2025 City of Virginia Beach Disparity Study

Final Report

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2025 City of Virginia Beach Disparity Study

Prepared for
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CHAPTER ES.
Executive Summary

BBC Research & Consulting (BBC) conducted a disparity study to evaluate whether small businesses and minority-, woman-, and service disabled veteran (SDV)-owned businesses (referred to collectively as *small and diverse businesses*) have equitable opportunities to participate in the City of Virginia Beach's (the City's) contracts and procurements.[1] As part of the disparity study, we examined whether there are any *disparities*, or differences, between:

- The percentage of prime contract and subcontract dollars the City awarded to small and diverse businesses during the *study period*, which was July 1, 2020 through June 30, 2024 (i.e., *utilization* or *participation*); and
- The percentage of prime contract and subcontract dollars one might expect the City to award to small and diverse businesses based on their availability to perform specific types and sizes of its prime contracts and subcontracts (i.e., *availability*).

Information from the disparity study will help the City better understand outcomes for small and diverse businesses in its contracting and procurement and help the organization address any substantial disparities between the participation and availability of those businesses for that work.

A. Disparity Study Results

BBC analyzed $1.6 billion of construction, architecture and engineering (A/E), professional services, and goods and services contracts the City awarded during the study period to measure the participation and availability of small and diverse businesses for that work and to assess whether any disparities exist between those measures. We summarize key results from those analyses below and identify sections of the report that provide more details about the methodology and results of each analysis.

1. Availability analysis (Chapter 6 and Appendix C of the report). BBC conducted a *custom census availability analysis* to estimate the availability of minority-, woman-, and SDV-owned businesses for City work while accounting for the characteristics of relevant businesses that exist in the *Virginia Beach marketplace* and the characteristics of the relevant prime contracts and subcontracts the City awards.[2] Figure ES-1 presents the availability of each relevant group of minority-, woman-, and SDV-owned businesses for all relevant contracts and procurements the City awarded during the study period. The availability of minority-owned businesses considered together for Virginia Beach work is 25.2 percent. The minority-owned business groups that account for the largest shares of the total availability of minority-owned businesses are Asian Pacific-owned businesses (4.5%), Black-owned businesses (12.5%), and Hispanic-owned businesses (2.8%). In addition, the availability of White woman-owned businesses for City work is 13.7 percent, and the availability of SDV-owned businesses is 12.6 percent.

[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race/ethnic groups.

[2] We defined the Virginia Marketplace, or the relevant geographic market area (RGMA), for the disparity study as the Virginia cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia.

Figure ES-1.
Availability estimates for City work

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

MENA stands for Middle Eastern and North African.

A text description of Figure ES-1 is provided in Appendix E.

Business group	
Race and gender	
Minority	25.2 %
Asian Pacific	4.5 %
Black	12.5 %
Hispanic	5.1 %
MENA	1.0 %
Native American	1.6 %
Subcontinent Asian	0.4 %
White woman	13.7 %
Veteran status	
Service-disabled veteran	12.6 %

As part of its implementation of the Small, Woman-owned, and Minority-owned (SWaM) Procurement Program, the City used race-based goals to encourage the participation of minority-owned businesses in certain construction projects worth more than $5 million that it awarded during the study period. BBC assessed the differences in the availability of minority- and woman-owned businesses in construction projects the City awarded with the use of contract goals (*goals* projects) and for similarly sized construction projects it awarded without the use of contract goals (*no goals* projects).[3] As shown in Figure ES-2, all minority-owned business groups and White woman-owned businesses exhibited similar availability for goals and no goals projects. The groups that showed the greatest levels of availability for both project sets were Black-owned businesses (goals: 10.9%; no goals: 10.2%), White woman-owned businesses (goals: 8.9%; no goals: 9.8%), and Hispanic-owned businesses (goals: 6.9%; no goals: 7.0%).

Figure ES-2.
Availability estimates for goals and no goals contracts

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure ES-2 is provided in Appendix E.

	Goal Status	
Business group	Goals	No goals
Minority	21.6 %	22.2 %
Asian Pacific	1.7 %	2.5 %
Black	10.9 %	10.2 %
Hispanic	6.9 %	7.0 %
MENA	0.9 %	1.0 %
Native American	0.9 %	1.2 %
Subcontinent Asian	0.3 %	0.3 %
White woman	8.9 %	9.8 %

2. Utilization analysis (Chapter 7 of the report). BBC also calculated the participation of minority-, woman-, and SDV-owned businesses in the relevant contracts and procurements the City awarded during the study period. As shown in Figure ES-3, during the study period, the City awarded 4.5 percent of its contracting and procurement dollars to all minority-owned businesses considered together. The only minority-owned business group to which the City awarded more than 1 percent of its

[3] To ensure that the sets of goals and no goals contracts we compared were similar in terms of work type and contract size, the contracts we included in the analysis were limited to construction contracts worth $5 million or greater, regardless of whether they were awarded with the use of project goals.

dollars was Black-owned businesses (2.5%). White woman-owned businesses received 6.3 percent of City contract dollars, and SDV-owned businesses received 1.1 percent of those dollars.

Figure ES-3.
Utilization analysis results for City work

Business group	
Race and gender	
Minority	4.5 %
Asian Pacific	0.9 %
Black	2.5 %
Hispanic	0.9 %
MENA	0.0 %
Native American	0.0 %
Subcontinent Asian	0.1 %
White woman	6.3 %
Veteran status	
Service-disabled veteran	1.1 %

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure ES-3 is provided in Appendix E.

BBC also assessed the differences in the participation of minority- and woman-owned businesses in goals projects and for similarly sized no goals projects. As shown in Figure ES-4, minority-owned businesses considered together exhibited greater levels of participation in goals projects (2.3%) than in no goals projects (1.2%). Of all the minority-owned business groups, Black-owned businesses exhibited the greatest difference in participation between goals projects (2.3%) and no goals projects (0.4%). Similarly, White woman-owned businesses also exhibited greater levels of participation in goals projects (7.4%) than in no goals projects (4.4%).

Figure ES-4.
Utilization analysis results for goals and no goals projects

	Goal Status	
Business group	Goals	No goals
Minority	2.3 %	1.2 %
Asian Pacific	0.0 %	0.4 %
Black	2.3 %	0.4 %
Hispanic	0.0 %	0.4 %
MENA	0.1 %	0.0 %
Native American	0.0 %	0.0 %
Subcontinent Asian	0.0 %	0.0 %
White woman	7.4 %	4.4 %

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure ES-4 is provided in Appendix E.

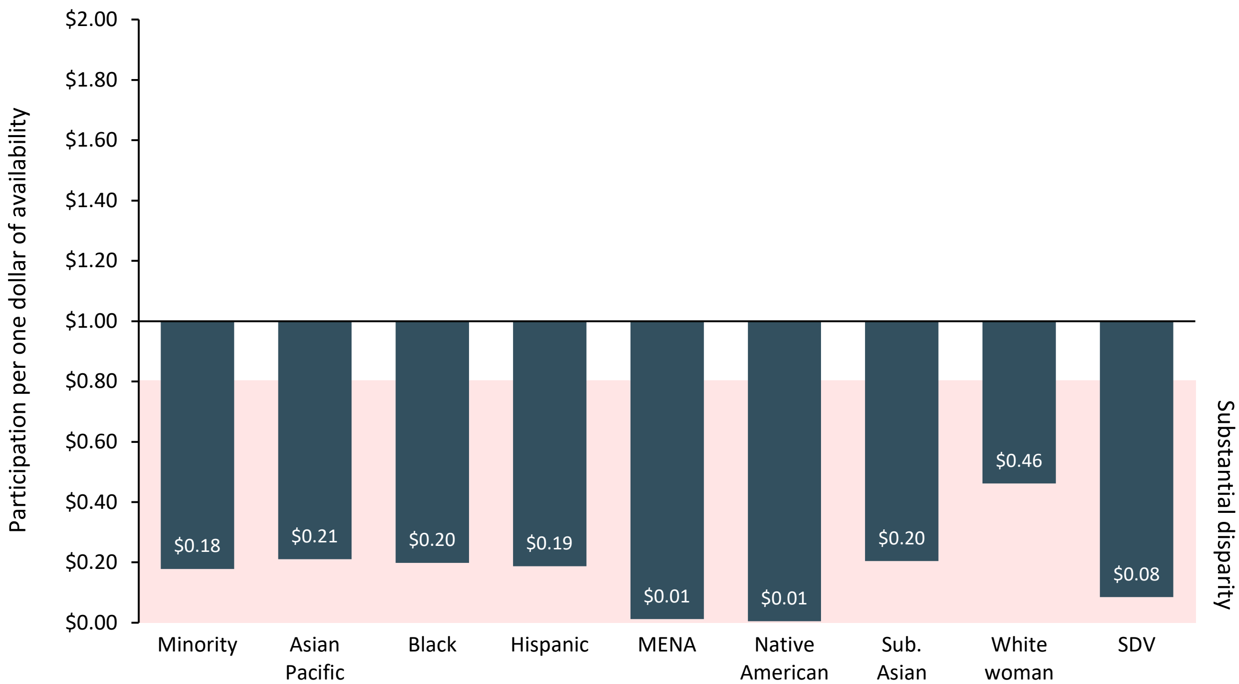
3. Disparity analysis (Chapter 8 and Appendix D of the report). The crux of the disparity study was to assess whether any disparities exist between the participation and availability of minority-, woman-, and SDV-owned businesses for City work. We used the following formula to calculate *disparity indices* to compare utilization and availability for relevant business groups:

$$\textbf{Disparity Index (\$)} = \frac{\text{dollars of participation}}{\text{dollars of availability}}$$

A disparity index indicates the proportion of the City's contract dollars it awarded to a business group for every $1.00 of the group's availability for that work. For example, a disparity index of $0.57 would indicate that the City awarded $0.57 of its contract dollars to a business group for every $1.00 of that group's availability for the City's work. A disparity index of less than $1.00 indicates a *disparity* between participation and availability. That is, the participation of a group is less than its availability. A disparity index of less than $0.80 indicates a *substantial disparity* between participation and availability. That is, the group is considered to have been substantially underutilized relative to its availability.

a. Overall. Figure ES-5 presents disparity indices for minority-, woman-, and SDV-owned businesses for all City contracts considered together. There is a red box at the disparity index level of $0.80 and below, which indicates substantial disparities. As shown in Figure ES-5, minority-owned businesses (disparity index of $0.18) exhibited a substantial disparity for City work. Moreover, all individual minority-owned business groups, White woman-owned businesses, and SDV-owned businesses exhibited substantial disparities.

Figure ES-5.
Overall disparity analysis results for City work



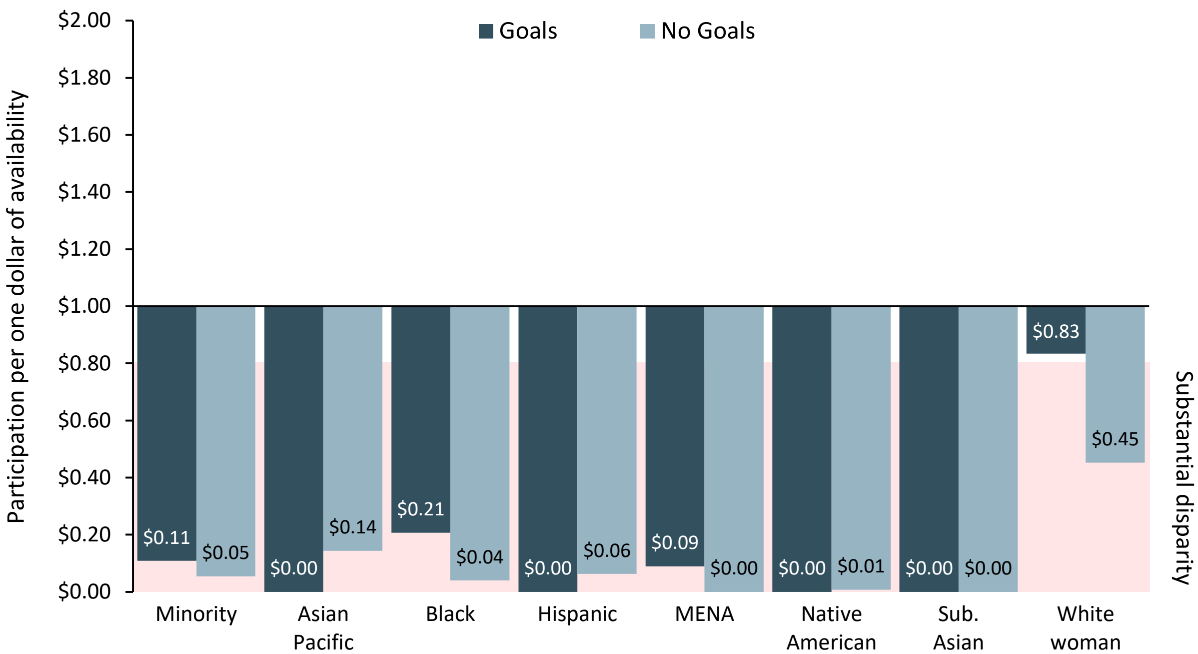
Notes: For more detail, see Figure D-1 in Appendix D.
A text description of Figure ES-5 is provided in Appendix E.

b. Goal status. BBC also assessed disparities for minority- and woman-owned businesses separately for goals projects and for similarly sized *no goals* projects. As shown in Figure ES-6, minority-owned businesses considered together exhibited a substantial disparities for goals projects (disparity index of $0.11) and no goals projects (disparity index of $0.05), although the disparity index for goals projects was somewhat larger (indicating a smaller disparity). Disparity indices differed by individual minority-owned business group and goal status:

- Relevant groups of minority-owned businesses all showed substantial disparities for goals projects: Asian Pacific-owned businesses (disparity index of $0.00), Black-owned businesses (disparity index of $0.21), Hispanic-owned businesses (disparity index of $0.00), MENA-owned businesses (disparity index of $0.09), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- All relevant groups of minority-owned businesses also exhibited substantial disparities for no goal contracts: Asian Pacific-owned businesses (disparity index of $0.14), Black-owned businesses (disparity index of $0.04), Hispanic-owned businesses (disparity index of $0.06), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.01), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- The only minority groups to show smaller disparities for goals projects than for no goals projects were Black-owned businesses (goals: $0.21 no goals: $0.04) and MENA-owned businesses (goals: $0.09; no goals: $0.00).

Although White woman-owned businesses were not eligible for the City's contract goals, BBC nonetheless calculated disparity indices for them for goals projects and no goals projects. White woman-owned businesses exhibited a substantial disparity for no goals projects (disparity index of $0.45), but they did not exhibit a substantial disparity for goals projects (disparity index of $0.83).

Figure ES-6.
Disparity analysis results by contract goal status



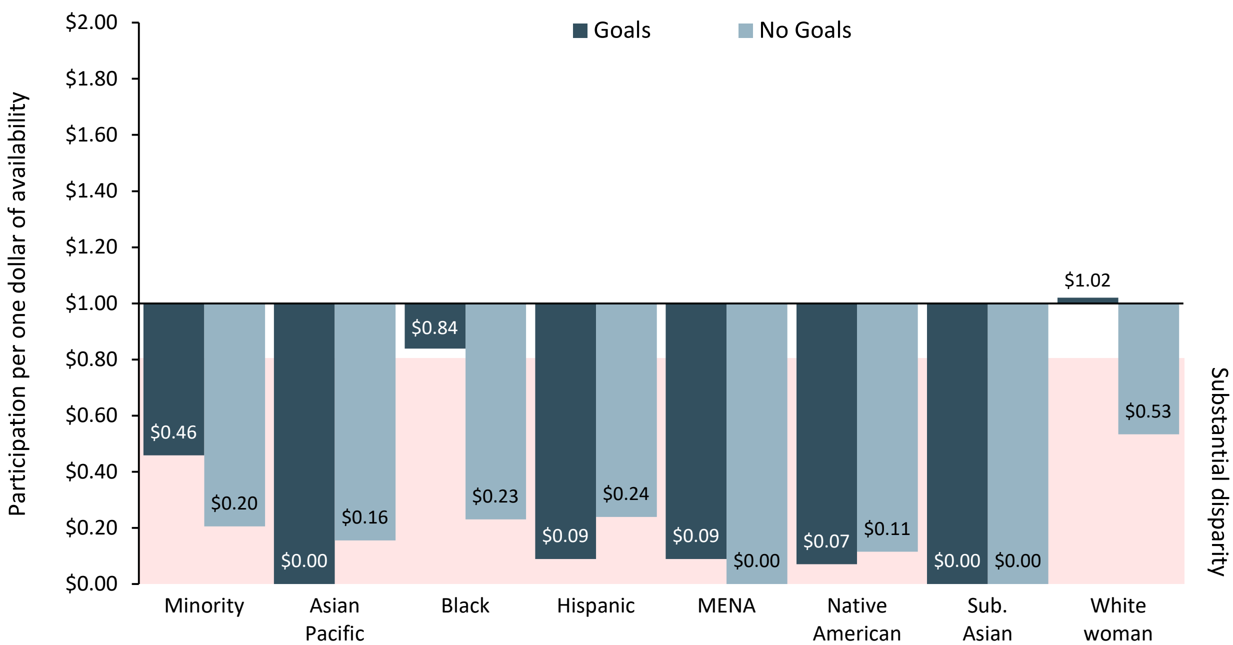
Notes: For more detail, see Figures D-10 and D-11 in Appendix D.
A text description of Figure ES-6 is provided in Appendix E.

The analyses in this study focused on businesses that have a location within the Virginia Beach marketplace. However, businesses located outside the marketplace can become SWaM-certified and are thus eligible to participate in business programs for SWaM-certified businesses, including the City's use of MBE goals during the study period. Thus, it is instructive to examine disparity indices for goals projects and no goals projects, considering both local (i.e. businesses with a location in the marketplace) and non-local (i.e. businesses that do not have a location in the marketplace) minority- and woman-owned businesses that participated in City work during the study period. As shown in Figure ES-7, when including both local and non-local businesses in the analysis, minority-owned businesses considered together exhibited a substantial disparity on goals projects (disparity index of $0.46) and no goals projects (disparity index of $0.20), but their outcomes were better for goals than for no goals projects (i.e., they showed a smaller disparity for goals than for no goals projects). Disparity indices differed by individual minority-owned business group and goal status:

- When including both local and non-local businesses in the analysis, Asian Pacific-owned businesses (disparity index of $0.00), Hispanic-owned businesses (disparity index of $0.09), MENA-owned businesses (disparity index of $0.09), Native American-owned businesses (disparity index of $0.07), and Subcontinent Asian-owned businesses (disparity index of $0.00) exhibited substantial disparities on goals projects. Black-owned businesses exhibited a disparity for those projects (disparity index of $0.84), but that disparity was not substantial.
- All minority-owned business groups exhibited substantial disparities for no goals projects: Asian Pacific-owned businesses (disparity index of $0.16), Black-owned businesses (disparity index of $0.23), Hispanic-owned businesses (disparity index of $0.24), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.11), and Subcontinent Asian-owned businesses (disparity index of $0.00).

In addition, when including both local- and non-local businesses in the analysis White woman-owned businesses exhibited a substantial disparity for no goals projects (disparity index of $0.53), but did not exhibit a disparity for goals projects (disparity index of $1.02).

Figure ES-7.
Disparity analysis results for goals and no goals projects, local and non-local participation



Notes: For more detail, see Figures D-5 and D-6 in Appendix D.

This figure presents disparity indices for goals projects and no goals projects considering both local (i.e., businesses with a location inside of the RGMA) and non-local (i.e., businesses that do not have a location inside of the RGMA) utilized minority- and woman-owned businesses.

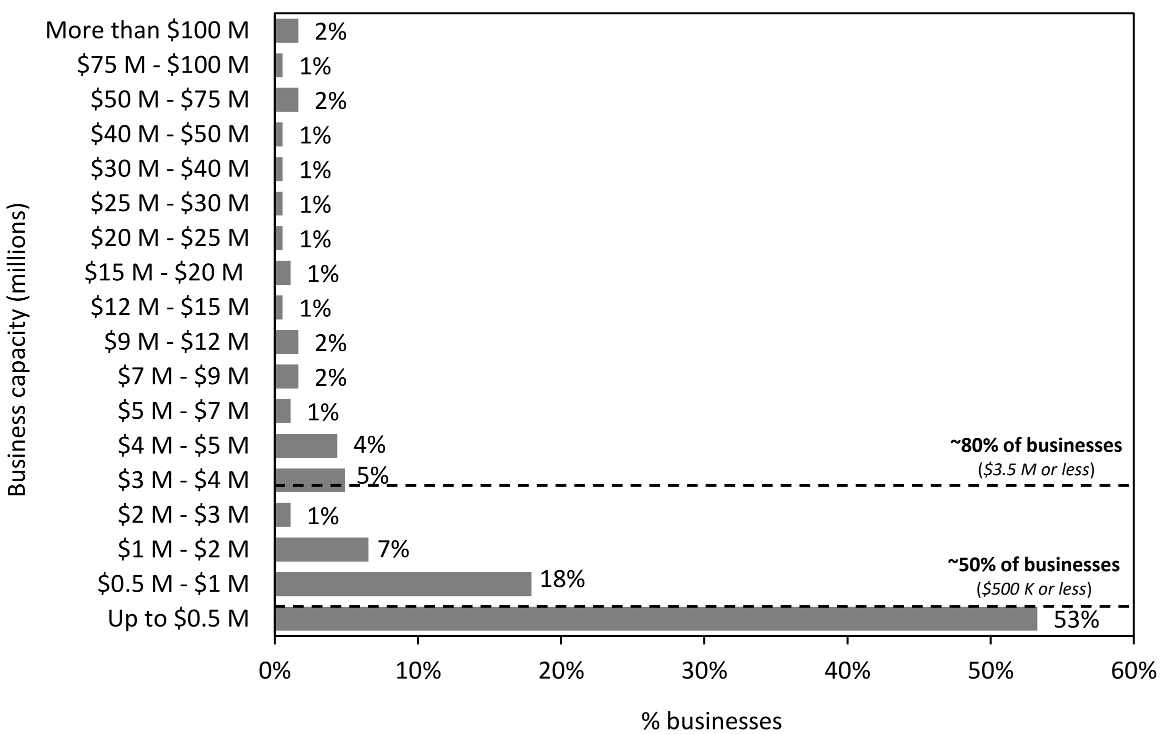
A text description of Figure ES-7 is provided in Appendix E.

4. Analysis of business characteristics (Chapter 9 of the report). BBC collected extensive information on businesses available for City contracts and on businesses that participated in City work during the study period. The City can use that information to tailor its contracting inclusion efforts to the specific needs of the businesses—including many minority-, woman-, and SDV-owned businesses—in the marketplace. Doing so may become particularly important if the City considers implementing additional program measures to support small and local businesses in the region.

a. Available businesses. BBC analyzed various characteristics of businesses we identified as available for City work, including information on their revenues, numbers of employees, ages, bidding capacities, and whether they work as prime contractors or subcontractors. We highlight results from two key analyses—those on businesses' revenues and bidding capacities—in this chapter.

i. Business revenues. Contracting inclusion programs are typically designed to support socially and *economically* disadvantaged businesses in organizations' contracting. A common indicator of economic disadvantage is business revenue, so we explored the distribution of businesses available for City work based on their annual revenues. Figure ES-8 shows the distribution of the businesses that provided data on their annual revenues as part of availability surveys. As shown in Figure ES-8, 50 percent of businesses available for City work have annual revenues of $500,000 or less, and 80 percent of them have annual revenues of $3.1 million or less.

Figure ES-8.
Distribution of available businesses based on their annual revenues

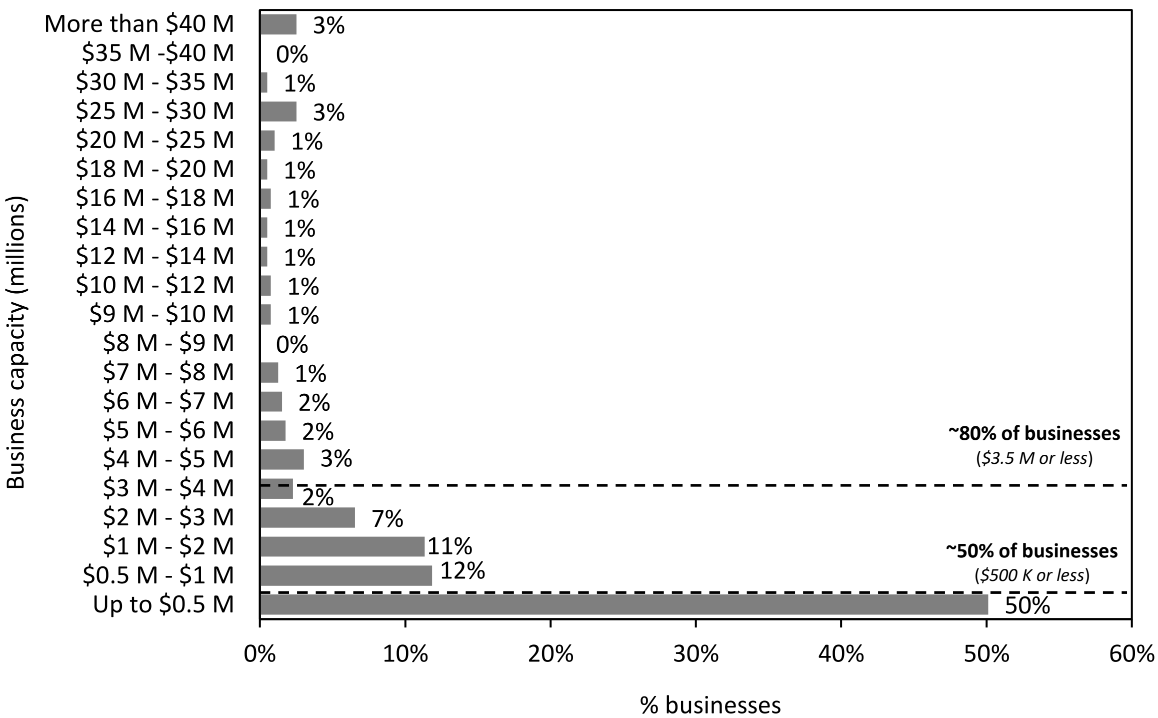


Notes: Values may not sum exactly to 100 percent due to rounding.

A text description of Figure ES-8 is provided in Appendix E.

ii. Bidding capacity. It is useful for the City to understand the largest contracts for which available businesses can realistically compete (i.e., *bidding capacity*) so the organization can right-size its opportunities for them. As part of availability surveys, businesses reported the largest contract for which they are able to compete or perform. Figure ES-9 shows the distribution of the businesses that provided that information. As shown in Figure ES-9, 50 percent of businesses available for City work can bid on contracts worth up to $500,000 and 80 percent of businesses can bid on contracts worth up to $3.5 million.

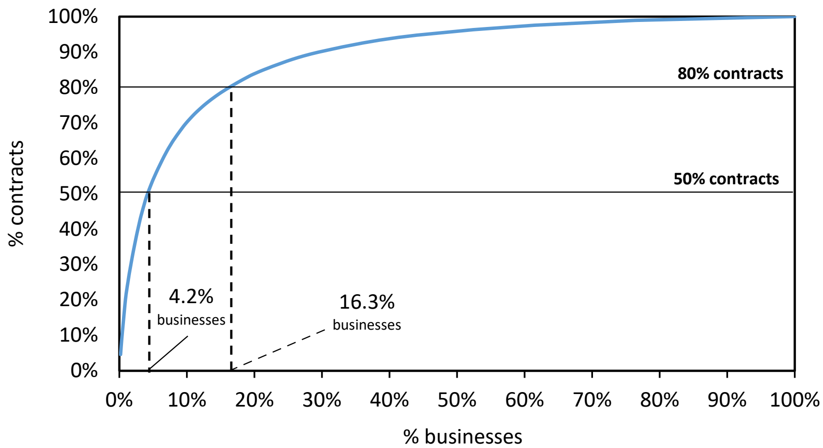
Figure ES-9.
Distribution of available businesses based on their capacities



Notes: Values may not sum exactly to 100 percent due to rounding.
A text description of Figure ES-9 is provided in Appendix E.

b. Utilized businesses. A common finding in disparity study research is that government organizations tend to award a disproportionate percentage of their contracts and contract dollars to relatively few businesses. BBC conducted a concentration analysis of the contract dollars the City awarded during the study period to assess whether they were awarded to a relatively large number of businesses or whether they were heavily concentrated among a relatively small number of businesses. BBC identified all businesses to which the City awarded a contract that was worth less than $1 million and then ordered businesses in descending order based on the volume of contract dollars the City awarded to each one. We then calculated the percentage of businesses that accounted for 50 percent and 80 percent of the dollars the City awarded. As shown in Figure ES-10, during the study period, the City awarded 50 percent of the dollars associated with contracts worth less than $1 million to only 4.2 percent of the businesses that participated in its work. The organization awarded 80 percent of those dollars to only 16.3 percent of businesses.

Figure ES-10.
Cumulative distribution of businesses based on the volume of contract dollars the City awarded to them (contracts worth less than $1 million)



Notes: A text description of Figure ES-10 is provided in Appendix E.

B. Key Recommendations (Chapter 11 of the report)

The disparity study provides substantial information the City should examine as it considers potential refinements to its policies and its efforts to further encourage the participation of minority-, woman-, and SDV-owned businesses in its contracts and procurements. Based on our analysis of City policies and programs, qualitative information we collected from stakeholders, disparity study results, and best practices in the industry, BBC presents several key recommendations for specific contracting policies and programs the City could consider refining or developing to help increase the participation of those businesses in its work.

1. Project Goals Program. As part of its implementation of the SWaM Procurement Program, the City implemented the Project Goals Program from 2022 until the sunset of the program in June 2025. As part of the program, the City used condition-of-award, race-based Minority-owned Business Enterprise (MBE) project goals to encourage the participation of certain eligible, certified MBE subcontractors in certain construction projects worth more than $5 million. Based on disparity study results, the City should consider reinstating its MBE Project Goals Program. If the City decides to do so, then it must ensure that its use of any race-based project goals meets the requirements of the *strict scrutiny* standard of constitutional review, including showing a *compelling governmental interest* for their use and ensuring that their use is *narrowly tailored*.

a. Eligibility for goals program. BBC assessed disparity analysis results for all relevant minority-owned business groups for the large construction projects the City awarded during the study period without the use of MBE project goals (i.e., *no goals* projects). Those results are the best indicator of outcomes for minority-owned businesses for projects the City awards using only race-neutral measures and for projects similar to the ones the City currently awards with the use of MBE project goals. As shown in Figure ES-6 and ES-7, all race groups on which disparity study analyses focused—Asian Pacific-, Black-, Hispanic-, MENA-, Native American-, Subcontinent Asian-owned businesses—exhibited substantial disparities on the construction projects the City awarded during the study period without the use of

MBE project goals. Those results indicate inferences of discrimination for all relevant groups of minority-owned businesses and provide support for the City's continued use of MBE project goals.

b. Woman-owned business enterprise (WBE) project goals. In addition to the use of MBE project goals, the City should consider applying WBE on applicable contracts and procurements, as the use of race- and gender-neutral measures has not adequately addressed disparities for White woman-owned businesses. Additionally, like most other groups, White woman-owned businesses exhibited substantial disparities on most of the various sets of projects the City awarded during the study period, including on construction projects worth more than $5 million that the City awards without the use of project goals. If the City decides to set WBE goals, it should consider setting them separately from MBE goals, because barriers for White woman-owned businesses tend to be different than those for minority-owned businesses.

c. Expand the program. Based on BBC's experience conducting disparity studies, construction and professional services are far more likely than other industries to include subcontracting opportunities, and those opportunities often exist on projects worth $5 million or less. Additionally, BBC observed substantial disparities for certain groups of minority-owned businesses—Asian Pacific-, Black-, MENA-, and Native American-owned businesses—and White woman-owned businesses on the professional services projects the City awarded during the study period, and all groups of minority-owned businesses and White woman-owned businesses exhibited substantial disparities on the architecture and engineering (A/E) projects the City awarded. If the City reinstates the Project Goals Program, it should consider using project goals to award both construction and professional services projects, and it should consider lowering the threshold for the application of project goals across both industries. Using project goals to award more projects will increase opportunities for small and diverse businesses, especially those that do not currently have the capacity to work as prime contractors.

2. Overall aspirational goals. The City's current aspirational goals for the overall participation of MBEs, WBEs, and SDV-owned businesses are based on the results of the 2018 City of Virginia Beach Disparity Study. As part of the 2025 study, BBC found that the availability of minority-, woman-, and SDV-owned businesses in the Virginia Beach marketplace has increased since the 2018 study. The City should consider updating its overall MBE, WBE, and SDV-owned business participation goals based on results from the current availability analysis as well as on other considerations.

3. Consolidated subcontracting program. The City currently implements two race- and gender-neutral subcontracting goals programs for SWaM-certified businesses: the *Small Business Enhancement Program* and the *Enhanced Subcontracting Program* (see Chapter 9 for more details on these programs). The City should consider consolidating the Small Business Enhancement Program and the Enhanced Subcontracting Program into a single program. A consolidated program will likely reduce confusion among members of the business community and make the program easier to operate. To do so, the City should consider selecting applicable projects and setting subcontracting minimums based on the sizes, scopes, and types of the specific projects, rather than automatically setting a 50 percent subcontracting minimum on all projects worth more than a certain dollar threshold. That is, the minimums would vary from project to project, and for some projects, the City might not set a subcontracting minimum at all. In addition, the City should not make the requirements contingent on whether bidders choose to use subcontractors. Rather, program requirements should apply to all bidders. Finally, projects across all relevant industries—construction, A/E, professional services, and goods and services—should be considered for the program.

4. Sheltered Bidding Program. As shown in Figure ES-8, BBC found that approximately 50 percent of relevant businesses in the RGMA have revenues of less than $500,000 per year. Additionally, BBC's qualitative analysis indicates the need for program measures that support the smallest of businesses, because the size of "small businesses" can vary substantially. The City currently sets aside certain construction contracts worth between $25,000 and $500,000 and certain goods and services contracts worth more than $10,000 for exclusive competition among SWaM-certified businesses. To better align the Sheltered Bidding Program with the characteristics of the businesses available in the marketplace, the City should consider a tiered approach to implementing the Sheltered Bidding Program. For example, the City could set aside smaller contracts for businesses that earn less revenue each year, and larger contracts for businesses that earn more. Doing so will allow the City to better address economic disadvantages that small businesses face in the marketplace by better tailoring its efforts to those businesses that need the most support.

5. Mentor-protégé program. Many business owners and representatives who shared qualitative information as part of the disparity study spoke highly of mentor-protégé programs and relationships, noting the benefits of working with and learning from larger, more successful companies in similar industries. However, they also indicated that mentors have to take active roles in those relationships for them to be mutually beneficial. The City should consider developing a mentor-protégé program to introduce new businesses to prime contractors and City decision makers, provide guidance to growing businesses, and increase the capacity of these businesses to perform City work as prime contractors or prime consultants themselves. Such a program should include:

- Mentorship from businesses that successfully compete for and perform City contracts in the same industries as protégés;
- An emphasis on teaching protégés how to navigate City processes to work as prime contractors;
- Compensation for the time and resources required for mentors to participate in the program;
- Incentives for mentors to include their protégés on project teams for future opportunities, such as bid discounts or set-asides; and
- Key performance indicators to ensure that mentors are making genuine efforts to support the growth of protégés and that protégés are benefitting from their relationships with mentors.

6. Encourage untried business participation. BBC found that the vast majority of the contracts and procurements—as well as the associated dollars—the City awarded during the study period were awarded to a relatively small number of businesses. The City should consider exploring different ways to engage with businesses that have not participated in its work in the past—that is, *untried businesses*. Some of those efforts could include:

- Continuing to work with local organizations to engage directly with untried businesses and providing them with information about the advantages of and the process for doing so;
- Setting aside contract opportunities for exclusive competition among untried businesses; or

- Expanding the use of multiple-award contracts—at the prime contract or subcontract level—to multiple businesses where there is a rotation schedule so all the businesses receive comparable amounts of work over the life of the contract.

7. SWaM Business Office capacity and enforcement. The City has dedicated staff members within the SWaM Business Office to implement the SWaM Procurement Program, set contract goals on relevant projects, and monitor the participation of SWaM businesses in its work, among other responsibilities. Refinements and expansions of the Project Goals, Small Business Enhancement, and Sheltered Bidding Programs will involve close monitoring and enforcement that may require an expansion of the SWaM Business Office. When considering how many additional staff members it might need, the City should consider various functions new or expanded roles might serve, such as assisting businesses with relevant certification requirements, monitoring business participation in City work, setting project-specific goals, implementing technical assistance programs, and various other functions.

CHAPTER 1.
Introduction

The City of Virginia Beach (the City) is the most populous city in Virginia and one of the 50 most populous cities in the United States. Each year, the City spends hundreds of millions of dollars in contracts and procurements to procure various goods and construction, architecture and engineering (A/E), professional, and other services to serve the needs of local residents, visitors, and businesses. To encourage the participation of small businesses, minority-owned businesses, woman-owned businesses, and service-disabled veteran (SDV)-owned businesses in that work, the City operates the Small, Woman-owned, and Minority-owned Business (SWaM) Procurement Program, which it has been refining over the past five years based on recommendations from the 2018 City of Virginia Beach Disparity Study.

The City retained BBC Research & Consulting (BBC) to conduct a new *disparity study* to evaluate whether minority-, woman-, and SDV-owned businesses face any barriers in its contracting and procurement. As part of the study, we examined whether there are any *disparities*, or differences, between:

- The percentage of contract dollars the City spent with minority-, woman-, and SDV-owned businesses during the *study period*, which was July 1, 2020 through June 30, 2024 (i.e., *utilization* or *participation*); and
- The percentage of contract dollars one might expect the City to award to those businesses based on their availability to perform specific types and sizes of the prime contracts and subcontracts the organization awards (i.e., *availability*).

The disparity study also provides other quantitative and qualitative information related to:

- The legal framework surrounding the City's implementation of the SWaM Procurement Program;
- Local marketplace conditions for minority-, woman-, and SDV-owned businesses; and
- Contracting practices and business assistance programs the City has in place or could consider implementing in the future.

BBC relied on results from the disparity study to provide guidance to the City on how it could help address any barriers that minority-, woman-, and SDV-owned businesses in its work face as part of the organization's contracting and procurement processes and in the surrounding marketplace.

BBC introduces the 2025 City of Virginia Beach Disparity Study in three parts:

A. Background;

B. Study scope; and

C. Study team members.

A. Background

The SWaM Procurement Program is designed to increase the participation of small businesses, minority-owned businesses, woman-owned businesses, and SDV-owned businesses in City contracts and procurements. It includes various efforts the City uses to meet three overall aspirational participation goals each year:

- Awarding 12.0 percent of its contract and procurement dollars to minority-owned businesses;
- Awarding 13.3 percent of its contract and procurement dollars to woman-owned businesses; and
- Awarding 11.9 percent of its contract and procurement dollars to SDV-owned businesses.

The City currently uses a combination of *race-based* measures and *race- and gender-neutral* measures to meet its overall goals. Race-based measures are contracting inclusion measures specifically designed to increase the participation of minority-owned businesses in an organization's contracts and procurements.[1] In contrast, race- and gender-neutral measures are designed to increase the participation of particular groups of businesses, regardless of the race or gender of the owners, in City contracts and procurements. The only race-based measure the City uses as part of the SWaM Procurement Program is setting percentage goals for the participation of certified Minority-owned Business Enterprises (MBEs) in awarding construction contracts worth $5 million or more. As a condition of award, bidders have to meet those goals as part of their bids by making participation commitments—usually subcontract commitments—with eligible, certified MBEs, or if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts to do so.

As a result of the 2018 Virginia Beach Disparity Study, the Virginia Beach City Council signed a resolution on February 18, 2020 directing the City Manager to implement policy recommendations from the disparity study and additional recommendations suggested by the Minority Business Council and the Virginia Beach City Council. The City has since established additional measures to further encourage SWaM business participation in its contracts and procurements, including a subcontract goals program to increase the participation of minority-owned businesses in construction contracts, a subcontract goals program to increase SWaM business participation in subcontracts, and a sheltered bidding program to improve supplier diversity through the use of small business set asides.

B. Study Scope

BBC assessed whether any disparities exist between the participation and availability of minority-, woman, and SDV-owned businesses for the construction, A/E, professional services, and goods and services contracts and procurements the agency awards. We based those and other analyses on contracts and procurements the City awarded between July 1, 2020 and June 30, 2024, which we treated as a proxy for the contracts and procurements the City will award in the future.

[1] Gender-based measures are contracting inclusion measures specifically designed to increase the participation of woman-owned businesses in an organization's contracts and procurements. The City does not use any gender-based measures as part of the SWaM Procurement Program.

1. Definitions of small and diverse businesses. To interpret the core analyses presented in the disparity study, it is useful to understand how BBC defined minority-, woman, and SDV-owned businesses and SWaM-certified businesses in our analyses.

a. Minority-owned businesses. BBC focused our analyses on the following minority-owned business groups: Asian Pacific-, Black-, Hispanic-, Middle Eastern and North African-, Native American-, and Subcontinent Asian-owned businesses. Our definition of minority-owned businesses included both businesses owned by men of color and women of color. For example, we grouped results for businesses owned by Black men with results for businesses owned by Black women to present results for Black-owned businesses in general. We gathered business ownership information from a variety of different sources, including surveys, business listings, and Internet research. We considered businesses to be minority-owned based on the known races of their business owners, regardless of whether they were SWaM-certified or held any other types of certification.

b. Woman-owned businesses. Because we classified businesses owned by women of color according to their corresponding racial groups, analyses and results for woman-owned businesses pertain specifically to results for *non-Hispanic White woman-owned businesses*. As with minority-owned businesses, we considered businesses to be woman-owned based on the known genders of business owners, regardless of whether they were SWaM-certified or held any other types of certification.

c. SDV-owned businesses. BBC defined an SDV-owned business as a business owned by veterans of the United States military who suffer from physical or mental disabilities resulting from their military service**.**

d. SWaM-certified businesses. A SWaM-certified business is a business that is certified as a small business, minority-owned business, woman-owned, or SDV-owned business by the Commonwealth of Virginia's Department of Small Business and Supplier Diversity (SBSD). Businesses seeking SWaM certification are required to submit an application to SBSD. Applications require business owners to submit various information about their companies, including business names; contact information; tax information; work specializations; and the races, genders, and veteran statuses of their owners.

2. Analyses in the disparity study. The crux of the disparity study was to assess whether any disparities exist between the participation and availability of minority-, woman-, and SDV-owned businesses for the contracts and procurements the City awards in the areas of construction, A/E, professional services, and goods and services. The study also includes various analyses related to outcomes for minority-, woman-, and SDV-owned businesses throughout the local marketplace.
BBC presents results from those analyses as follows:

a. Legal framework and analysis. The study team conducted a detailed analysis of relevant laws, legal decisions, and other information to guide the methodology for the disparity study and inform our recommendations for refinements to the SWaM Procurement Program. BBC presents the legal framework and analysis for the study in **Chapter 2** and **Appendix B.**

b. Marketplace conditions. The study team conducted extensive quantitative analyses of conditions and potential barriers in the local marketplace for minority-, woman-, and SDV-owned businesses. In addition, we collected qualitative evidence about potential barriers different individuals and businesses face in the local marketplace using in-depth interviews, focus groups, public meetings, and other engagement efforts. BBC presents quantitative information about marketplace conditions in **Chapter 3** and qualitative information in **Chapter 4**.

c. Data collection. BBC examined contract, procurement, and vendor data from multiple sources to complete the utilization and availability analyses. We present information on our contract, procurement, and vendor data collection processes in **Chapter 5.**

d. Availability analysis. The study team analyzed the percentage of contract and procurement dollars one might expect the City to award to small businesses as well as minority-, woman-, and SDV-owned businesses based on their availability to perform specific types and sizes of the organization's contracting work. That analysis was based on City data and surveys the study team conducted with 473 local businesses that work in industries related to the types of contracts and procurements the City awards. We present results from the availability analysis in **Chapter 6** and **Appendix C**.

e. Utilization analysis. The study team analyzed contract and procurement dollars the City awarded to minority-, woman-, and SDV-owned businesses during the study period, including information about associated subcontracts. We present results from the utilization analysis in **Chapter 7**.

f. Disparity analysis. BBC examined whether there were any disparities between the participation and availability of minority-, woman-, and SDV-owned businesses for contracts and procurements the City awarded during the study period. We present results from the disparity analysis in **Chapter 8** and **Appendix D.**

g. Program measures. BBC reviewed the measures the City uses to encourage the participation of minority-, woman-, and SDV-owned businesses in its contracting and procurement, as well as its implementation of the SWaM Procurement Program. We present that information in **Chapter 9**.

h. Analyses of the business community. BBC conducted key analyses of business characteristics, beyond race and gender, of businesses potentially available for the projects the City awards and the businesses that performed work for the City during the study period. We present that information in **Chapter 10**.

i. Recommendations. BBC provided guidance related to additional program options and changes to current contracting practices the City could consider implementing. We present those recommendations in **Chapter 10**.

C. Study Team Members

The disparity study was conducted by a study team made up of four firms that, collectively, possess decades of experience related to conducting disparity studies in connection with contracting inclusion programs.

1. BBC (prime consultant). BBC is an Asian American-owned disparity study and economic research firm based in Denver, Colorado. We had overall responsibility for the study and performed all quantitative and qualitative analyses.

2. The Miles Agency. The Miles Agency is a Black woman-owned community engagement firm based in Virginia Beach. The Miles Agency conducted in-depth interviews with businesses located in the

Virginia Beach region as part of the study team's qualitative analyses of marketplace conditions. In addition, the firm helped facilitate various community engagement efforts.

3. Davis Research. Davis Research is a survey fieldwork firm based in Calabasas, California that has conducted tens of thousands of surveys as part of disparity studies across the country. The firm conducted telephone and online surveys with hundreds of local businesses in connection with the availability and utilization analyses.

4. Holland & Knight. Holland & Knight is a law firm with offices throughout the country. The firm conducted a review of the legal framework for the study and the SWaM Procurement Program, and the study team's recommendations.

CHAPTER 2.
Legal Framework and Analysis

The City of Virginia Beach (the City) commissioned a disparity study to assess whether there are any statistical disparities between the participation and availability of minority-, woman-, and service-disabled veteran (SDV)-owned businesses for the contracts and procurements the organization awards. One of the primary reasons for those assessments is to determine whether compelling evidence of discrimination exists for specific business groups in obtaining work on City projects and whether the organization should consider continuing its use of *race-based* measures as part of its contracting and procurement processes. In the context of government contracting, *race- and gender-based* measures are efforts designed to specifically encourage the participation of minority- and woman-owned businesses, respectively, in the contracts and procurements a government organization awards (e.g., using condition-of-award goals for the participation of certain eligible business groups as part of awarding individual projects). In contrast, *race- and gender-neutral* measures are efforts designed to encourage the participation of certain groups of businesses in an organization's work, regardless of the race or gender of business owners.

Chapter 2 summarizes the legal standards that govern the use of race- and gender-based and race- and gender-neutral measures in three parts:

A. Legal standards;

B. Court decisions; and

C. Addressing legal requirements with the disparity study.

A. Legal Standards

The City operates the Small, Woman-owned, and Minority-owned Business (SWaM) Procurement Program to encourage the participation of small businesses, minority-owned businesses, woman-owned businesses, and SDV-owned businesses in the contracts and procurements it awards. The program is made up almost entirely of race- and gender-neutral measures, but the City does set race-based percentage goals for the participation of certified Minority-owned Business Enterprises as part of awarding construction projects worth $5 million or more. There are different legal standards for determining the constitutionality of the program measures the City uses as part of the SWaM Procurement Program, depending on whether they are race- and gender based in nature.

1. Race- and gender-neutral measures. Examples of race- and gender-neutral contracting measures include an organization's use of small business participation goals or setting aside certain projects for exclusive competition among SDVs. Because race- and gender-neutral measures are not based on the race, gender, sexual orientation, or other *legally suspect* characteristics of business owners, courts apply the *rational basis* test—which is the least rigorous test for evaluating the constitutionality of contracting measures—to assess whether an organization's use of such measures is constitutional. To meet the requirements of the rational basis test, an organization must ensure that its use of race- and gender-neutral measures is rationally related to legitimate government interests (e.g., encouraging the participation of economically disadvantaged businesses in its work).

2. Race- and gender-based measures. In contrast to race- and gender-neutral contracting measures, an organization's use of race-based and gender-based measures must meet the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

a. Strict scrutiny. An organization's use of race-based contracting measures is subject to the strict scrutiny standard of review, which is the most stringent standard for evaluating the constitutionality of contracting measures that include legally suspect classifications. (In 2023, the United States Supreme Court in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* reaffirmed that the strict scrutiny standard is the appropriate standard for assessing the constitutionality of race-based inclusion measures.[1]) To meet the strict scrutiny standard, government organizations must show a *compelling governmental interest* in using race-based measures and demonstrate that their use is *narrowly tailored*.

i. Compelling governmental interest. Government organizations using race-based contracting measures must have evidence of the existence of discrimination within their own *relevant geographic market areas* (*RGMAs*)—including statistical and anecdotal evidence—that supports the use of such measures.[2] It is not necessary for organizations themselves to have discriminated against minority-owned businesses for them to demonstrate a compelling governmental interest. If evidence indicates that they are *passive participants* in race-based discrimination that exists in their RGMAs, then they could consider using race-based measures to account for that discrimination as part of their contracting and procurement processes.[3] Passive participation in discrimination refers to organizations perpetuating discrimination that exists in their marketplaces through the policies and practices they use to award projects (e.g., by requiring high insurance requirements to perform work on their projects when demonstrable barriers exist for minority-owned businesses in local insurance markets).

ii. Narrow tailoring. In addition to demonstrating a compelling governmental interest, government organizations that use race-based contracting measures must demonstrate that their use of such measures is narrowly tailored to meet program objectives. There are several factors courts consider in determining whether an organization's use of race-based contracting measures is narrowly tailored:

- The necessity of such measures and the efficacy of alternative, race-neutral measures;
- The degree to which the use of such measures is limited to those groups for which evidence of discrimination exists in the local marketplace;
- The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;
- Whether any numerical, race-based participation goals are related to the local marketplace; and
- Whether the use of such measures is overly burdensome for businesses not owned by minorities.

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[1] *Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023)*.

[2] See e.g., *Concrete Works, Inc. v. City and County of Denver* ("Concrete Works I"), 36 F.3d 1513, 1520 (10th Cir. 1994).

[3] See e.g., *City of Richmond v. J.A. Croson Co*., 488 U.S. 469, 492 (1989); *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1048 (Federal Cir. 2008).

b. Intermediate scrutiny. In 1976, the United States Supreme Court (SCOTUS) ruled that a government organization's use of gender-based inclusion measures must meet the requirements of the intermediate scrutiny standard, which is less rigorous than the strict scrutiny standard but more rigorous than the rational basis test.[4] To meet the requirements of intermediate scrutiny, an organization must demonstrate that its use of gender-based contracting measures serves an important government objective and is substantially related to achieving that objective. Although the use of gender-based measures is technically subject to the requirements of intermediate scrutiny, most courts assess the constitutionality of both race-based and gender-based contracting measures based on the requirements of strict scrutiny. In accordance with that practice, BBC Research & Consulting (BBC) generally treats both race- and gender-based measures as being subject to strict scrutiny requirements.

B. Court Decisions

Two SCOTUS decisions established the strict scrutiny standard as the appropriate standard for evaluating the constitutionality of race-based measures:

- *City of Richmond v. J.A. Croson Company* (*Croson*);[5] and
- *Adarand Constructors, Inc. v. Peña* (*Adarand*).[6]

SCOTUS' decision in the *Croson* case in particular provides important guidance on the types of evidence organizations must provide to ensure that their use of race-based contracting measures is constitutional.

1. *Croson* and *Adarand*. SCOTUS' landmark decisions in *Croson* and *Adarand* are the most important decisions to date in connection with the use of race-based measures in government contracting and disparity study methodology. In *Croson*, SCOTUS struck down the City of Richmond's race-based subcontracting program as unconstitutional and, in doing so, established various requirements government organizations must meet when considering the use of such measures as part of their contracting inclusion programs:

- Organizations' use of race-based measures must meet the strict scrutiny standard of constitutional review. That is, in remedying any race-based discrimination, they must establish a compelling governmental interest to do so and must ensure the use of such measures is narrowly tailored.
- Organizations must assess the availability of local minority-owned businesses for their work and their use of race-based contracting measures must be tailored to such assessments.
- In assessing the availability of minority-owned businesses for their work, organizations must account for various characteristics of the projects they award and the degree to which local minority-owned businesses are *ready, willing, and able* to perform that work.
- If organizations have evidence of statistical disparities between the percentage of dollars they awarded to minority-owned businesses and the percentage of dollars those businesses are

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[4] *Craig v. Boren*, 429 U.S. 190 (1976).

[5] *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

[6] *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

available to perform, then *inferences of discrimination* could exist, supporting the use of narrowly tailored, race-based measures.

SCOTUS' decision in *Adarand* expanded its decision in *Croson* to include the use of race-based measures in federal government contracting programs. In *Adarand*, SCOTUS ruled that *federal* contracting programs must also adhere to the requirements of strict scrutiny.

2. *Subsequent decisions*. Many subsequent decisions in federal courts have refined the requirements for using race- and gender-based contracting measures as part of contracting inclusion programs, including cases in the Fourth Circuit, the federal judicial circuit in which the City operates. Examples of those cases include *H. B. Rowe Co., Inc. v. W. Lyndo Tippett, North Carolina Department of Transportation, et al.* and *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore*. BBC summarizes those decisions as well as many other decisions relevant to contracting inclusion programs and disparity study methodology in Appendix B of this report.[7, 8]

C. Addressing Legal Requirements with the Disparity Study

Many government organizations have used information from disparity studies to:

- Determine whether different business groups face barriers as part of their contracting processes or in their marketplaces that make it more difficult for those businesses to compete for or obtain work on the projects they award;
- Design efforts to encourage the participation of different business groups in their contracts and procurements; and
- Ensure that their use of any race- or gender-based measures meet the requirements of the strict scrutiny standard.

Various aspects of the 2025 City of Virginia Beach Disparity Study specifically address requirements SCOTUS and other federal courts have established around the use of race-and gender-based measures:

- The study includes extensive econometric analyses and analyses of qualitative insights to assess whether any economic barriers exist for minorities, women, and minority- and woman-owned businesses in the RGMA and whether the City is actively or passively participating in those barriers
- BBC accounts for various characteristics of the projects the City awards—such as work type and size—as well as the specific characteristics of businesses located in the RGMA—such as primary lines of work, bid capacities, and interest in performing government work—in estimating the availability of minority- and woman-owned businesses for City work.
- The study includes assessments of whether minority-, woman-, and SDV-owned businesses exhibit substantial, statistical disparities between their participation in and availability for City work, indicating whether any inferences of discrimination exist for specific groups of those businesses.
- The study includes various recommendations to help the City consider whether the use of race- and gender-based contracting measures is appropriate and how to do so effectively and legally.

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[7] *H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al.,* 615 F.3d 233 (4th Cir. 2010).

[8] *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore,* 218 F. Supp.2d 749.

CHAPTER 3.
Marketplace Conditions

Historically, numerous legal, economic, and social obstacles have inhibited minorities and women from starting and operating successful businesses in the United States. Systemic injustices and barriers such as slavery, racial oppression, segregation, race-based displacement, labor market discrimination, and other discriminatory government policies have produced substantial disparities for minorities and women. Those barriers have limited opportunities for minorities and women to obtain quality education, gain workplace experience, and build wealth, the effects of which still impact these communities today.[1, 2, 3, 4, 5]

A. Historical and Current Marketplace Conditions

In 19th and 20th century Virginia, minorities and women experienced political, economic, and social barriers similar to those experienced by minorities and women nationwide. Following the Civil War, Virginians had to adapt to an economy that was devastated by damaged infrastructure, a loss of human capital, and debt. Free Black business owners and formerly enslaved men and women experienced barriers such as a lack of access to financial capital, intimidation from former Confederates, and political restrictions that prevented their economic mobility.[6, 7] These restrictions included disenfranchisement and an 1866 Virginia Vagrancy Law that allowed local law enforcement to arrest and detain unemployed former slaves.[8]

In 1902, Virginia's State Constitution codified voting restrictions as well as many other Jim Crow laws enforcing racial segregation that would persist through the mid-20th century.[9] For instance, Black Americans were forced to live in segregated neighborhoods and send their children to segregated schools. Several of the most well-documented examples of redlining—a practice by which Black Americans were systematically denied access to banking and mortgage services because they were deemed to live in higher-risk, "undesirable" neighborhoods—occurred in places like Richmond and Norfolk, Virginia.[10] Black Americans and other minorities were also forced to use separate facilities at restaurants, public buildings, and cultural institutions, forcing them to develop independent economies and social infrastructures. These barriers were maintained through the pervasive threat of violence.[11] Segregation also extended into the labor market, as minorities were concentrated in low-wage work in agriculture and other industries with few opportunities for advancement.[12, 13] Similarly, women in the 20th century were typically restricted to either being homemakers or taking gender-specific jobs with low pay and scarce advancement opportunities.[14, 15, 16] Alongside rigid cultural norms, gender inequalities in Virginia's education and political systems restricted women from receiving equal pay and benefits and from participating in the workforce altogether.[17]

In the middle of the 20th century, many reforms opened up new opportunities for minorities and women in Virginia and nationwide as a result of the Civil Rights movement. For example, *Brown v. Board of Education, The Equal Pay Act*, *The Civil Rights Act*, and *The Women's Educational Equity Act* outlawed many forms of discrimination. Eventually, workplaces adopted policies and programs in an effort to diversify their staffs.[18] Those reforms increased diversity in workplaces and reduced educational and employment disparities for minorities and women.[19, 20, 21, 22] However, despite those improvements, minorities and women continued to face barriers as a result of these historical inequities—such as incarceration, residential segregation, and disproportionate family responsibilities—that have made it more difficult for them start and operate businesses successfully today.[23, 24, 25, 26]

B. Quantitative Analyses of Marketplace Conditions

BBC conducted extensive quantitative analyses to assess whether minorities; women; service-disabled veterans (SDVs); and minority-, woman-, and SDV-owned businesses face any barriers in the construction, architecture and engineering (A/E), professional services, and goods and services industries in the Virginia cities of Virginia Beach, Chesapeake, Norfolk, Portsmouth, and Suffolk (referred to collectively as the *Virginia Beach marketplace*). We also examined the potential effects any such barriers have on the formation and success of businesses as well as their availability for contracts and procurements the City of Virginia Beach (the City) awards. We examined marketplace conditions in four primary areas:

- **Human capital**, to assess whether minorities, women, and SDVs face barriers related to education, employment, and gaining industry experience;
- **Financial capital**, to assess whether minorities, women, and SDVs face barriers related to wages, homeownership, personal wealth, and financing;
- **Business ownership**, to assess whether minorities and women own businesses at rates comparable to that of White men and whether SDVs own businesses at rates that are comparable to that of other people; and
- **Business success**, to assess whether minority- and woman-owned businesses have outcomes similar to those of businesses owned by White men and whether SDV-owned businesses have outcomes similar to those of other businesses.

1. Human capital. Human capital is the collection of personal knowledge, behavior, experience, and personal characteristics that make up an individual's ability to perform and succeed in particular labor markets. Factors such as education, business experience, and managerial experience have been shown to be related to business success.[27, 28, 29, 30] Any barriers in those areas may make it more difficult for minorities, women, and SDVs to work in relevant industries and may prevent some of them from starting and operating businesses successfully.

a. Education. Barriers associated with educational attainment may preclude entry or advancement in certain industries, because many occupations require at least a high school diploma, and some occupations require at least a four-year college degree. In addition, education is a strong predictor of both income and personal wealth, which are both shown to be related to business formation and success.[31, 32, 33] Nationally, minorities lag behind White people in terms of both educational attainment and the quality of education they receive.[34, 35, 36] Minority students are more likely than White students to attend schools that do not provide access to core classes in science and math.[37] In addition, Black students are more likely than White students to be expelled or suspended from high school.[38] For those and other reasons, minorities are far less likely than White people to attend college, enroll at selective four-year college institutions, and earn college degrees.[39]

Educational outcomes for minorities in Virginia Beach are similar to those for minorities nationwide. BBC's analyses of the Virginia Beach labor force indicate that people who identify with certain minority groups are less likely than White people to earn high school diplomas, associate's degrees, and bachelor's degrees. Figure 3-1 presents the rates of educational attainment of workers in the Virginia Beach marketplace aged 25 and older, broken down by race, gender, and SDV status. As shown in Figure 3-1:

- Asian Pacific (92%), Black (93%), Hispanic (87%), and Native American (94%) workers are substantially less likely than White workers (97%) to have earned a high school diploma. In contrast, Subcontinent Asian workers (99%) are substantially more likely than White workers to have earned a high school diploma.
- Black (58%), Hispanic (63%), and Native American (61%) workers are substantially less likely than White workers (71%) to have earned an associate's degree. In contrast, Asian Pacific (74%), Middle Eastern and North African (MENA; 87%), and Subcontinent Asian workers (92%) are substantially more likely than White workers to have earned an associate's degree.
- Black (28%), Hispanic (31%), and Native American (33%) workers are substantially less likely than White workers (44%) to have earned a bachelor's degree. In contrast, MENA (62%) and Subcontinent Asian workers (85%) are substantially more likely than White workers to have earned a bachelor's degree.

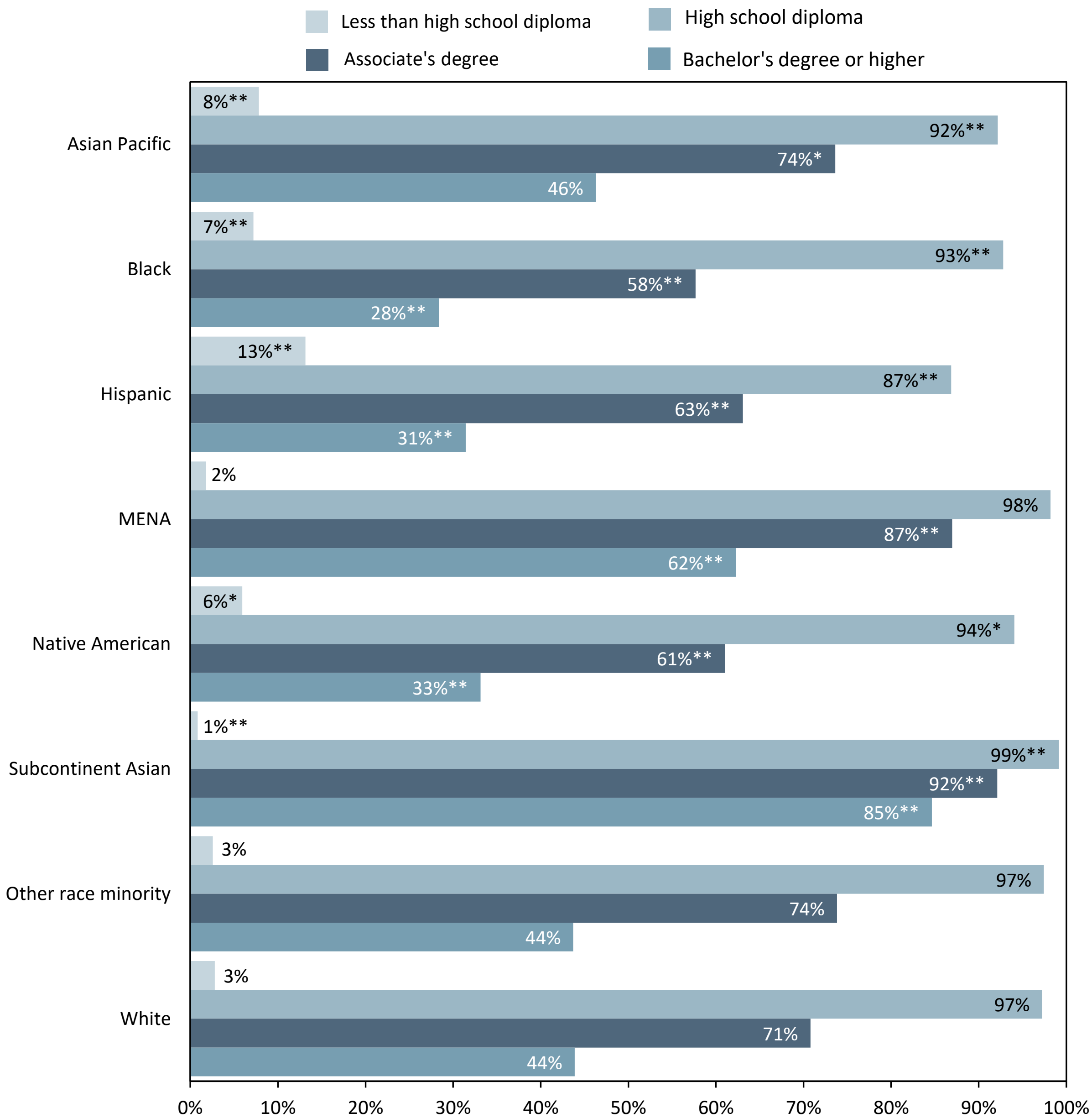
Women are substantially more likely than men to have earned a high school diploma (women: 96%, men: 94%), associate's degree (women: 70%, men: 64%), and bachelor's degree (women: 43%, men: 35%). Additionally, SDVs are substantially more likely than other people to have earned a high school diploma (SDVs: 100%, all others: 95%), an associate's degree (SDVs: 72%, all others: 67%), and a bachelor's degree (SDVs: 49%, all others: 38%).

b. Employment and management experience. An important precursor to business ownership and success is acquiring direct experience in relevant industries. Any barriers that limit minorities and women from acquiring that experience could prevent them from starting and operating businesses in the future.

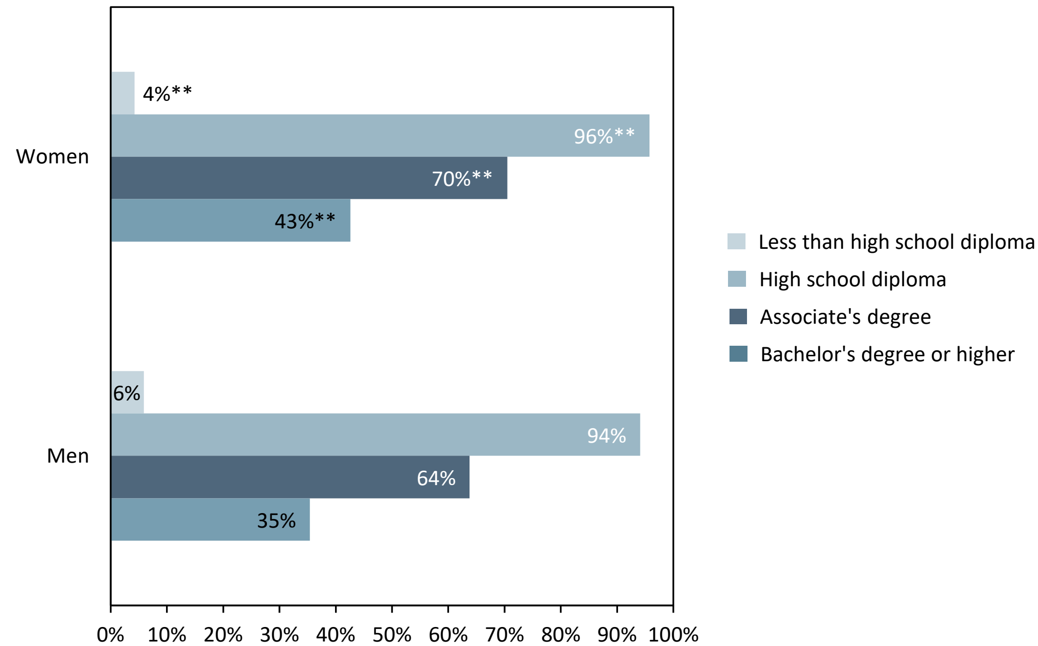
i. Employment. On a national level, prior industry experience has been shown to be an important indicator for business ownership and success. However, minorities and women are often unable to acquire that experience. They are sometimes discriminated against in hiring decisions, which impedes their entry into the labor market.[40, 41, 42] When employed, they are often relegated to peripheral positions in the labor market and to industries that already exhibit high concentrations of minorities and women.[43, 44, 45, 46, 47, 48] In addition, Black people, Hispanic people, and Native Americans are incarcerated at greater rates than White people in Virginia and nationwide, which contributes to many labor difficulties, including difficulties finding jobs and slow wage growth.[49, 50, 51, 52, 53, 54, 55]

Figure 3-1.
Rates of educational attainment of all workers aged 25 and older, Virginia Beach marketplace, 2018-2022

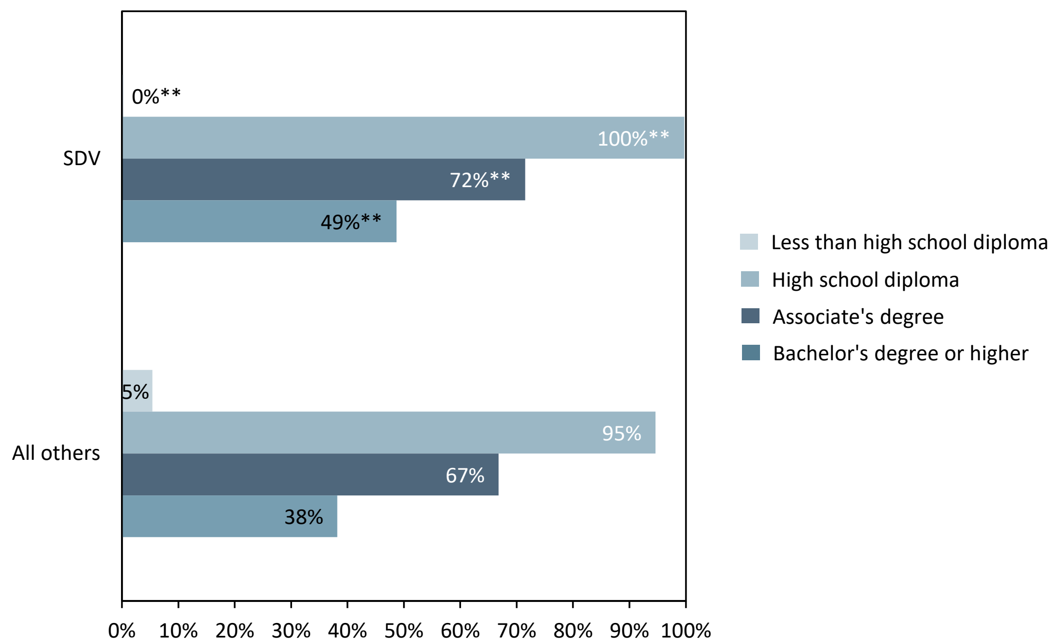
a) Race



b) Gender



c) SDV status



Notes: *, ** Denotes that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 90% and 95% confidence levels, respectively.

A text description of Figure 3-1 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

BBC assessed the representation of minority, woman, and SDV workers in the Virginia Beach A/E, construction, professional services, and goods and services industries compared to their representation in all Virginia Beach industries considered together. We present the results of that analysis in Figure 3-2. Compared to their representation in all industries:

- Smaller percentages of Black people (12.9%) and women (25.2%) work in the A/E industry. In contrast, a greater percentage of SDVs work in the A/E industry (19.7%).
- Smaller percentages of Asian Pacific people (2.0%), Black people (21.2%), Subcontinent Asian people (0.2%), women (13.2%), and SDVs (2.0%) work in the construction industry. In contrast, greater percentages of Hispanic people (14.2%) work in the construction industry.
- Smaller percentages of Black people (24.0%), Hispanic people (5.3%), and women (31.7%) work in the professional services industry. In contrast, greater percentages of Subcontinent Asian people (3.4%) and SDVs (14.1%) work in the professional services industry.
- Smaller percentages of Hispanic people (5.2%) and women (29.6%) work in the goods and services industry. In contrast, a greater percentage of Black people (34.7%) work in the goods and services industry.

Figure 3-2.
Demographic characteristics of workers in study-related contracting industries and all industries, Virginia Beach marketplace, 2018-2022

Group	All industries (n=29,256)	Architecture and engineering (n=511)	Construction (n=1,582)	Professional services (n=678)	Goods and services (n=1,415)
Race/ethnicity					
Asian Pacific	5.1 %	5.0 %	2.0 % **	6.5 %	4.7 %
Black	30.5 %	12.9 % **	21.2 % **	24.0 % **	34.7 % **
Hispanic	7.6 %	6.7 %	14.2 % **	5.3 % **	5.2 % **
MENA	0.4 %	0.6 %	0.2 %	0.3 %	0.7 %
Native American	0.8 %	0.8 %	0.9 %	1.4 %	1.0 %
Subcontinent Asian	0.7 %	1.6 %	0.2 % **	3.4 % **	0.4 %
Other race minority	0.8 %	0.8 %	0.5 %	1.1 %	1.1 %
Total minority	**45.9 %**	**28.4 %**	**39.3 %**	**41.9 %**	**47.7 %**
White	54.1 %	71.6 % **	60.7 % **	58.1 % *	52.3 %
Total	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**
Gender					
Women	47.0 %	25.2 % **	13.2 % **	31.7 % **	29.6 % **
Men	53.0 %	74.8 % **	86.8 % **	68.3 % **	70.4 % **
Total	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**
SDV status					
SDV	5.0 %	19.7 % **	2.0 % **	14.1 % **	5.5 %
All others	95.0 %	80.3 % **	98.0 % **	85.9 % **	94.5 %
Total	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**	**100.0 %**

Notes: *, ** Denotes that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 90% and 95% confidence levels, respectively.

A text description of Figure 3-2 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

BBC also examined the relationships between race, gender, and SDV status and unemployment. Figure 3-3 presents unemployment rates among minorities, women, and SDVs relative to White people, men, and people who are not SDVs, respectively. Compared to White people (3%), Black people (8%) and Hispanic people (5%) are substantially more likely to be unemployed in Virginia Beach. In contrast, SDVs (3%) are substantially less likely than other people (5%) to be unemployed in Virginia Beach.

Figure 3-3.
Unemployment rates, Virginia Beach marketplace, 2018-2022

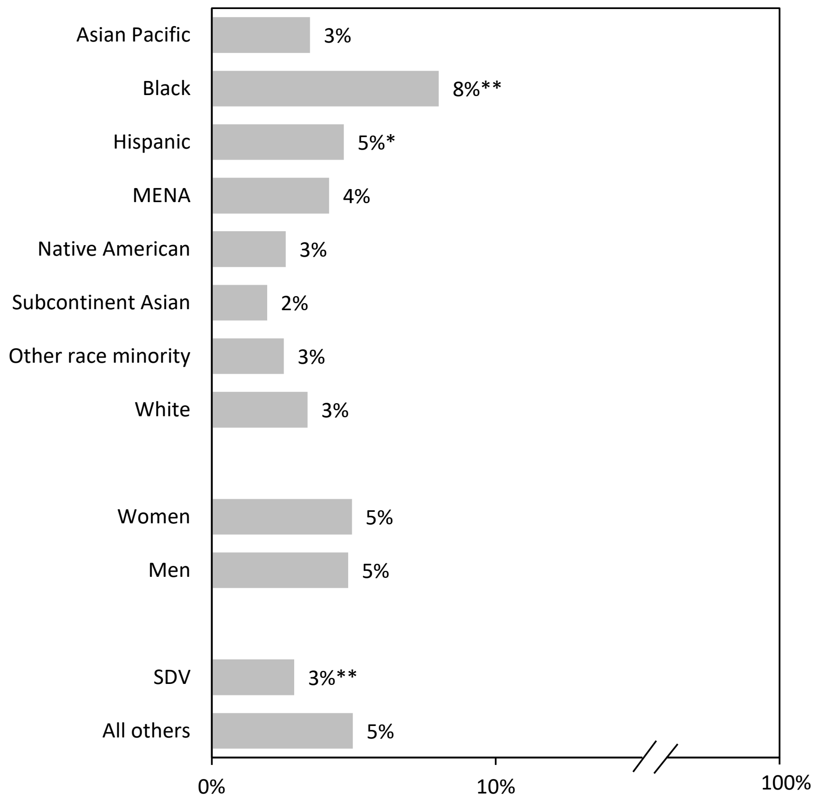
Notes:

** Denotes that the difference in proportions between the minority group and White workers, between women and men, or between SDVs and other people is statistically significant at the 95% confidence level.

A text description of Figure 3-3 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.



We also conducted regression analyses to assess whether there are relationships between race and gender and unemployment even after accounting for various personal characteristics such as age, education, and family status. Figure 3-4 presents results of those analyses. Positive values indicate that minorities or women are more likely to be unemployed relative to White people or men, respectively, even after accounting for various personal characteristics. As shown in Figure 3-4, even after accounting for personal characteristics, Black people are more likely to be unemployed compared to White people. In addition, women are more likely to be unemployed compared to men.

Figure 3-4.
Predictors of unemployment,
Virginia Beach marketplace, 2018-2022

Notes:

The regression included 26,199 observations.

** Denotes statistical significance at the 95% confidence level.

† Denotes significant differences in proportions not reported due to small sample size.

A text description of Figure 3-4 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Race/gender group	Coefficient
Asian Pacific	0.0273
Black	0.3537 **
Hispanic	0.0061
MENA	0.1875
Native American	-0.1204
Subcontinent Asian	-0.0875
Other race minority	-0.1418
Women	0.1137 **

ii. Management experience. Managerial experience is an important predictor of business ownership and success, but discrimination remains an obstacle to greater diversity in management positions.[56, 57, 58, 59] Nationally, minorities and women are far less likely than White people and men, respectively, to work in management positions.[60, 61, 62] BBC examined the representation of minorities, women, and SDVs in management positions in the Virginia Beach A/E, construction, professional services, and goods and services industries. As shown in Figure 3-5:

- Smaller percentages of Black people (0.9%) than White people (6.1%) work as managers in the Virginia Beach A/E industry. In addition, smaller percentages of SDVs (1.1%) than other people (5.9%) work as managers in the Virginia Beach A/E industry.
- Smaller percentages of Asian Pacific people (4.4%), Black people (2.2%), and Hispanic people (4.3%) than White people (11.6%) work as managers in the Virginia Beach construction industry. In addition, smaller percentages of women (4.8%) than men (8.8%) work as managers in the Virginia Beach construction industry.
- Smaller percentages of Asian Pacific people (2.6%) and Black people (3.0%) than White people (10.9%) work as managers in the Virginia Beach professional services industry.
- Smaller percentages of Black people (0.1%) than White people (3.5%) work as managers in the Virginia Beach goods and services industry. In addition, smaller percentages of women (0.8%) than men (2.8%) work as managers in the Virginia Beach goods and services industry.

Figure 3-5.
Percentage of non-owner workers who worked as a manager in each study-related industry, Virginia Beach marketplace, 2018-2022

Group	Architecture and engineering		Construction		Professional services		Goods and services	
Race/ethnicity								
Asian Pacific	2.8 %	†	4.4 %	*	2.6 %	**	2.3 %	
Black	0.9 %	**	2.2 %	**	3.0 %	**	0.1 %	**
Hispanic	3.9 %	†	4.3 %	**	12.9 %		0.0 %	
MENA	0.0 %	†	30.0 %	†	0.0 %	†	30.1 %	†
Native American	0.0 %	†	7.9 %	†	2.7 %	†	1.3 %	†
Subcontinent Asian	0.0 %	†	0.0 %	†	3.7 %	†	0.0 %	†
Other race minority	10.2 %	†	20.0 %	†	36.9 %	†	0.0 %	†
White	6.1 %		11.6 %		10.9 %		3.5 %	
Gender								
Women	8.3 %		4.8 %	**	5.5 %		0.8 %	**
Men	3.8 %		8.8 %		9.8 %		2.8 %	
SDV status								
SDV	1.1 %	**	12.4 %		8.3 %		0.0 %	
All others	5.9 %		8.1 %		8.4 %		2.3 %	
All individuals	**4.9 %**		**8.2 %**		**8.4 %**		**2.2 %**	

Notes: *, ** Denotes that the difference in proportions between the minority group and White workers, between women and men, or between SDVs and other people is statistically significant at the 90% and 95% confidence levels, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

A text description of Figure 3-5 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

We also conducted regression analyses to assess whether there are relationships between race and gender and holding a management position even after accounting for various personal factors. Figure 3-6 presents results of those analyses, which indicate that, even after accounting for such factors, Black people are less likely to hold management positions in the construction and goods and services industries than White people. Additionally, women in the construction and goods and services industries are less likely to hold management positions than men. In contrast, women in the A/E industry are more likely to hold management positions than men.

Figure 3-6.
Predictors of management in study-related industries, Virginia Beach marketplace, 2018-2022

Variable	Coefficient Architecture and Engineering	Construction	Professional services	Goods and services
Asian Pacific	-0.2612	0.0000 †	0.3588	-0.0545
Black	0.0000 †	-1.0678 **	-0.3432	-0.8513 **
Hispanic	0.1538	0.1880	-0.0112	0.0000 †
MENA	0.0000 †	-0.2815	0.0000 †	0.8906
Native American	0.0000 †	0.0000 †	-0.5788	-0.1935
Subcontinent Asian	0.0000 †	0.0000 †	-0.7327	0.0000 †
Other race minority	0.0000 †	1.1000 *	1.4524	0.0000 †
Women	0.5245 *	-0.6192 **	-0.0175	-0.5698 **

Notes: The A/E regression included 361 observations.
The construction regression included 952 observations.
The professional services regression included 493 observations.
The goods and services regression included 859 observations.
*, ** Denotes statistical significance at the 90% and 95% confidence levels, respectively.
† Denotes significant differences in proportions not reported due to small sample size.
The referent for each set of categorical variables is as follows: high school diploma for the education variables and White for the race variables.
A text description of Figure 3-6 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

2. Financial capital. In addition to human capital, financial capital has been shown to be an important indicator of business formation and success.[63, 64, 65] Individuals can acquire financial capital through many sources, including wages, personal wealth, homeownership, and loans. If barriers exist in financial markets, minorities and women may have difficulty acquiring the capital necessary to start, operate, or expand businesses.

a. Wages and income. Wage and income gaps between minorities and White people and between women and men exist nationwide, even when researchers have accounted for various personal factors.[66, 67, 68, 69] For example, nationally, on average, Black people and Hispanic people have household incomes less than two-thirds and three-fourths, respectively, those of White people.[70] Women have also faced wage and income gaps relative to men. Nationally, the median hourly wage of women is only 84 percent that of men, even after accounting for various personal factors.[71] Such disparities make it difficult for minorities and women to use wages as a source of business capital.

BBC observed wage disparities in Virginia Beach consistent with those observed nationally. Figure 3-7 presents mean annual wages for Virginia Beach workers by race, gender, and SDV status. Asian Pacific ($65,121), Black ($51,712), Hispanic ($56,384), and Native American workers ($57,435) earn less than White workers ($74,658). In addition, women ($54,852) earn less than men ($77,429). In contrast, SDVs ($88,832) earn more than other people ($64,620).

Figure 3-7.
Mean annual wages, Virginia Beach marketplace, 2018-2022

Notes:

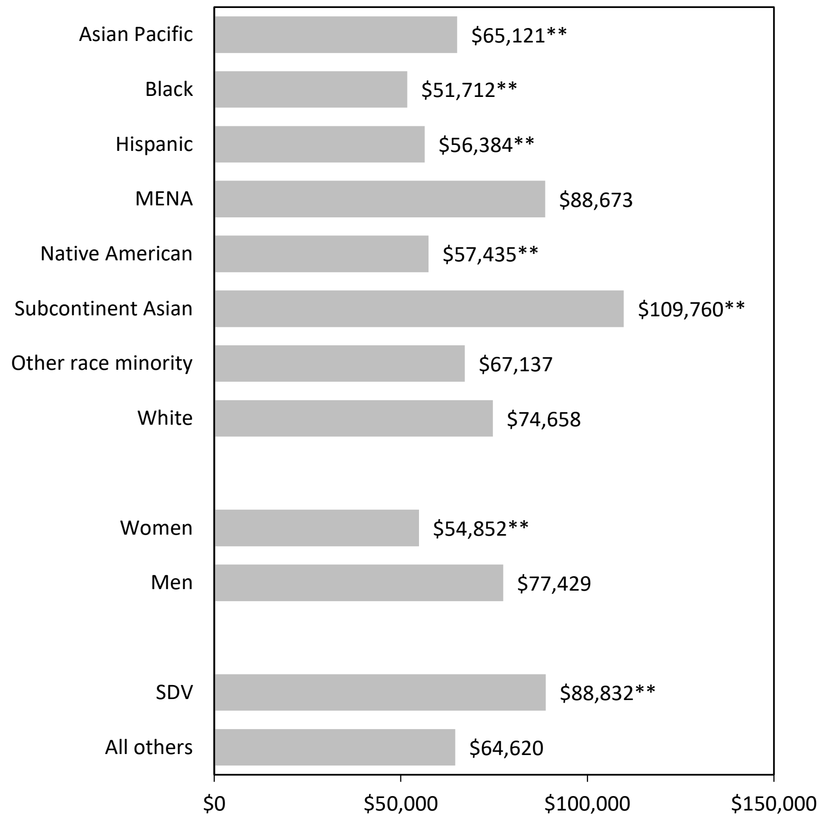
The sample universe is all non-institutionalized, employed individuals aged 25-64 who are not in school, the military, or self-employed.

** Denotes that the difference in mean between the minority group and White workers, between women and men, or between SDVs and other people is statistically significant at the 95% confidence level.

A text description of Figure 3-7 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.



We also conducted regression analyses to assess whether wage gaps for minorities and women exist even after accounting for various personal factors. Figure 3-8 presents results of those analyses. The values in Figure 3-8 represent how many cents minorities earn in wages for every $1.00 in wages White people earn and how many cents women earn in wages for every $1.00 men earn. As shown in Figure 3-8, Asian Pacific, Black, Hispanic, and Native American workers earn less than White workers and women earn less than men, even after accounting for various personal characteristics.

Figure 3-8.
Predictors of annual wages (regression), Virginia Beach marketplace, 2018-2022

Notes:

The regression includes 13,773 observations.

The sample universe is all non-institutionalized, employed individuals aged 25-64 who are not in school, the military, or self-employed.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

** Denotes statistical significance at the 95% confidence level.

The referent for race variables is White.

A text description of Figure 3-8 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Variable	Exponentiated coefficient
Asian Pacific	0.862 **
Black	0.820 **
Hispanic	0.917 **
MENA	0.921
Native American	0.800 **
Subcontinent Asian	0.910
Other race minority	0.909
Women	0.754 **

b. Personal wealth. Another source of business capital is personal wealth, and there are substantial disparities between minorities and White people and between women and men in personal wealth, even after accounting for various personal characteristics.[72, 73, 74, 75] For example, in 2019, Black people and Hispanic people across the country exhibited average household net worth that was 14 percent and 17 percent, respectively, that of White people.[76] Additionally, the median wealth of non-married women nationally is approximately one-third that of non-married men.[77] In Virginia, 16.8 percent of Black people, 12.0 percent of Hispanic people, 6.8 percent of Asian/Native Hawaiian or Pacific Islander people, and 22.9 percent of Native Americans are living in poverty, compared to 8.3 percent of White people.[78]

c. Homeownership. Home equity has also been shown to be a key source of business capital, but minorities appear to face substantial barriers nationwide in owning homes, and those disparities appear to be at least partly due to discrimination.[79, 80, 81] Research indicates that minorities continue to be given less information on prospective homes and have their purchase offers rejected because of their races.[82, 83] In addition, minority homeowners tend to own homes worth less than those of White homeowners and tend to accrue less equity.[84, 85, 86] Differences in home values and equity can be attributed—at least, in part—to the depressed property values that tend to exist in racially segregated neighborhoods.[87, 88, 89] Minorities appear to face homeownership barriers in Virginia Beach similar to those observed nationally. As shown in Figure 3-9, Black people (46%), Hispanic people (51%), Native Americans (66%), Subcontinent Asian people (42%), and other race minorities (57%) own homes at rates that are less than that of White people (73%).

Figure 3-9. Homeownership rates, Virginia Beach marketplace, 2018-2022

Notes:

The sample universe is all households.

*, ** Denotes statistically significant differences from White homeowners at the 90% and 95% confidence levels, respectively.

A text description of Figure 3-9 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

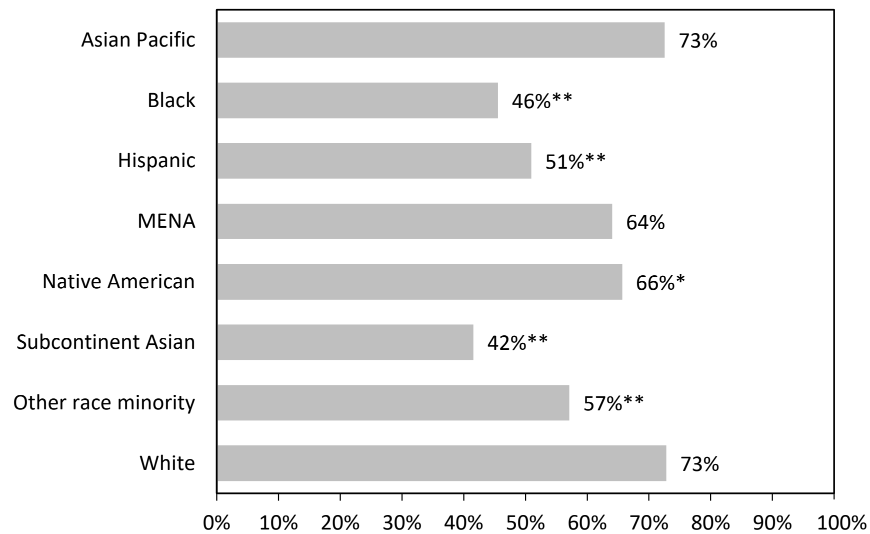


Figure 3-10 presents median home values among minority homeowners in Virginia Beach. Those data indicate that Black ($250,000), Hispanic ($290,000), MENA ($280,000), and Native American ($285,000) homeowners own homes that, on average, are worth less than those of White homeowners ($300,000). In contrast, Subcontinent Asian ($430,000) and other race minority homeowners ($335,000) own homes that, on average, are worth more than White homeowners.

Figure 3-10.
Median home values, Virginia Beach marketplace, 2018-2022

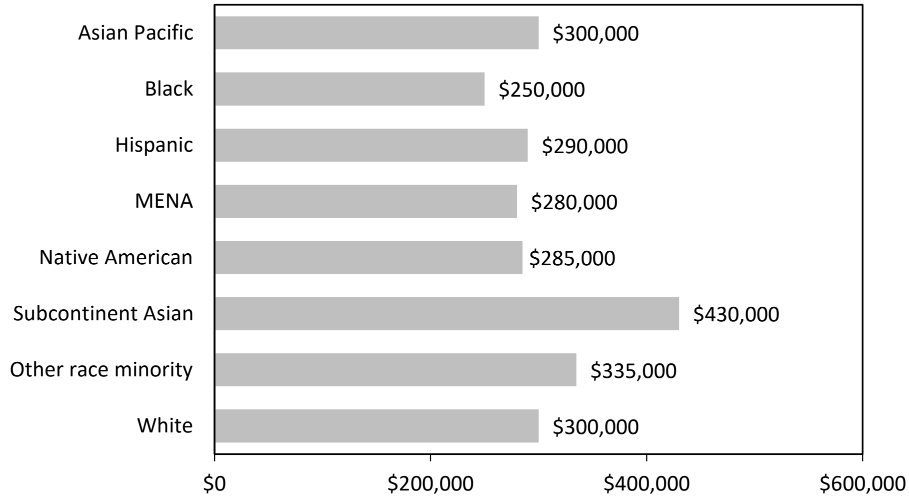
Notes:

The sample universe is all owner-occupied housing units.

A text description of Figure 3-10 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.



d. Access to financing. Minorities and women face many barriers in trying to access credit and financing, both for home and business capital. Researchers have often attributed those barriers to various forms of race- and gender-based discrimination in credit markets.[90, 91, 92, 93, 94, 95] BBC assessed difficulties minorities and women face in home and business credit markets in Virginia Beach.

i. Home credit. Minorities and women continue to face barriers when trying to access credit to purchase homes. Examples include discriminatory treatment of minorities and women during pre-application processes and less favorable loan terms when minority and women borrowers are approved for home loans.[96, 97] Disparities in home loan denial rates and in mortgage costs may prevent minorities and women from accessing the wealth-building potential of homeownership.[98, 99, 100, 101, 102] To examine how minorities fare in the home credit market relative to White people in Virginia Beach, we analyzed home loan denial rates for high-income households by race in Virginia Beach. As shown in Figure 3-11, Asian people (6%), Black people (17%), Hispanic people (14%), and Native Americans (60%) in Virginia Beach are denied home loans at greater rates than White people (4%).

Figure 3-11.
Denial rates of conventional purchase loans for high-income households, Virginia Beach marketplace, 2023

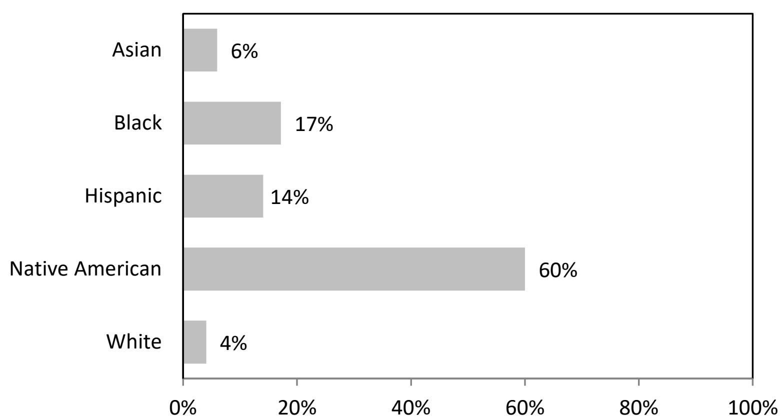
Notes:

High-income borrowers are those households with 120% or more of the HUD/FFIEC area median family income (MFI). The MFI data are calculated by the FFIEC.

A text description of Figure 3-11 is provided in Appendix E.

Source:

FFIEC HMDA data 2023. The raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: https://ffiec.cfpb.gov/data-browser/.



ii. Business credit. Minority- and woman-owned businesses also face difficulties accessing business credit. For example, during pre-application meetings, minority-owned businesses are given less information about loans, are subjected to more information requests, and are offered less support than White-owned businesses.[103] In addition, minority- and woman-owned businesses are more likely to forego submitting business loan applications because of fears of denial.[104, 105, 106] They are also more likely to be denied business credit when they do seek loans and are less likely to receive all the financing they originally sought if their loans are approved.[107, 108, 109, 110, 111, 112] Finally, minority and women business owners face worse loan outcomes even after accounting for creditworthiness.[113, 114, 115] Without equal access to capital, minority- and woman-owned businesses operate with less capital than White-owned businesses and businesses owned by men, respectively, and must rely more on personal finances.[116, 117, 118, 119]

BBC analyzed denial rates for loans, lines of credit, and cash advances for minorities and women relative to White people and men, respectively, at a national level. As shown in Figure 3-12, minority-owned businesses are denied loans at greater rates than White-owned businesses, and businesses owned by women are denied loans at greater rates than businesses owned by men.

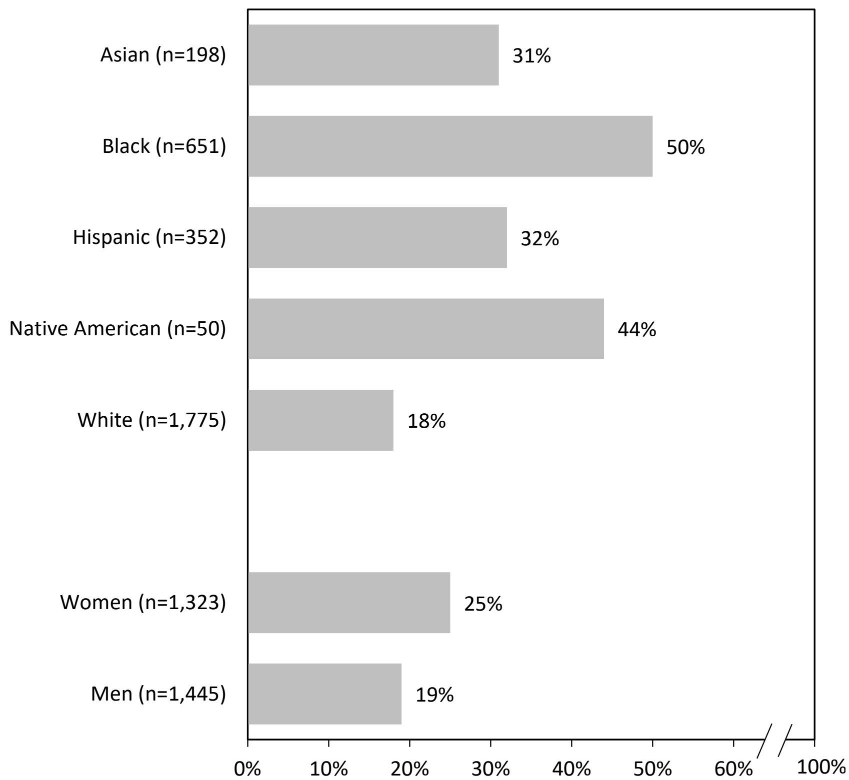
Figure 3-12.
Loan, line of credit, and cash advance denial rates, United States, 2022

Note:

A text description of Figure 3-12 is provided in Appendix E.

Source:

2022 Small Business Credit Survey.



We also analyzed the degree to which minority- or woman-owned businesses do not apply for loans due to a fear of denial at a national level. Figure 3-13 presents the rates at which those businesses forego loan applications due to fears of denial relative to White-owned businesses and businesses owned by men, respectively. Nationally, minority-owned businesses are more likely than White-owned businesses and woman-owned businesses are more likely than businesses owned by men to not apply for loans due to a fear of denial.

3. Business ownership. Nationally, there has recently been substantial growth in the number of minority- and woman-owned businesses. For example, from 2017 to 2020, the number of woman-owned businesses with employees increased by 9 percent, Black-owned businesses increased by 14 percent, and Hispanic-owned businesses increased by 17 percent.[120, 121] However, important barriers in starting and operating businesses remain. Black people, Hispanic people, and women are still less likely to start businesses than White men.[122, 123, 124, 125, 126] In addition, minorities and women have not been able to penetrate all industries equally. They disproportionately own businesses in industries that require less human and financial capital to be successful and that already include large concentrations of minorities and women.[127, 128, 129]

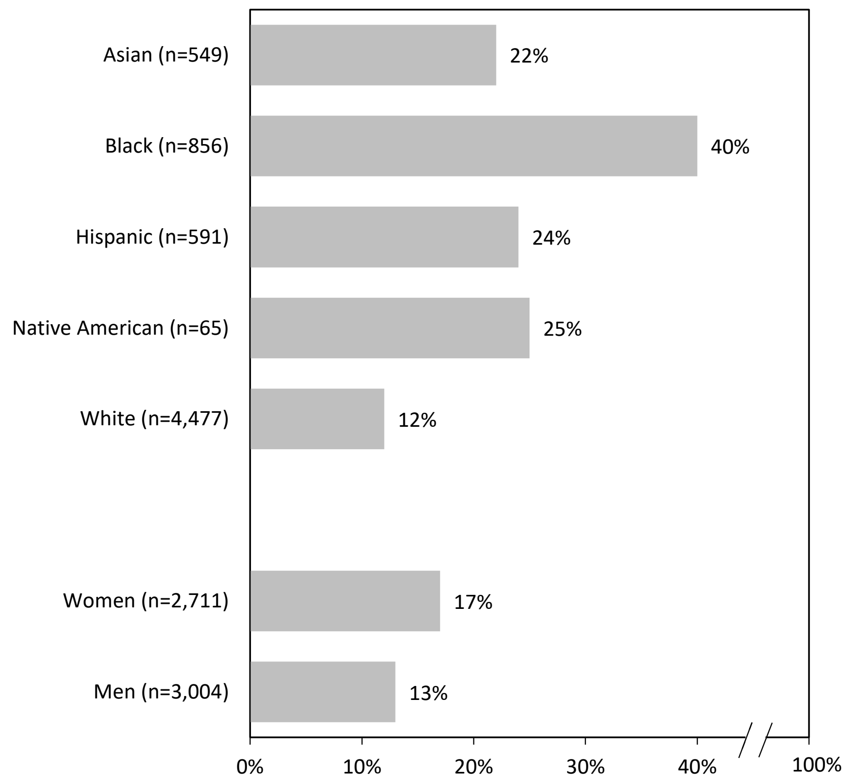
Figure 3-13.
Businesses that did not apply for loans due to fear of denial, United States, 2022

Note:

A text description of Figure 3-13 is provided in Appendix E.

Source:

BBC from 2022 Small Business Credit Survey.



BBC examined rates of self-employment (i.e., business ownership) in Virginia Beach for each relevant industry by race, gender, and SDV status. As shown in Figure 3-14:

- Black people (1.1%) own A/E businesses at a rate less than that of White people (5.3%). In addition, SDVs (1.8%) own A/E businesses at a rate less than that of other people (5.5%).
- Black people (13.5%) and Hispanic people (10.2%) own construction businesses at rates less than that of White people (21.5%), and women (12.5%) own construction businesses at a rate less than that of men (19.1%).
- Asian Pacific people (3.9%) own goods and services businesses at a rate less than that of White people (11.6%), and women (6.1%) own such businesses at a rate less than that of men (15.4 %).

BBC also conducted regression analyses to determine whether differences in business ownership rates in Virginia Beach exist based on race and gender even after statistically controlling for various personal factors such as income, education, and familial status. As shown in Figure 3-15, even after accounting for various personal factors, Asian Pacific people are less likely to own goods and services businesses than White people. Additionally, women are less likely to own construction and goods and services businesses than men.

Figure 3-14.
Self-employment rates in study-related contracting industries, Virginia Beach marketplace, 2018-2022

Group	Architecture and engineering	Construction	Professional services	Goods and services
Race/ethnicity				
Asian Pacific	8.8 %	19.6 %	6.4 %	3.9 % **
Black	1.1 % **	13.5 % **	4.3 %	15.2 %
Hispanic	6.2 % †	10.2 % **	2.3 %	15.7 %
MENA	0.0 % †	59.5 % †	0.0 % †	37.9 % †
Native American	0.0 % †	23.8 % †	8.0 % †	9.1 % †
Subcontinent Asian	0.0 % †	49.3 % †	0.0 % †	0.0 % †
Other race minority	0.0 % †	4.9 % †	30.2 % †	0.0 % †
White	5.3 %	21.5 %	4.6 %	11.6 %
Gender				
Women	2.8 %	12.5 % **	4.0 %	6.1 % **
Men	5.4 %	19.1 %	5.0 %	15.4 %
SDV status				
SDV	1.8 % *	11.7 %	7.2 %	13.5 %
All others	5.5 %	18.4 %	4.3 %	12.6 %
All individuals	**4.8 %**	**18.2 %**	**4.7 %**	**12.7 %**

Notes: *, ** Denotes that the difference in proportions between the minority group and White people, between women and men, or between SDVs and other people is statistically significant at the 90% and 95% confidence levels, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

A text description of Figure 3-14 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Figure 3-15.
Predictors of business ownership in study-related industries (regression), Virginia Beach marketplace, 2018-2022

Variable	Coefficient			
	Architecture and engineering	Construction	Professional services	Goods and services
Asian Pacific	0.2146	-0.1348	0.2664	-0.8986 **
Black	-0.9290	-0.2430	0.0955	0.0744
Hispanic	0.1591	-0.1401	-0.7435	-0.2647
MENA	0.0000 †	0.9390	0.0000 †	0.2114
Native American	0.0000 †	-0.0064	0.1730	0.1395
Subcontinent Asian	0.0000 †	0.9025	0.0000 †	0.0000 †
Other race minority	0.0000 †	0.0000 †	1.0295	0.0000 †
Women	-0.3981	-0.4162 **	-0.0256	-0.5782 **

Notes: The A/E regression included 436 observations.

The construction regression included 1,319 observations.

The professional services regression included 552 observations.

The goods and services regression included 1,148 observations.

** Denotes statistical significance at the 95% confidence level.

A text description of Figure 3-15 is provided in Appendix E.

Source: 2018-2022 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

4. Business success. Research indicates that, nationally, minority- and woman-owned businesses fare worse than businesses owned by White men. For example, minority- and woman-owned businesses are more likely to experience financial challenges relative to those owned by White people and men, respectively.[130, 131] In addition, minority- and woman-owned businesses have been shown to be less successful than those owned by White people and men, respectively, based on a number of different indicators such as profits and business size.[132, 133, 134, 135] BBC examined data on business financial conditions, business receipts, and business owner earnings to further explore business success in Virginia Beach.

a. Financial condition. BBC examined the reported *financial condition* of businesses in the United States by the race and gender of their owners at the national level according to the Small Business Credit Survey. Financial condition refers to a business' increase or decrease in revenue and number of employees in the past 12 months as well as anticipated increase in revenue and number of employees over the next 12 months. Financial condition also assesses financial challenges a business may have experienced in the past 12 months including weak sales, difficulty paying expenses, uneven cash flow, and credit availability. As shown in Figure 3-16, Asian- (30%), Black- (33%), Hispanic- (23%), and Native American-owned businesses (23%) are more likely than White-owned businesses (16%) to report being in poor financial condition. In addition, woman-owned businesses (22%) are more likely than businesses owned by men (17%) to report being in poor financial condition.

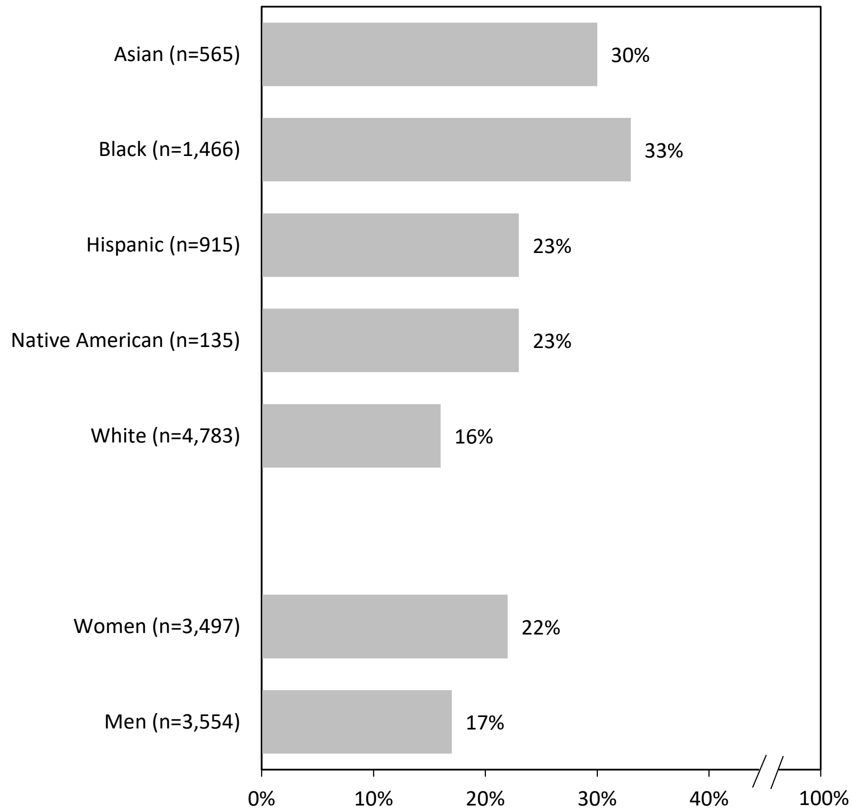
Figure 3-16.
Businesses in poor financial condition, United States, 2022

Note:

A text description of Figure 3-16 is provided in Appendix E.

Source:

2022 Small Business Credit Survey.



b. Business receipts. BBC also examined data on business receipts to assess whether minority- and woman-owned businesses in Virginia Beach earn as much as those owned by White people and men, respectively. Figure 3-17 indicates that Asian- ($1.3 million), Black- ($624,000), Hispanic- ($1.1 million), and Native Hawaiian and Other Pacific Islander-owned businesses ($1.9 million) have mean annual business receipts less than White-owned businesses ($2.7 million). In addition, woman-owned businesses ($1.0 million) have mean annual business receipts less than those owned by men ($3.1 million).

Figure 3-17.
Mean annual business receipts (in thousands), Virginia Beach-Chesapeake-Norfolk, VA-NC Metro Area

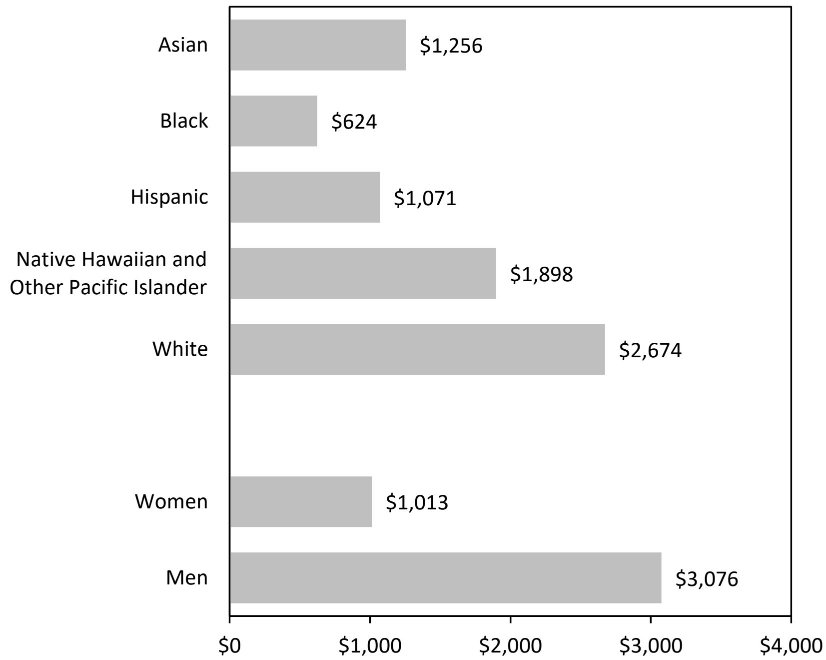
Notes:

Includes employer firms. Does not include publicly traded companies or other firms not classifiable by race/ethnicity and gender.

A text description of Figure 3-17 is provided in Appendix E.

Source:

2022 Annual Business Survey.



c. Business owner earnings. BBC also analyzed the earnings of business owners to assess whether business owners who are minorities, women, and SDVs in Virginia Beach earn as much as business owners who are White, men, and people who are not SDVs, respectively. Figure 3-18 indicates that Black business owners ($30,116) earned less on average than White business owners ($49,782), and woman business owners ($27,232) earned less on average than business owners who are men ($61,720). In contrast, business owners who are SDVs ($72,403) earned more on average than other business owners ($44,494).

BBC also conducted regression analyses to determine whether race- or gender-based differences in business owner earnings in Virginia Beach exist even after statistically controlling for various personal factors such as age, education, and family status. Figure 3-19 presents the results of those analyses. As shown in Figure 3-19, woman business owners earn substantially less than business owners who are men. In contrast, Hispanic and Native American business owners earn substantially more than White business owners,

Figure 3-18.
Mean annual business owner earnings, Virginia Beach marketplace, 2018-2022

Notes:

The sample universe is business owners aged 16 and over who reported positive earnings. All amounts in 2022 dollars.

*, ** Denotes that the difference in mean between the minority group and White owners, between women and men, or between SDVs and other people is statistically significant at the 90% and 95% confidence levels, respectively.

A text description of Figure 3-18 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

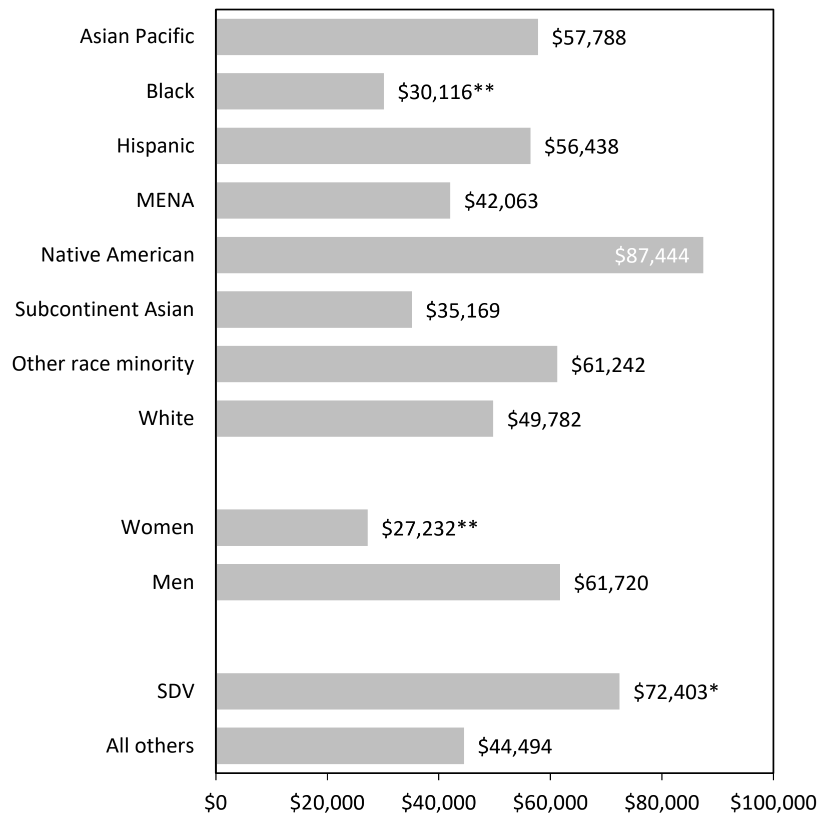


Figure 3-19.
Predictors of business owner earnings (regression), Virginia Beach marketplace, 2018-2022

Notes:

The regression includes 1,142 observations.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

The sample universe is business owners aged 16 and over who reported positive earnings.

** Denotes statistical significance at the 95% confidence level.

The referent for race variables is White.

A text description of Figure 3-19 is provided in Appendix E.

Source:

2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Variable	Exponentiated coefficient
Asian Pacific	1.249
Black	1.001
Hispanic	2.004 **
MENA	1.235
Native American	2.338 **
Subcontinent Asian	0.862
Other race minority	0.580
Women	0.511 **

C. Summary

BBC's analyses of marketplace conditions indicate that minorities and women face barriers in industries relevant to the contracts and procurements the City awards. Both existing and primary research we conducted indicate that barriers exist in acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence that those barriers exist even after accounting for various personal factors. There is also evidence that many of those barriers are due—at least, in part—to race- and gender-based discrimination. Barriers in the marketplace likely have important effects on the ability of minorities and women to start businesses in relevant industries—construction, A/E, professional services, and goods and services—and to operate those businesses successfully. Any difficulties those individuals face in starting or operating businesses may reduce their availability for government work and the degree to which they are able to successfully perform such work.

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CHAPTER 4.
Qualitative Evidence of Marketplace Barriers

As part of the disparity study, business owners, trade association representatives, and other stakeholders had the opportunity to share personal insights about their experiences working in the Virginia Beach marketplace as well as with the City of Virginia Beach (the City) and other government agencies.[1] BBC Research & Consulting (BBC) documented those insights and identified key themes about conditions in the Virginia Beach marketplace for small businesses and minority-, woman-, and service-disabled veteran (SDV)-owned businesses (collectively referred to as *small and diverse businesses*) as well as other businesses. We used that information to supplement many of the quantitative analyses we conducted as part of the disparity study to provide context for study results and provide explanations for various barriers small and diverse businesses potentially face as part of City contracting and procurement.

A. Data Collection

The study team collected personal insights about marketplace conditions, experiences working with the City, and recommendations for programs the City could refine or implement to reduce barriers for small and diverse businesses in its marketplace and encourage their participation in City contracting and procurement. We made various efforts between October 2024 and July 2025 to collect that information:

- **Public meetings:** BBC solicited written and verbal insights from stakeholders at three public meetings: two in-person meetings on October 7 and October 8, 2024, and one meeting hosted virtually on October 16, 2024.
- **In-depth interviews:** The study team conducted 40 in-depth interviews with owners and other high-level representatives of local construction, architecture and engineering (A/E), professional services, and goods and services businesses to collect insights about interviewees' perceptions of, and experiences with, in local contracting industries, working or attempting to work with government organizations in the Virginia Beach marketplace, the City's business assistance programs, and other relevant topics. BBC identified interview participants primarily from a random sample of businesses the study team contacted during the availability survey process (see Chapter 6 for details), stratified by business type, location, and the race/ethnicity and gender of business owners.
- **Availability surveys:** As part of the availability analysis, BBC conducted surveys with 548 businesses located and operating in the Virginia Beach marketplace (see Chapter 6 for details). The survey included an opportunity for participants to share qualitative insights about whether they have experienced barriers starting or expanding businesses in their industries, obtaining work, or working with government organizations in the Virginia Beach marketplace. A total of 205 survey participants shared such information.

[1] For the purposes of this study, the *Virginia Beach marketplace* is defined as the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia (see Chapter 3 for details).

- **Focus groups:** BBC conducted two focus groups with representatives of business organizations, such as chambers of commerce, business assistance organizations, and trade groups, in addition to representatives of certified Small, Woman-owned, and Minority-owned (SWaM) businesses. We conducted the focus groups on April 7 and May 21, 2025. The study team engaged 20 participants across the two focus groups. During each focus group, participants discussed and shared insights about working with private and public sector organizations in the Virginia Beach marketplace.
- **Written comments:** Throughout the study, the study team invited stakeholders and community members to submit written comments directly to BBC regarding their experiences working in the Virginia Beach marketplace. One community member shared such written comments.

B. Key Themes

BBC identified various themes from the personal insights we collected as part of the disparity study. We summarize the most prevalent themes by topic area and present representative quotations for each:

1. Barriers to business ownership;
2. Barriers to business success;
3. Doing business with the City and other public agencies; and
4. Business inclusion programs.

To protect the anonymity of individuals and businesses, we indicate whether each quotation was from an interviewee, a public meeting participants (with the prefix "PT"), a focus group participant (with the prefix "FG"), or an availability survey participant (with the prefix "AV"), either at the beginning of the quotation (in the case of focus group participants) or in parentheses at the end of the quotation. In addition, for quotations from interviews and availability surveys, we identify the interview or survey response with a unique number (e.g., "Interviewee #15" or "AV #9"). We also preface them with a brief description of the ownership characteristics of the business and the business' line of work. We indicate whether each participant represents a Minority Business Enterprise (MBE), a Woman Business Enterprise (WBE), or other relevant SWaM certification.

1. Barriers to business ownership. Business owners and representatives shared their experiences starting a business and described various financial barriers to business ownership. These insights may help explain the disparities we observed between the availability and participation of small and diverse businesses in City contracting.

a. Business owner earnings. One of the biggest barriers to business ownership that participants described is the challenge of generating enough revenue to sustain and grow their businesses while also supporting themselves as owners. Business owners of various backgrounds described working without pay in the early stages of their businesses to keep their companies afloat. Without financial support to help them in this early period, many business owners had to work other jobs while establishing their own businesses, limiting their time and capacity to work on building their businesses. For example:

> *The representative of a Black-owned professional services company stated, "One of the barriers that I hear about is being able to put in the time. A lot of the people are still working a full-time job while they're trying to build their business, so they don't always*

have the time or the financial capital to really invest in their business the way they would want to. For some of them, getting to that success they want takes a much longer time." [#1]

The White male owner of a professional services company stated, "My brother-in-law owns a data center up in Northern Virginia in Loudoun County. He and his co-owners have gone two or three years without getting a paycheck. And I know how that feels because I was building up equity into my business before I eventually got to the point where I could afford paying myself." [#23]

The Black female owner of a professional services company stated, "My long-term goal is to fully work for myself and to not have to juggle working full-time and doing my business full-time because I easily will work like 70 hours a week. … Every time I put [money] back into my business, I don't pay myself a salary. When I get money, it goes back [into the business]; it's just it's the challenge of scaling and doing all of it on your own." [#39]

The White male owner of a professional services company stated, "I have run out of funds since [I started my company] and taken on another full-time job." [#40]

b. Financing and access to loans. Without access to loans or lines of credit, business owners rely on other sources of personal wealth to start their businesses, or they are unable to start businesses at all. Business owners described experiencing difficulties accessing financing and loans to support the growth of their businesses. Black business owners, in particular, described experiencing tougher barriers in comparison to other business owners in obtaining loans, including discrimination from financial institutions. For example:

The Black male owner of an MBE-certified professional services company stated, "We used a home equity line of credit to kind of get started and then paid that back based off the [money] we have coming in. … We used a lot of our home equity line of credit as we built our clientele until we had enough clients to pay our employees and also have some leftover to pay the bills." [#11]

The Black male owner of a professional services company stated, "Prejudice does occur [in financing]. A good example is, I had gotten my credit all the way up to 750 and I applied for a credit card at a bank. I thought they would see how well I'm doing and I could get at least $50,000 in credit. I only got $15,000." [#14]

The Black female co-owner of a Disadvantaged Business Enterprise (DBE)- and SWaM-certified construction company stated, "I've heard of other people having difficulty in getting lending. There are two drivers working for us. One of them would like to have his own truck, but he doesn't meet the financial requirements to get a loan." [#3]

The Black female owner of a WBE- and MBE-certified professional services company stated, "[I felt] blown off [when applying for loans]. A lot of people don't understand what my business is, what my business does. Some people have never heard of it. When I spoke to loan advisors at the bank, they were standoffish about it. Even though I have my certifications and all my required documents, I can explain [my work] to the T, and I generate income, but … I cannot get a loan to save my life." [#32]

The Black female co-owner of an SDV-owned construction company stated, "We have not been able to obtain capital. It has been very difficult to get funding because a lot of times we use our personal credit cards to do a job, which hurts our debt-to-income ratio dealing with a bank. We were working with [a financial institution] and we had some property we wanted to refinance. The portfolio was close to $1 million, and we owed maybe $150,000 on the properties, but they would only give us $200,000. ... We definitely faced some prejudice in that aspect. [Not having loans means we] have to pull money from personal funding to keep the business going; when people don't pay us in a timely manner, we still have to make payroll." [#33]

c. Access to insurance. Small business owners described the inaccessibility and unaffordability of insurance as a key barrier in the marketplace, one that has implications for their ability to bid on jobs, work as subcontractors on project teams, and make a profit. For example:

The Hispanic owner of a construction company stated, "Your top barrier in terms of owning a small business? Insurance. It was horrible when I first started my business. If you're in any kind of construction, especially something like mine, they will dog you out. Once I started hitting six or seven employees, [no insurance companies] would work with me. I had to go through state insurance and it costs so much money … even though I had no accidents. … Because if you don't have insurance, you can't work." [#16]

The White female owner of a construction company stated, "We spent all this time building a relationship, getting a price, going to contract, and then it's the insurance companies that do not allow us to do that [work]." [#19]

The White male co-owner of a WBE-certified construction company stated, "I think the insurance game as a whole is getting out of hand. All these requirements getting put on these contractors, especially smaller ones such as ourselves, is almost pushing us out. Because if I have to go get a specific kind of insurance, I'm going to have put it on the job and then it prices us out of the job. When there are bids that I see that have umbrella policies we'd be required to get, it's just not worth it." [#30]

A representative of a veteran-owned professional services company stated, "We were a subconsultant and the prime consultant put an extra insurance requirement on the job. They would not give us the job because we didn't have extra insurance." [AV #106]

The co-owner of a SWaM-certified, veteran-owned, professional services microbusiness stated, "There was one job that we went after and the prime that was demanding such an excessive liability insurance—almost five times what the City required for that whole contract. It was a subtle way to discourage people because we don't have that much insurance because we are very small." [WT]

2. Barriers to business success. Business owners and representatives described various barriers they face in the marketplace when trying to expand their businesses, especially when trying to grow their capacity to work with public agencies. As with barriers to business ownership, barriers to business success may help explain the disparities we observed between the availability and participation of small and diverse businesses in City contracting.

a. Labor and workforce barriers. Business owners, especially small business owners, described labor and workforce barriers that impact their ability to successfully grow their work capacity. These barriers include a shortage of qualified workers and difficulty training employees to perform specialized work. Small business owners also described the challenges of competing with large companies for a limited supply of workers. For example:

> *The Black female co-owner of a DBE- and SWaM-certified construction company stated, "Larger companies can pay more. They've been in business longer. Their expenses are allocated for higher staffing, so whatever [role] it is, they can take workers and pay more." [#3]*

> *A representative of a White male-owned construction company stated, "It's hard to get experienced employees to work for us. We have ads in Craigslist and other forms of media, but we can't get the workers." [AV #179]*

> *The Black female owner of a WBE- and MBE-certified professional services company stated, "There is a distance barrier for the certification that I hold [in my industry]. Training [for that work] is not in the state of Virginia, so you have to commute. I have one other employee … . It's really hard to train them and get them to be prepared to take that certification course, so he's not certified as of yet. He can perform tests, but he cannot stamp reports to send into [clients]. The hardest part for me is find[ing] an already trained and qualified employee." [#32]*

Multiple business owners described how labor requirements limiting fair chance hiring opportunities prevent those businesses from working with government agencies in the region. Business owners cited challenges hiring workers able to work on all types of government contracts as a reason why they were unable to expand their capacity in the Virginia Beach marketplace. For example:

> *The White male owner of a construction company stated, "The entire industry, whether it's national or local, [has] struggles with workforce development … . And you add to that the complication in the Hampton Roads area because we're military-oriented, so everybody has to be able to get on [to a military] base. … You have to be able to hire people, sometimes it's towards the lower end of the pay spectrum, but they can't have a [criminal] record because otherwise they can't get on base. … I would otherwise be amenable to hiring someone maybe who's got a record, I'm simply not capable of doing so because I can't get them on base to run the deliveries." [#28]*

> *The White male co-owner of a WBE-certified construction company stated, "The only workforce requirements I have been [faced with is] when we do some base work … where you've got to have clean records. If you have any type of criminal background, you can't get on base. That's probably our biggest hurdle that we've come across." [#30]*

b. Barriers related to race and gender. Interviewees discussed instances of discrimination they experienced such as stereotypical attitudes denigrating minority- and woman-owned businesses and the quality of their work. Business owners said that these experiences can create unwelcoming work environments, and that they require minority and women business owners to work harder to achieve the same success as similar businesses. For example:

The representative of a Black-owned professional services company stated, "I think one of the main challenges that we have, as successful as the business has been—and I hate to say this—but this is just America. When somebody hears that we're a minority-owned business, they think of those stereotypes that go along with it, and it's almost like we don't get to rest on our laurels. We're a very successful business, yet it's owned by a Black man … we've been trying to shake that stereotype for years." [#1]

The representative of a woman-owned goods and services company stated, "[My business at the start] faced the normal challenges of economic business cycles and things to that sort. [But also] it simply faced the unusual nature of being in an industry with as close to zero percent female executive leadership as could exist." [#17]

The owner of a WBE-certified construction company stated, "I would have guys question my knowledge and ability to understand what was going on on the job site. Of course, I proved them wrong because I typically knew more than they did. … That's something that I think most women of my age are very familiar with. … I had a little sign in my office that said, 'A woman has to work 10 times as hard as a man to get the same recognition.' And unfortunately, that was true." [#24]

The Black owner of a SWaM-certified professional services microbusiness stated, "When I started my business, I went to a Bible study group with a lot of other businessmen. But I started to get the feeling that they weren't being honest with me. They weren't really telling me what I needed to know to be successful. I felt like people were just grinning and nodding their heads and kind of just watching me as if I was entertainment, thinking, 'Oh, look at him try to climb the ladder and he just kind of keeps slipping down. That's so funny.'" [#25]

The Black woman owner of a professional services company stated, "When you're in fields or industries where you are the only person of color or woman of color, and you're at that table or in that space, you know there's a question of if you belong in this space. [People are asking,] 'Why are you here? How did you get here? Who do you know?'… You have to prove that you are competent and capable. I've always been having to prove that I'm twice as good in [an] industry that I know that I'm qualified and capable in. … [That] stigma applies to all people of color … [and it's] the elephant in the room: as a woman, as a minority, or if you fall into both categories, it's difficult, even in 2025. There are challenges that should not exist in terms of getting funding or getting a space in the room when we're trying to get on a contract." [#39]

c. Education and mentorship barriers. Business owners described barriers to continuing education or mentorship that impacted their ability to grow their businesses successfully. Business owners described how education and mentorship require time, money, and human capital, but that these resources are not always available to small business owners. For example:

A representative of a woman-owned goods and services company stated, "The only thing that holds us back is not being able to qualify for a pesticide license. My husband would have to go to school for two years to get it." [AV #156]

The Black owner of a professional services company stated, "I did not have access to opportunities to gain more knowledge capital where the information was freely shared *that would've helped me push my business forward. … Especially as it pertains to knowledge, [access] is disparate." [#2]*

The White male owner of a professional services company stated, "If I went out to get a job at another company, five years ago, I wouldn't qualify even with all the experience I have because I don't have a BA [bachelor's of arts degree]." [#26]

3. Doing business with the City and other public agencies. Business owners and representatives discussed their experiences learning about, bidding on, and performing work with the City and other public agencies. Study participants described challenges they face when working or trying to work in the public sector.

a. Closed networks. The barrier that study participants most commonly described with respect to public agency work was difficulty breaking into what they perceive as a closed network of Virginia Beach contractors. Business owners of all backgrounds described a "good ol' boy" network in the City, where the same group of businesses receive benefits because they have established relationships with the City. Several minority business owners described their experiences of attempting to work with the City as discriminatory. For example:

A representative of an SDV-owned construction company stated, "It is very known that Virginia Beach has favorites, and they discriminate. The opportunities for minority-owned businesses is limited. That is well known." [AV #189]

A representative of a Black-owned professional services company stated, "[A barrier is the] lack of opportunities, and you have to know someone or have some kind of contact to get awarded a government job." [AV #278]

A representative of a Black-owned construction company stated, "I don't even try for government projects because it seems there are certain companies they always deal with." [AV #157]

The Black owner of a WBE- and MBE-certified professional services company stated, "I worked in a part of the City of Virginia Beach school system. Definitely when it comes to contracting out work, some of that work goes to people's family or friends, and people of color may not get the same opportunities as that network that [is already] inside of that school system. I would definitely say that good old boy system does still work." [#32]

The White male owner of a construction company stated, "The City of Virginia Beach [has] got their prime [contractors it likes to work with. All the big money jobs? They've already got guys lined up for that. It's a good old boy system. They grab people like me, because ... they have to make sure they use a certain amount of small independent contractors or contractors of color. But they just go through the motions. All the big jobs are going to go to a few of the bigger companies, and they've already got them lined up. They're not going to use anybody else. It's all rigged." [#18]

Business owners shared specific examples of times that they have bid on City projects but found it very difficult to get an award. They described how repeated attempts to compete for work without successfully breaking into the City's closed networks discouraged them from continuing to pursue additional contracts with the City. For example:

The White male owner of a professional services company stated, "There is a tendency for contractors to be selected based on their previous knowledge of the process in the City. So [these companies] are automatically elevated to the shortlist. ... As a newcomer you wonder, 'How do I compete with that? I'm not even going to even bid on it because I can't compete with it.' And that's kind of how we felt when we tried to bid on [a City project]. We put our name in a hat, but we didn't even come close to being shortlisted. It was just one of those things that we have to really pick and choose your projects and hope that the City is willing to take a chance on you." [#23]

The Black owner of a SWaM-certified professional services microbusiness stated, "I had a situation where I spent two months working on a bid and I had PTAC [the Virginia Procurement Technical Assistance Center] review it. They said it was a perfect proposal. But we didn't get picked. And it turns out that the person who won that contract was someone who [the agency] already knew and I think someone who, I believe, that they had already had in mind was going to win that contract before they made it public. When that happens, you're just like, 'I'm not going to invest that kind of time again.'" [#25]

b. Learning about contracting opportunities. Business owners and representatives described barriers they face in learning about contracting opportunities with the City. Many participants described a knowledge gap between the City's outreach efforts and their own experiences looking for City work. Business owners, particularly small business owners, described the significant amount of time it takes to learn about upcoming opportunities as a barrier to working with the City. For example:

A representative of a Black-owned goods and services company stated, "I am just starting to get into government work and I don't where to start to even compete for jobs." [AV #287]

A representative of a White male-owned goods and services company stated, "The City and the state don't usually reach out to the smaller businesses. We are expected to monitor jobs on their bid boards and we don't have time to do that." [AV #102]

The Black female co-owner of a DBE- and SWaM-certified construction company stated, "I'm enrolled in a lot of things that the City of Virginia Beach has to offer to allow me to get my foot better in the door. When I [started attending] … I wasn't aware of all the pre-bid meetings. I wasn't aware of all the different avenues where you could get information prior to bidding on a job or being a subcontractor. I'm so much more aware, … [but] I [still] feel like I'm locked out. We're bidding on contracts. We're trying to subcontract … but there are people out there that are making moves that we have no idea how they made them, how they got these contracts that we don't even know are going on. … All of that is like smoke. That's where I began to realize and see that we don't have our toe in the door. The door's not even open." [#3]

c. Bid process barriers. Bid process barriers combined with closed networks can adversely impact the willingness of small and diverse businesses to continue pursuing work with the City. Business owners and representatives described the bid process to compete for City work and other public agency work as complicated and resource-intensive. Business owners who had not won bids with public agencies described not understanding what they could be doing differently to be more successful in the future.

Some business owners described how arduous bid requirements act as a deterrent to competing for government work. For example:

> *A representative of a White male-owned construction company stated, "Bid process isn't always easy; it's very complicated. They require a lot of extra information, forms to fill out and many requirements … . It is just very time-consuming." [AV #3462]*
>
> *The Black female owner of a SWaM-certified professional services company stated, "[I don't go after big City projects.] Am I lazy? No, I don't mind hard work, but when you're reading the scope, it seems like they're not looking for someone like me. It just seems like it's just too overwhelming." [#7]*
>
> *A representative of a community business organization stated, "I think a lot of the barriers with working with the City has to do with when [businesses bid on City work] … they're not sure of if they filled the application out correctly, or they think they did but they never heard anything back. So, they don't know what they should have done differently or better to get their actual contract. … I found a lot of [SWaM business owners] will say, 'Well, I tried to apply for a contract with the City but it didn't go anywhere for me.' And they just don't know why." [FG #2]*
>
> *A representative of a Hispanic-owned goods and services company stated, "Most bids say you have to give of examples of work you have done, and the amount of the work you have done. I would not be qualified for that type of work. I am a small minority business." [AV #3376]*
>
> *The White male owner of a professional services company stated, "It took almost a year to get through the bidding process for me going from a subcontract position to a prime contract position. The City took a year to procure that contract. … I've seen on PlanHub contracts are out on the street and they got like, 'Hey, in two weeks we're bidding on this. We have to submit our bid in two weeks or a week.' … I've got to put down everything that I've got as a small business down on the table and ignore it while I can focus on spending 10 or 20 hours or 30 hours preparing a bid that I may not win. It's got to be done in two weeks. And then once I submit it, I don't know if I've won it or I don't know if ... it takes six months to go through the process, and then I might hear about it six months later." [#23]*

d. Payment barriers. Business owners and representatives described barriers they have encountered related to payment from public agencies or from prime contractors with which they worked. For some business owners, having to wait to be paid by government agencies is the reason they do not participate in government contracts, because they do not have the revenue or financing to continue operating while they are waiting for payment. Minority and women business owners described how discrimination may compound their experiences of payment delays. For example:

> *A representative of a White woman-owned professional services company stated, "Projects are slow to develop and slow to pay, so I do not go after municipal projects." [AV #50]*
>
> *The Hispanic owner of a construction company stated, "One customer made me wait six weeks [for payment]. [As a] small business owner, I could have $95,000 in my bank account Monday. By Wednesday, I could have $3,000 if I pay all my bills and pay for materials and things like that." [#16]*

The Black female owner of a WBE- and MBE-certified professional services company stated, "One percent of contractors won't pay me on time. It doesn't necessarily throw my entire business off, but I feel like a debt collector. ... I definitely feel like that 1 percent does take advantage [of me] because my business is woman-owned. I feel like, had I been a male in this industry, my bill definitely would've been paid or that invoice would've been paid a lot faster." [#32]

The White male owner of a construction company stated, "Your financing is probably the one thing that will take you out quicker than anything else. … We tried to vet our customers because you don't want to work for someone that's got a reputation for being a slow payer or, worse than that, a non-payer, even though we were hungry [for work]. … You're always going to come across jobs that take 70 days, 90 days to get your money and, if you don't have a good backup financial status, then it could ruin you." [#22]

The Black male co-owner of a SWaM- and MBE-certified professional services company stated, "Small companies have to have money to pay their workers every two weeks. The problem with government work is, it could be two or three months before you get your first check. It sounds good on paper to get a $10 million contract from the City of Virginia Beach, but … when you sub, you're totally at the mercy of the prime in terms of when you're going to get paid. If it takes them 60 to 90 days, they're not going to pay you, they can't pay you as a sub until they get paid. So once again, I've had some Black-owned companies, minority-owned companies in the past tell me, they never want to be a subcontractor again, because again, you become totally beholden and totally dependent upon that prime contractor." [#8]

e. Barriers to performing work. Business owners, especially small business owners, described the City's permitting process as a major barrier to their ability to perform the work they are awarded. They also described challenges related to using government agency compliance systems and managing administrative work, particularly for small companies with limited resources. For example:

A representative of a Native American-owned professional services company stated, "I have issues with the City of Virginia Beach, with getting projects. They are hard to work with, due to needing to get through the convoluted process of getting permits. I have not only lost contracts with the City, but also in the private sectors due to permit restraints." [AV #98]

A representative of a veteran-owned construction company stated, "Right now we are working for [a Hampton Roads-area government agency]. The project managers are making us use an online project management system. It is a resource killer for our business." [AV #3416]

A representative of a White male-owned construction company stated, "We have had some problems with the paperwork required. Some of the jobs require so much paperwork, it is like a full-time job." [AV #3434]

4. Business inclusion programs. Study participants described their awareness of and experiences with the City's business inclusion programs, especially the SWaM Procurement Program and the technical assistance offerings the City coordinates.

a. Program awareness. Study participants described a lack of awareness in the small business community about the business inclusion and technical assistance programs the City offers. Additionally, study participants identified challenges in understanding how small and diverse businesses can best leverage the available programming to their benefit as business owners. For example:

> *The Black female co-owner of a DBE- and SWaM-certified construction company stated, "The City should know that they want to service a group of people, but they don't even know if [these business owners] have a cell phone. The method you have of reaching them could be something they don't even utilize. … [The City should be] reaching out at library meetings, church meetings, small group meetings." [#3]*

> *The Black female owner of a professional services company stated, "[The barrier is] the awareness. For minorities and specifically women of color, we don't know about a lot of the programs and services that are available to us. I find out either directly from clients or a girlfriend might call me and say, 'Hey there's an event or conference or something coming up.' [Otherwise] I'm not going to hear anything about it, even though it's five minutes away." [#39]*

> *A participant in a focus group stated, "There are a lot of great resources in the City. We talked about the HIVE, also the Minority Business Council. … They also have their Minority Business Expo every year in the fall that tends to be well attended. They're trying to grow that more. So those are some tools there that have been offered. But one of the challenges is just making sure that the businesses are aware of these services." [FG #1]*

> *A representative of a community business organization and a business owner stated, "A barrier is knowing how to get SWaM-certified. [And also] more, how do you utilize [the certification]? The small businesses think they can't win these big contracts and they don't realize that they can be subcontractors … and work on these contracts as well." [FG #1]*

> *A representative of a community business organization stated, "A lot of business owners are first-generation [business owners]. And because they're first-generation business owners, they don't have the guidance and help from their parents … . They need someone who can pull all the information together for their specific business needs and help them find the place to start what they need to do to be successful." [FG #2]*

b. Program barriers. Business owners described barriers they experience as participants in the SWaM Program, as well as other business inclusion programs. One business owner described how woman-owned businesses of different sizes compete against each other in the program, making it difficult for smaller companies to successfully compete against the larger companies. Some business owners shared that, despite being certified, they experience little benefit from participating in the SWaM Program. Additionally, minority business owners described experiences of agencies implementing the SWaM Procurement Program to "check a box" without creating meaningful pathways for small and diverse businesses to have greater opportunities. For example:

> *A representative of a Hispanic-, SDV-, and woman-owned goods and services company stated, "I compete with other SWaM companies that are multimillion-dollar women-owned businesses. It's very hard to compete with SWaM companies that are already established when I am a microbusiness and still competing with these other women-owned business." [AV #208]*

The Black male owner of a professional services company stated, “I wanted to apply for some of the certifications. However, when I look at the people who have gotten those certifications, they're not receiving the work they're supposed to be receiving by having those certifications." [#14]

The Black female owner of a WBE- and MBE-certified professional services company stated, “It took me almost an entire year to get certified. … I don't see any disadvantages to [being certified], but I also don't see any advantages to it at all either. … For me, the certifications that I hold have not given me any type of contracts so far." [#32]

The Black owner of a SWaM-certified professional services microbusiness stated, "The suspicion is if there is a set aside, [the government agency doesn't] want you making profit off of it. It's going to be the type of project that nobody wanted. [And] it seems to me that some people who create SWaM opportunities looked at me and they said, 'Oh, well, you seem pretty smart. You seem like you would be useful for whatever purpose I want to put you on.' But they're uninterested in what I actually have to say. They're uninterested in what I actually know. They're not interested in my skills. It seems like they just want me for my Blackness, as if they want to use me to fill in this spot because they need a Black guy to look Black. And I don't want any type of opportunities like that.” [#25]

The Black female co-owner of a DBE- and SWaM-certified construction company stated, “[When agencies] set aside work for specific groups, [such as designating contracts as] 'This is for the women. This is for minorities. This is for the veterans. This is for the women.' I feel like they only give me what they want me to have. … I might not be getting everything that another group is getting. … The separateness is beneficial, but it's also detrimental, because it leaves you wondering if you've been left out of something.” [#3]

CHAPTER 5.
Data Collection and Analysis

Chapter 5 provides an overview of the contracts and procurements BBC Research & Consulting (BBC) analyzed as part of the 2025 Virginia Beach Disparity Study and the processes we used to collect relevant prime contract, subcontract, and vendor data from the City of Virginia Beach (the City) and other sources. Chapter 4 is organized in five parts:

A. Contract and procurement data;

B. Vendor data;

C. Relevant geographic market area (RGMA);

D. Subindustry classifications; and

E. Review process.

A. Contract and Procurement Data

BBC collected information on contracts and procurements that the City awarded between July 1, 2020 and June 30, 2024 (the *study period*) from the City's Oracle system. Those data served as the basis for key disparity study analyses, including the utilization, availability, and disparity analyses. We collected the most comprehensive data available on the prime contracts and subcontracts the City awarded during the study period. We sought those data regardless of the businesses' statuses as minority-, woman-, or service-disabled veteran (SDV)-owned businesses.

1. Prime contract data. The City provided BBC with the following data from Oracle on relevant prime contracts and procurements it awarded during the study period:

- Contract or purchase order number;
- Prime contractor name;
- Prime contractor identification number;
- Contract title;
- Description of work;
- Award date;
- Award amount (including change orders and amendments);
- Amount paid-to-date; and
- Goal status [whether the City awarded the project under the Small, Woman-, and Minority-owned (SWaM) Procurement Program].

The City advised BBC on how to interpret the data it provided, including how to best identify unique bid opportunities and how to aggregate related award or payment records, where applicable.

2. Subcontract data. The City does not collect comprehensive data on the subcontracts associated with the prime contracts it awards. For prime contracts that were subject to the enhanced subcontracting program, the sheltered bidding program, and the contract goals program, the City collected subcontractor reports from prime contractors. Those reports provided data on the dollars awarded to SWaM-certified subcontractors as well as the aggregate dollars the City awarded to SWaM-certified firms at the end of each fiscal year. The City provided subcontractor reports to BBC for 101 prime contracts totaling $476.1 million. Those prime contracts included 605 associated subcontracts totaling $151.5 million. To gather information on additional subcontracts, BBC conducted surveys with prime contractors to collect data on the subcontracts associated with the projects the City awarded to them during the study period and that we deemed to likely have included subcontract opportunities. We made that determination based on the work types involved in each project and on project sizes, primarily including relatively large architecture and engineering (A/E), highway street and bridge construction, and marine construction projects. We requested the following information from prime contractors about each subcontract associated with each relevant project the City awarded to them:

- Associated prime contract number;
- Award amount for the project;
- Amount paid-to-date for the project;
- Amount paid on each subcontract;
- Description of work; and
- Subcontractor name.

BBC requested subcontract data associated with 72 prime contracts the City awarded during the study period. We collected information on subcontractor participation for more than 39 percent of the dollars associated with those projects.

3. Prime contract and subcontract amounts. For each prime contract and subcontract (i.e., *contract element*) included in our analyses, BBC examined the dollars the City awarded to each prime contractor and the dollars each prime contractor committed to any subcontractors. If a project did not include any subcontracts, we attributed the project's entire award amount to the prime contractor. If a project included subcontracts, we calculated the prime contract amount as the total project award amount less the sum of dollars committed to all subcontractors. Because BBC was unable to collect subcontract data on all relevant prime contracts the City awarded during the study period, we weighted the data we received to simulate subcontract dollars associated with prime contracts likely to have included such opportunities.

4. Contracts and procurements included in study analyses. Figure 5-1 presents the number of contract elements and associated dollars BBC included in our analyses.

B. Vendor Data

BBC also compiled information on the businesses that participated in relevant prime contracts and subcontracts the City awarded during the study period, including:

- Business name;

- Physical addresses and phone numbers;
- Ownership status (i.e., whether each business was minority-, woman-, or SDV-owned);
- Race of owners (if minority-owned);
- Status as a certified SWaM business;
- Primary lines of work;
- Business size; and
- Year of establishment.

We relied on a variety of sources for that information, including:

- The City's contract and vendor data;
- Surveys the study team conducted with business owners and managers;
- Data from the United States Small Business Administration;
- Commonwealth of Virginia SWaM directory;
- Dun & Bradstreet (D&B) business listings and other business information sources; and
- Business websites and other secondary research.

Figure 5-1.
Contract elements and associated dollars included in the disparity study

Notes:

Numbers rounded to nearest dollar and thus may not sum exactly to totals.

A text description of Figure 5-1 is provided in Appendix E.

Contract type	Number	Dollars
Construction	1,968	$734,269,689
A/E	513	$417,486,657
Professional services	362	$85,941,997
Goods and services	33,642	$400,576,963
Total	**36,485**	**$1,638,275,306**

C. RGMA

BBC used data from the City to determine the RGMA—the geographical area in which the agency spends the substantial majority of its contract and procurement dollars—for the disparity study. During the study period, the City awarded approximately 79 percent of relevant contract and procurement dollars to businesses located in the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia. As a result, our analyses—including the availability analysis and quantitative analyses of marketplace conditions—focused on those five cities.

D. Subindustry Classifications

For each prime contract and subcontract included in our analyses, BBC determined the *subindustry* that best characterized the vendor's primary line of work (e.g., concrete work). We determined subindustries based on the City's contract, procurement, and vendor data; surveys the study team conducted with prime contractors and subcontractors; business certification lists; D&B business listings; and other sources. Figure 5-2 presents subindustry classifications for the construction, A/E, professional services, and goods and services contracts and procurements we included in our analyses as well as the dollars the City awarded to businesses within each subindustry during the study period.

BBC combined related subindustries that accounted for relatively small percentages of total contract and procurement dollars into nine “other” subindustries: other A/E, other heavy construction, other building construction, other special trade contractors, other transit services, other construction materials, other nonprofessional services, other goods, and other professional services. For example, the dollars the City awarded to contractors for carpentry represented less than 1 percent of the total dollars we examined as part of the study. So, we combined carpentry work with other special trade contractors that also accounted for relatively small percentages of total dollars into the “other special trade contractors” subindustry. There were also various contracts and procurements we classified into subindustries that we did not ultimately include in our analyses:

- Purchases and grants the City made with or awarded to government agencies, utility providers, hospitals, or nonprofit organizations ($303 million);
- Contracts and procurements that reflected “national markets”—that is, subindustries dominated by large national or international businesses—or subindustries where the City awarded most of the dollars to businesses located outside the RGMA ($127 million);[1]
- Purchases that often include property purchases, leases, or other pass-through dollars ($108 million);[2] and
- Types of work not typically included in disparity studies and that account for relatively small percentages of the City’s contract and procurement dollars ($11 million).[3]

E. Review Process

The City reviewed contract, procurement, and vendor data throughout the study process. BBC consulted with the City to discuss the data collection process, review information the study team gathered, and present summary results. We incorporated that feedback in the final contract, procurement, and vendor data we used for our analyses.

[1] Examples of such work include computer manufacturing and proprietary software.

[2] An example of such work is real estate consulting.

[3] An example of an industry not typically included in disparity studies is legal services.

Figure 5-2.
Contract and procurement dollars by subindustry

Note:

Numbers rounded to nearest dollar and thus may not sum exactly to totals.

A text description of Figure 5-2 is provided in Appendix E.

Industry	Total
Construction	
Water, sewer, and utility lines	$167,595,772
Highway, street, and bridge construction	$146,366,007
Marine and related construction	$123,798,211
Nonresidential building construction	$94,060,606
Electrical work	$65,956,680
Plumbing and HVAC	$43,458,946
Concrete work	$34,520,429
Excavation, drilling, wrecking, and demolition	$11,123,508
Roofing, siding, and sheet metal work	$3,309,449
Other special trade contractors	$31,761,578
Other heavy construction	$10,113,360
Other building construction	$2,205,142
Total construction	**$734,269,689**
A/E	
Engineering	$346,510,987
Surveying and mapmaking	$23,884,128
Landscape architecture	$13,735,180
Environmental services	$13,296,600
Testing and inspection	$5,035,713
Other architecture and engineering	$15,024,048
Total A/E	**$417,486,657**
Professional services	
IT and data services	$40,075,045
Advertising, marketing, and public relations	$35,282,091
Business and management consulting	$3,513,216
Other professional services	$7,071,645
Total professional services	**$85,941,997**
Goods and services	
Automobiles	$43,568,842
Communications equipment	$39,012,439
Trucking, hauling, and storage	$32,282,379
Staffing services	$32,281,812
Cleaning and janitorial services	$30,463,338
Safety equipment	$28,100,944
Heavy construction equipment rental	$24,229,361
Vehicle parts and supplies	$21,358,547
Furniture	$13,403,418
Industrial equipment and machinery	$10,463,027
Landscaping services	$8,788,043
Printing, copying, and mailing	$6,977,295
Security guard services	$6,295,518
Cleaning and janitorial supplies	$3,319,342
Vehicle maintenance and repair	$2,794,642
Other construction materials	$40,501,411
Other nonprofessional services	$29,183,213
Other goods	$24,810,084
Other transit services	$2,743,309
Total goods and services	**$400,576,963**
GRAND TOTAL	**$1,638,275,306**

CHAPTER 6.
Availability Analysis

BBC Research & Consulting (BBC) analyzed the availability of minority-, woman-, and service-disabled veteran (SDV)-owned businesses that are *ready, willing, and able* to perform work on the construction, architectural and engineering (A/E), professional services, and goods and services contracts and procurements the City of Virginia Beach (the City) awards.[1] Chapter 6 describes the analysis in three parts:

A. Purpose;

B. Methodology; and

C. Results.

Appendix C provides more information about the analysis and the methodology we used to conduct it.

A. Purpose

BBC examined the availability of minority-, woman-, and SDV-owned businesses for City prime contracts and subcontracts to compare with the actual participation of those businesses in its work to assess whether any disparities exist between participation and availability. Assessing disparities between the participation and availability of minority-, woman-, and SDV-owned businesses allowed us to determine whether certain business groups were *substantially underutilized* during the study period, which is crucial in determining whether the use of *race- or gender-based measures* is appropriate and, if so, ensuring that their use meets the *strict scrutiny* and *intermediate scrutiny standards* of constitutional review, respectively (for details, see Chapter 2). This information was also critical in informing the City's implementation of the Small, Woman-owned, and Minority-owned (SWaM) Procurement Program, including for setting overall aspirational goals for the participation of minority-, woman-, and SDV-owned businesses in the projects it awards and for setting race- or gender-based contracting goals for the participation of those businesses in its projects, if the City determines the continued use of such measures is appropriate.

B. Methodology

BBC used a *custom census* approach—which accounts for specific business and project characteristics such as work type, role, size, capacity, location, and interest—to estimate the availability of minority-, woman-, and SDV-owned businesses for City work. The availability analysis focused on specific areas of work, or *subindustries*, associated with the contracts and procurements the City awarded between July 1, 2020 and June 30, 2024 (the *study period*), which serves as a proxy for the work it might award in the future. We began the analysis by identifying the specific subindustries in which the City awarded most of its contracting dollars as well as the geographic area in which most of the businesses to which it awards those dollars are located (i.e., the *relevant geographic market area*, or *RGMA*). Our analyses showed that the City awarded approximately 79 percent of relevant contract and procurement dollars during the

[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race/ethnic groups.

study period to businesses located in the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia, which we considered as the RGMA.

1. Availability surveys. After identifying the RGMA, the study team conducted telephone and online surveys with more than 500 businesses in the marketplace to develop a representative and unbiased database of businesses *potentially available* to perform work on City projects. The objective of the survey process was not to collect information from every relevant business located in the RGMA, but rather, to collect information from an unbiased subset of the relevant business population that appropriately represents the entire relevant business population. We conducted the surveys with business owners and managers to identify local businesses potentially available for City prime contracts and subcontracts.

a. Business directory. BBC began the survey process by compiling a *directory* of all types of businesses—regardless of ownership characteristics—that perform work relevant to City contracts and procurements and that are located in the RGMA, based primarily on 8-digit work specialization codes from Dun & Bradstreet (D&B) Marketplace. We obtained listings on 5,567 local businesses that perform work related to those work specializations. We did not have working phone numbers for 1,132 of those businesses, but we attempted surveys with the remaining 4,435 businesses.

b. Survey information. The study team collected various pieces of information about each business that participated in an *availability survey*, including:

- Status as a private sector business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Interest in performing work for government organizations;
- Interest in performing work as a prime contractor or subcontractor;
- Largest prime contract or subcontract the business is able to perform;
- Whether the business is able to work or serve customers in Virginia Beach;
- Business size in terms of revenue and number of employees;
- Race of the owner(s);
- Gender of the owner(s); and
- SDV status of the owner(s).

c. Availability database. After conducting availability surveys, BBC compiled an availability database that included information about businesses potentially available for relevant City projects. We included businesses in the database if they reported possessing the following characteristics:

- Being a private sector business that is active and operational;
- Having primary lines of work relevant to City projects;

- Being able to perform work or serve customers in Virginia Beach; and
- Being interested in working for government organizations.

The database included information on the 468 businesses with which Davis Research completed availability surveys and provided responses that met the above criteria. Figure 6-1 presents the percentage of businesses in the availability database that were minority-, woman-, and SDV-owned. As shown in Figure 6-1, 42.7 percent of the businesses in the database were minority-owned, 14.3 percent were woman-owned, and 9.2 percent were SDV-owned.

Figure 6-1.
Percent of businesses in the availability database by relevant business group

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 6-1 is provided in Appendix E.

Business group	
Race and gender	
Minority	26.8 %
Asian Pacific	2.4 %
Black	18.4 %
Hispanic	4.3 %
MENA	1.1 %
Native American	1.7 %
Subcontinent Asian	0.6 %
White woman	14.3 %
Veteran status	
Service-disabled veteran	9.2 %

2. Calculating availability. BBC only considered a portion of the businesses in the availability database as potentially available for any given prime contract or subcontract (referred to generally as a *contract element*). We identified the type of work, contract size, and contract role for each contract element, and then took the following steps to estimate the availability of minority-, woman-, and SDV-owned businesses for each one:

1. We identified businesses in the availability database that reported they:
   - Perform work in that particular role (i.e., as a prime contractor or a subcontractor);
   - Perform that type of work; and
   - Can perform work of that size or larger.
2. We then counted the number of minority-, woman-, and SDV-owned businesses as well as all other businesses that met the criteria in step 1.
3. We translated the counts of businesses in step 2 into percentages for each relevant business group.

Figure 6-2 provides an example of how we estimated the availability of minority-owned businesses for a subcontract associated with a project the City awarded during the study period.

BBC repeated the above steps for each contract element included in the analysis and then multiplied the percent availability of minority-, woman-, and SDV-owned businesses for each contract element by the dollars associated with it. We then added results across all contract elements and divided by the total corresponding dollars, resulting in estimates of the percent of relevant project dollars one would expect the City to award to minority-, woman-, and SDV-owned businesses based on their availability for specific types and sizes of the work it awards.

Figure 6-2.
Example of calculating availability for a City subcontract

On a contract the City awarded during the study period, the prime contractor awarded a subcontract worth $598,107 for excavation, drilling, wrecking, and demolition work. To determine the overall availability of minority-owned businesses for the subcontract, BBC identified businesses in the availability database that indicated they:

a. Perform excavation, drilling, wrecking, and demolition work;
b. Perform work as subcontractors;
c. Are able to perform work of equal size or larger than the size of contract element; and
d. Perform work or serve customers in Virginia Beach.

We found seven businesses in the availability database that met those criteria, two of which were minority-owned. Thus, the availability of minority-owned businesses for the subcontract was 28.6 percent (i.e., 2/7 x 100 = 28.6).

3. Markov Chain Monte Carlo (MCMC). With any survey effort where the survey sample does not represent the entire population and the response rate is less than 100 percent, there is some amount of random error or potential for unintended bias associated with the survey process itself. BBC used MCMC simulations to adjust our observed availability estimates to help account for any such issues as part of the availability survey process. For the simulations, we specified a *prior* for the MCMC model, which represented any initial knowledge we had about the population of local businesses potentially available for relevant contracts and procurements the City awarded. Such knowledge was available to us from the United States Census Bureau, which provides percentages of minority-, woman-, and SDV-owned businesses located in the Virginia Beach-Chesapeake-Norfolk, VA-NC Metropolitan Statistical Area that work in the local construction, A/E, professional services, and goods and services industries. We specified data from the United States Census Bureau as a prior in our model so it could better estimate business availability for each contract element included in the analysis.

Once we specified the prior, we ran three MCMC models, each with six sequential chains of Monte Carlo simulations for each contract element in our analysis: one model for simulating the availability of minority- and woman-owned businesses, one for simulating the availability of veteran-owned businesses, and one for simulating the availability of disabled-owned businesses. Each chain included 4,000 simulations, so in total, we ran 24,000 Monte Carlo simulations for each model for each contract element.[2] Essentially, the model generated estimated availability for each contract element if we had repeatedly run our availability survey process 24,000 times, resulting in less random error and mitigating any unintended bias in the survey process. The availability estimates we report in the next section and in subsequent analyses are the availability estimates we observed adjusted for results from the MCMC process.

C. Results

BBC estimated the overall availability of minority-, woman-, and SDV-owned businesses for the construction, A/E, professional services, and goods and services work the City awards as well as

[2] Across all the more than 36,000 contract elements included in the analyses, there were 265 unique sets of combinations of business and contract characteristics (i.e., availability sets). For computational efficiency, we ran MCMC simulations on each unique availability set and then applied them to each appropriate contract element.

separately for various subsets of that work.[3] We present availability estimates for all minority-owned businesses together and separately for each relevant business group: Asian Pacific-owned businesses, Black-owned businesses, Hispanic-owned businesses, Middle Eastern and North African (MENA)-owned businesses, Native American-owned businesses, and Subcontinent Asian-owned businesses.

BBC based availability estimates on the prime contracts and subcontracts the City awarded during the study period. A key assumption of the availability analysis is that the work it awarded during the study period is representative of the work it will award in the future. If the types and sizes of the projects it awards in the future differ substantially from the work it awarded during the study period, then the City should adjust availability estimates accordingly.

1. Overall. Figure 6-3 presents estimates of the overall availability of minority-, woman-, and SDV-owned businesses for City work. As shown in Figure 6-3, the availability of minority-owned businesses for all City work considered together is 25.2 percent, indicating that one might expect the City to award approximately 25.2 percent of project dollars to minority-owned businesses, based on the availability of those businesses for that work. The minority-owned business groups that exhibit the greatest levels of availability for City work are Black-owned businesses (12.5%), Hispanic-owned businesses (5.1%), and Asian Pacific-owned businesses (4.5%). The availability of White woman-owned businesses for all City work is 13.7 percent, and the availability of SDV-owned businesses for all City work is 12.6 percent.

Figure 6-3.
Availability estimates for City work

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 6-3 is provided in Appendix E.

Business group	
Race and gender	
Minority	25.2 %
Asian Pacific	4.5 %
Black	12.5 %
Hispanic	5.1 %
MENA	1.0 %
Native American	1.6 %
Subcontinent Asian	0.4 %
White woman	13.7 %
Veteran status	
Service-disabled veteran	12.6 %

2. Industry. BBC also examined the availability of minority-, woman-, and SDV-owned businesses separately for the construction, A/E, professional services, and goods and services work the City awards to assess whether the availability of those businesses differs by industry. As shown in Figure 6-4, minority-owned businesses exhibit greater availability for the City's professional services work (39.9%) than for its A/E (30.2%), goods and services (24.1%), or construction (21.2%) work. Availability for individual minority-owned business groups differs across industries:

[3] SDVs are not exclusive of other business groups. For example, if a business is owned by a minority who is also a service-disabled veteran, results for the business would be included in the results for minority-owned businesses and for service-disabled veteran-owned businesses.

- The minority groups that exhibit the greatest levels of availability for construction work are Black-owned businesses (9.5%) and Hispanic-owned businesses (7.4%).
- The minority groups that exhibit the greatest levels of availability for A/E work are Asian Pacific-owned businesses (10.8%) and Black-owned businesses (14.5%).
- The minority group that exhibits the greatest level of availability for professional services work is Black-owned businesses (21.7%).
- The minority group that exhibits the greatest level of availability for goods and services work is Black-owned businesses (14.0%).

White woman-owned businesses exhibit greater availability for the City's professional services work (21.6%) than for its A/E (17.8%), goods and services (17.0%), and construction (8.8%) work. SDV-owned businesses exhibit greater availability for the City's A/E work (29.2%) than for its professional services (20.5%), goods and services (12.4%), and construction work (2.3%).

Figure 6-4.
Availability estimates for construction, A/E, professional services, and goods and services work

Business group	Industry			
	Construction	A/E	Professional services	Goods and services
Race and gender				
Minority	21.2 %	30.2 %	39.9 %	24.1 %
Asian Pacific	1.9 %	10.8 %	5.2 %	2.5 %
Black	9.5 %	14.5 %	21.7 %	14.0 %
Hispanic	7.4 %	2.9 %	4.1 %	3.2 %
MENA	0.9 %	1.1 %	1.1 %	1.2 %
Native American	1.1 %	0.6 %	6.3 %	2.7 %
Subcontinent Asian	0.3 %	0.4 %	1.5 %	0.5 %
White woman	8.8 %	17.7 %	21.6 %	16.9 %
Veteran status				
Service-disabled veteran	2.3 %	29.2 %	20.5 %	12.4 %

Notes: Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.
A text description of Figure 6-4 is provided in Appendix E.

3. Contract role. Minority-, woman-, and SDV-owned businesses are often small businesses, and thus, often work as subcontractors, so it is instructive to examine availability estimates separately for City prime contracts and subcontracts. In addition, prime contracts are usually bigger in size than subcontracts, and project size is typically inversely related to the availability of minority-, woman-, and SDV-owned businesses for agency work (i.e., the larger the project, the less the availability of minority-, woman-, and SDV-owned businesses). As shown in Figure 6-5, the availability of minority-owned businesses for City subcontracts (26.2%) is slightly greater than for its prime contracts (25.0%). Availability for individual minority-owned business groups differs between prime contracts and subcontracts:

- The minority groups that exhibit the greatest levels of availability for prime contracts are Black-owned businesses (11.9%), Hispanic-owned businesses (5.0%), and Asian Pacific-owned businesses (4.8%).
- The minority groups that exhibit the greatest levels of availability for subcontracts are Black-owned businesses (15.4%) and Hispanic-owned businesses (5.4%).

The availability of White woman-owned businesses for City subcontracts (13.3%) is similar to their availability for its prime contracts (13.8%). The availability of SDV-owned businesses for City subcontracts (9.3%) is less than their availability its prime contracts (13.3%).

Figure 6-5.
Availability estimates for prime contracts and subcontracts

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 6-5 is provided in Appendix E.

	Role	
Business group	**Prime contracts**	**Subcontracts**
Race and gender		
Minority	25.0 %	26.2 %
Asian Pacific	4.8 %	3.0 %
Black	11.9 %	15.4 %
Hispanic	5.0 %	5.4 %
MENA	1.1 %	1.0 %
Native American	1.7 %	1.1 %
Subcontinent Asian	0.5 %	0.3 %
White woman	13.8 %	13.3 %
Veteran status		
Service-disabled veteran	13.3 %	9.3 %

4. Prime contract size. BBC examined the availability of minority-, woman-, and SDV-owned businesses separately for prime contracts the City awarded during the study period for three different size categories:

- *Large* prime contracts, that is, contracts worth more than $2 million for construction or A/E, more than $1.5 million for professional services, or more than $800,000 for goods and services;
- *Small* prime contracts, that is, contracts worth less than $2 million but more than $400,000 for construction, less than $2 million but more than $200,000 for A/E, less than $1.5 million but more than $200,000 for professional services, or less than $800,000 but more than $200,000 for goods and services; and
- *Micro* prime contracts, that is, contracts worth $400,000 or less for construction or $200,000 or less for A/E, professional services, or goods and services

That analysis helped us assess whether prime contract size was related to the availability of minority-, woman-, and SDV-owned businesses for City work. As shown in Figure 6-6, the availability of minority-owned businesses is greater for large prime contracts (25.9%) than for small (23.3%) or micro prime contracts (19.3%). This result may be due to the relatively low availability of minority-owned businesses for goods and services work, which comprises a larger proportion of small and micro prime contracts. The minority groups that exhibit the greatest levels of availability for large, small, and micro prime contracts are the same: Black-owned businesses (large: 12.0%; small: 12.3%; micro: 10.3%), Hispanic-owned businesses (large: 5.3%; small: 4.5%; micro: 3.3%), and Asian Pacific-owned businesses (large: 5.3%; micro: 2.9%; small: 3.1%). In addition, the availability of White woman-owned businesses is greater for micro prime contracts (14.7%) than for large (13.8%) or small prime contracts (8.9%). Similarly, the availability of SDV-owned businesses is greater for large prime contracts (14.7%) than small (9.3%) or micro prime contracts (7.6%).

Figure 6-6.
Availability estimates by prime contract size

Business group	Contract Size Micro	Small	Large
Race and gender			
Minority	19.3 %	23.3 %	25.9 %
Asian Pacific	2.9 %	3.1 %	5.3 %
Black	10.3 %	12.3 %	12.0 %
Hispanic	3.3 %	4.5 %	5.3 %
MENA	1.3 %	1.5 %	0.9 %
Native American	1.2 %	1.6 %	1.8 %
Subcontinent Asian	0.3 %	0.3 %	0.5 %
White woman	14.7 %	8.9 %	13.8 %
Veteran status			
Service-disabled veteran	7.6 %	9.3 %	14.7 %

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 6-6 is provided in Appendix E.

5. Goal status. As part of its implementation of the SWaM Procurement Program, the City used race-based goals to encourage the participation of minority-owned businesses in certain construction projects worth $5 million or more that it awarded during the study period. BBC assessed the differences in the availability of minority- and woman-owned businesses for construction projects the City awarded with the use of contract goals (*goals* projects) and for similarly sized construction projects it awarded without the use of contract goals (*no goals* projects).[4] As shown in Figure 6-7, minority-owned businesses exhibit similar availability for goals projects (21.6%) and no goals projects (22.2%). The minority groups that exhibit the greatest levels of availability for goals projects and non-goals projects are the same: Black-owned businesses (goals: 10.9%; no goals: 10.3%) and Hispanic-owned businesses (goals: 6.9%; no goals: 7.0%). Although White woman-owned businesses were not eligible for the City's use of contract goals during the study period, BBC nonetheless calculated their availability for goals projects and no goals projects. White woman-owned businesses exhibit lower availability for goals projects (8.9%) than no goals projects (9.8%).

[4] To ensure that the sets of goals and no goals contracts we compared were similar in terms of work type and contract size, the contracts we included in the analysis were limited to construction contracts worth $5 million or greater, regardless of whether they included project goals.

Figure 6-7.
Availability estimates for goals and no goals projects

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 6-7 is provided in Appendix E.

	Goal Status	
Business group	**Goals**	**No goals**
Minority	21.6 %	22.2 %
Asian Pacific	1.7 %	2.5 %
Black	10.9 %	10.2 %
Hispanic	6.9 %	7.0 %
MENA	0.9 %	1.0 %
Native American	0.9 %	1.2 %
Subcontinent Asian	0.3 %	0.3 %
White woman	8.9 %	9.8 %

CHAPTER 7.
Utilization Analysis

BBC Research & Consulting (BBC) measured the participation of minority-, woman-, and service-disabled veteran (SDV)-owned businesses in the construction, architecture and engineering (A/E), professional services, and goods and services contracts and procurements the City of Virginia Beach (the City) awarded between July 1, 2020 and June 30, 2024 (the *study period*).[1] We measured participation in terms of *utilization*—the percentage of project dollars the City awarded to those businesses during the study period. We measured the participation of minority-, woman-, and SDV-owned businesses in all relevant contracts and procurements the City awarded during the study period as well as in various subsets of those projects. Chapter 7 presents the analysis in two parts:

A. Purpose; and

B. Results.

A. Purpose

Calculating the percentage of dollars the City awarded to minority-, woman-, and SDV-owned businesses during the study period is the first step in determining whether certain business groups face barriers related to the City's contracting and procurement processes. Moreover, assessing whether any business groups are *substantially underutilized* relative to their availability for that work allows the City to determine whether the use of *race- or gender-based measures* is appropriate and ensure that its use of such measures is tailored to those business groups for which compelling evidence of such barriers exist.

B. Results

BBC calculated the participation of minority-, woman-, and SDV-owned businesses that were located in the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in all relevant projects the City awarded during the study period considered together. We also present utilization analysis results separately for various subsets of the projects the City awarded during the study period.

1. Overall. Figure 7-1 presents the overall participation of minority-, woman-, and SDV-owned businesses for City work. Overall, the City awarded 4.5 percent of relevant project dollars to all minority-owned businesses considered together. The individual minority-owned business groups that exhibited the greatest levels of participation in City work were Black-owned businesses (2.5%), Asian Pacific-owned businesses (0.9%), and Hispanic-owned businesses (0.9%). In addition, the City awarded 6.3 percent of relevant project dollars to White woman-owned businesses and 1.1 percent of relevant project dollars to SDV-owned businesses.

[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race/ethnic groups.

Figure 7-1.
Utilization results for Virginia Beach projects

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 7-1 is provided in Appendix E.

Business group	
Race and gender	
Minority	4.5 %
Asian Pacific	0.9 %
Black	2.5 %
Hispanic	0.9 %
MENA	0.0 %
Native American	0.0 %
Subcontinent Asian	0.1 %
White woman	6.3 %
Veteran status	
Service-disabled veteran	1.1 %

2. Industry. BBC also examined the participation of minority-, woman-, and SDV-owned businesses separately in the City's construction, A/E, professional services, and goods and services work to assess whether the participation of those businesses in City work differed by industry. As shown in Figure 7-2, the participation of minority-owned businesses considered together was greater in the City's goods and services work (8.3%) than in its professional services (6.7%), construction (3.1%), or A/E work (2.7%). Participation for individual minority-owned business groups differed across industries:

- The minority-owned business groups that exhibited the greatest levels of participation in construction work were Asian Pacific-owned businesses (1.4%) and Black-owned businesses (1.0%).
- The minority-owned business groups that exhibited the greatest levels of participation in A/E work were Hispanic-owned businesses (1.4%) and Asian Pacific-owned businesses (1.2%).
- The minority-owned business groups that exhibited the greatest levels of participation in professional services work were Hispanic-owned businesses (4.0%) and Subcontinent Asian-owned businesses (1.7%).
- The minority-owned business group that exhibited the greatest level of participation in goods and services work was Black-owned businesses (8.2%). All other groups of minority-owned businesses showed virtually no participation in goods and services work.

The participation of White woman-owned businesses was greater in the City's professional services work (15.1%) than in its A/E (7.0%), construction (5.6%), or goods and services work (5.0%). The participation of SDV-owned businesses was greater in the City's A/E work (1.4%) than in its goods and services (1.3%), construction (0.9%), or professional services work (0.0%).

Figure 7-2.
Utilization analysis results by industry

Business group	Industry: Construction	A/E	Professional services	Goods and services
Race and gender				
Minority	3.1 %	2.7 %	6.7 %	8.3 %
Asian Pacific	1.4 %	1.2 %	0.0 %	0.0 %
Black	1.0 %	0.0 %	1.1 %	8.2 %
Hispanic	0.8 %	1.4 %	4.0 %	0.1 %
MENA	0.0 %	0.0 %	0.0 %	0.0 %
Native American	0.0 %	0.0 %	0.0 %	0.0 %
Subcontinent Asian	0.0 %	0.0 %	1.7 %	0.0 %
White woman	5.6 %	7.0 %	15.1 %	5.0 %
Veteran status				
Service-disabled veteran	0.9 %	1.4 %	0.0 %	1.3 %

Notes: Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.
A text description of Figure 7-2 is provided in Appendix E.

3. Contract role. Many minority-, woman-, and SDV-owned businesses are small businesses, and thus, often work as subcontractors. For that reason, it is useful to examine participation separately in the prime contracts and subcontracts the City awarded during the study period. As shown in Figure 7-3, the participation of minority-owned businesses considered together was greater in the City's subcontracts (15.3%) than in its prime contracts (2.3%). Participation for individual minority-owned business groups differed between prime contracts and subcontracts:

- The minority-owned business groups that exhibited the greatest levels of participation in prime contracts were Hispanic-owned businesses (1.0%), Asian Pacific-owned businesses (0.7%), and Black-owned businesses (0.6%).
- The minority-owned business groups that exhibited the greatest levels of participation in subcontracts were Black-owned businesses (12.1%) and Asian Pacific-owned businesses (2.3%).

The participation of White woman-owned businesses was greater in subcontracts (9.4%) than in prime contracts (5.7%). In contrast, the participation of SDV-owned businesses was greater in prime contracts (1.2%) than in subcontracts (0.6%).

**Figure 7-3.
Utilization analysis
results by contract role**

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 7-3 is provided in Appendix E.

Business group	Role	
	Prime contracts	Subcontracts
Race and gender		
Minority	2.3 %	15.3 %
Asian Pacific	0.7 %	2.3 %
Black	0.6 %	12.1 %
Hispanic	1.0 %	0.7 %
MENA	0.0 %	0.1 %
Native American	0.0 %	0.1 %
Subcontinent Asian	0.1 %	0.0 %
White woman	5.7 %	9.4 %
Veteran status		
Service-disabled veteran	1.2 %	0.6 %

4. Prime contract size. BBC examined the participation of minority-, woman-, and SDV-owned businesses separately for prime contracts the City awarded during the study period for three different size categories:

- *Large* prime contracts, that is, contracts worth more than $2 million for construction or A/E, more than $1.5 million for professional services, or more than $800,000 for goods and services;
- *Small* prime contracts, that is, contracts worth less than $2 million but more than $400,000 for construction, less than $2 million but more than $200,000 for A/E, less than $1.5 million but more than $200,000 for professional services, or less than $800,000 but more than $200,000 for goods and services; and
- *Micro* prime contracts, that is, contracts worth $400,000 or less for construction or $200,000 or less for A/E, professional services, or goods and services

That analysis helped us assess whether contract size was related to the participation of minority-, woman-, and SDV-owned businesses in City prime contracts. As shown in Figure 7-4, the participation of minority-owned businesses considered together was greater in small prime contracts (8.2%) than in micro prime contracts (6.3%) or large prime contracts (0.7%). Participation for individual minority-owned business groups differed by contract size:

- The minority-owned business groups that exhibited the greatest levels of participation in micro prime contracts were Black-owned businesses (2.6%), Asian Pacific-owned businesses (2.0%), and Hispanic-owned businesses (1.6%).
- The minority-owned business groups that exhibited the greatest levels of participation in small prime contracts were Asian Pacific-owned businesses (3.3%), Hispanic-owned businesses (3.0%), and Black-owned businesses (1.3%).
- The minority-owned business groups that exhibited the greatest levels of participation in large prime contracts were Black-owned businesses (0.2%) and Hispanic-owned businesses (0.5%).

The participation of White woman-owned businesses was greater in micro prime contracts (8.5%) than in large prime contracts (5.6%) or small prime contracts (4.9%). The participation of SDV-owned businesses was greater in large prime contracts (1.2%) and small prime contracts (1.2%) than in micro prime contracts (0.5%).

Figure 7-4. Utilization analysis results by contract size

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 7-4 is provided in Appendix E.

	Contract Size		
Business group	Micro	Small	Large
Race and gender			
Minority	6.3 %	8.2 %	0.7 %
Asian Pacific	2.0 %	3.3 %	0.0 %
Black	2.6 %	1.3 %	0.2 %
Hispanic	1.6 %	3.0 %	0.5 %
MENA	0.0 %	0.0 %	0.0 %
Native American	0.0 %	0.0 %	0.0 %
Subcontinent Asian	0.0 %	0.7 %	0.0 %
White woman	8.5 %	4.9 %	5.6 %
Veteran status			
Service-disabled veteran	0.5 %	1.2 %	1.2 %

5. Goal status. As part of its implementation of the Small, Woman, and Minority Business (SWaM) Procurement Program, the City used race-based goals to encourage the participation of minority-owned businesses in certain construction projects worth $5 million or more that it awarded during the study period. BBC assessed the differences in the participation of minority- and woman-owned businesses for construction projects the City awarded with the use of project goals (*goals* projects) and for similarly sized construction projects it awarded without the use of project goals (*no goals* projects).[2] As shown in Figure 7-5, minority-owned businesses considered together exhibited greater levels of participation in goals projects (2.3%) than in no goals projects (1.2%). Participation for individual minority-owned business groups differed between goal status:

- The group that exhibited the greatest level of participation in goals projects was Black-owned businesses (2.3%).
- The groups that exhibited the greatest levels of participation in no goals projects were Asian Pacific-owned businesses (0.4%), Black-owned businesses (0.4%), and Hispanic-owned businesses (0.4%).

Although White woman-owned businesses are not currently eligible for the City's project goals, BBC also calculated their participation in goals projects and no goals projects. White woman-owned businesses exhibited greater levels of participation in goals projects (7.4%) than in no goals projects (4.4%).

[2] To ensure that the sets of goals and no goals contracts we compared were similar in terms of work type and contract size, the contracts we included in the analysis were limited to construction contracts worth $5 million or greater, regardless of whether they included project goals.

Figure 7-5.
Utilization analysis results for goals and no goals projects

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 7-5 is provided in Appendix E.

Business group	Goal Status	
	Goals	No goals
Minority	2.3 %	1.2 %
Asian Pacific	0.0 %	0.4 %
Black	2.3 %	0.4 %
Hispanic	0.0 %	0.4 %
MENA	0.1 %	0.0 %
Native American	0.0 %	0.0 %
Subcontinent Asian	0.0 %	0.0 %
White woman	7.4 %	4.4 %

6. Goal status, local and non-local. The analyses in this study focused on businesses that have a location within the study's relevant geographic market area (RGMA), which includes the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia. However, businesses located outside the RGMA can become SWaM-certified and are thus eligible to participate in business programs for SWaM-certified businesses, including the City's contract goals program. Thus, it is instructive to examine utilization for goals projects and no goals projects considering both local (i.e., businesses with a location inside of the RGMA) and non-local (i.e., businesses that do not have a location inside of the RGMA) utilized minority- and woman-owned businesses. As shown in Figure 7-6, minority-owned businesses considered together exhibited greater levels of participation in goals projects, local and non-local participation (9.9%) than in no goals projects, local and non-local participation (4.6%). Participation for individual minority-owned business groups differed between goal status:

- The group that exhibited the greatest level of participation in goals projects, local and non-local participation, was Black-owned businesses (9.2%).
- The groups that exhibited the greatest levels of participation in no goals projects, local and non-local participation were Black-owned businesses (2.4%), and Hispanic-owned businesses (1.7%).

Although White woman-owned businesses were not eligible for the City's contract goals, BBC also calculated their participation in goals projects and no goals projects, local and non-local participation. White woman-owned businesses exhibited greater levels of participation in goals projects, local and non-local participation (9.1%) than in no goals projects, local and non-local participation (5.2%).

Figure 7-6.
Utilization analysis results for goals and no goals projects, local and non-local participation

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

A text description of Figure 7-6 is provided in Appendix E.

Business group	Goal Status	
	Goals	No goals
Minority	9.9 %	4.6 %
Asian Pacific	0.0 %	0.4 %
Black	9.2 %	2.4 %
Hispanic	0.6 %	1.7 %
MENA	0.1 %	0.0 %
Native American	0.1 %	0.1 %
Subcontinent Asian	0.0 %	0.0 %
White woman	9.1 %	5.2 %

CHAPTER 8.
Disparity Analysis

BBC Research & Consulting (BBC) compared the percentage of contract and procurement dollars the City of Virginia Beach (the City) awarded to minority-, woman-, and service-disabled veteran (SDV)-owned businesses during the study period (i.e., *utilization* or *participation*) with the percentage of contract and procurement dollars one might expect the City to award to those businesses based on their availability for that work.[1] The analysis focused on construction, architecture and engineering (A/E), professional services, and goods and services work the City awarded between July 1, 2020 and June 30, 2024 (the *study period*).

A. Overview

BBC used the following formula to calculate a *disparity index* to help compare participation and availability for relevant business groups and different sets of contracts the City awarded during the study period:

$$\textbf{Disparity Index (\$)} = \frac{\text{\$ of participation}}{\text{\$ of availability}}$$

The disparity index indicates the volume of contract and procurement dollars the City awarded to a business group for every $1.00 of that group's availability for that work. A disparity index of $1.00 indicates *parity* between actual participation and availability. That is, the participation of a particular business group is in line with its availability. A disparity index of less than $1.00 indicates a *disparity* between participation and availability. That is, the group is considered to have been *underutilized* relative to its availability. Finally, a disparity index of less than $0.80 indicates a *substantial disparity* between participation and availability. That is, the group is considered to have been substantially underutilized relative to its availability. Many courts have considered substantial disparities as *inferences of discrimination* against particular business groups, and they often serve as justification for organizations to use relatively aggressive measures—such as *race- and gender-based measures*—to address corresponding barriers.[2]

B. Disparity Analysis Results

BBC measured disparities between the participation and availability of minority-, woman-, and SDV-owned businesses for all relevant contracts and procurements the City awarded during the study period considered together. We also measured disparities separately for various subsets of the contracts and procurements it awarded during the study period. For all of the disparity results figures presented in

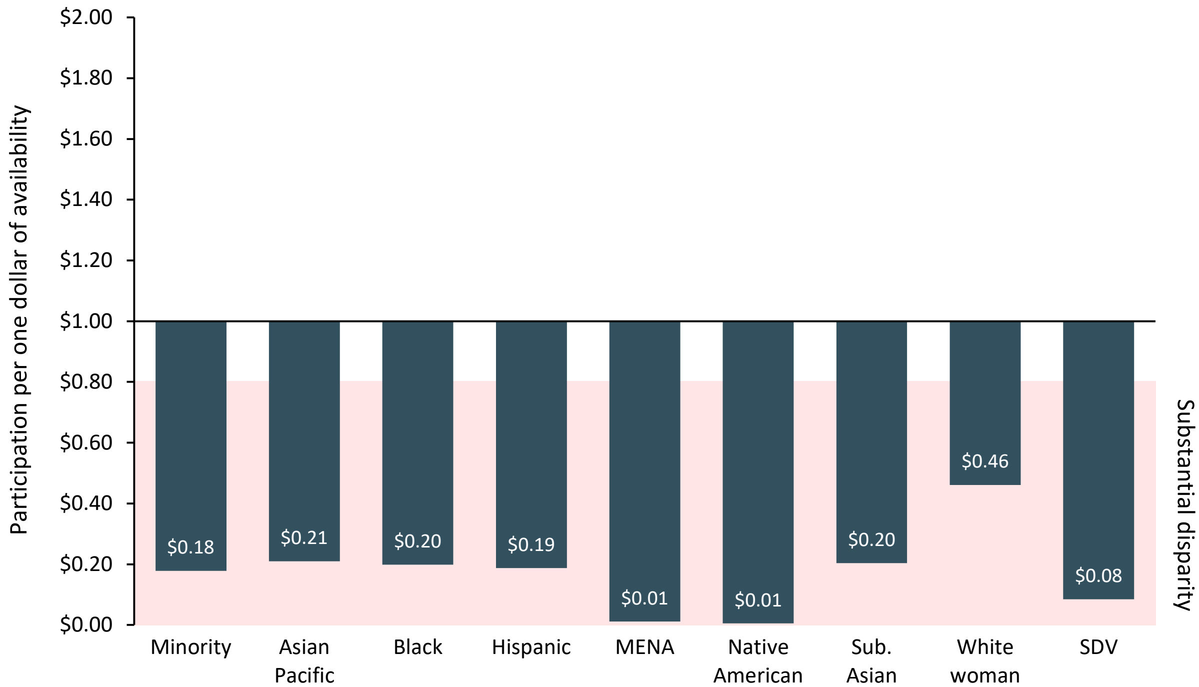
[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race/ethnic groups.

[2] For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County,* 122 F.3d at 914, 923 (11th Circuit 1997); and *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).

this chapter, there is a red box at the disparity index level of $0.80 and below, which indicates a substantial disparity. We provide more detailed disparity analysis results in Appendix D.

1. Overall. Figure 8-1 presents disparity indices for minority-, woman-, and SDV-owned businesses for all relevant prime contracts and subcontracts the City awarded during the study period. As shown in Figure 8-1, minority-owned businesses considered together exhibited a disparity index of $0.18 for the relevant contracts and procurements the City awarded during the study period, indicating a disparity where the City awarded minority-owned businesses $0.18 for every dollar one might expect it to award to those businesses based on their availability for that work. All individual minority-owned business groups exhibited substantial disparities for City work: Asian Pacific-owned businesses (disparity index of $0.21), Black-owned businesses (disparity index of $0.20), Hispanic-owned businesses (disparity index of $0.19), Middle Eastern and North African (MENA)-owned businesses (disparity index of $0.01), Native American-owned businesses (disparity index of $0.01), and Subcontinent Asian-owned businesses (disparity index of $0.20). In addition, White woman-owned businesses (disparity index of $0.46) and SDV-owned businesses (disparity index of $0.08) exhibited substantial disparities for City work.

Figure 8-1.
Overall disparity analysis results for City work

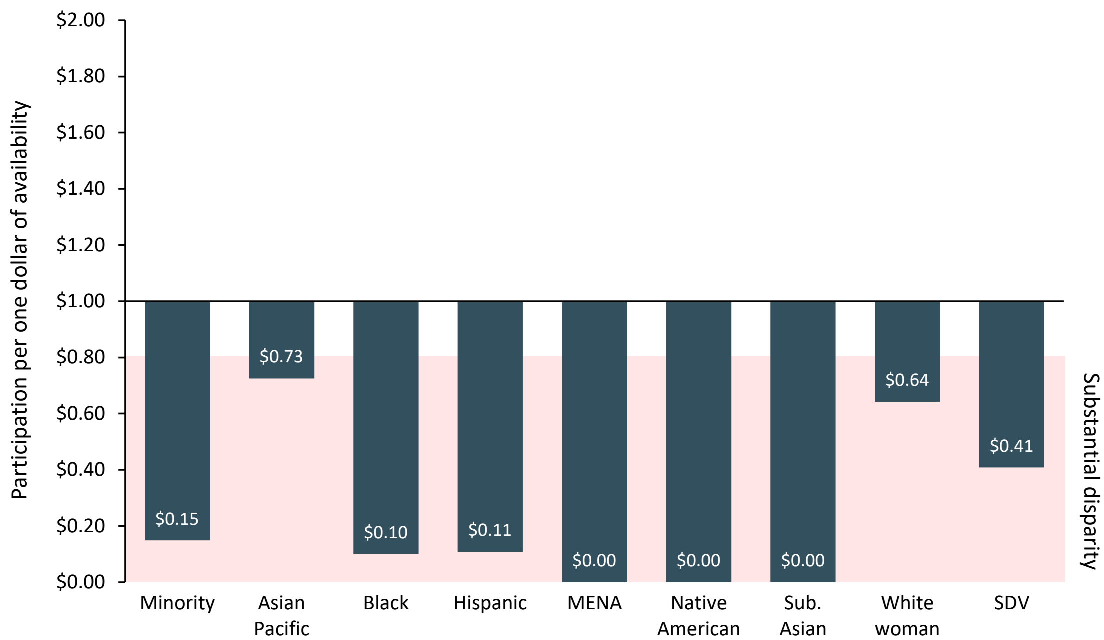


Notes: For more detail, see Figure D-1 in Appendix D.
A text description of Figure 8-1 is provided in Appendix E.

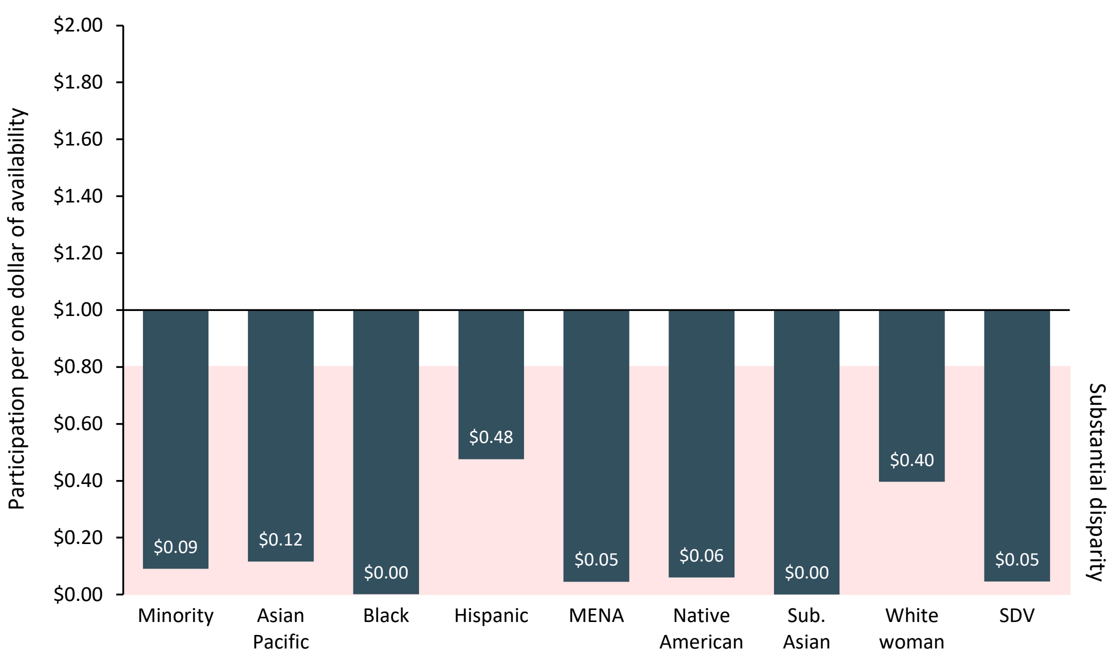
2. Industry. The City can develop programs to encourage the participation of minority -, woman-, and SDV-owned businesses in its work that are tailored specifically to different industries. For example, if the City determines that it is appropriate to reinstate the use of race-based measures as part of its contracting and procurement—or, if it decides to implement gender-based measures—it can determine which groups might be eligible to participate in those measures separately for construction, A/E, professional services, and goods and services projects based on information about which groups face substantial disparities in each industry. BBC examined disparity analysis results separately for the construction, A/E, professional services, and goods and services work the City awarded during the study period to determine whether outcomes for minority -, woman-, and SDV-owned businesses differed by industry. Those results are presented in Figure 8-2.

Figure 8-2.
Disparity analysis results by industry

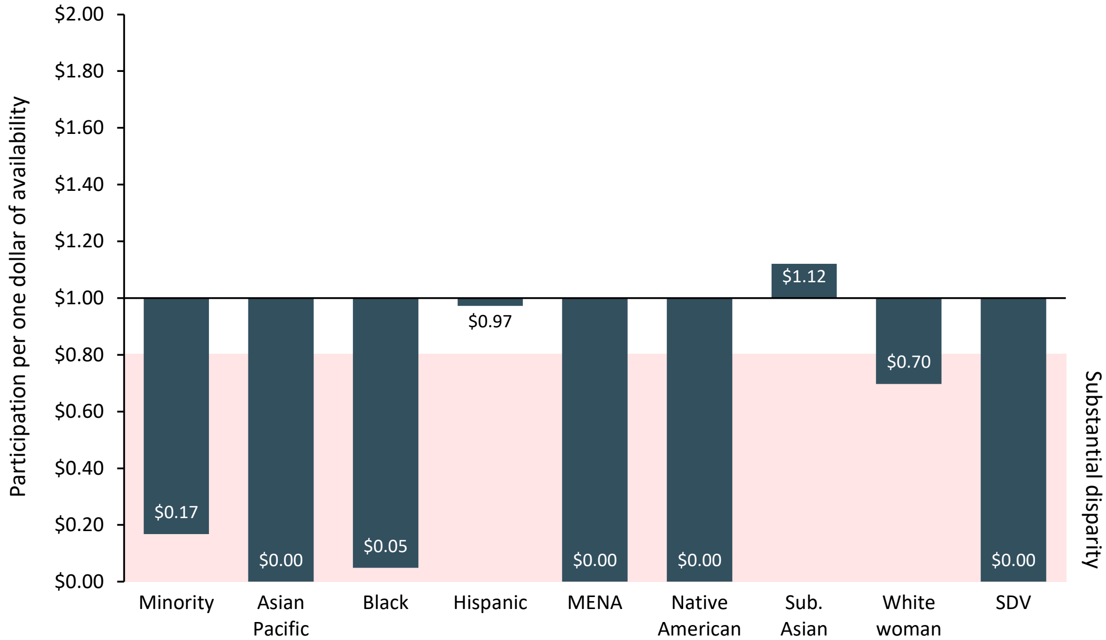
a) Construction



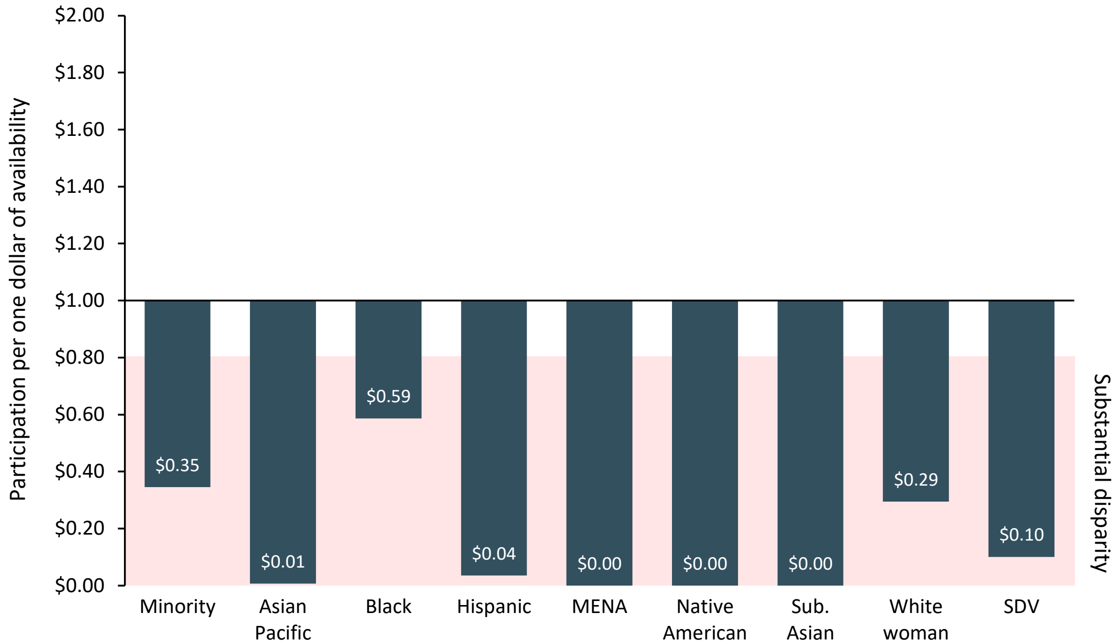
b) A/E



c) Professional services



d) Goods and services



Note: For more detail, see Figures D-2, D-7, D-8, and D-9 in Appendix D.
A text description of Figure 8-2 is provided in Appendix E.

As shown in Figure 8-2, minority-owned businesses considered together exhibited substantial disparities for construction (disparity index of $0.15), A/E (disparity index of $0.09), professional services (disparity index of $0.17), and goods and services work (disparity index of $0.35). Disparity indices for individual minority-owned business groups differed by industry:

- All minority-owned business groups exhibited substantial disparities for construction work: Asian Pacific-owned businesses (disparity index of $0.73), Black-owned businesses (disparity index of $0.10), Hispanic-owned businesses (disparity index of $0.11), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- All minority-owned business groups exhibited substantial disparities for A/E work: Asian Pacific-owned businesses (disparity index of $0.12), Black-owned businesses (disparity index of $0.00), Hispanic-owned businesses (disparity index of $0.48), MENA-owned businesses (disparity index of $0.05), Native American-owned businesses (disparity index of $0.06), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- Asian Pacific-owned businesses (disparity index of $0.00), Black-owned businesses (disparity index of $0.05), MENA-owned businesses (disparity index of $0.00), and Native American-owned businesses (disparity index of $0.00) exhibited substantial disparities for professional services work. Hispanic-owned businesses exhibited a disparity for professional services work (disparity index of $0.97), though that disparity was not substantial.
- Asian Pacific-owned businesses (disparity index of $0.01), Black-owned businesses (disparity index of $0.59), Hispanic-owned businesses (disparity index of $0.04), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00) exhibited substantial disparities for goods and services work.

White woman-owned businesses exhibited substantial disparities for City work in all industries (disparity index of $0.64 for construction, disparity index of $0.40 for A/E, disparity index of $0.70 for professional services, and disparity index of $0.29 for goods and services). SDV-owned businesses also exhibited substantial disparities for City work in all industries (disparity index of $0.41 for construction, disparity index of $0.05 for A/E, disparity index of $0.00 for professional services, and disparity index of $0.10 for goods and services).

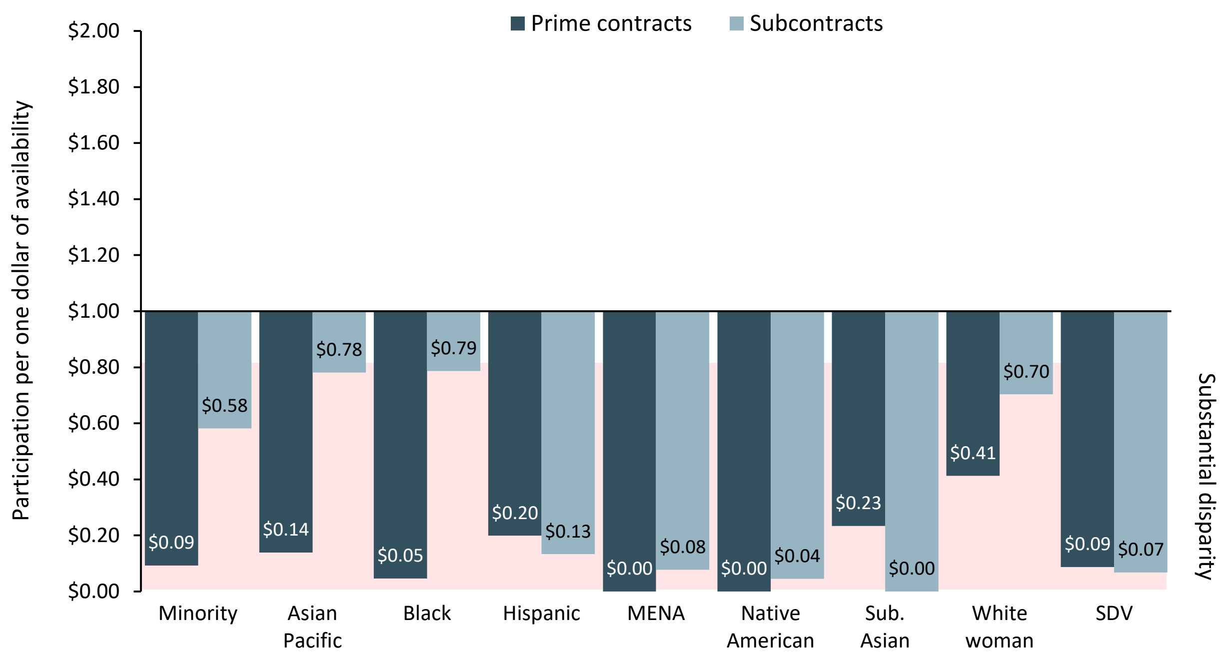
3. Contract role. Many minority-, woman-, and SDV-owned businesses are small businesses, and thus, often work as subcontractors. For that reason, it is instructive to examine disparity analysis results separately for the prime contracts and subcontracts the City awarded during the study period. As shown in Figure 8-3, minority-owned businesses considered together exhibited substantial disparities for prime contracts (disparity index of $0.09) and for subcontracts (disparity index of $0.58), but their outcomes were better for subcontracts than for prime contracts (i.e., they showed a smaller disparity for subcontracts than for prime contracts). Disparity indices differed by individual minority-owned business group and role:

- Relevant groups of POC-owned businesses exhibited the following disparities for prime contracts: Asian Pacific-owned businesses (disparity index of $0.14), Black-owned businesses (disparity index of $0.05), Hispanic-owned businesses (disparity index of $0.20), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.23).
- Relevant groups of POC-owned businesses exhibited the following disparities for subcontracts: Asian Pacific-owned businesses (disparity index of $0.78), Black-owned businesses (disparity index of $0.79), Hispanic-owned businesses (disparity index of $0.13), MENA-owned businesses

(disparity index of $0.08), Native American-owned businesses (disparity index of $0.04), and Subcontinent Asian-owned businesses (disparity index of $0.00).

White woman-owned businesses exhibited substantial disparities for both City prime contracts (disparity index of $0.41) and for subcontracts ($0.70). SDV-owned businesses also exhibited substantial disparities for City prime contracts (disparity index of $0.09) and for subcontracts ($0.07).

Figure 8-3.
Disparity analysis results by contract role



Note: For more detail, see Figure D-10 and D-11 in Appendix D.
A text description of Figure 8-3 is provided in Appendix E.

4. Prime contract size. BBC examined disparity analysis results for minority-, woman-, and SDV-owned businesses separately for prime contracts the City awarded during the study period for three different size categories:

- *L*arge prime contracts, that is, contracts worth more than $2 million for construction or A/E, more than $1.5 million for professional services, or more than $800,000 for goods and services;
- *Small* prime contracts, that is, contracts worth less than $2 million but more than $400,000 for construction, less than $2 million but more than $200,000 for A/E, less than $1.5 million but more than $200,000 for professional services, or less than $800,000 but more than $200,000 for goods and services; and
- *Micro* prime contracts, that is, contracts worth $400,000 or less for construction or $200,000 or less for A/E, professional services or goods and services

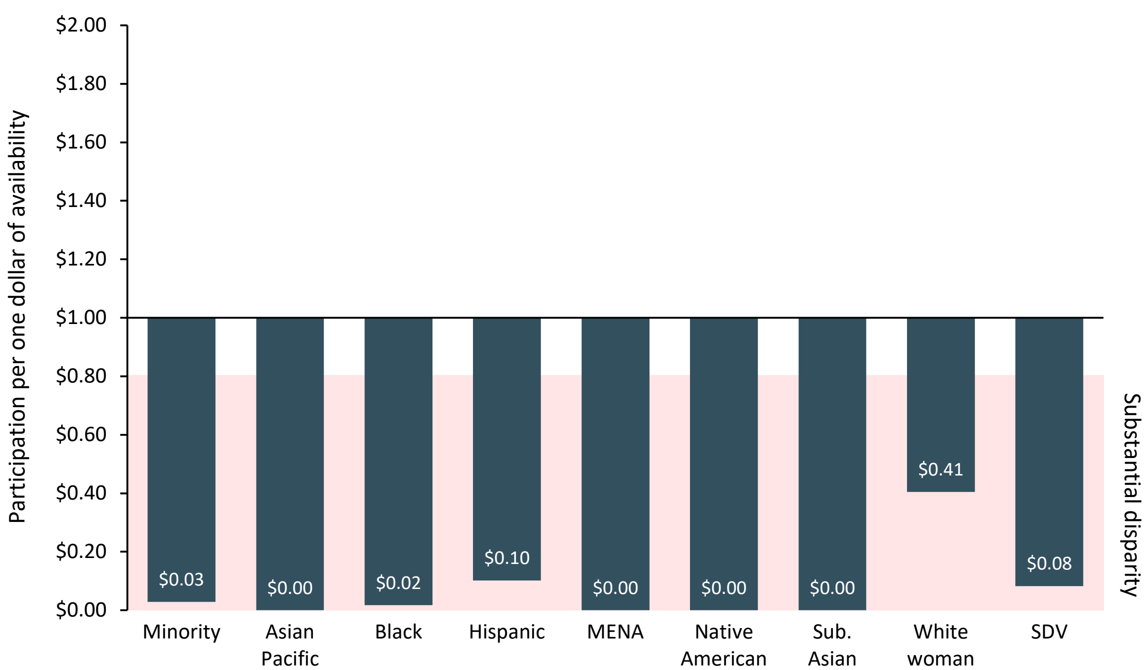
As shown in Figure 8-4, minority-owned businesses considered together exhibited substantial disparities on large prime contracts (disparity index of $0.03), small prime contracts (disparity index of $0.35), and micro prime contracts (disparity index of $0.32). Disparity analysis results differed by individual minority-owned business group and contract size:

- All minority-owned business groups exhibited substantial disparities for large prime contracts: Asian Pacific-owned businesses (disparity index of $0.00), Black-owned businesses (disparity index of $0.02), Hispanic-owned businesses (disparity index of $0.10), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- Black-owned businesses (disparity index of $0.10), Hispanic-owned businesses (disparity index of $0.66), MENA-owned businesses (disparity index of $0.00), and Native American-owned businesses (disparity index of $0.00) exhibited substantial disparities for small prime contracts.
- All minority-owned business groups exhibited substantial disparities for micro prime contracts: Asian Pacific-owned businesses (disparity index of $0.70), Black-owned businesses (disparity index of $0.25), Hispanic-owned businesses (disparity index of $0.50), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00).

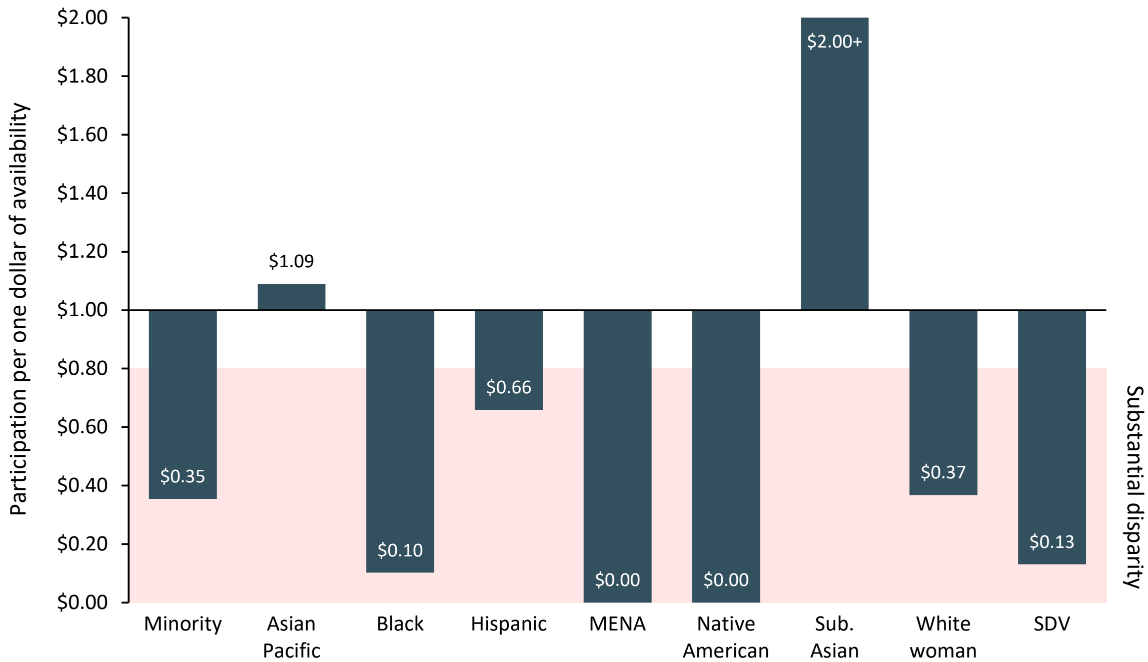
White woman-owned businesses exhibited substantial disparities for all sizes of City prime contracts (disparity index of $0.41 for large prime contracts, disparity index of $0.37 for small prime contracts, and disparity index of $0.58 for micro prime contracts). SDV-owned businesses also exhibited substantial disparities for all sizes of City prime contracts (disparity index of $0.08 for large prime contracts, disparity index of $0.13 for small prime contracts, and disparity index of $0.07 for micro prime contracts).

Figure 8-4.
Disparity analysis results by contract size

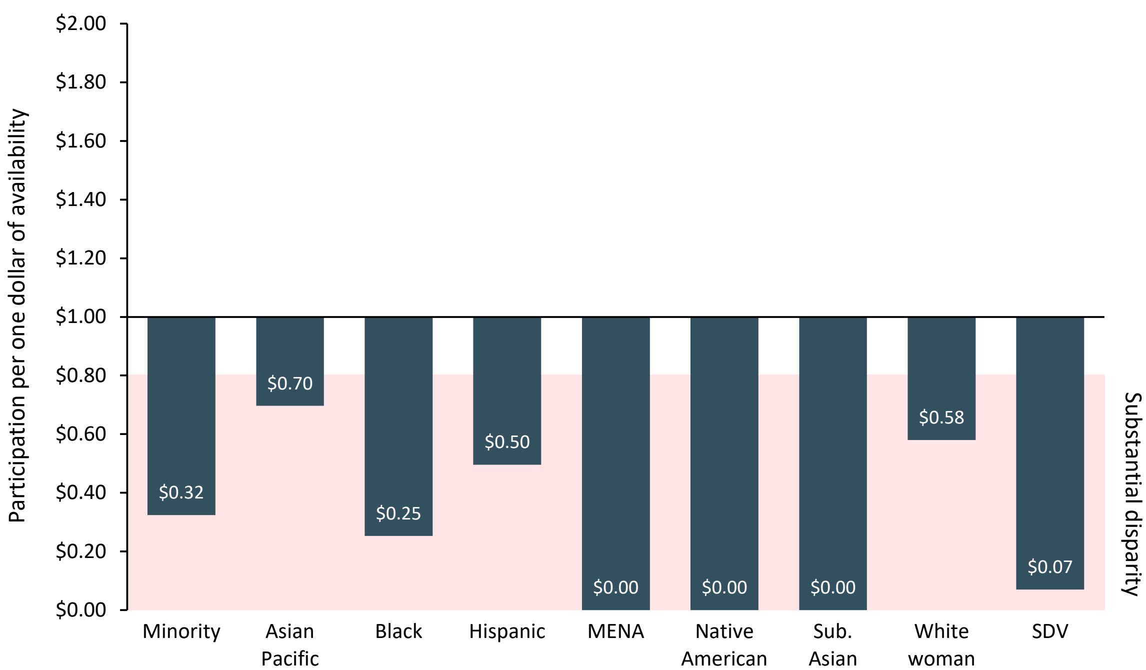
a) Large prime contracts



b) Small prime contracts



c) Micro prime contracts



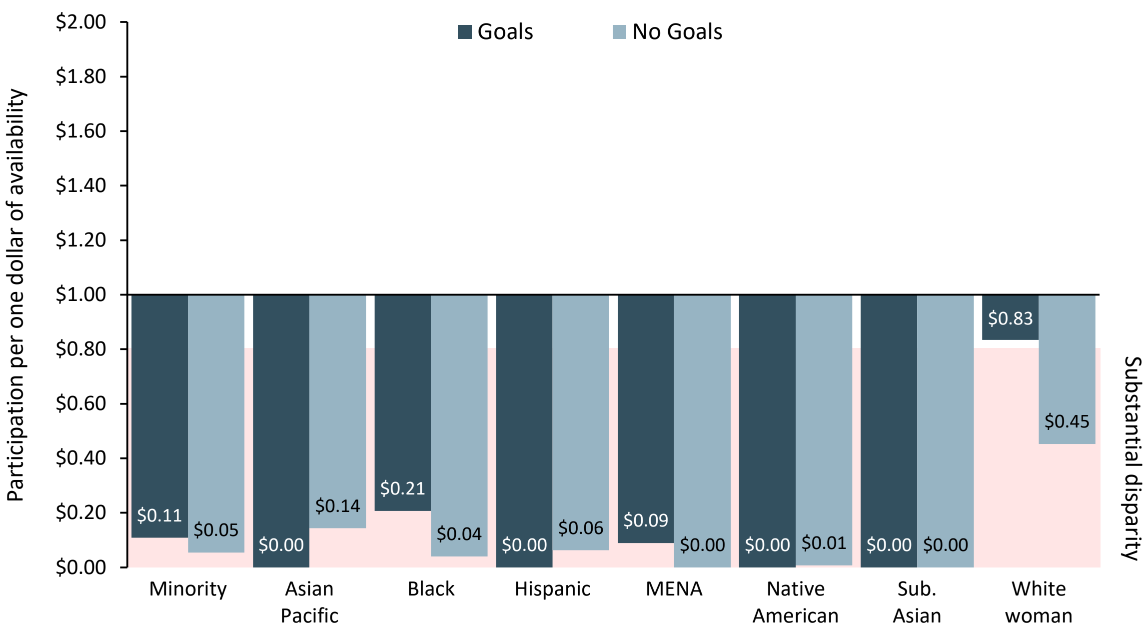
Notes: For more detail, see Figures D-12, D-13, and D-14 in Appendix D.
A text description of Figure 8-4 is provided in Appendix E.

5. Goal status. As part of its implementation the Small, Woman-owned, and Minority-owned (SWaM) Procurement Program, the City used race-based goals to encourage the participation of minority-owned businesses in certain construction projects worth $5 million or more that it awarded during the study period. BBC assessed the differences in the participation of minority- and woman-owned businesses for construction projects the City awarded with the use of contract goals (*goals* projects) and for similarly sized construction projects it awarded without the use of contract goals (*no goals* projects).[3] As shown in Figure 8-5, minority-owned businesses considered together exhibited substantial disparities on goals projects (disparity index of $0.11) and no goals projects (disparity index of $0.05), Disparity indices differed by individual minority-owned business group and goal status:

- Relevant groups of POC-owned businesses exhibited the following disparities for goals projects: Asian Pacific-owned businesses (disparity index of $0.00), Black-owned businesses (disparity index of $0.21), Hispanic-owned businesses (disparity index of $0.00), MENA-owned businesses (disparity index of $0.09), Native American-owned businesses (disparity index of $0.00), and Subcontinent Asian-owned businesses (disparity index of $0.00).
- Relevant groups of POC-owned businesses exhibited the following disparities for prime contracts: Asian Pacific-owned businesses (disparity index of $0.14), Black-owned businesses (disparity index of $0.04), Hispanic-owned businesses (disparity index of $0.06), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.01), and Subcontinent Asian-owned businesses (disparity index of $0.00).

Although White woman-owned businesses were not eligible for the City's contract goals, BBC nonetheless calculated disparity indices for them for goals projects and no goals projects. White woman-owned businesses exhibited a substantial disparity for no goals projects (disparity index of $0.45). They also exhibited a disparity for goals projects (disparity index of $0.83), though that disparity was not substantial.

Figure 8-5.
Disparity analysis results by contract goal status



Notes: For more detail, see Figure D-3 and D-4 in Appendix D.

[3] To ensure that the sets of goals and no goals contracts we compared were similar in terms of work type and contract size, the contracts we included in the analysis were limited to construction contracts worth $5 million or greater, regardless of whether they included project goals.

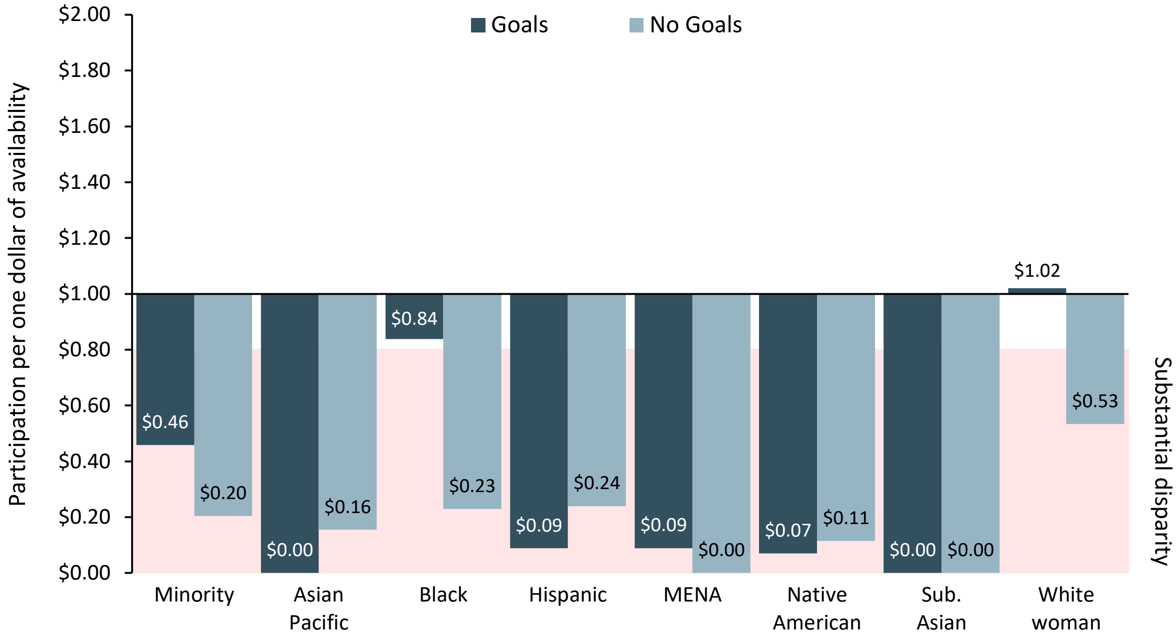
A text description of Figure 8-5 is provided in Appendix E.

The analyses in this study focused on businesses that have a location within the study's relevant geographic market area (RGMA), which includes the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia. However, businesses located outside the RGMA can become SWaM-certified and are thus eligible to participate in business programs for SWaM-certified businesses, including the City's use of MBE goals during the study period. Thus, it is instructive to examine disparity indices for goals projects and no goals projects, considering both local (i.e. businesses with a location in of the RGMA) and non-local (i.e. businesses that do not have a location in of the RGMA) minority- and woman-owned businesses that participated in City work during the study period. As shown in Figure 8-6, when including both local and non-local businesses in the analysis, minority-owned businesses considered together exhibited a substantial disparity on goals projects (disparity index of $0.46) and no goals projects (disparity index of $0.20), but their outcomes were better for goals than for no goals projects (i.e., they showed a smaller disparity for goals than for no goals projects). Disparity indices differed by individual minority-owned business group and goal status:

- When including both local- and non-local businesses in the analysis, Asian Pacific-owned businesses (disparity index of $0.00), Hispanic-owned businesses (disparity index of $0.09), MENA-owned businesses (disparity index of $0.09), Native American-owned businesses (disparity index of $0.07), and Subcontinent Asian-owned businesses (disparity index of $0.00) exhibited substantial disparities on goals projects. Black-owned businesses exhibited a disparity for those projects (disparity index of $0.84), but that disparity was not substantial.
- All minority-owned business groups exhibited substantial disparities for no goals projects: Asian Pacific-owned businesses (disparity index of $0.16), Black-owned businesses (disparity index of $0.23), Hispanic-owned businesses (disparity index of $0.24), MENA-owned businesses (disparity index of $0.00), Native American-owned businesses (disparity index of $0.11), and Subcontinent Asian-owned businesses (disparity index of $0.00).

White woman-owned businesses exhibited a substantial disparity for no goals projects, local and non-local participation (disparity index of $0.53), but did not exhibit a disparity for goals projects, local and non-local participation (disparity index of $1.02).

Figure 8-6.
Disparity analysis results by contract goal status, local and non-local participation



Notes: For more detail, see Figures D-5 and D-6 in Appendix D.
A text description of Figure 8-6 is provided in Appendix E.

6. Comparisons to the 2018 Virginia Beach Disparity Study. BBC last conducted a disparity study for the City in 2018. It is instructive to compare disparity indices for minority-, woman-, and SDV-owned businesses in City work between the 2018 and 2025 disparity studies to assess whether outcomes are improving for those businesses in City work over time. Figure 8-7 presents overall disparity indices for minority-, woman-, and SDV-owned business groups for all relevant City projects considered together from the 2018 disparity study and the 2025 disparity study.

a. Methodological considerations. Since the 2018 disparity study was conducted, BBC made two relevant changes in methodology:

- The utilization analyses in the 2025 study focused only on businesses that had a location in the RGMA. In the 2018 study, BBC included businesses outside of the RGMA as part of the utilization analysis.
- As part of the 2025 study, BBC used Markov Chain Monte Carlo (MCMC) simulations to improve the accuracy of the availability analysis to better account for random error or potential for unintended bias (see Chapter 6 for more details on MCMC analyses). The availability estimates reported in Chapter 6 are the availability estimates we observed adjusted for results from the MCMC process. The 2018 disparity study did not include an MCMC analysis as part of the availability analysis.

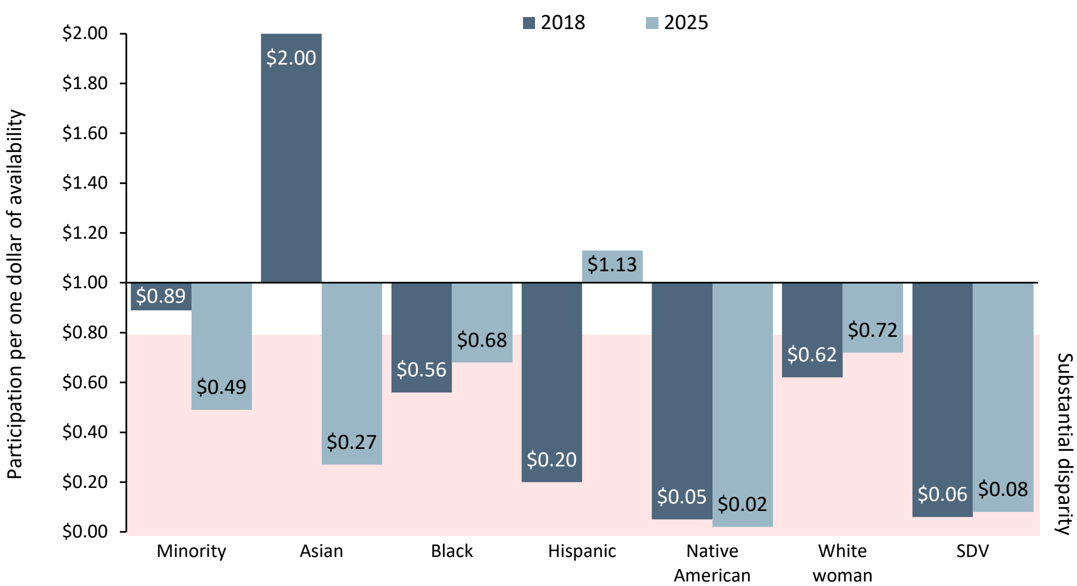
To more accurately assess changes in disparity results for minority- and woman-owned businesses since 2018, BBC presents 2025 disparity results in Figure 8-7 based on availability estimates that have *not* undergone the MCMC analysis and utilization results that include businesses both within and outside the RGMA.

b. Results. As shown in Figure 8-7, minority-owned businesses exhibited larger disparities in 2025 (disparity index of $0.49) than in 2018 (disparity index of $0.89). Disparity analysis results differed by individual minority-owned business group and study year:

- Asian-owned businesses did not exhibit a disparity in 2018 (disparity index of $2.00) but exhibited a substantial disparity in 2025 (disparity index of $0.27).[4]
- Black-owned businesses exhibited a smaller disparity in 2025 than in 2018 (disparity indices of $0.56 in 2018 and $0.68 in 2025).
- Hispanic-owned businesses exhibited a substantial disparity in 2018 (disparity index of $0.20) but did not exhibit a disparity in 2025 (disparity index of $1.13).
- Native American-owned businesses exhibited similar disparities in 2025 as in 2018 (disparity indices of $0.05 in 2018 and $0.02 in 2025).

White woman-owned businesses exhibited a slightly smaller disparity in 2025 than in 2018 (disparity indices of $0.62 in 2018 and $0.72 in 2025), and SDV-owned businesses exhibited similar disparities in 2025 and in 2018 (disparity indices of $0.06 in 2018 and $0.08 in 2025).

Figure 8-7.
Overall disparity indices from 2018 and 2025 disparity studies



Notes: For the purpose of this figure, 2025 disparity analysis results for Asian Pacific and Subcontinent Asian were combined as they were for disparity results in the 2018 disparity study. Similarly, MENA was excluded from these results, as this business group was not studied as part of the 2018 disparity study.

A text description of Figure 8-7 is provided in Appendix E.

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[4] As part of the 2018 disparity study, we observed that one Asian-owned business to which the City awarded such a large volume of contracting dollars that it met the criteria to be consider a statistical outlier. After accounting for the dollars the City awarded to that business, the utilization of Asian-owned businesses in the 2018 study decreased from 5.6 percent to 1.0 percent, resulting in a disparity index of $1.25 for Asian-owned businesses and a disparity index of $0.51 for all minority-owned businesses considered together.

CHAPTER 9.
Program Measures

Chapter 9 provides an overview of the business programs the City of Virginia Beach (the City) uses to encourage the participation of small businesses, as well as minority-, woman-, and service-disabled veteran (SDV)-owned businesses, in the contracts and procurements it awards. BBC Research & Consulting (BBC) reviewed the City's program measures in four parts:

A. Program overview;

B. Race and gender-neutral measures;

C. Race and gender-based measures; and

D. Good faith effort (GFE) requirements.

A. Program Overview

The City operates the Small, Woman, and Minority Business (SWaM) Procurement Program to encourage the participation of minority-, woman-, and SDV-owned businesses in its contracting. The City began operating the program—modelled after the Commonwealth of Virginia's SWaM Procurement Program—in 2007, and has since adopted various measures to increase the participation of SWaM businesses in its work. The following types of businesses are eligible for participation in the SWaM Program:

- A small business with 250 or fewer employees, or average annual gross receipts of $10 million or less over the previous three years;
- A business that is at least 51 percent owned and controlled by one or more minorities who are United States citizens or legal resident aliens;
- A business that is at least 51 percent owned and controlled by one or more women who are United States citizens or legal resident aliens; or
- A business that is at least 51 percent owned and controlled by SDVs who are certified as such by the Virginia Department of Veteran Services.

In 1995, the City established the Minority Business Council (MBC) to advise City Council on issues related to minority-owned business participation and equitable procurement policies, to provide educational programs and support for small and diverse businesses, and to raise awareness of remedial business programs. In 2017, BBC was commissioned to conduct a disparity study to assess outcomes for minority-, woman-, and SDV-owned businesses in City contracting, and in 2020, the City implemented various recommendations from the study and from the Virginia Beach Minority Business Council (MBC). Those recommendations included establishing aspirational goals for minority-, woman-, and SDV-owned business participation, creating the Virginia Beach SWaM Business Office, and using race-based contract goals for minority-owned businesses.

The City has established three aspirational goals as part of the SWaM Business Program to guide its efforts to encourage the participation of minority-, woman, and SDV-owned businesses in the contracts and procurements it awards each year:

- Spending 12.0 percent of all contract and procurement dollars with minority-owned businesses;
- Spending 13.3 percent of all contract and procurement dollars with woman-owned businesses; and
- Spending 11.9 percent of all contracts and procurement dollars with SDV-owned businesses.

During the study period (i.e., July 1, 2020 and June 30, 2024), the used a combination of *race- and gender-neutral* and *race- and gender-based* measures to try to meet those goals each year. Race- and gender-neutral measures are designed to encourage the participation of all businesses—or, all small businesses—in an organization's contracting, irrespective of the race or gender of business owners. In contrast, race- and gender-based measures are designed to specifically encourage the participation of minority- and woman-owned businesses in an organization's contracting (e.g., using minority- or woman-owned business participation goals in awarding individual projects).

B. Race- and Gender-Neutral Measures

The City uses various race- and gender-neutral measures as part of the SWaM Procurement Program to encourage the participation of small businesses—including minority-, woman-, and SDV-owned businesses—in its projects. Those measures include:

- the Small Business Enhancement Program;
- the Enhanced Subcontracting Program;
- the Sheltered Bidding Program;
- the SWaM Business Office;
- the Economic UPLIFT Capital Accelerator Program;
- the Virginia Beach Small Business Institute Leadership Development Program; and
- Business outreach and communication.

1. Small Business Enhancement Program. As part of implementing the SWaM Procurement Program and trying to meet its aspirational goals, the City operates the Small Business Enhancement Program to provide opportunities to small businesses to participate in City construction contracts. The Small Business Enhancement program applies to all construction contracts worth $50,000 or more. For these contracts, the City requires each bidder responding to the associated solicitation to either commit at least 50 percent of the total value of any subcontracted work to SWaM-certified businesses or demonstrate that they made GFE to do so by the time of bid. (We describe GFE requirements in additional detail in Section D of this chapter.)

2. Enhanced Subcontracting Program. The City operates the Enhanced Subcontracting Program to increase subcontracting opportunities for small businesses in the construction and goods and services industries. The City may apply enhanced subcontracting requirements to construction and goods and services contracts that it deems to have sufficient subcontracting opportunities. For these contracts, the City requires each bidder responding to the associated solicitation to either subcontract 50 percent of the total bid amount to SWaM-certified businesses or demonstrate that they made GFE to do so by the time of bid.

3. Sheltered Bidding Program. The City operates the Sheltered Bidding Program to make prime contracting opportunities more accessible to small businesses. The City may designate construction contracts worth between $25,000 and $500,000 and goods and services procurements worth $10,000 or greater as sheltered bidding opportunities for small businesses. If a procurement is designated for the sheltered bidding program, the associated invitation to bid limits bidding to SWaM-certified businesses. In order for a procurement to qualify for the sheltered bidding program, the Purchasing Agent or other designee must determine that there are at least three SWaM-certified businesses willing and able to provide the desired goods or services.

4. The SWaM Business Office. The SWaM Business Office offers a variety of free technical assistance programs at the HIVE, which is a small business resource hub located in Virginia Beach, to businesses across all industries and ownership types. Courses are offered both in-person and online and cover topics such as marketing and sales, financing and loans, and how to get certified as a SWaM vendor. In addition, the SWaM Business Office partners with government agencies and private sector volunteers to offer a variety of workshops that focus on early-stage business growth. Business owners can also schedule one-on-one consultations for assistance with certification and various challenges they may be facing.

5. Economic UPLIFT Capital Accelerator Program. The Economic UPLIFT Capital Accelerator Program is an annual eight-week course offered to a small cohort of businesses through the SWaM Business Office in partnership with AGH Advisory Services, a business consulting firm based in Maryland. In order to participate, businesses must meet specified eligibility requirements such as being registered, being in business for at least two years, and earning at least $50,000 in annual revenue. Businesses that participate in the program take part in courses and one-on-one consultations to assist them with financial analysis, marketing, mentoring, and networking.

6. Virginia Beach Small Business Institute Leadership Development Program. The Virginia Beach Small Business Institute Leadership Development Program is an annual five-week workshop series offered through the SWaM Business Office in partnership with Dream Builders Communication, a training and development firm based in Huntersville, North Carolina. The program is targeted toward individuals who are considering opening a business, in the beginning stages of opening a business, or are currently running a business. The virtual program consists of classes that help business owners engage with public organizations, review contracts, and improve their communication skills.

7. Business outreach and communication. Businesses that register with the City as suppliers can sign up to receive notifications of upcoming solicitation opportunities on the City's Supplier Services webpage. Additionally, the HIVE publishes a monthly newsletter advertising upcoming technical and financial assistance programs such as those offered by the SWaM Business Office. The HIVE and the SWaM Business Office are currently expanding outreach efforts to increase the visibility of business programs through social media and other news outlets.

C. Race- and Gender-Based Measures

As part of the SWaM Procurement Program and as part of its efforts to meet its overall aspirational goals, during the study period, the City set subcontract goals for the participation of minority-owned businesses on select construction projects.[1] The City set these goals on select construction projects with an estimated value of $5 million or more. For these procurements, the City required each bidder responding to the associated solicitation to meet goal requirements at the time of bid by either making subcontracting commitments to certified minority-owned business enterprises (MBEs) or by demonstrating that they made GFE to do so. Subcontract goals do not apply to emergency procurements or projects to which the Federal Disadvantaged Business Enterprise Program or similar requirements apply.

To determine whether an MBE subcontract goal was appropriate for a project, the City's SWaM Business Office used a goal-setting worksheet that allowed the organization to account for the following factors:

- The extent to which the required work could be reasonably segmented into elements that MBEs could perform;
- The specific work types and supplies involved with the project and those that likely included subcontractor and supplier opportunities;
- The availability of MBEs for those specific subcontractor and supplier opportunities;
- The level of participation of MBEs in similar projects in the past;
- Contract specifications or requirements, such as bonding or prequalification requirements, that may have impacted the ability of MBEs to perform work on the project;
- Other upcoming work in the local marketplace that may have limited the capacity of minority-owned businesses to perform work on the project;
- The City's progress toward meeting its overall aspirational goals; and
- Other relevant factors.

If the City determined that a goal was not warranted for a project, due to either insufficient subcontracting opportunities or because there was little or no MBE availability, the requesting department was required to submit a goal waiver with a written explanation for why a goal was not appropriate for the solicitation.

D. GFE Requirements

As described above, the City uses various subcontract goals as part of both its race- and gender-neutral measures (i.e., the Small Business Enhancement Program and the Enhanced Subcontracting Program) and race- and gender based measures (i.e., the Project Goals Program to encourage the participation of minority-owned businesses in its contracting). These programs allow bidders to submit GFE documentation in lieu of meeting subcontract goals. GFEs refer to genuine and meaningful steps bidders take to meet goal requirements, even if they were unsuccessful in doing so. Per City Code §2-224.2,

[1] The project goals program sunset on June 30, 2024, per City ordinance.

bidders may make a variety of efforts to achieve an established subcontract goal, and the City will consider the following factors when determining whether those GFEs are sufficient:

- Steps the bidder took to solicit and negotiate subcontracting bids from relevant businesses;
- Whether the bidder used the City outreach list;
- Whether the bidder unbundled or right-sized project work to allow for meaningful participation of relevant businesses;
- Whether the bidder helped its partners obtain bonding, insurance, equipment, or supplies;
- Whether the bidder took other steps to identify and engage relevant businesses that would be willing and able to perform project work;
- Whether the efforts the bidder undertook would reasonably lead to the maximum participation of relevant businesses; and
- Other efforts that could reasonably result in sufficient participation of relevant businesses.

When an apparent low bidder submits a GFE waiver, the SWaM Business Office convenes a GFE review committee comprising an odd number of no less than three City representatives—including a designee from the requesting department, a designee from the SWaM Business Office, and a designee from the Purchasing Office—to evaluate the sufficiency of the bidder's GFEs. If the apparent low bidder's GFEs are deemed sufficient, then the SWaM Business Office considers the apparent low bidder as in compliance with program requirements.

CHAPTER 10.
Analysis of the Business Community

BBC Research & Consulting (BBC) collected detailed information about businesses that are potentially available for the contracts and procurements the City of Virginia Beach (the City) awards and about the businesses that performed work for the organization during the study period. That information may be valuable to the City in tailoring its implementation of the Small, Woman-owned, and Minority-owned Business (SWaM) Procurement Program to the specific characteristics of businesses operating in the *relevant geographic market area* (*RGMA*[1]). Moreover, developing an extensive understanding of the characteristics of the local business community beyond the race and gender of business owners will help the City strengthen the *race- and gender-neutral* inclusion measures it uses and help it better meet the needs of economically disadvantaged businesses—including many businesses owned by minorities, women, and service-disabled veterans (SDVs)—in the marketplace.

A. Available Businesses

BBC conducted surveys with hundreds of local businesses to understand the different types of businesses potentially *available* for City contracts, as part of which we collected extensive information on the characteristics of each business. We used that information to provide the City with a better understanding of the characteristics of the businesses in the marketplace that are ready, willing, and able to compete for and perform work on the contracts it awards.

1. General characteristics. Figure 10-1 presents descriptive characteristics of all businesses BBC considered potentially available for City contracts. We present the following information for all available businesses considered together as well as separately for non minority-/non woman-owned businesses and for minority- and woman-owned businesses:

- Percentage of businesses that are minority- or woman-owned;
- Median annual revenue;
- Median business age;
- Median *bid capacity* (i.e., largest contracts businesses report being able to perform);
- Percentage of businesses interested in prime contracting work;
- Percentage of businesses interested in subcontracting work; and
- Percentage of businesses that participated in City work.

[1] BBC identified the RGMA as the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia based on the locations of the businesses to which the City awarded the vast majority of its contracting dollars during the study period.

As shown in Figure 10-1:

- Overall, a larger percentage of businesses potentially available for City contracts are non minority-/non woman-owned (57.3%) compared to minority- or woman-owned (42.7%).
- Non minority-/non woman-owned businesses generally earn more in annual revenue (median = $1.08 million) than minority- and woman-owned businesses do (median = $300,000).
- Non minority-/non woman-owned businesses are generally older (median = 24 years old) than minority- and woman-owned businesses (median = 14 years old).
- Non minority-/non woman-owned businesses can perform contracts that are generally larger (median = $750,000) than those minority- and woman-owned businesses can perform (median = $500,000).
- Nearly all available businesses, regardless of the race or gender of the owners, are interested in prime contract work (non-minority/non-woman = 95.4%; minority and woman = 96.8%). Similarly, the vast majority of available businesses, regardless of the race or gender of the owners, are interested in subcontract work (non-minority/non-woman = 88.9%; minority and woman = 89.5%).

Figure 10-1.
General characteristics of potentially available businesses

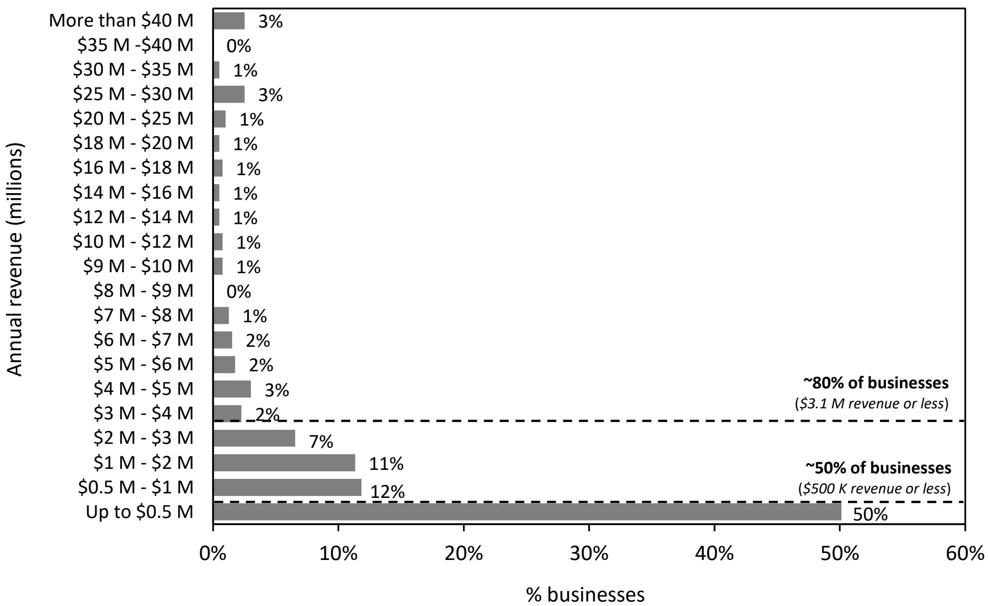
		Business Group	
Characteristic	All	Non minority-owned/ Non woman owned	Minority-owned/ Woman owned
Ownership	-	57.3%	42.7%
Revenue (median)	$500k	$1.1 M	$300k
Age (median)	19 years	24 years	14 years
Capacity (median)	$750k	$750k	$500k
Prime contractor interest (%)	96.1%	95.4%	96.8%
Subcontractor interest (%)	89.2%	88.9%	89.5%
Participated in Virginia Beach work (%)	17.3%	22.8%	10.0%

Notes: *n* = 468 for race/gender, capacity, prime contract interest, subcontract interest, and location in the RGMA;*n* = 434 for age; *n* = 397 for revenue.
Numbers rounded to nearest one-tenth of one percent and thus may not sum exactly to 100 percent.
A text description of Figure 10-1 is provided in Appendix E.

2. Business size. An important aspect of most contracting inclusion programs is to support socially *and* economically disadvantaged businesses as part of organizations' contracting processes. A common indicator of economic disadvantage is business revenue, on which BBC collected information from businesses potentially available for City work. Furthermore, among available businesses, minority- and woman-owned businesses tend to earn less in annual revenues than non minority-/non woman-owned businesses do, as presented in the General Characteristics section above. We explored annual revenues among businesses potentially available for City work further by examining the distributions of available businesses based on their annual revenues. We analyzed that information for all available businesses together and separately for minority- and woman-owned businesses.

a. All businesses. Figure 10-2 presents the distribution of the 397 available businesses that provided raw data on their annual revenues as part of availability surveys.[2] The dashed lines represent the points at which 80 percent and 50 percent of businesses reported revenues of that amount or less. As shown in Figure 10-2, 80 percent of all the businesses BBC identified as available for City work reported annual revenues of $3.1 million or less, and 50 percent reported revenues of $500,000 or less.

Figure 10-2.
Distribution of potentially available owned businesses based on their reported raw revenues



Notes: *n* = 397.

Numbers rounded to nearest whole percent and thus may not sum exactly to 100 percent.

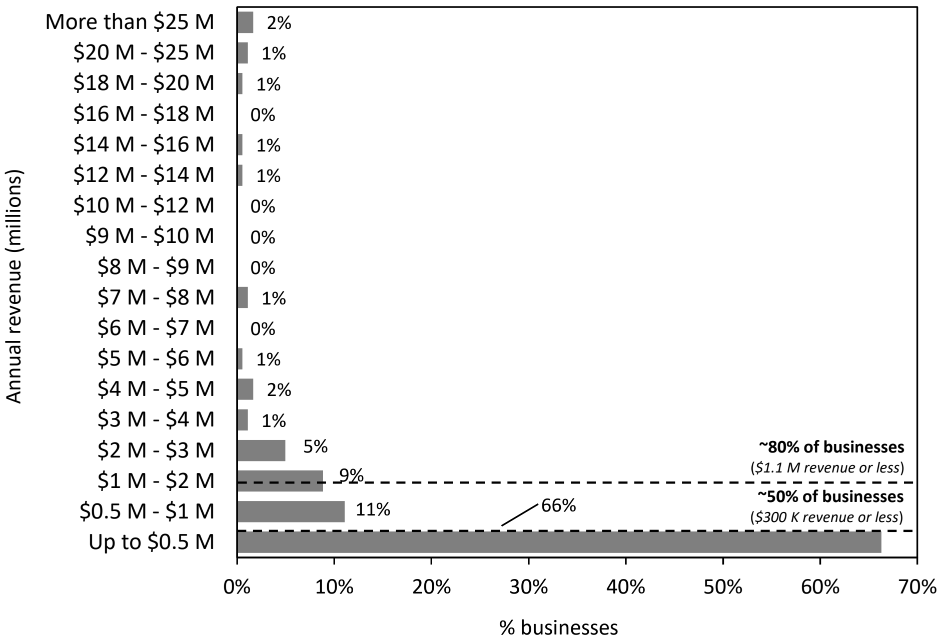
A text description of Figure 10-2 is provided in Appendix E.

b. Minority- and woman-owned businesses. BBC separately examined the distribution of the 181 available minority- and woman-owned businesses that provided raw revenue data as part of availability surveys. As shown in Figure 10-3, available minority- and woman-owned businesses generally showed smaller annual revenues than all available businesses considered together. Approximately 80 percent of minority- and woman-owned businesses available for City work reported annual revenues of $1.1 million or less (compared to $3.1 million or less for all businesses) and approximately 50 percent of them reported annual revenues of $300,000 or less (compared to $500,000 or less for all businesses). Moreover, a substantially larger percentage of minority- and woman-owned businesses reported annual revenues of $500,000 or less (66.2%)—the smallest revenue category—than did non minority-/non woman-owned businesses (50.1%), and that difference is statistically significant (t = 33.62; p < 0.01).

[2] The remaining businesses that completed availability surveys provided information on their annual revenues in the form of ranges. BBC decided not to include those responses in our analyses, because raw revenue data were more precise.

3. Business age. Businesses can vary considerably in age, and it is likely that younger businesses need more support to compete for or perform work on government contracts than older businesses. Among available businesses, minority- and woman-owned businesses tend to be younger than non minority-/non woman-owned businesses, as presented in the General Characteristics section above. To further explore the age of businesses potentially available for City contracts, we examined the distribution of available businesses based on how many years they reported being in business. We analyzed that information for all available businesses considered together and separately for available minority- and woman-owned businesses.

Figure 10-3.
Distribution of potentially available minority- and woman-owned businesses based on their reported raw revenues



Notes: n = 181.

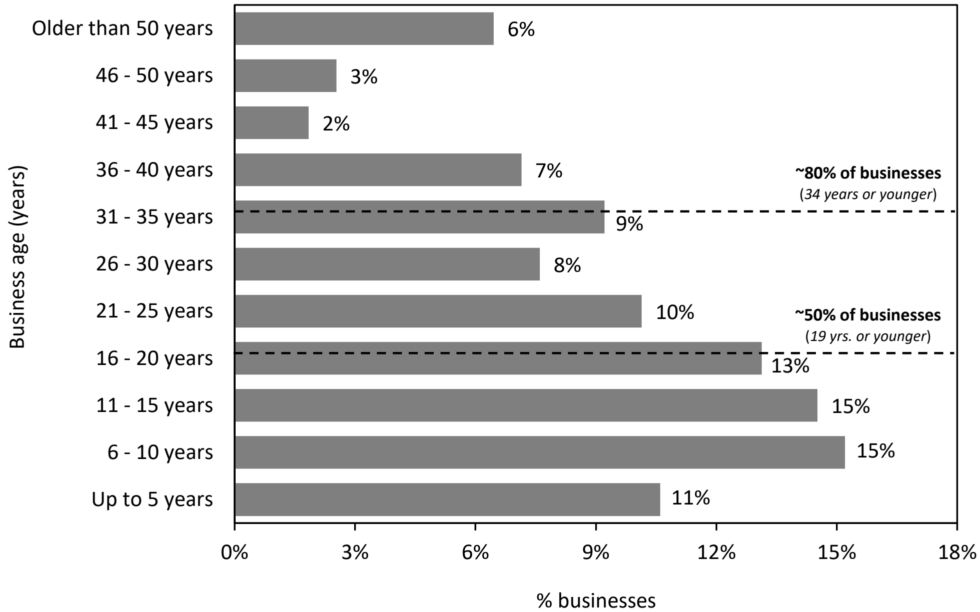
Numbers rounded to nearest whole percent and thus may not sum exactly to 100 percent.

A text description of Figure 10-3 is provided in Appendix E.

a. All businesses. Figure 10-4 presents the distribution of the 427 businesses that provided business age information as part of availability surveys. As shown in Figure 10-4, approximately 80 percent of businesses available for City work reported an age of 34 years or younger, and approximately 50 percent of them reported an age of 19 years or younger.

b. Minority- and woman-owned businesses. Figure 10-5 presents the distribution of the 182 minority- and woman-owned businesses that provided business age information as part of availability surveys. Minority- and woman-owned businesses are generally younger than all businesses considered together. Approximately 80 percent of minority- and woman-owned businesses available for City work reported an age of 25 years or younger (compared to 34 years or younger for all businesses), and 50 percent of them reported an age of 13 years or younger (compared to 19 years or less for all businesses). Moreover, a substantially larger percentage of minority- and woman-owned businesses reported an age of 5 years or younger (17.2%)—the youngest age category—than did non minority-/non woman-owned businesses (10.6%), and that difference is statistically significant ($\chi^2 = 14.37$; $p < 0.01$).

Figure 10-4.
Distribution of potentially available businesses based on their reported ages

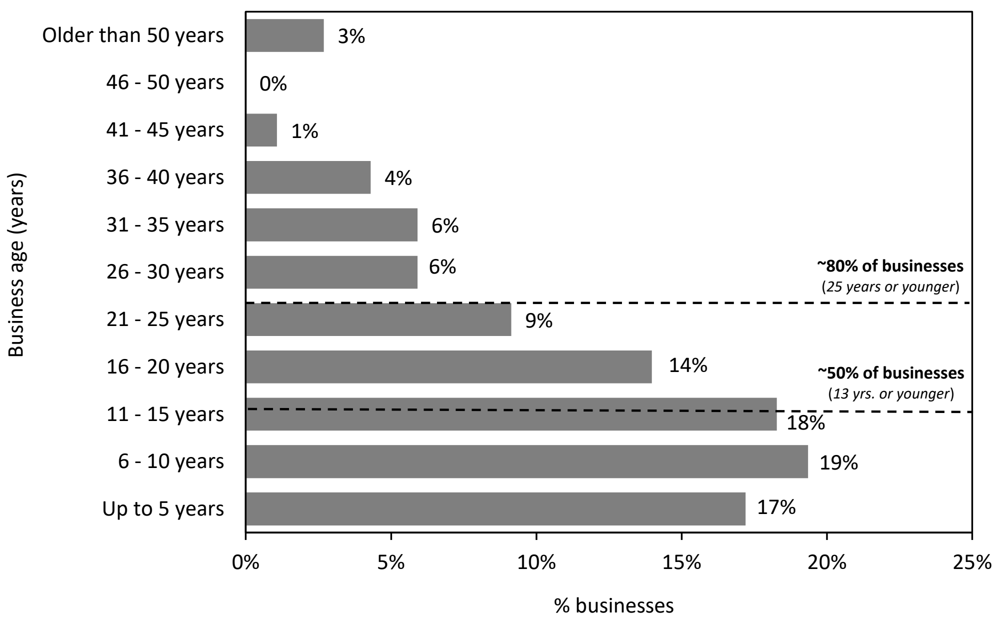


Notes: *n* = 427.

Numbers rounded to nearest whole percent and thus may not sum exactly to 100 percent.

A text description of Figure 10-4 is provided in Appendix E.

Figure 10-5.
Distribution of potentially available minority- and woman-owned businesses based on their reported ages



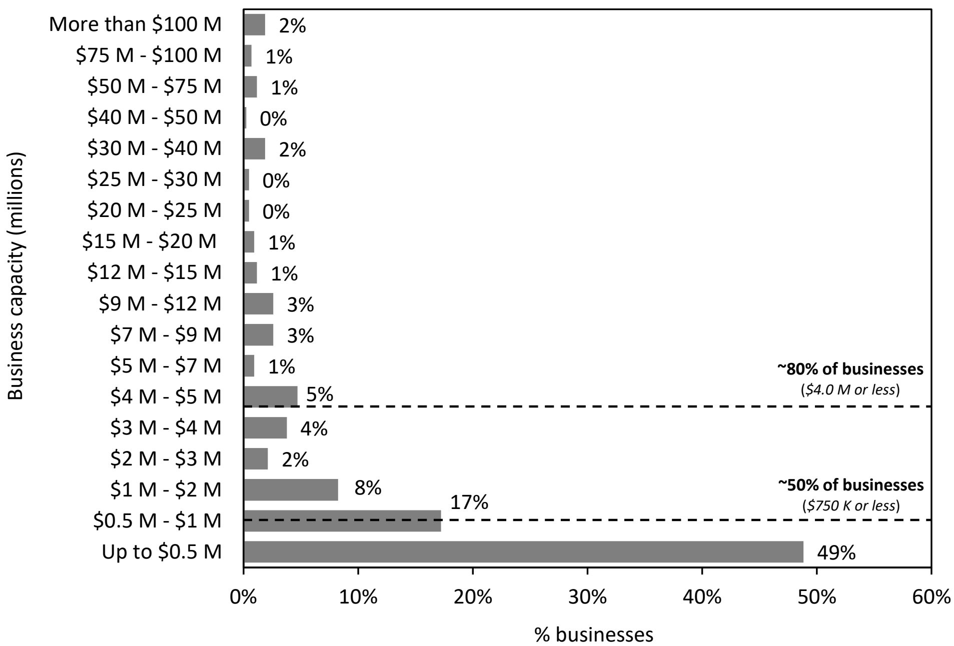
Notes: *n* = 182.

Numbers rounded to nearest whole percent and thus may not sum exactly to 100 percent.

4. Business capacity. As part of availability surveys, potentially available businesses reported the largest prime contract, subcontract, or other piece of work for which they are able to compete or are able to perform (i.e., *capacity*). BBC observed a correlation of 0.5 between annual revenue and capacity, indicating that businesses with greater revenues tend to report greater capacities (t =12.66, p < .01). However, among available businesses, minority- and woman-owned businesses can perform contracts that tend to be smaller than the contracts non minority-/non woman-owned businesses can perform, as presented in the General Characteristics section above. We examined the distributions of the businesses available for City contracts based on their capacities.

a. All businesses. Figure 10-6 presents the distribution of business capacity among the 424 businesses that provided that information as part of availability surveys. As shown in Figure 10-6, approximately 80 percent of businesses potentially available for City work reported that they could compete for or perform contracts worth $4 million or less, and approximately 50 percent of them reported that they could compete for or perform contracts worth $750,000 or less.

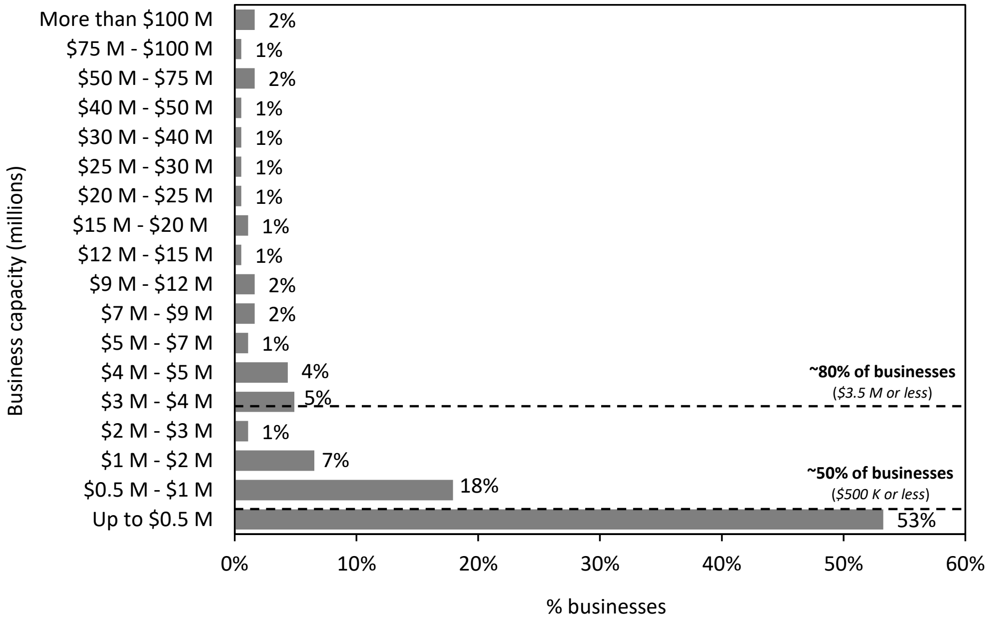
Figure 10-6.
Distribution of potentially available businesses based on their reported capacities



Notes: n = 424.
Numbers rounded to nearest one-tenth of one percent and thus may not sum exactly to 100 percent.
A text description of Figure 10-6 is provided in Appendix E.

b. Minority- and woman-owned businesses. Figure 10-7 presents the distribution of the 184 minority- and woman-owned businesses that reported their capacity for City contracts. As shown in Figure 10-7, minority- and woman-owned businesses potentially available for City work generally report less capacity than all available businesses considered together. Approximately 80 percent of available minority- and woman-owned businesses reported capacities of $3.5 million or less (compared to $4 million or less for all available businesses), and approximately 50 percent of them reported capacities of $500,000 or less (compared to $750,000 or less for all available businesses).

Figure 10-7.
Distribution of potentially available minority- and woman-owned businesses based on their reported capacities



Notes: *n* = 184.
Numbers rounded to nearest one-tenth of one percent and thus may not sum exactly to 100 percent.
A text description of Figure 10-7 is provided in Appendix E.

B. Utilized Businesses

BBC also assessed characteristics of the 757 businesses that participated in the 36,485 contracts the City awarded during the study period. Figure 10-8 presents descriptive characteristics of the businesses to which the City awarded work during the study period. We present the following information for all businesses that participated in City work considered together as well as separately for non minority-/non woman-owned businesses and for minority- and woman-owned businesses:

- Percentage of businesses that are minority- or woman-owned;
- Median annual revenue;
- Percentage of businesses located in the RGMA;
- Number of contracts awarded;
- Volume of contract dollars awarded; and
- Average volume of contract dollars awarded to each business.

Figure 10-8.
Characteristics of businesses to which the City awarded contracts during the study period

	Business Group		
Characteristic	All	Non minority-owned/ Non woman owned	Minority-owned/ Woman owned
Ownership	-	76.6%	23.4%
Contracts awarded (%)	-	76.5%	19.2%
Contract dollars awarded (%)	-	88.4%	11.6%
Dollars per business (avg.)	$ 587,487	$ 678,473	$ 289,960
Revenue (median)	$ 3,144,079	$ 4,491,430	$ 1,500,000

Notes: *n* = 757.

Numbers rounded to nearest one-tenth of one percent and thus may not sum exactly to 100 percent.

A text description of Figure 10-8 is provided in Appendix E.

As shown in Figure 10-8:

- During the study period, the City awarded 76.5 percent of its contracts to non minority/ non woman-owned businesses and 19.2 percent to minority- and woman-owned businesses.
- The City awarded 88.4 percent of the dollars associated with its contracts to non minority-/ non woman-owned businesses and 11.6 percent to minority- and woman-owned businesses.
- On average, the City awarded $289,960 in contract dollars to each minority- and woman-owned business that participated in its work during the study period compared to $678,473 to each non minority-/non woman-owned business, but that difference was not statistically significant.
- On average, non minority-/non woman-owned businesses that participated in City contracts exhibited greater annual revenues (median = $4.5 million) than minority- and woman-owned businesses that participated in City contracts ($1.5 million), and that difference was statistically significant ($t = 3.13$; $p < 0.01$).[3]

1. Business concentration. During the study period, the City awarded 36,485 contracts and procurements in construction, architecture and engineering (A/E), professional services, and goods and services—totaling $1.6 billion—to 757 different businesses. A common finding in disparity study research is that government organizations tend to award a disproportionate percentage of their contracts and contract dollars to relatively few businesses. BBC conducted a concentration analysis of the contracts and contract dollars the City awarded during the study period to assess whether they were awarded to a relatively large number of businesses or whether they were heavily concentrated among a relatively small number of businesses.

BBC began the analysis by identifying all contracts the City awarded during the study period that were worth less than $1 million. We reasoned that there may only be certain vendors that have the capacity to

[3] For revenue, BBC transformed each raw data point by its natural log before conducting two-tailed *t*-tests.

win and perform contracts worth $1 million or more, and most of those businesses are non minority-/non woman-owned businesses. Thus, by considering relatively large contracts in the analysis, we might have observed relatively high levels of business concentration, particularly for non minority-/non woman-owned businesses, when business concentration may in fact be much less for more typically sized City contracts.[4] After limiting the dataset to contracts worth less than $1 million, we ordered all businesses in descending order based on how many contracts and contract dollars the City awarded to them. We then assessed how many different businesses accounted for 80 percent and 50 percent of the total contracts and contract dollars the City awarded.

a. Contracts. Figure 10-9 presents a cumulative distribution of the 11,809 contracts worth less than $1 million the City awarded to 545 different businesses during the study period. The elements of Figure 10-9 represent the following information:

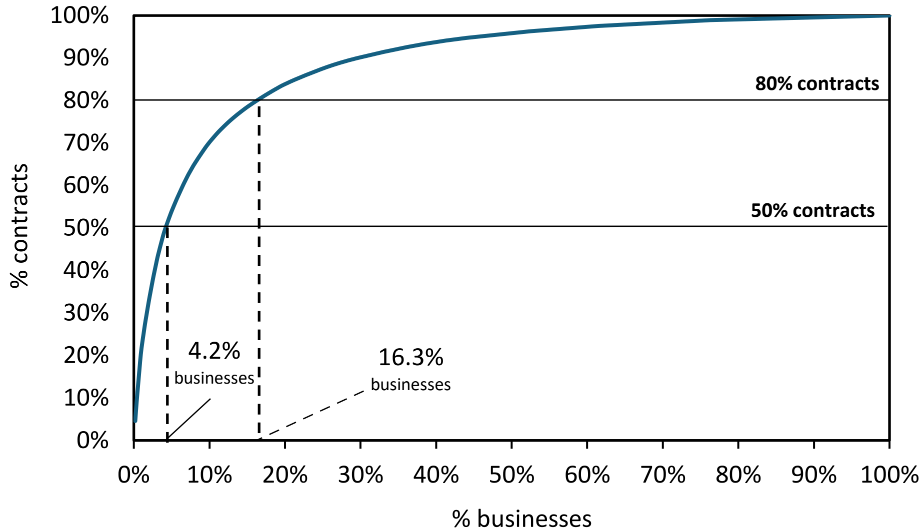
- The **horizontal axis** presents the percentage of the different businesses to which the City awarded contracts during the study period.
- The **vertical axis** presents the percentage of contracts the City awarded to different businesses.
- The **curve** presents the cumulative percentage of different businesses that accounted for the contracts the City awarded during the study period after BBC ordered businesses from the one that was awarded the largest number of contracts during the study period to the one that was awarded the least number of contracts.
- The **horizontal dashed lines** indicate the number of contracts that represent 80 percent and 50 percent of the contracts the City awarded during the study period.
- The **vertical dashed lines** indicate the percentage of businesses that accounted for 80 percent and 50 percent of the contracts the City awarded during the study period.

As shown in Figure 10-9, during the study period, the City awarded approximately 80 percent of its contracts worth less than $1 million (9,452 contracts) to just 16.3 percent of businesses (89 businesses). Furthermore, the organization awarded approximately 50 percent of those contracts (5,922 contracts) to just 4.2 percent of businesses (23 businesses).

BBC conducted the same analysis separately for the 2,386 contracts worth less than $1 million the City awarded to 136 minority- and woman-owned businesses during the study period. Figure 10-10 presents those results. As with all businesses considered together, the concentration analysis indicated that the vast majority of the contracts worth less than $1 million that the City awarded to minority- and woman-owned businesses were awarded to relatively few businesses. The organization awarded approximately 80 percent of them (1,913 contracts) to just 17.6 percent of minority- and woman-owned businesses (24 businesses), and approximately 50 percent of them (1,230 contracts) to just 4.4 percent of minority- and woman-owned businesses (six businesses).

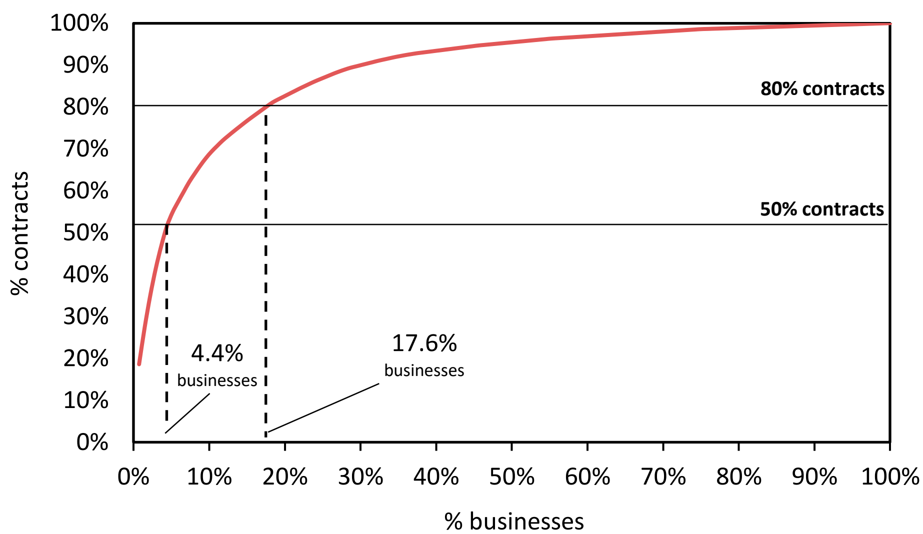
[4] Compared to when we limited the analysis to contracts worth less than $1 million, including all contracts in the analysis did in fact indicate greater levels of business concentration regardless of whether we based the analysis on contracts or contract dollars.

Figure 10-9.
Cumulative distribution of businesses based on the number of contracts worth less than $1 million the City awarded to them



Notes: *n* = 11,809 contracts.
A text description of Figure 10-9 is provided in Appendix E.

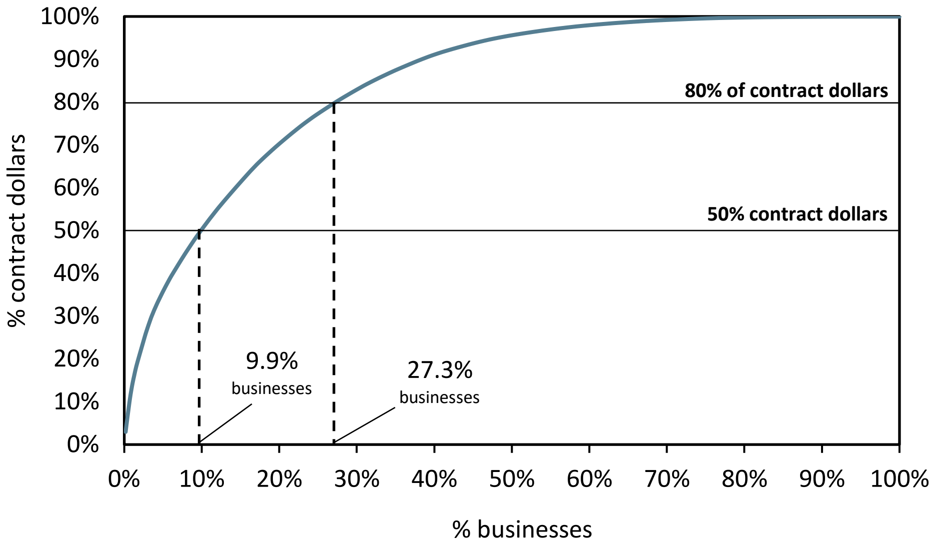
Figure 10-10.
Cumulative distribution of minority- and woman-owned businesses based on the number of contracts worth less than $1 million the City awarded to them



Notes: *n* = 2,386 contracts.
A text description of Figure 10-10 is provided in Appendix E.

b. Contract dollars. Because contract sizes can vary so widely, BBC also assessed business concentration based on the contract *dollars* the City awarded during the study period. As with the contract-based concentration analysis, BBC limited the dollars-based analysis on contracts the City awarded during the study period that were worth less than $1 million, which totaled $260.3 million. Figure 10-11 presents a cumulative distribution of the percentage of contract dollars the City awarded to all businesses during the study period. As shown in Figure 10-11, during the study period, the City awarded approximately 80 percent of those contract dollars ($208.5 million) to just 27.3 percent of businesses (149 businesses). Furthermore, the organization awarded approximately 50 percent of those contract dollars ($130.2 million) to just 9.9 percent of businesses (54 businesses).

Figure 10-11.
Cumulative distribution of businesses based on the dollars associated with contracts worth less than $1 million the City awarded to them

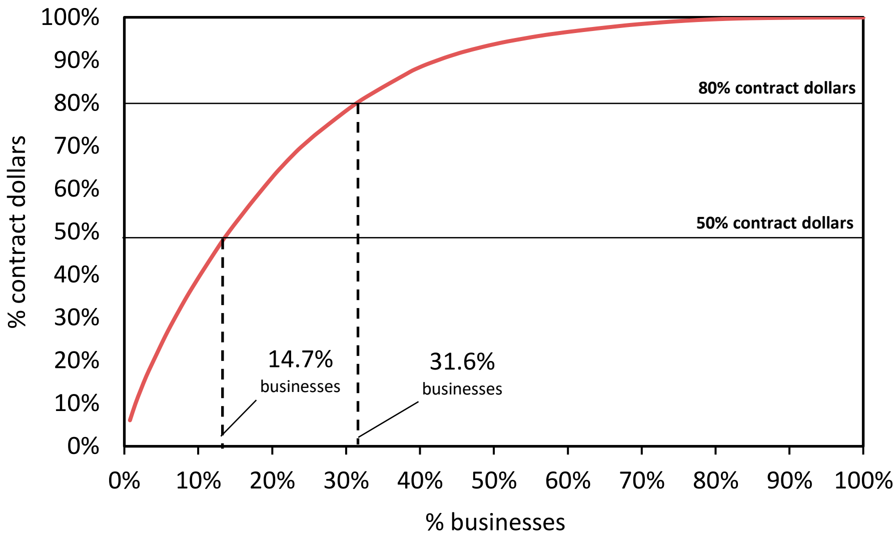


Notes: *n* = 11,809 contracts.

A text description of Figure 10-11 is provided in Appendix E.

BBC conducted the same analysis separately for the minority- and woman-owned businesses to which the City awarded contract dollars on contracts worth $1 million or less during the study period, totaling $50.9 million. Figure 10-12 presents those results. As with all businesses considered together, the analysis indicated that the majority of the total contract dollars the City awarded to minority- and woman-owned businesses on contracts worth less than $1 million were awarded to relatively few businesses. Of the contract dollars the City awarded to minority- and woman-owned businesses, it awarded approximately 80 percent of those contract dollars ($40.85 million) to just 31.6 percent of those businesses (43 businesses). Furthermore, it awarded approximately 50 percent ($26.13 million) of those contract dollars to just 14.7 percent of those businesses (20 businesses).

Figure 10-12.
Cumulative distribution of minority- and woman-owned businesses based on the dollars associated with contracts worth less than $1 million the City awarded to them



Notes: *n* = 2,386 contracts.

A text description of Figure 10-12 is provided in Appendix E.

CHAPTER 11.
Implications and Recommendations

The 2025 City of Virginia Beach (the City) Disparity Study provides substantial information the City should use as it considers efforts to encourage the participation of small businesses as well as minority-, woman-, and service-disabled veteran (SDV)-owned businesses in its contracts and procurements. Based on our analysis of City policies and programs, qualitative information we collected from stakeholders, disparity study results, and best practices in the industry, BBC Research & Consulting (BBC) presents implications of key disparity study results and recommendations for specific contracting policies and programs the City could consider refining or developing to help increase the participation of those businesses in its work.

A. Key Results and Implications

BBC analyzed contract and procurement dollars the City awarded between July 1, 2020 and June 30, 2024 (*study period*) to calculate the *participation* (or, *utilization*) of minority-, woman-, SDV-owned businesses in its work; estimate the *availability* of those businesses for that work; and assess whether any *disparities* exist between those measures.[1, 2] We also conducted research on outcomes for minorities, women, and SDVs and the businesses they own in the Virginia Beach marketplace to assess whether any barriers exist in the marketplace that make it more difficult for those businesses to perform City work. That information will help the organization assess whether those businesses experience barriers as part of its contracting processes and what types of measures it could use to help address those barriers as part of its contracting processes and its implementation of the Small, Woman-owned, and Minority-owned (SWaM) Procurement Program.

1. Disparities between participation and availability. The crux of the disparity study was to assess whether any disparities exist between the participation and availability of minority-, woman-, and SDV-owned businesses located in the *relevant geographic market* area (*RGMA*) for City work.[3] A *substantial disparity* between participation and availability—that is, a disparity where participation is 80 percent or less of availability—for a particular business group is interpreted by courts as an *inference of discrimination* against that group in the marketplace and often serves as evidence that the organization should consider using race- or gender-based measures to address corresponding barriers for that group. As discussed in Chapter 8 of this report, all relevant minority-, woman-, and SDV-owned business groups showed substantial disparities for various project sets BBC examined as part of the disparity study. In addition to SDV-owned businesses, those groups include Asian Pacific-, Black-, Hispanic-, Middle Eastern and North African (MENA)-, Native American-, Subcontinent Asian-, and

[1] BBC analyzed $1.6 billion of relevant contracts and procurements the City awarded during the study period.

[2] BBC uses the term "woman-owned business" to refer specifically to White woman-owned businesses. To avoid double counting, results for businesses owned by minority women are included with other businesses owned by minorities according to their corresponding race groups.

[3] The RGMA for the 2025 Virginia Beach Disparity Study included the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk (also referred to as the *Virginia Beach marketplace*), based on the locations of the businesses that participated in City work during the study period. Limiting study analyses to the RGMA ensures that study results are tailored specifically to the geographical region that best represents the City's contracting activity.

White woman-owned businesses. Thus, disparity analysis results indicate inferences of discrimination for all the business groups we examined as part of the study.

2. Barriers in the marketplace. Barriers in the marketplace likely affect the ability of minorities and women to start businesses in relevant industries and operate them successfully. Any difficulties they face in starting and operating businesses in the region may reduce their availability for City work and their ability to successfully compete for and perform that work. The United States Supreme Court and other federal courts have held that analyses of conditions in an RGMA for minority- and woman-owned businesses are instructive in determining whether organizations' use of race- and gender-based programs as part of their contracting processes are appropriate and justified. They have held that evidence of marketplace barriers for minorities, women, and minority- and woman-owned businesses helps to establish a *compelling government interest* for organizations to take remedial action to address those barriers and can help organizations *narrowly tailor* the use of such measures to the business groups for which evidence of barriers exist.

BBC's analyses of marketplace conditions in Virginia Beach indicate that minorities, women, minority- and woman-owned businesses face various barriers in the region in terms of acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence that those barriers exist even after accounting for various other factors such as age, income, education, and familial status. Those results may help the City in establishing a compelling government interest in using race- or gender-based measures and narrowly tailor the use of those measures.

B. Guidance

The disparity study provides substantial information the City should examine as it considers potential refinements to its implementation of the SWaM Procurement Program and other efforts to further encourage the participation of minority-, woman-, and SDV-owned businesses in its contracts and procurements. BBC presents several recommendations for the City's consideration.

1. Overall aspirational goals. The City uses various measures as part of the SWaM Procurement Program to increase minority-, woman-, and SDV-owned business participation in its contracting and to meet three aspirational goals each year:

- Awarding 12 percent of its contract and procurement dollars to certified Minority-owned Business Enterprises (MBEs);
- Awarding 13.3 percent of its contract and procurement dollars to certified Woman-owned Business Enterprises (WBEs); and
- Awarding 11.9 percent of its contract and procurement dollars to certified SDV-owned businesses.[4]

The current aspirational goals are based on the results of the 2018 City of Virginia Beach Disparity Study. As part of the 2025 study, BBC found that the availability of minority-, woman-, and SDV-owned businesses in the Virginia Beach marketplace has increased. The City should consider updating its

[4] The overall MBE, WBE, and SDV goals are not race- or gender-based measures, because they are not program measures at all. Instead, they represent overall, aspirational objectives that guide various individual measures the City uses to encourage the participation of minority-, woman-, and SDV-owned businesses in its work. Each of those individual measures are either race- and gender-neutral or race- and gender-based in nature.

overall MBE-, WBE-, and SDV-owned business participation goals based on results from the current availability analysis as well as other considerations. Figure 11-1 presents the estimated availability of minority-owned business groups, White woman-owned businesses, and SDV-owned businesses that meet SWaM certification requirements for City work (i.e., *potential SWaM businesses*).

As shown in Figure 11-1, the combined availability of minority-owned businesses that are potential SWaM businesses—that is, businesses that meet the requirements to become SWaM certified—is 24.1 percent, which the City could consider as its new overall MBE goal. The availability of White woman-owned businesses that are potential SWaM businesses is 13.7 percent, which the City could consider as its new overall WBE goal. In addition, the availability of SDV-owned businesses for City work that are potential SWaM-owned businesses is 12.6 percent.

Figure 11-1.
Availability of potential SWaM businesses for City work

Business group	
Race and gender	
Minority	24.1 %
Asian Pacific	4.5 %
Black	12.5 %
Hispanic	5.1 %
Native American	1.6 %
Subcontinent Asian	0.4 %
White woman	13.7 %
Veteran status	
Service-disabled veteran	12.6 %

Notes:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The availability of MENA-owned businesses is not included in this figure as the City does not currently certify those businesses as MBEs.

A text description of Figure 11-1 is provided in Appendix E.

2. Goal adjustments. The City could also examine various factors to determine whether further adjustments to the proposed aspirational goals are warranted to account for any characteristics of the Virginia Beach marketplace that might affect the ability of minority-owned, woman-owned, and SDV-owned businesses to compete for or participate in City work. The City should consider the following factors to decide whether to adjust their overall goals:

- Past participation of MBEs, WBEs, or SDVs in City work;
- Information on barriers related to employment, business ownership, education, training, and unions;
- Information on barriers related to financing, bonding, and insurance; and
- Other relevant information.

If the City decides to further adjust its overall aspirational goals, it would have to decide which factors to consider and the direction and magnitude of any adjustments. For example, the participation of certified SDV-owned businesses in City work during the study period was much lower than their availability for that work. The overall participation of certified SDV-owned businesses in City work during the study period was 1.1 percent whereas the availability of SDV-owned businesses that are potential SWaM businesses for City work is 12.6 percent. Given that discrepancy, the City could consider using the average of the availability of SDV-owned businesses that are potential SWaM businesses for City work and the participation of certified SDV-owned businesses in City work during the study period. Doing so would result in an overall aspirational SDV goal of 6.8 percent.

3. Project Goals Program. As part of its implementation of the SWaM Procurement Program, the City implemented the Project Goals Program from 2022 until the sunset of the program in June 2025. As part of the program, the City used condition-of-award race-based MBE project goals to encourage the participation of eligible, certified MBE subcontractors in certain construction projects worth more than $5 million (i.e., Black-owned MBEs, Hispanic-owned MBEs, and Asian-owned MBEs, based on results from the 2018 City of Virginia Beach Disparity Study). As discussed in Chapter 8, during the study period, eligible minority-owned businesses exhibited smaller disparities on projects the City awarded with MBE project goals than on projects the City awarded without such goals (see Figures 8-5 and 8-6), indicating that the program was effective in improving outcomes for those businesses.

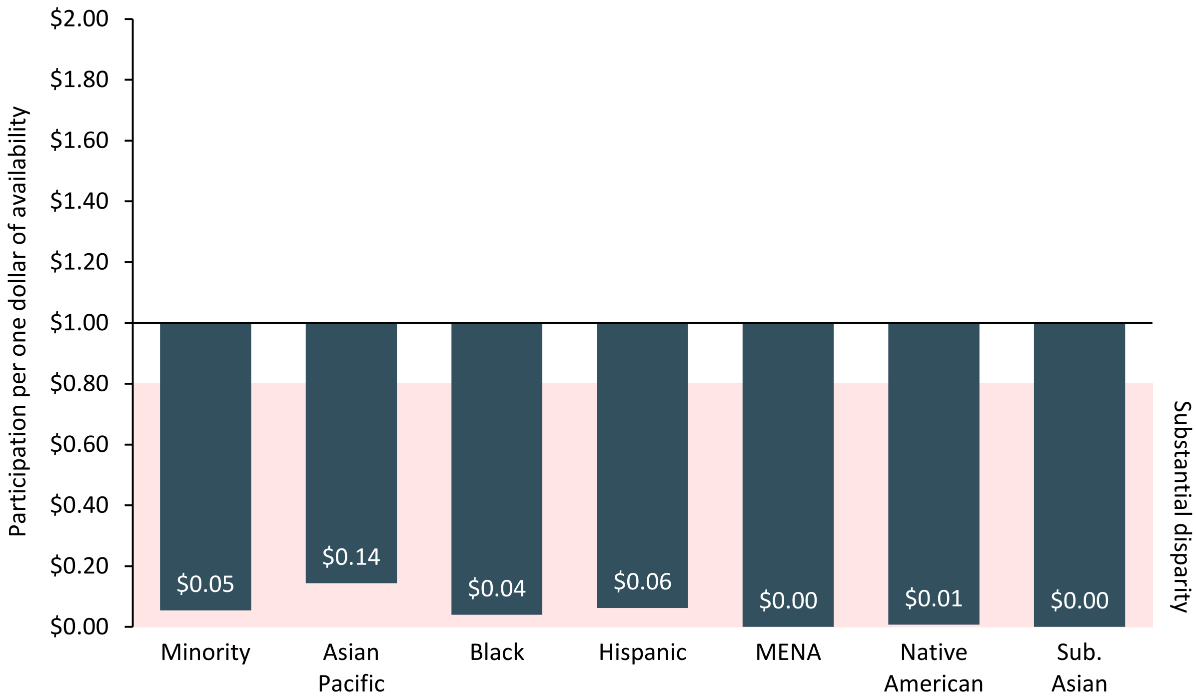
If the City decides to continue implementing the Project Goals Program, then it must ensure that its use of any race-based project goals meets the requirements of the *strict scrutiny* standard of constitutional review, including showing a *compelling governmental interest* for their use and ensuring that their use is *narrowly tailored*. Prior to using MBE project goals, the City must also consider whether it has maximized its use of race-neutral measures, including fully leveraging existing race-neutral measures and considering whether additional measures might be sufficient to address disparities without the use of race or gender classifications.

a. Eligibility for goals program. BBC assessed disparity analysis results for all relevant minority-owned business groups for the large construction projects (over $5 million) the City awarded during the study period without the use of MBE project goals (i.e., *no goals* projects). Those results are the best indicator of outcomes for minority-owned businesses for projects the City awards using only race-neutral measures and for projects similar to the ones the City currently awards with the use of MBE project goals. As shown in Figure 11-2, all race groups on which disparity study analyses focused—Asian Pacific-, Black-, Hispanic-, Middle Eastern and North African (MENA)-, Native American-, Subcontinent Asian-owned businesses—exhibited substantial disparities on the construction projects the City awarded during the study period without the use of MBE project goals.

b. Continued use of MBE goals. Because the City already uses numerous race-neutral measures to encourage the participation of small businesses, including many minority-, woman-, and SDV-owned businesses in its work, and because those measures have not sufficiently addressed disparities for minority-owned businesses, the organization should consider reinstating the use of MBE project goals to award certain projects. If the City decides which minority-owned business groups to include in its Project Goals Program based on the results presented in Figure 11-2, then it should consider deeming *all* relevant race groups as eligible to participate in the program. To do so, the City would set MBE participation goals on individual projects based on the availability of minority-owned businesses for the types of work involved in each project, and, as a condition of award, prime contractors would have to meet those goals by making subcontracting commitments with MBEs as part of their bids, quotes, or proposals or by demonstrating they made *good faith efforts* (*GFEs*) to do so.

c. MENA-owned businesses. MENA-owned businesses are not presumed to be disadvantaged as part of the SWaM Procurement Program. However, BBC included MENA-owned businesses in disparity study analyses, because the estimated population of people who identify as MENA in the United States—and likely by extension, MENA-owned businesses—has increased steadily over the past 45 years. Because of such trends, the United States Census Bureau updated its race categories in 2024 to include a separate MENA classification as part of its population and business surveys, including the American Community Survey and the Decennial Census.[5] Disparity analysis results indicate that MENA-owned businesses exhibit substantial disparities between their participation in and availability for nearly all the sets of City projects BBC examined, suggesting that MENA-owned businesses face barriers in competing for and performing City work. Based on those results, and to better align the SWaM Procurement Program with the growth of the MENA population and the practices of the United States Census Bureau, the City should consider expanding the SWaM Procurement Program to include MENA-owned businesses as a separate, certifiable group of MBEs. If the City chooses to do so, it would extend eligibility of the various elements of the program to MENA-owned businesses, including internal reporting requirements, outreach efforts, the Project Goals Program, and other program measures.

Figure 11-2.
Disparity indices for minority-owned businesses on no goals projects



Note: A text description of Figure 11-2 is provided in Appendix E.

d. White woman-owned businesses. In addition to the use of MBE project goals, the City should also consider that the use of race- and gender-neutral measures has not adequately addressed disparities for White woman-owned businesses. Like most other groups, White woman-owned businesses also exhibited substantial disparities on most of the various sets of projects the City awarded during the study period, including on construction projects worth more than $5 million that the City awards without the use of project goals. The City does not use WBE goals as part of the Project Goals Program, but given disparity study results, it should consider doing so on applicable contracts and procurements. If the City decides to do so, it should consider setting WBE goals separate from MBE goals, because barriers for White woman-owned businesses tend to be different than those for minority-owned

[5] https://www.census.gov/library/working-papers/2024/demo/pop-wps-108.html

businesses and the use of gender-based measures are subject to different constitutional standards—that is, *intermediate scrutiny* rather than strict scrutiny.

e. Professional services and A/E. During the study period, the City only set MBE project goals on certain construction projects. However, BBC observed substantial disparities during the study period for certain groups of minority-owned businesses—Asian Pacific-, Black-, MENA-, and Native American-owned businesses—and White woman-owned businesses on the professional services projects the City awarded. Additionally, all groups of minority-owned businesses and White woman-owned businesses exhibited substantial disparities on the architecture and engineering (A/E) projects the City awarded during the study period. To address these disparities, the City should consider expanding the Project Goals Program to A/E and professional services projects.[6] To ensure that its use of MBE and WBE goals meets the requirements of strict scrutiny and intermediate scrutiny, respectively, the City should consider setting goals separately for each eligible contract opportunity based on the availability of minority- and woman-owned businesses for the types of work involved rather than setting the same MBE and WBE goals across all eligible contracting opportunities.

f. Size thresholds for goals. The City currently sets project goals only on certain construction projects worth more than $5 million. Based on BBC's experience conducting disparity studies, construction and professional services are far more likely than other industries to include subcontracting opportunities, and those opportunities often exist on projects worth $5 million or less. If the City reinstates the Project Goals Program, it should consider using project goals to award both construction and professional services projects and lowering the threshold for the application of project goals across both industries. Using project goals to award more projects will increase opportunities for small minority- and woman-owned businesses, especially those that cannot yet work as prime contractors.

4. Race- and gender-neutral measures. Based on our analysis of City policies and programs, disparity study results, and stakeholder feedback, BBC identified several race- and gender-neutral efforts the agency should consider refining or developing to help increase the participation of small businesses, including many minority-, woman-, and SDV-owned businesses, in its work.

a. Consolidated subcontracting programs. The City currently implements two race- and gender-neutral subcontracting goals programs for SWaM-certified businesses: the *Small Business Enhancement Program* and the *Enhanced Subcontracting Program*.

- The Small Business Enhancement Program applies to all construction contracts worth $50,000 or more. For these contracts, the City requires bidders that are going to use subcontractors to commit at least 50 percent of the total value of any subcontracted work to SWaM-certified businesses.
- The Enhanced Subcontracting Program applies to certain construction and goods and services projects for which the City determines that sufficient subcontracting opportunities for those projects exist. For applicable projects, bidders must subcontract 50 percent of their total bid amounts to SWaM-certified businesses.

[6] BBC provides the recommendation to set project goals on applicable professional services and A/E projects because those projects often have opportunities for subcontracting. However, all minority-owned businesses and White-woman owned businesses exhibited substantial disparities on goods and service projects as well. The City may consider setting project goals on goods and services projects as well based on this information.

The City should consider consolidating the Small Business Enhancement Program and the Enhanced Subcontracting Program into a single program. A consolidated program will likely reduce confusion among members of the business community and make the program easier to operate. To do so, the City should consider selecting applicable projects and setting subcontracting minimums based on the sizes, scopes, and types of the specific projects, rather than automatically setting a 50 percent subcontracting minimum to all projects worth more than a certain dollar threshold. That is, the minimums would vary from project to project, and for some projects, the City might not set a subcontracting minimum at all. In addition, the City should not make the requirements contingent on whether bidders choose to use subcontractors—the requirements should apply to all bidders. Finally, projects of all industries should be considered for the program.

Although the application of subcontracting goals should ultimately be based on the characteristics of each project, it may be beneficial to set a threshold at which projects are *considered* for the subcontracting program. For example, during the study period, businesses that met SWaM certification criteria were available for more than 50 percent of the subcontracts associated with the City's construction and A/E contracts worth more than $500,000. Those results suggest that the City could perhaps consider setting subcontracting minimums for certain construction and professional services projects (including A/E) worth more than $500,000. That is, for construction and professional services contracts over $500,000, the City would determine whether subcontracting goals should apply based on the project subindustry, type, and other relevant characteristics, and then set a subcontracting minimum accordingly.

b. Refined Sheltered Bidding Program The City currently sets aside certain construction contracts worth between $25,000 and $500,000 and certain goods and services contracts worth more than $10,000 for exclusive competition among SWaM-certified businesses. BBC's qualitative analysis supports the need for program measures that specifically support even smaller businesses, because the size of "small businesses" can vary substantially. For example:

> *The Hispanic woman and disabled veteran owner of a goods and services company stated, "I compete with other SWaM businesses that are multimillion-dollar woman-owned businesses. It's very hard to compete with SWaM companies that are already established when I am a Micro-business."* [#AV 208]

To better align the Sheltered Bidding Program with the characteristics of the businesses available in the marketplace, the City should consider a tiered approach to implementing the Sheltered Bidding Program. As presented in Chapter 10, approximately 50 percent of relevant businesses in the RGMA have revenues of less than $500,000 per year. Based on this information, the City could consider tailoring its implementation of the Sheltered Bidding Program according to the following tiers of SWaM-certified Small Business Enterprises (SBEs), based on their revenues:

- SBE-1 for businesses that earn up to $500,000 in annual revenue;
- SBE-2 for businesses that earn more than $500,000 and up to $3 million in annual revenue (in alignment with the SWaM Micro-business annual revenue requirement); and

- SBE-3 for businesses that earn more than $3 million and up to $10 million in annual revenue (in alignment with the SWaM SBE annual revenue requirement).[7]

The City could then set aside different projects of different sizes in accordance with the estimated bid capacities of SBE-1s, SBE-2s, and SBE-3s. To ensure that the benefits of the SWaM Procurement Program are appropriately tailored to each tier of businesses, the City could consider the 50th percentile of their corresponding bid capacities, and set aside contracts as follows:

- Set aside projects worth up to $200,000 for SBE-1s;
- Set aside projects worth more than $200,000 but less than $750,000 for SBE-2s; and
- Set aside projects worth more than $750,000 but less than $2.5 million for SBE-3s.[8]

Doing so will allow the City to better address economic disadvantages that small businesses face in the marketplace by better tailoring its efforts to those businesses that need the most support.

c. Encourage *untried* business participation. BBC found that the vast majority of the contracts and procurements—as well as the associated dollars—the City awarded during the study period were awarded to a relatively small number of businesses. One of the fundamental objectives of a contracting inclusion program is to diversify the pool of businesses to which an organization is awarding work. The City should consider exploring different ways to engage with businesses that have not participated in its work in the past—that is, *untried businesses*. Some of those efforts could include:

- Continuing to work with local organizations to engage directly with businesses that might not have worked with the City in the past and providing businesses with information about the advantages and the process for doing so;
- Setting aside contract opportunities for exclusive competition among untried businesses; or
- Expanding the use of the multiple award contracts—at the prime contract or subcontract level—to multiple businesses where there is a rotation schedule so all the businesses receive comparable amounts of work over the life of the contract.

Being new to the City's contracting processes should not replace being *qualified* to perform work on the contracts and procurements it awards. The City should still strongly emphasize and assess businesses' qualifications as part of contract awards, but it should consider taking steps to identify qualified businesses that may not have worked with the organization in the past.

d. Encourage local business participation. BBC's findings showed differences in disparity indices for minority-, woman-, and SDV-owned businesses depending on whether our calculations of their

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[7] The Virginia Department of Small Business and Supplier Diversity (SBSD) certifies Micro-businesses as those businesses that have 25 employees or under and an annual revenue of $3 million or less. However, the City is only required to use the employee requirement when implementing programs that target Micro-businesses. The City may consider using employee size to determine applicable program measures for various small business tiers, but it should also carefully consider how employee tiers correlate with average annual revenue. Otherwise, the City should request revenue information from the Virginia SBSD, if possible, to implement a tiered Sheltered Bidding Program.

[8] Each tier of SBEs would be permitted to bid on projects targeted toward larger tiers but the reverse would not be permitted. For example, SBE-1s would be permitted to bid on projects set aside for SBE-2s or SBE-3s but those businesses would not be permitted to bid on projects set aside for SBE-1s.

participation in City work included only those businesses located in the RGMA or whether they also included businesses located outside of the RGMA. For example, when we only included businesses located in the RGMA, we found that Black-owned businesses exhibited substantial disparities on contracts the City awards with the use of MBE project goals. However, when we included businesses located in the RGMA and businesses located outside of it, Black-owned businesses did not exhibit a substantial disparity on those contracts. These results indicate that a large portion of the participation of Black-owned businesses on projects the City awarded with the use of MBE goals came from businesses located outside the RGMA.

When refining the SWaM Procurement Program, the City should continue to make efforts to encourage the participation of disadvantaged businesses in its work, but it should also also make concerted efforts to encourage the participation of *local* disadvantaged businesses to more directly benefit the business community the program is designed to serve. Spending money with local businesses supports both local job creation and local tax revenue, as those businesses are most likely to have employees that live in Virginia Beach and engage in economic activity in the City.[9] Thus, by awarding more contracting dollars to local businesses, the City will keep more money within the local economy.

The Virginia Public Procurement Act does not currently allow municipalities to award incentives or preferences to businesses based on consideration of their locations and only explicitly allows organizations to use local business preferences in the case of tie-bids for certain types of procurements. However, the City may be able to encourage local business participation through:

- Targeted advertising campaigns to raise awareness of City projects and opportunities to encourage interest among local businesses;
- Continuing to encourage local businesses to use technical assistance programs offered by the SWaM Business Office, with the goal of increasing their capacity and understanding of the City's bidding processes and procedures; and
- Continuing to maintain relationships with local businesses through networking events and mentorship to increase their awareness of and familiarity with City opportunities.

The City should continue to work with its internal legal counsel to assess the degree to which it can take those or other efforts to increase its engagement with local businesses.

e. Incentivized mentor-protégé program. Many business owners and representatives who shared qualitative information as part of the disparity study spoke highly of mentor-protégé programs and relationships, noting the benefits of working with and learning from larger, more successful companies in similar industries. However, they also indicated that mentors have to take active roles in those relationships for them to be mutually beneficial. For example:

> *The Black woman co-owner of a service-disabled veteran-owned construction company said, "I would love the opportunity to be involved in a mentorship program. … I think the biggest thing [to learn] would be how to bid the jobs when there's something for us on the*

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[9] Rodriguez, Heather, and Dan Houston. 2007. Procurement Matters: The Economic Impact of Local Suppliers. Civic Economics. https://nebula.wsimg.com/e2f7bcae9f68a9d06a5e5d96e99e2f62?AccessKeyId=8E410A17553441C49302&disposition=0&alloworigin=1

state or the local level as far as they put out for bids and requests. And a lot of times small businesses aren't familiar with that aspect of the bid process." [#33]

The Black woman co-owner of a DBE- and SWaM-certified construction company said, "When we were [mentored by] that prime company, they withheld everything. We didn't even know we were all over their paperwork. It leaves a bad taste in your mouth. But if you can get the mentorship of someone who is invested in your growth, who feels like, "Yeah, how can you help them, too?" So they're going to meet their goals while we're meeting yours. So it'll be a mutual relationship, but you would learn as you go." [#3]

The City should consider developing a mentor-protégé program to introduce new businesses to prime contractors and City decision makers, provide guidance to growing businesses, and increase the capacity of these businesses to perform City work as prime contractors or prime consultants themselves. Such a program should include:

- Mentorship from businesses that successfully compete for and perform City contracts in the same industries as protégés;
- An emphasis on teaching protégés how to navigate City processes to work as prime contractors;
- Compensation for the time and resources required for mentors to participate in the program;
- Incentives for mentors to include their protégés on project teams for future opportunities, such as bid discounts or set-asides; and
- Key performance indicators (KPIs) to ensure that mentors are making genuine efforts to support the growth of protégés and that protégés are benefitting from their relationships with mentors.

Several organizations offer incentivized mentor protégé programs, which could serve as models for the City to consider. For example:

- MDOT implements a mentor protégé program for small consulting businesses. Key elements of this program include:
  - *Set-aside contracts*: The agency sets aside select contracts each year for exclusive competition among mentor-protégé pairings. As part of bid evaluation for those contracts, project teams must submit mentorship plans that are assessed as part of evaluation processes.
  - *Non-exclusivity*: Mentors cannot require their proteges to bid exclusively with them on set-aside contracting opportunities. Mentors can team with multiple protégés, and protégés can team with multiple mentors.
  - *Project cost reimbursement*: Time required to execute mentorship plans can be billed to MDOT.
- The Colorado Department of Transportation (CDOT) implements an a mentor protégé program for small construction and consulting businesses. Key elements of the program include:
  - *Relationship building*: The agency supports emerging businesses in developing relationships with prime contractors or consultants that successfully perform CDOT work.
  - *Financial compensation*: Mentors receive annual stipends for their participation in the program.

- *Project team incentives*: Consultant teams receive an extra evaluation point for including protégés (past or present) on their teams and two points if prime consultants are graduates of the MPP and include protégés on their project teams.

f. Consolidated communication and outreach. While many business owners in the RGMA spoke highly of the technical assistance programs offered by the City, some participants said they were unaware of the programs. Internal stakeholders also recognized a lack of awareness around vendor fairs, workshops, and other programs offered at the HIVE. For example:

> *The owner of a Black-owned professional services company said, "It's still a challenge having to get all of that information [about City opportunities and events] from all over the place. I don't see a lot of attention and energy given into [concentrated campaigns] or communications." [#2]*
>
> *A representative of a community business organization and a business owner said, "I think the City could do a better job with promoting and getting the word out about the HIVE … The stats show that small businesses do need assistance to increase their success rate. … Maybe [collaborating with organizations] that we are partnered with to get the word out." [#FG2b]*
>
> *A representative of a community development organization and the owner of a construction company said, "Business owners are required to put together a marketing plan. So, it always confuses me that that's not something that [public agencies] do. A strategic marketing plan that incorporates constant contact, emailing, and touch points to their website, keeping their website updated, LinkedIn, Instagram." [#FG2a]*

The City should consider consolidating communication about upcoming workshops and technical assistance programs so that business owners have a clear indication of which program might suit them best. The City should also lean into initiatives to market programs through social media platforms and use existing partnerships to get the word out about programs offered by the HIVE.

g. KPIs. The primary metric most organizations use to assess the effectiveness of their contracting inclusion efforts is to monitor and report the percentage of contract and procurement dollars they spend with small and diverse businesses relative to all the contract dollars they award. Considering the sheer amount of dollars organizations tend to award each year, it would likely require them to award substantial volumes of work to small and diverse businesses to meaningfully increase the overall percentage of dollars they award to those businesses in aggregate. Although doing so is important, focusing exclusively on the percentage of dollars an organization awards to small and disadvantaged businesses may incentivize organizations to repeatedly award work to the small and disadvantaged businesses that are already relatively successful or encourage them to pursue large contracts or procurements they might not be ready to perform. In addition, focusing exclusively on the percentage of dollars an organization awards to small and diverse businesses can obscure some of the value contracting inclusion programs provide. For example, if the City were to establish multiple tiers of SBEs within the SWaM Procurement Program with efforts focused on the smallest businesses (e.g., SBE-1s), the contract dollars the City awards to those businesses may not have a substantial impact on the overall percentage of dollars the City awards to SWaM businesses relative to its total contract dollars, but those efforts would likely be of immense value to SBE-1s, which likely need the most support.

In addition to the overall percentage of dollars the City awards to small and diverse businesses, the organization might consider tracking other KPIs that better reflect all the value that the SWaM Procurement Program provides. Doing so might also encourage internal staff to support more businesses in the marketplace that need it most. Examples of such metrics include:

- The number of different small and diverse businesses to which the City awards work;
- The number of contracts and procurements the City awards to those businesses;
- The volume of work the City awards to businesses that have never worked with the City in the past;
- Various characteristics of the small and diverse businesses to which the City awards work (beyond their race, gender, and SDV status), including business size, location, age, industry, and average contract size; and
- Success stories of individual businesses that the SWaM Procurement Program has helped.

h. SWaM Business Office capacity and enforcement. The City employs dedicated staff members within the SWaM Business Office to implement the SWaM Procurement Program, set contract goals on relevant projects, and monitor the participation of SWaM businesses in its work, among other responsibilities. Refinements and expansions of the Project Goals, Small Business Enhancement, and Sheltered Bidding Programs will involve close monitoring and enforcement that may require an expansion of the SWaM Business Office. When considering how many additional staff members it might need, the City should consider various functions, including:

- Assisting businesses with relevant certification requirements;
- Administering the SWaM Procurement Program (e.g., setting overall aspirational goals and monitoring business participation in City work);
- Implementing various program measures, including networking and outreach, technical assistance programs, determining eligible projects for the Sheltered Bidding Program, and setting project-specific goals, as applicable;
- Conducting contract compliance activities with respect to project-specific SWaM, MBE, and WBE goals, as applicable;
- Training City staff on program policies and measures.

Additionally, the expansion of various elements of the SWaM Procurement Program—including setting project goals on a greater number of projects and expanding the use of the Sheltered Bidding Program—will require efficient communication across City departments to ensure that the selected projects for the programs are aligned with the needs of each department and the availability of specific work types for those projects. It is critical for the SWaM Business Office and the Office of Purchasing to be closely involved in reviewing projects for their eligibility for those programs and setting project goals, likely even more so than they are now.

APPENDIX A.
Definitions of Terms

Appendix A defines terms useful to understanding the 2025 City of Virginia Beach (City) Disparity Study report.

Architecture and Engineering (A/E)

A/E refers to the professional, scientific, or technical services that require a high degree of expertise and training to support, plan, and ensure the safety of horizontal and vertical construction. Examples of A/E include architectural, engineering, and specialized design services; building inspection services; testing services; surveying and mapping services; environmental consulting services; and transportation planning services.

Business

A business is a for-profit enterprise, including sole proprietorships, corporations, professional corporations, limited liability companies, limited partnerships, limited liability partnerships, and any other business structures. The definition includes the headquarters of the entity as well as all its other locations, if applicable.

City of Virginia Beach (City)

Virginia Beach is the most populous city in Virginia and one of the 40 most populous cities in the United States. The City provides myriad services to the nearly 500,000 people who live and work in the region, including police and fire protection, health and mental health services, road construction and maintenance, water and sewage services, and a variety of social and economic services.

Commonwealth of Virginia (Commonwealth)

The Commonwealth comprises various agencies, departments, and offices to oversee the functions and management of Virginia. It also operates the Small, Woman, and Minority-owned Business Program, including the associated certification process.

Compelling Governmental Interest

As part of the strict scrutiny standard of constitutional review, a government agency must demonstrate a compelling governmental interest in remedying any identified discrimination in order to use race-based measures. That is, an agency that uses race-based measures as part of a contracting program has the initial burden of showing evidence of barriers or discrimination—including statistical and anecdotal evidence—that supports the need for such measures. The agency must assess such discrimination within its own relevant geographic market area.

Construction

Construction refers to the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. “Buildings, structures, or other real property” includes bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, channels, and other structures.

Consultant

A consultant is a business that performs professional services work.

Contract

A contract is a legally binding relationship between the seller of goods or services and a buyer. The study team sometimes uses the term contract interchangeably with *procurement* or *project*.

Contract Element

A contract element is either a prime contract or subcontract.

Contract Goals

Contract goals are often a race- or gender-based effort whereby organizations set percentage goals for the participation of minority- or woman-owned businesses in individual contracts or procurements they award. Certain contract goals may be race- and gender-neutral in nature, such as goals for the participation of service-disabled veteran (SDV)-owned businesses. As a condition of award, prime contractors have to meet contract goals as part of their bids, quotes, or proposals by making participation commitments with eligible, certified minority-, woman-, or SDV-owned businesses, or if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts to do so. The use of contract goals as they apply to minority- and woman-owned businesses must meet the strict scrutiny and intermediate scrutiny standards of constitutional review, respectively.

Contractor

A contractor is a business that performs construction work.

Control

Control means exercising management and executive authority of a business.

Custom Census Availability Analysis

A custom census availability analysis is one in which researchers attempt surveys with potentially available businesses located in an organization's relevant geographic market area to collect information about key business characteristics. Researchers then take survey information about those businesses and match them to the characteristics of contracts and procurements the organization actually awarded during some study period to assess the percentage of dollars one might expect the organization to award to specific groups of businesses. A custom census availability approach is accepted in the industry as the preferred method for conducting availability analyses, because it takes myriad factors into account, including businesses' primary lines of work and their capacities to perform work on an organization's contracts and procurements.

Department of Small Business and Supplier Diversity (SBSD)

SBSD is the Commonwealth of Virginia agency responsible for the administration of the Small, Woman, and Minority-owned Business certification program.

Disparity

A disparity is an appreciable difference between an actual outcome and some benchmark where the actual outcome is less than the benchmark. In this report, the term disparity refers specifically to a difference between the participation of a specific group of businesses in the City of Virginia Beach's contracting and procurement and the estimated availability of the group for that work.

Disparity Analysis

A disparity analysis examines whether there are any differences between the participation of a specific group of businesses in an organization's work and the estimated availability of the group for that work.

Disparity Index

A disparity index is computed by dividing the percentage of contract and procurement dollars an organization awarded to a specific group of businesses by the dollars one would expect the organization to award to those businesses based on their availability for that work. A disparity index is expressed as a dollar amount that represents how many dollars (or cents) the organization awarded to the group of businesses relative to every dollar of the organization's work for which those businesses are available.

Dun & Bradstreet (D&B)

D&B is the leading global provider of lists of business establishments and other business information for specific industries within specific geographical areas (for details, see www.dnb.com).

Goods and Services

A goods and services business engages in providing goods, supplies, or services that typically do not require a specific educational background, license, or high degree of expertise and training to perform. Examples of goods and services industries include cleaning and janitorial services and supplies; office equipment and supplies; printing, copying, and mailing services; safety equipment; security systems; security guard services; uniforms and apparel; automobiles; and vehicle repair services.

Good Faith Efforts (GFEs)

GFEs are genuine and meaningful steps bidders take to meet a contract goal, even if they were unsuccessful in doing so. Bidders may submit a waiver detailing their GFEs in lieu of meeting program requirements, and the organization reviews those efforts when evaluating the bid. Failure to demonstrate sufficient GFEs may render a bidder's bid non-responsive.

Industry

An industry is a broad classification of businesses providing related goods or services (e.g., construction or professional services).

Inference of Discrimination

An inference of discrimination is the conclusion that businesses whose owners identify with particular race or gender groups suffer from barriers or discrimination in the marketplace based on sufficient quantitative or qualitative evidence. When inferences of discrimination exist, government organizations sometimes use race- or gender-based measures to address the barriers affecting those businesses. Courts have generally considered substantial disparities between the participation and availability of a particular group of businesses for an organization's contracts and procurements as an inference of discrimination that supports the use of race-based contracting measures.

Intermediate Scrutiny

Intermediate scrutiny is the legal standard government organizations' use of gender-based measures must meet in order to be considered constitutional. It is more rigorous than the rational basis standard, which applies to business measures unrelated to race or gender but less rigorous than the strict scrutiny standard, which applies to business measures related to race. In order for programs to meet intermediate scrutiny, they must serve important government objectives, and they must be substantially related to achieving those objectives.

Marketplace Conditions

Marketplace conditions refers to various factors that potentially affect outcomes for certain workers and businesses operating in that marketplace (e.g., minorities, women, service-disabled veterans, and the businesses they own). The study team assessed conditions in the Virginia Beach marketplace in four primary areas: human capital, financial capital, business ownership, and business success.

Minority

A minority is an individual who identifies with one of the following racial groups: Asian Pacific, Black, Hispanic, Middle Eastern and North African, Native American, Subcontinent Asian, or other non-White racial groups.

Minority-owned Business

A minority-owned business is a business with at least 51 percent ownership and control by individuals who identify with one of the following racial groups: Asian Pacific, Black, Hispanic, Middle Eastern and North African, Native Americans, Subcontinent Asian, or other non-White racial groups. The study team considered businesses owned by minority men or minority women as minority-owned businesses. A business does not have to be certified as such by the Department of Small Business and Supplier Diversity or any other organization to be considered a minority-owned business.

Narrow Tailoring

As part of the strict scrutiny standard of constitutional review, a government organization must demonstrate that its use of race-based measures is narrowly tailored. There are several factors a court considers when determining whether the use of such measures is narrowly tailored, including:

- The necessity of such measures and the efficacy of alternative, race-neutral measures;
- The degree to which the use of such measures is limited to those groups that suffer barriers or discrimination in the local marketplace;
- The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;
- The relationship of any numerical goals to the relevant business marketplace; and
- The impact of such measures on the rights of third parties.

Passive Participation

Passive participation in discrimination refers to government organizations perpetuating discrimination in their contract and procurement processes simply by operating in marketplaces where such barriers exist, and thus, unintentionally perpetuating them as part of their contracting processes.

Participation

See *utilization*.

Prime Consultant

Prime consultants are businesses that perform professional services work directly for end users, such as the City of Virginia Beach.

Prime Contract

Prime contracts are contracts between prime contractors or prime consultants and end users, such as the City of Virginia Beach.

Prime Contractor

Prime contractors are construction businesses or goods and services vendors that perform work directly for end users, such as the City of Virginia Beach.

Procurement

See *contract*.

Professional Services

Professional services refers to professional, scientific, or technical services that require a high degree of expertise and training. Individuals who perform professional services are frequently—but not always—required to have a license or specific educational background. Examples of professional services include legal counsel; accounting, bookkeeping, and payroll services; computer services; consulting services; research services; advertising services; photographic services; and other professional, scientific, and technical services.

Project

Projects refer to construction, architecture and engineering, professional services, or goods and services endeavors the City of Virginia Beach bids out. Projects could include one or more prime contracts and corresponding subcontracts.

Qualitative Information

Qualitative information includes personal accounts of experiences—including any incidents of discrimination—and perceptions related to the marketplace that individual interviewees, public meeting participants, focus group participants, and other stakeholders shared with the study team.

Race- and Gender-based Measures

Race- and gender-based measures are contracting measures designed to increase the participation of minority- and woman-owned businesses, specifically, in government work. Businesses owned by individuals who identify with particular race groups might be eligible for such measures, whereas others might not. Similarly, businesses owned by individuals who identify as women might be eligible for such measures, whereas businesses owned by individuals who identify as men might not. An example of race- and gender-based measures is an organization's use of minority- or woman-owned business participation goals in awarding individual contracts or procurements.

Race- and Gender-neutral Measures

Race- and gender-neutral measures are measures designed to address potential barriers for businesses regardless of the race or gender of the owners. Race- and gender-neutral measures may include providing assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, and establishing programs to support start-up businesses.

Rational Basis

Government organizations that operate contracting inclusion programs that rely solely on race- and gender-neutral measures to encourage the participation of businesses in their work must show a rational basis for their programs. Showing a rational basis requires organizations to demonstrate their contracting programs are rationally related to legitimate government interests. It is the lowest threshold for evaluating the legality of government contracting programs.

Relevant Geographic Market Area (RGMA)

The RGMA is the geographic area in which the businesses to which organizations award most of their contracting dollars are located. Case law related to contracting inclusion programs and disparity studies requires analyses to focus on the RGMA. The RGMA for the disparity study includes the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia (sometimes collectively referred to as the *Virginia Beach marketplace*).

Service-Disabled Veteran (SDV)

An SDV is a veteran who: 1) served on active duty in the United States military ground, naval, or air service; 2) was discharged or released under conditions other than dishonorable; and 3) has a service-related disability rating fixed by the United States Department of Veterans Affairs.

Service-Disabled Veteran (SDV)-owned Business

An SDV-owned business is a business with at least 51 percent ownership and control by SDVs. A business does not have to be certified as such by the Department of Small Business and Supplier Diversity or any other organization to be considered an SDV-owned business.

Small Business

A small business is a business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less over the previous three years.

Small Business Set Aside

A small business set aside is a procurement policy by which the City of Virginia Beach reserves bidding for a particular contract or procurement exclusively for small businesses.

Statistically Significant Difference

A statistically significant difference is a quantitative difference for which there is a 0.95 or 0.90 probability that chance can be correctly rejected as an explanation for the difference (that is, there is a 0.05 or 0.10 probability, respectively, that chance could correctly account for the difference).

Strict Scrutiny

Strict scrutiny is the legal standard a government agency's use of race-based measures must meet to be considered constitutional. Strict scrutiny is the highest threshold for evaluating the legality of measures that might impinge on the rights of others, short of prohibiting them altogether. Under the strict scrutiny standard, an organization must:

- Have a compelling governmental interest in remedying past identified discrimination or its present effects; and
- Establish that the use of any such measures is narrowly tailored to achieve the goal of remedying the identified discrimination.

An organization's use of race-based measures must meet both the compelling governmental interest and the narrow tailoring components of the strict scrutiny standard for it to be considered constitutional.

Study Period

The study period is the time period on which the study team focused for the utilization, availability, and disparity analyses. The study period for the disparity study was July 1, 2020 through June 30, 2024. The City of Virginia Beach had to have awarded contracts or procurements during the study period for them to be included in our analyses.

Subcontract

Subcontracts are contracts between prime contractors or prime consultants and other businesses providing goods or services to the prime contractors or prime consultants as part of larger projects.

Subcontracting Participation Plan

A Subcontracting Participation Plan is a plan bidders and offerors must include as part of their bids or proposals for City of Virginia Beach projects detailing the participation of small businesses, minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses as subcontractors on their teams. Bidders and offerors are required to submit Subcontracting Participation plans whenever they intend to rely on subcontractor participation to meet any applicable participation goals on projects.

Subcontractor

Subcontractors are businesses that provide goods or services to prime contractors as part of larger projects.

Subindustry

Subindustries are specific classifications for businesses providing related goods or services within particular industries (e.g., highway and street construction is a subindustry of construction).

Substantial Disparity

Substantial disparities are disparities of $0.80 or less, indicating that the actual participation of a specific business group in agency work is $0.80 percent or less of the group's estimated availability. Substantial disparities are considered inferences of discrimination in the relevant geographic market area against particular business groups. Government organizations sometimes use substantial disparities as justification for the use of race- or gender-based measures to address barriers affecting certain groups of minority- or woman-owned businesses.

Small, Woman, and Minority-owned Business (SWaM) Business Office

The SWaM Business Office is housed under the City of Virginia Beach's (the City's) Finance Department, Purchasing Division and is responsible for implementing the SWaM Procurement Program and monitoring the City's progress towards achieving its annual aspirational goals.

Small, Woman, and Minority-owned Business (SWaM)-certified Business

A SWaM-certified business is a business that is certified as a small business, minority-owned business, or woman-owned business by the Department of Small Business and Supplier Diversity or a successor department of the Commonwealth of Virginia.

Small, Woman, and Minority-owned Business (SWaM) Procurement Program

The City of Virginia Beach's (the City's) SWaM Procurement Program includes myriad race- and gender-neutral and race- and gender-based efforts the City uses to meet three overall aspirational participation goals each year:

- Awarding 12.0 percent of its contracting dollars to minority-owned businesses;
- Awarding 13.3 percent of its contracting dollars to woman-owned businesses; and
- Awarding 11.9 percent of its contracting dollars to service-disabled veteran-owned businesses.

The SWaM Procurement Program also includes data collection and analysis requirements for the SWaM Business Office to assess whether the City achieves its goals in a given year, and if it does not, to work with relevant departments to ensure that it is better positioned to meet them the following year.

Utilization

Utilization refers to the percentage of total dollars associated with a particular set of contracts or procurements the City of Virginia Beach awarded to a specific group of businesses during the study period. The study team uses the term utilization synonymously with *participation*.

Vendor

Vendors are businesses that supply goods either to prime contractors or prime consultants or to end users, such as the City of Virginia Beach.

Woman-owned Business

A woman-owned business is a business with at least 51 percent ownership and control by White women. Businesses do not have to be certified by the Department of Small Business and Supplier Diversity or any other organization to be considered woman-owned businesses. (The study team considered businesses owned by women of color as minority-owned businesses.)

APPENDIX B.
Legal Framework and Analysis

A. Introduction

In this appendix, Holland & Knight LLP discusses recent cases involving local and state government minority- and women-owned and disadvantaged-owned business enterprise (MBE/WBE/DBE) programs, and social and economic disadvantaged business programs, which are instructive to the study and MBE/WBE/DBE programs. The appendix provides a summary of the legal framework for the disparity study as applicable to Virginia Beach of multiple local government agencies.

The appendix also discusses recent cases regarding the Federal Disadvantaged Business Enterprise (Federal DBE) Program, notes instructive guidance regarding the Federal Airport Concessions Disadvantaged Business Enterprise (Federal ACDBE) Program, and provides an analysis of the implementation of the Federal DBE and ACDBE Programs by local and state governments.[1, 2] The Federal DBE Program was continued and reauthorized by the 2015 Fixing America's Surface Transportation Act (FAST Act).[3] In October 2018, Congress passed the FAA (Federal Aviation Administration) Reauthorization Act.[4] In November 2021, Congress passed the Infrastructure Investment and Jobs Act of 2021, which reauthorized the Federal DBE Program based on findings of continuing discrimination and related barriers posing significant obstacles for MBE/WBE/DBEs.[5]

The appendix reviews the landmark United States Supreme Court decision in *City of Richmond v. J.A. Croson* (*Croson*).[6] *Croson* sets forth the strict scrutiny constitutional analysis applicable in the legal framework for conducting a disparity study. This section also notes the United States Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, (*Adarand I*), which applied the strict scrutiny analysis set forth in *Croson* to federal programs that provide federal assistance to a recipient of federal funds.[7] The Supreme Court's decisions in *Adarand I* and *Croson*, and subsequent cases and authorities provide the basis for the legal analysis in connection with the study.

The legal framework analyzes, discusses and includes significant recent court decisions that have followed, interpreted, and applied *Croson* and *Adarand I* to the present and that are applicable to this disparity study, the Federal DBE Program and its implementation by state and local governments and recipients of federal funds, MBE/WBE/DBE programs, and the strict scrutiny analysis. The City of

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1 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (Federal DBE Program). See the Transportation Equity Act for the 21st Century (TEA-21) as amended and reauthorized (MAP-21, SAFETEA, and SAFETEA-LU), and the United States Department of Transportation (USDOT or DOT) regulations promulgated to implement TEA-21, the federal regulations known as Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.; preceded by Pub L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1156; preceded by Pub L. 105-178, Title I, § 1101(b), June 9, 1998, 112 Stat. 107.

2 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions).

3 Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

4 Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.

5 Pub. L. 117-58, H.R. 3684, §11101(e), November 15, 2021, 135 Stat 443-449.

6 *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

7 *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

Virginia Beach is in the United States Court of Appeals for the Fourth Circuit. In particular, this analysis discusses and references Fourth Circuit Court of Appeals decisions, which followed the *Croson* decision and applied the strict scrutiny standard, that are instructive to the study, including the decisions in *H. B. Rowe Co., Inc. v. W. Lyndo Tippett, North Carolina DOT et al.* (*H.B. Rowe*) and district court decisions in the Fourth Circuit regarding MBE/WBE/DBE programs.[8]

In addition, the analysis includes and references recent federal cases from other jurisdictions that have considered the validity of the Federal DBE Program and its implementation by state departments of transportation (DOTs) and local or state government agencies and the validity of local and state DBE programs, focusing on the application by those courts of the strict scrutiny standard and disparity studies, including: *Mid-America Milling Company LLC and Bagshaw Trucking Inc. v. United States Department of Transportation (USDOT), et. al.*; *Associated General Contractors of America (AGC), San Diego Chapter, Inc. v. California Department of Transportation (Caltrans), et al.*; *Western States Paving Co. v. Washington State DOT, Orion Insurance Group, Ralph G. Taylor v. Washington Minority & Women's Business Enterprise, USDOT, et al.* (*Western States*); *Mountain West Holding Co. v. Montana, Montana DOT, et al.*; *M.K. Weeden Construction v. Montana, Montana DOT, et al.*; *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads* (*Sherbrooke Turf*); *Geyer Signal, Inc. v. Minnesota DOT*; *Adarand Constructors, Inc. v. Slater (Adarand VII)*; *United States v. Taylor*; *Geod Corporation v. New Jersey Transit Corporation*; *South Florida Chapter of the AGC v. Broward County Florida*; *Midwest Fence Corp. v. USDOT, Federal Highway Administration (FHWA), Illinois DOT, Illinois State Toll Highway Authority, et al.* (*Midwest Fence*); *Dunnet Bay Construction Co. v. Illinois DOT* (*Dunnet Bay*); and *Northern Contracting, Inc. v. Illinois DOT* (*Northern Contracting*).[9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23]

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8 615 F.3d 233 (4th Cir. 2010).

9 Mid-America Milling Company LLC (MAMCO) and Bagshaw Trucking Inc. v. U.S. Department of Transportation, et. al. 2024 WL 4267183 (Sept. 23, 2024); U.S. District Court for the Eastern District of Kentucky, Frankfort Division; Case No: 3:23 -cv-00072-GFVT.

10 *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. 2013)

11 *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005)

12 *Orion Insurance Group, Ralph G. Taylor v. Washington Minority & Women's Business Enterprise, U.S. DOT, et al.*

13 *Mountain West Holding Co. v. Montana, Montana DOT, et al.*

14 *M.K. Weeden Construction v. Montana, Montana DOT, et al.*

15 *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004).

16 *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014).

17 *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147 (10th Cir. 2000) ("*Adarand VII*").

18 232 F.Supp. 3d 741 (W.D. Penn. 2017)

19 *Geod Corp. v. New Jersey Transit Corp.*, 766 F. Supp.2d. 642 (D. N.J. 2010); *Geod Corporation v. New Jersey Transit Corporation, et seq.* 678 F.Supp.2d 276, 2009 WL 2595607 (D.N.J. August 20, 2009

20 *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F. Supp.2d 1336 (S.D. Fla. 2008).

21 *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), cert. denied, 2017 WL 497345 (2017).

22 *Dunnet Bay Construction Co. v. Borggren, Illinois DOT, et al.*, 799 F.3d 676, 2015 WL 4934560 (7th Cir. 2015), cert. denied, 2016 WL 193809 (2016); *DunnetBay Construction Co. v. Illinois DOT*, et. al. 2014 WL 552213 (C. D. Ill. 2014), affirmed by *Dunnet Bay*, 2015 WL 4934560 (7th Cir. August 19, 2015).

23 *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007).

The analysis also references, discusses, and analyzes recent court decisions that involved challenges to MBE/WBE/DBE programs and social and economic disadvantaged business programs in other jurisdictions, which are instructive to the study.

The analyses of these and other recent cases discussed below, including the Fourth Circuit decisions, are instructive to the disparity study because they are decisions by courts setting forth the legal framework applied to MBE/WBE/DBE Programs, the Federal DBE Program, and its implementation by local and state governments receiving USDOT funds, disparity studies, social and economic disadvantaged business programs, and construing the validity of government programs involving MBE/WBE/DBEs and social and economic disadvantaged businesses. They also are pertinent in terms of an analysis and consideration and, if legally appropriate under the strict scrutiny standard, preparation of narrowly tailored local or state government MBE/WBE/DBE programs.

The appendix notes in Section C.5 below significant pending and very recent cases instructive and informative to the study and MBE/WBE/DBE and social and economic disadvantaged business type programs. We can provide more detail on these cases if requested.

In addition, the appendix points out in Sections C.6, C.7, and C.8 references to January 2025 Executive Orders issued by the President, a February 2025 Attorney General Memorandum, and Title VI Complaints against the State of New York's MWBE Program and the Wisconsin Department of Administration Supplier Diversity Program, which have been filed recently with the United States Department of Justice (USDOJ) requesting investigations.

B. United States Supreme Court Cases

The following section summarizes key United States Supreme Court Cases.

1. *City of Richmond v. J.A. Croson Co.* (*Croson*), 488 U.S. 469 (1989). In *Croson*, the United States Supreme Court struck down the City of Richmond's "set-aside" program as unconstitutional because it did not satisfy the strict scrutiny analysis applied to "race-based" governmental programs.[24] J.A. Croson Co. (Croson) challenged the City of Richmond's minority contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more MBEs. In enacting the plan, the City cited past discrimination and an intent to increase minority business participation in construction projects as motivating factors.

The Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the "strict scrutiny" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination and that any program adopted by a local or state government must be "narrowly tailored" to achieve the goal of remedying the identified discrimination.

The Court determined that the plan neither served a "compelling governmental interest" nor offered a "narrowly tailored" remedy to past discrimination. The Court found no "compelling governmental interest" because the City had not provided "a strong basis in evidence for its conclusion that [race-

24 488 U.S. 469 (1989).

based] remedial action was necessary."[25] The Court held that the City presented no direct evidence of any race discrimination on its part in awarding construction contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors.[26] The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the City failed to demonstrate that the plan was "narrowly tailored" for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase minority business participation in city contracting, and because of the over inclusiveness of certain minorities in the "preference" program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.[27]

The Court stated that reliance on the disparity between the number of prime contracts awarded to minority firms and the minority population of the City of Richmond was misplaced. There is no doubt, the Court held, that "[w]here gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination" under Title VII.[28] But it is equally clear that "[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value."[29]

The Court concluded that where special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of minorities qualified to undertake the particular task. The Court noted that "the city does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects."[30] "Nor does the city know what percentage of total city construction dollars minority firms now receive as subcontractors on prime contracts let by the city."[31]

The Supreme Court stated that it did not intend its decision to preclude a state or local government from "taking action to rectify the effects of identified discrimination within its jurisdiction."[32] The Court held that "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise."[33]

The Court said: "If the City of Richmond had evidence before it that nonminority contractors were systematically excluding minority businesses from subcontracting opportunities it could take action to

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[25] 488 U.S. at 500, 510.

[26] 488 U.S. at 480, 505.

[27] 488 U.S. at 507-510.

[28] 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307–308, 97 S.Ct. 2736, 2741.

[29] 488 U.S. at 501 quoting *Hazelwood*, 433 U.S. at 308, n. 13, 97 S.Ct., at 2742, n. 13.

[30] 488 U.S. at 502.

[31] *Id.*

[32] 488 U.S. at 509.

[33] *Id.*

end the discriminatory exclusion."[34] "Under such circumstances, the city could act to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria." "In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion."[35]

The Court further found "if the City could show that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the City could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice."[36]

2. *Adarand Constructors, Inc. v. Peña* (*Adarand I*), 515 U.S. 200 (1995). In *Adarand I*, the United States Supreme Court extended the holding in *Croson* and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass a test of strict scrutiny in order to survive constitutional muster.

The cases interpreting *Croson* and *Adarand I* are the most recent and significant decisions by federal courts setting forth the legal framework for disparity studies as well as the predicate to satisfy the constitutional strict scrutiny standard of review, which applies to the implementation of the Federal DBE Program and Federal ACDBE Program by recipients of federal funds.

3. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (*SFFA*), 143 S. Ct. 2141 (June 29, 2023). In *SFFA*, the Supreme Court held unconstitutional under the Equal Protection Clause of the Fourteenth Amendment the admissions systems used by Harvard College and the University of North Carolina. The Majority decision of the Court referenced, cited, and applied the Supreme Court decisions in *Croson* and *Adarand,* including the strict scrutiny standard, to the university admissions systems in these cases. The Majority decision in the *SFFA* case did not specifically rule on or address the constitutionality of MBE/WBE/DBE contracting programs by local or state governments or the implementation of the Federal DBE or ACDBE Programs by local or state governments, airports, transit or transportation authorities, or other government agencies.

This decision focused on university admissions and diversity as the basis for a race-conscious type program. It did not involve a federal, local, or state government contracting program. Recent cases, including as noted in Section C.5 below, have referenced and cited the *SFFA* decision in connection with challenges to federal, local, or state government contracting programs.

It is noteworthy that, subsequent to the Supreme Court decision in *SFFA,* Attorneys General from 13 states sent a letter, dated July 13, 2023, to "Fortune 100 CEOs" in which, among other statements, they urged businesses, to "immediately cease any unlawful race-based quotas or preferences your company has adopted for its employment and contracting practices." The Commonwealth of Virginia Attorney General was not among the state Attorneys General signing the July 13, 2023 letter.

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34 488 U.S. at 509.

35 *Id.*

36 488 U.S. at 492.

On July 19, 2023, Attorneys General from 20 states sent a letter to "Fortune 100 CEOs" in which they responded to and opposed the statements in the July 13, 2023 letter sent by the Attorneys General from the 13 states. This letter provides that the *"SFFA* does not directly address or govern the behavior or the initiatives of private sector businesses." In addition, the letter provides that *"SFFA* acknowledges that our society has a compelling interest in 'remediating specific, identified instances of past discrimination that violated the Constitution or a statute.' *SFFA*, slip op. at 15." The State of Virginia Attorney General was not among the state Attorneys General signing the July 19, 2023 letter.

C. The Legal Framework Applied to State and Local Government MBE/WBE/DBE Programs and Their Implementation of the Federal DBE and ACDBE Programs

The following provides an analysis for the legal framework focusing on recent key cases regarding state and local government MBE/WBE/DBE programs. The recent decisions involving these state and local government MBE/WBE/DBE programs, the Federal DBE Program and its implementation by state and local governments, and social and economic disadvantaged business programs are instructive because they concern the strict scrutiny analysis, the legal framework in this area, challenges to the validity of MBE/WBE/DBE programs, and an analysis of disparity studies and the implementation of the Federal DBE and ACDBE Programs by local and state government recipients of federal financial assistance (USDOT funds) based on 49 CFR Part 26 and 49 CFR Part 23.

The analysis also discusses the application of intermediate scrutiny and rational basis standards as applied to gender discrimination and social and economic business type programs.

1. The Federal DBE Program (and ACDBE Program) Implemented By State and Local Governments. The Congressional Acts noted above are informative as they are based on recent Congressional findings as to discrimination regarding MBE/WBE/DBEs, including relating to the Federal DBE Program, which set forth Congressional findings as to discrimination against MBE/WBE/DBEs, including from disparity studies and other evidence. Congress passed legislation in November 2021, (H.R. 3684 - 117th Congress, Section 11101, Infrastructure Investment and Jobs Act of 2021) that reauthorized the Federal DBE Program and its implementation by local and state governments based on evidence and findings of continuing discrimination and related barriers posing significant obstacles for MBE/WBE/DBEs.

The USDOJ in January 2022 issued a report that updated its 1996 report, "The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence," which "summarizes recent evidence required to justify the use of race- and sex-conscious provisions in federal contracting programs." The "Notice of Report on Lawful Uses of Race or Sex in Federal Contracting Programs" is published in the Federal Register, Vol. 87 at page 4955, January 31, 2022. This "updated report regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs" is available on the Department of Justice's website at: https://www.justice.gov/crt/page/file/1463921/download.

The federal government determined that there is a compelling governmental interest for race- and gender-based programs at the national level, and that the program is narrowly tailored because of the federal regulations, including the flexibility in implementation provided to individual federal aid recipients by the regulations. State and local governments are not required to implement race- and gender-based measures where they are not necessary to achieve DBE goals and those goals may be achieved by race- and gender-neutral measures.[37]

Although, as referenced above ,several federal courts of appeal have upheld the constitutionality of the Federal DBE Program, it is noteworthy that a federal district court in *Mid-America Milling Company LLC and Bagshaw Trucking Inc. v. USDOT, et. al.*, which is noted below in Section C.5 (viii), recently has considered a challenge to the Federal DBE Program.[38] Plaintiffs sought a preliminary and permanent injunction and a declaratory judgment that the Federal DBE Program, including Sections 11101(e)(2) and (3) of the Infrastructure Act and corresponding federal regulations, are unconstitutional because they violate the Equal Protection Clause of the United States Constitution. Plaintiffs' Motion for Preliminary Injunction was granted that enjoined enforcement of the Federal DBE Program as applied to the Plaintiffs in each state in which they bid or operate. The court enjoined USDOT from mandating the use of race- and gender-based rebuttable presumptions for certain groups regarding its contracts impacted by DBE goals. Currently the case is pending, with the most recent filings including a Joint Motion for Entry of a Consent Order proposed by the USDOT and the Plaintiffs requesting the court hold the Federal DBE Program unconstitutional in its requirement for presumptions of groups being eligible as DBEs, and an Intervention by Intervenor DBEs that are supporting the DBE Program, *See*, Section C.5 (viii), below.

2. Strict scrutiny analysis. A race- and ethnicity-based program implemented by a state or local government is subject to the strict scrutiny constitutional analysis.[39] The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.[40]

a. The compelling governmental interest requirement. The first prong of the strict scrutiny analysis requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination in order to implement a race- and ethnicity-based program.[41] State and local governments cannot rely on national statistics of discrimination in an industry to draw conclusions

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37 49 CFR § 26.51; see 49 CFR § 23.25.

38 2024 WL 4635430 (E.D. Ky. Oct. 31, 2024); 2024 WL 4267183 (Sept. 23, 2024), U.S. District Court for the Eastern District of Kentucky, Frankfort Division; Case No: 3:23 -cv-00072-GFV

39 *Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Pena (Adarand I)*, 515 U.S. 200, 227 (1995); see, e.g., *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H.B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng'g Contractors Ass'n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 990 (3d. Cir. 1993).

40 *Adarand I*, 515 U.S. 200, 227 (1995); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9th Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *Associated Gen. Contractors of Ohio, Inc. v. Drabik ("Drabik II")*, 214 F.3d 730 (6th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng'g Contractors Ass'n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 990 (3d. Cir. 1993).

41 *Id.*

about the prevailing market conditions in their own regions.[42] Rather, state and local governments must measure discrimination in their state or local market. However, that is not necessarily confined by the jurisdiction's boundaries.[43]

The federal courts have held that, with respect to the Federal DBE Program, recipients of federal funds, such as state and local governments, do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.[44] The federal courts also have held that Congress had ample evidence of discrimination in the transportation contracting industry to justify the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 CFR Part 26).[45]

It is instructive to review the type of evidence utilized by Congress and considered by the courts to support the Federal DBE Program and its implementation by local and state governments and agencies, which is similar to evidence considered by cases ruling on the validity of MBE/WBE/DBE programs. The federal courts found Congress "spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry."[46] The evidence found to satisfy the compelling interest standard included numerous

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42 *Id.*; see, e.g., *Concrete Works, Inc. v. City and County of Denver ("Concrete Works I")*, 36 F.3d 1513, 1520 (10th Cir. 1994).

43 See, e.g., *Concrete Works I*, 36 F.3d at 1520.

44 *N. Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; See *Midwest Fence*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), and affirming, 84 F. Supp. 3d 705, 2015 WL 1396376.

45 *Id. But, see, Mid-America Milling Company LLC (MAMCO) and Bagshaw Trucking Inc. v. U.S. DOT*, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024)(Holding USDOT evidence insufficient to support Federal DBE Program). In the case of *Rothe Dev. Corp. v. U.S. Dept. of Defense*, 545 F.3d 1023 (Fed. Cir. 2008), the Federal Circuit Court of Appeals pointed out it had questioned in its earlier decision whether the evidence of discrimination before Congress was in fact so "outdated" so as to provide an insufficient basis in evidence for the Department of Defense (DOD) program (i.e., whether a compelling interest was satisfied). 413 F.3d 1327 (Fed. Cir. 2005). The Court after its 2005 decision remanded the case to the district court to rule on this issue. *Rothe* considered the validity of race- and gender-conscious DOD regulations. The decisions in *N. Contracting*, *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving* held the evidence of discrimination nationwide in transportation contracting was sufficient to find the Federal DBE Program on its face was constitutional. On remand, the district court in *Rothe* on August 10, 2007 issued its order denying plaintiff Rothe's Motion for Summary Judgment and granting Defendant United States's Cross-Motion for Summary Judgment, holding the 2006 Reauthorization of the 1207 DOD Program constitutional. *Rothe Dev . Corp. v. U.S. Dept. of Defense*, 499 F.Supp.2d 775 (W.D. Tex. 2007). The district court found the data contained in the Appendix (The Compelling Interest, 61 Fed. Reg. 26050 (1996)), the Urban Institute Report, and the Benchmark Study – relied upon in part by the courts in *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving* in upholding the constitutionality of the Federal DBE Program – was "stale" as applied to and for purposes of the 2006 Reauthorization of the 1207 DOD Program. This district court finding was not appealed or considered by the Federal Circuit Court of Appeals. 545 F.3d 1023, 1037. The Federal Circuit Court of Appeals reversed the district court decision in part and held invalid the DOD Section 1207 program as enacted in 2006. 545 F.3d 1023, 1050*. See also* the 2012 district court decision in *DynaLantic Corp. v. U.S. Department of Defense, et al.*, 885 F.Supp.2d 237, (D.D.C.). In the 2016 decision in *Rothe Development, Inc. v. U.S. Dept of Defense and U.S. S.B.A.*, 836 F.3d 57 (D.C. Cir. Sept. 9, 2016), the United States Court of Appeals, District of Columbia Circuit, upheld the constitutionality of the Section 8(a) Program on its face, finding the Section 8(a) statute was race-neutral. The Court of Appeals affirmed on other grounds the district court decision that had upheld the constitutionality of the Section 8(a) Program. The district court had found the federal government's evidence of discrimination provided a sufficient basis for the Section 8(a) Program. 107 F.Supp. 3d 183, 2015 WL 3536271 (D. D.C. June 5, 2015). *But, see, Ultima Services Corp. v. U.S. Department of Agriculture, U.S. Small Business Administration, et. al.,* 2023 WL 4633481 (E.D. Tenn. July 19, 2023)(Holding unconstitutional the rebuttable presumption of groups included in the Section 8(a) program).

46 *Sherbrooke Turf*, 345 F.3d at 970, (citing *Adarand VII*,228 F.3d at 1167 – 76 (10th Cir. 2000); *Western States Paving*, 407 F.3d at 992-93.

congressional investigations and hearings, and outside studies of statistical and anecdotal evidence (*e.g.*, disparity studies).[47]

As noted above, a federal district court in Kentucky in *Mid-America Milling v. USDOT* (see section C.5 (viii) below) granted Plaintiffs' Motion for Preliminary Injunction that enjoined enforcement of the Federal DBE Program as applied to the Plaintiffs in each state in which they bid or operate. The court enjoined USDOT from mandating the use of race- and gender-based rebuttable presumptions for certain groups. The court considered in part the evidence presented by the federal defendants, including certain evidence presented to Congress, in connection with determining if the strict scrutiny standard was satisfied by the Federal DBE Program. The Plaintiffs and USDOT have filed a Joint Motion for Entry of a Consent Order that includes holding unconstitutional the Federal DBE Program's use of race- and sex-based rebuttable presumptions for certain groups. The United States Magistrate Judge has entered an Order granting intervention by Intervenor DBEs to support the DBE Program (see section C.5 (viii) below). This case is pending, at the time of this report, and the Preliminary Injunction remains in place.

The evidentiary basis on which Congress relied to support its finding of discrimination, which multiple federal Courts of Appeal and district courts have considered and found among other evidence sufficient to satisfy the strict scrutiny standard (see pages 2-3 above and citations below), includes:

- **Barriers to minority business formation.** Congress found that discrimination by prime contractors, unions, and lenders has woefully impeded the formation of qualified minority business enterprises in the subcontracting market nationwide, noting the existence of "good ol' boy" networks, from which minority firms have traditionally been excluded, and the race-based denial of access to capital, which affects the formation of minority subcontracting enterprise.[48]
- **Barriers to competition for existing minority enterprises.** Congress found evidence showing systematic exclusion and discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies precluding minority enterprises from opportunities to bid. When minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. Congress found evidence of the same prime contractor using a minority business enterprise on a government contract not using that minority business enterprise on a private contract, despite being satisfied with that subcontractor's work. Congress found that informal, racially exclusionary business networks dominate the subcontracting construction industry.[49]
- **Local disparity studies.** Congress found that local studies throughout the country tend to show a disparity between utilization and availability of minority-owned firms, raising an inference of discrimination.[50]
- **Results of removing affirmative action programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinued, minority business

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47 See, e.g., *Adarand VII*, 228 F.3d at 1167– 76 (10th Cir. 2000); see also *Western States Paving*, 407 F.3d at 992 (Congress "explicitly relied upon" the Department of Justice study that "documented the discriminatory hurdles that minorities must overcome to secure federally funded contracts"); *Geyer Signal, Inc.*, 2014 WL 1309092.

48 *Adarand VII*, 228 F.3d. at 1168-70 (10th Cir. 2000); *Western States Paving*, 407 F.3d at 992; see Geyer Signal, Inc., 2014 WL 1309092; *DynaLantic*, 885 F.Supp.2d 237.

49 *Adarand VII*, at 1170-72 (10th Cir. 2000); see *DynaLantic*, 885 F.Supp.2d 237.

50 *Id.* at 1172-74 (10th Cir. 2000); see *DynaLantic*, 885 F.Supp.2d 237; *Geyer Signal, Inc.*, 2014 WL 1309092.

participation in the relevant market drops sharply or even disappears, which courts have found strongly supports the government's claim that there are significant barriers to minority competition, raising the specter of discrimination.[51]

- **Infrastructure Investment and Jobs Act of 2021, Federal Aviation Administration (FAA) Reauthorization Act of 2018, FAST Act, and MAP-21.** In November 2021, October 2018, December 2015, and July 2012, Congress passed the Infrastructure Investment and Jobs Act of 2021, the FAA Reauthorization Act, the FAST Act, and MAP-21, respectively, which made "Findings" that "discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in "federally-assisted surface transportation markets," in airport-related markets, and that the continuing barriers "merit the continuation" of the Federal DBE Program and the Federal ACDBE Program.[52] Congress also found in the Infrastructure Investment and Jobs Act of 2021, the FAA Reauthorization Act of 2018, the FAST Act, and MAP-21 that it received and reviewed testimony and documentation of race and gender discrimination which "provide a strong basis that there is a compelling need for the continuation of the" Federal ACDBE Program and the Federal DBE Program.[53]

i. Burden of proof to establish the strict scrutiny standard. Under the strict scrutiny analysis, and to the extent a state or local governmental entity has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a strong basis in evidence (including statistical and anecdotal evidence) to support its remedial action.[54] If the government makes its initial showing, the burden shifts to the challenger to rebut that showing.[55] The challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of prior discrimination."[56]

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[51] *Adarand VII*, 228 F.3d at 1174-75 (10th Cir. 2000); see, *H. B. Rowe*, 615 F.3d 233, 247-258 (4th Cir. 2010); *Sherbrooke Turf*, 345 F.3d at 973-4.

[52] Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021; Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94, H.R. 22, §1101(b), December 4, 2015, 129 Stat 1312; Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.

[53] *Id.* at Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021; Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94. H.R. 22, § 1101(b)(1) (2015).

[54] See *AGC, SDC v. Caltrans*, 713 F.3rd at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242, 247-258 (4th Cir. 2010); *Rothe Development Corp. v. Department of Defense*, 545 F.3d 1023, 1036 (Fed. Cir. 2008); *N. Contracting, Inc. Illinois*, 473 F.3d at 715, 721 (7th Cir. 2007) (Federal DBE Program); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 990-991 (9th Cir. 2005) (Federal DBE Program); *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964, 969 (8th Cir. 2003) (Federal DBE Program); *Adarand Constructors Inc. v. Slater ("Adarand VII")*, 228 F.3d 1147, 1166 (10th Cir. 2000) (Federal DBE Program); *Eng'g Contractors Ass'n*, 122 F.3d at 916; *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 713 (9th Cir. 1997); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092; *DynaLantic*, 885 F.Supp.2d 237, 2012 WL 3356813; *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County*, 333 F. Supp.2d 1305, 1316 (S.D. Fla. 2004).

[55] *Adarand VII*, 228 F.3d at 1166; *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Eng'g Contractors Ass'n*, 122 F.3d at 916; *Geyer Signal, Inc.*, 2014 WL 1309092.

[56] See, e.g., *Adarand VII*, 228 F.3d at 1166; *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*,6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Eng'g Contractors Ass'n*, 122 F.3d at 916; see also *Sherbrooke Turf*, 345 F.3d at 971; *N. Contracting*, 473 F.3d at 721; *Geyer Signal, Inc.*, 2014 WL 1309092.

In applying the strict scrutiny analysis, the courts hold that the burden is on the government to show both a compelling interest and narrow tailoring.[57] It is well established that "remedying the effects of past or present racial discrimination" is a compelling interest.[58] In addition, the government must also demonstrate "a strong basis in evidence for its conclusion that remedial action [is] necessary."[59]

Since the decision by the Supreme Court in *Croson*, "numerous courts have recognized that disparity studies provide probative evidence of discrimination."[60] "An inference of discrimination may be made with empirical evidence that demonstrates 'a significant statistical disparity between a number of qualified minority contractors … and the number of such contractors actually engaged by the locality or the locality's prime contractors.'"[61] Anecdotal evidence may be used in combination with statistical evidence to establish a compelling governmental interest.[62]

In addition to providing "hard proof" to support its compelling interest, the government must also show that the challenged program is narrowly tailored.[63] Once the governmental entity has shown acceptable proof of a compelling interest and remedying past discrimination and illustrated that its plan is narrowly tailored to achieve this goal, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional.[64] Therefore, notwithstanding the burden of initial production rests with the government, the ultimate burden remains with the party challenging

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57 *Id.*; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990; See also *Majeske v. City of Chicago*, 218 F.3d 816, 820 (7th Cir. 2000); *Geyer Signal, Inc.*, 2014 WL 1309092.

58 *Shaw v. V. Hunt*, 517 U.S. 899, 909 (1996); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989); see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

59 *Croson*, 488 U.S. at 500; see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242; *Sherbrooke Turf*, 345 F.3d at 971-972; *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092.

60 *Midwest Fence*, 2015 W.L. 1396376 at *7 (N.D. Ill. 2015), affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3rd at 1195-1200; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Concrete Works of Colo. Inc. v. City and County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994), *Geyer Signal*, 2014 WL 1309092 (D. Minn, 2014); see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

61 See e.g., *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 2015 W.L. 1396376 at *7, quoting *Concrete Works*; 36 F.3d 1513, 1522 (quoting *Croson*, 488 U.S. at 509), affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d 233, 241-242 (8th Cir. 2003); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

62 *Croson*, 488 U.S. at 509; see, e.g., *AGC, SDC v. Caltrans*, 713 R.3d at 1196; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 WL 1396376 at *7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

63 *Adarand Constructors, Inc. v. Pena, ("Adarand III")*, 515 U.S. 200 at 235 (1995); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Majeske v. City of Chicago*, 218 F.3d at 820; *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

64 *Majeske*, 218 F.3d at 820; see, e.g. *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 277-78; *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Midwest Fence*, 2015 WL 1396376 *7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Geyer Signal*, Inc., 2014 WL 1309092; *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

the application of a DBE or MBE/WBE Program to demonstrate the unconstitutionality of an affirmative-action type program.[65]

To successfully rebut the government's evidence, the courts hold that a challenger must introduce "credible, particularized evidence" of its own that rebuts the government's showing of a strong basis in evidence for the necessity of remedial action.[66] This rebuttal can be accomplished by providing a neutral explanation for the disparity between MBE/WBE/DBE utilization and availability, showing that the government's data is flawed, demonstrating that the observed disparities are statistically insignificant, or presenting contrasting statistical data.[67] Conjecture and unsupported criticisms of the government's methodology are insufficient.[68] The courts have held that mere speculation the government's evidence is insufficient or methodologically flawed does not suffice to rebut a government's showing.[69]

The courts have stated that "it is insufficient to show that 'data was susceptible to multiple interpretations,' instead, plaintiffs must 'present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts.'"[70] The courts hold that in assessing the evidence offered in support of a finding of discrimination, it considers "both direct and circumstantial evidence, including post-enactment evidence introduced by defendants as well as the evidence in the legislative history itself."[71]

The courts have noted that "there is no 'precise mathematical formula to assess the quantum of evidence that rises to the *Croson* 'strong basis in evidence' benchmark."[72] The courts hold that a state need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in

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65 *Id.*; *Adarand VII*, 228 F.3d at 1166 (10th Cir. 2000).

66 See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at *7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092.

67 See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I")*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at *7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; see, generally, *Engineering Contractors*, 122 F.3d at 916; *Coral Construction, Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991).

68 *Id.*; *H. B. Rowe*, 615 F.3d at 242; see also, *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Sherbrooke Turf*, 345 F.3d at 971-974; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

69 *H.B. Rowe*, 615 F.3d at 242; see *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 991; see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

70 *Geyer Signal, Inc.*, 2014 WL 1309092, quoting *Sherbrooke Turf*, 345 F.3d at 970.

71 *Id*, quoting *Adarand Constructors, Inc.*, 228 F.3d at 1166; see, e.g., *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 597 (3d Cir. 1996).

72 *H.B. Rowe*, 615 F.3d at 241, quoting *Rothe Dev. Corp. v. Dep't of Def.*, 545 F.3d 1023, 1049 (Fed. Cir. 2008) (quoting *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 n. 11 (5th Cir. 1999)); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

evidence for concluding that remedial action is necessary.[73] Instead, the Supreme Court stated that a government may meet its burden by relying on "a significant statistical disparity" between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.[74] It has been further held by the courts that the statistical evidence must be "corroborated by significant anecdotal evidence of racial discrimination" or bolstered by anecdotal evidence supporting an inference of discrimination.[75]

The courts have stated the strict scrutiny standard is applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically "fatal in fact."[76] In so acting, a governmental entity must demonstrate it had a compelling interest in "remedying the effects of past or present racial discrimination."[77]

Thus, courts have held that to justify a race-conscious measure, a government must identify that discrimination, public or private, with some specificity, and must have a strong basis in evidence for its conclusion that remedial action is necessary.[78]

ii. Statistical evidence. Statistical evidence of discrimination is a primary method used to determine whether or not a strong basis in evidence exists to develop, adopt and support a remedial program (i.e., to prove a compelling governmental interest)—or in the case of a state or local government recipient, complying with the Federal DBE Program—to prove narrow tailoring of program implementation at the state or local government recipient level.[79] "Where gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination."[80]

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73 *H.B. Rowe Co.*, 615 F.3d at 241; see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 958 (10th Cir. 2003); , *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

74 *Croson*, 488 U.S. 509, see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *H.B. Rowe*, 615 F.3d at 241; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

75 *H.B. Rowe*, 615 F.3d at 241, quoting *Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *AGC, San Diego v. Caltrans*, 713 F.3d at 1196; see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

76 See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); see, e.g., *H. B. Rowe*, 615 F.3d at 241; 615 F.3d 233 at 241.

77 See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); see, e.g., *H. B. Rowe*; quoting *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

78 See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); *H. B. Rowe*; 615 F.3d 233 at 241 quoting, *Croson*, 488 U.S. at 504 and *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986)(plurality opinion); see, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993).

79 See, e.g., *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1195-1196; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also, *Concrete Works*, 321 F.3d 950, 959 (10th Cir. 2003); *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

80 *Croson*, 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977); see *Midwest Fence*, 840 F.3d 932, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1196-1197; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States*

One form of statistical evidence is the comparison of a government's utilization of MBE/WBEs compared to the relative availability of qualified, willing, and able MBE/WBEs.[81] The federal courts have held that a significant statistical disparity between the utilization and availability of minority- and women-owned firms may raise an inference of discriminatory exclusion.[82] However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.[83]

Other considerations regarding statistical evidence include:

Availability analysis. A disparity index requires an availability analysis. MBE/WBE and DBE/ACDBE availability measures the relative number of MBE/WBEs/DBEs and ACDBEs among all firms ready, willing, and able to perform a certain type of work within a particular geographic market area.[84] There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.[85] "An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach."[86]

Utilization analysis. Courts have accepted measuring utilization based on the proportion of an agency's contract dollars going to MBE/WBEs and DBEs.[87]

Paving, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999).

81 *Croson*, 448 U.S. at 509; see *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041-1042; *Concrete Works of Colo., Inc. v. City and County of Denver ("Concrete Works II")*, 321 F.3d 950, 959 (10th Cir. 2003); *Drabik II*, 214 F.3d 730, 734-736; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

82 See, e.g., *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041; *Concrete Works II*, 321 F.3d at 970; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d. Cir. 1993); see also *Western States Paving*, 407 F.3d at 1001; *Kossman Contracting*, 2016 WL 1104363 (S.D. Tex. 2016).

83 *Western States Paving*, 407 F.3d at 1001.

84 See, e.g., *Croson*, 448 U.S. at 509; 49 CFR § 26.35; *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *Rothe*, 545 F.3d at 1041-1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 602-603 (3d. Cir. 1996); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

85 *Contractors Ass'n of Eastern Pennsylvania, Inc. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 603 (3d Cir. 1996); see, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197, quoting *Croson*, 488 U.S. at 706 ("degree of specificity required in the findings of discrimination … may vary."); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *W.H. Scott Constr. Co. v. City of Jackson, Mississipp*i, 199 F.3d 206, 217-218 (5th Cir. 1999); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

86 *Contractors Ass'n of Eastern Pennsylvania, Inc. v. City of Philadelphia ("CAEP II")*, 91 F.3d 586, 603 (3d Cir. 1996); see, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197, quoting *Croson*, 488 U.S. at 706 ("degree of specificity required in the findings of discrimination … may vary."); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

87 See *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Concrete Works*, 321 F.3d at 958, 963-968, 971-972 (10th Cir. 2003); *Eng'g Contractors Ass'n*, 122 F.3d at 912; *N. Contracting*, 473 F.3d at 717-720; *Sherbrooke Turf*, 345 F.3d at 973.

Disparity index. An important component of statistical evidence is the "disparity index."[88] A disparity index is defined as the ratio of the percent utilization to the percent availability times 100. A disparity index below 80 has been accepted as evidence of adverse impact. This has been referred to as "The Rule of Thumb" or "The 80 percent Rule."[89]

Two standard deviation test. The standard deviation figure describes the probability that the measured disparity is the result of mere chance. Some courts have held that a statistical disparity corresponding to a standard deviation of less than two is not considered statistically significant.[90]

In terms of statistical evidence, the courts, including the Ninth Circuit, have held that a state "need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence," but rather it may rely on "a significant statistical disparity" between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.[91]

iii. Marketplace discrimination and data. The Tenth Circuit in *Concrete Works* held the district court erroneously rejected the evidence the local government presented on marketplace discrimination.[92] The court rejected the district court's "erroneous" legal conclusion that a municipality may only remedy its own discrimination. The court stated this conclusion is contrary to the holdings in its 1994 decision in *Concrete Works II* and the plurality opinion in *Croson.*[93] The court held it previously recognized in this case that "a municipality has a compelling interest in taking affirmative steps to remedy both public *and private* discrimination specifically identified in its area."[94] In *Concrete Works II,* the court stated that "we

88 *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Concrete Works*, 321 F.3d at 958, 963-968, 971-972 (10th Cir. 2003); *Eng'g Contractors Ass'n*, 122 F.3d at 914; *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 602-603 (3d. Cir. 1996); *Contractors Ass'n of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 at 1005 (3rd Cir. 1993).

89 See, e.g., *Ricci v. DeStefano*, 557 U.S. 557, 129 S.Ct. 2658, 2678 (2009); *Midwest Fence*, 840 F.3d 932, 950 (7th Cir. 2016); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *AGC, SDC v. Caltrans*, 713 F.3d at 1191; Rothe, 545 F.3d at 1041; *Eng'g Contractors Ass'n*, 122 F.3d at 914, 923; *Concrete Works I*, 36 F.3d at 1524.

90 See, e.g., *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Eng'g Contractors Ass'n*, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct; *Peightal v. Metropolitan Eng'g Contractors Ass'n*, 26 F.3d 1545, 1556 (11th Cir. 1994). The Seventh Circuit Court of Appeals in *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359 (7th Cir. 2001), raised questions as to the use of the standard deviation test alone as a controlling factor in determining the admissibility of statistical evidence to show discrimination. Rather, the Court concluded it is for the judge to say, on the basis of the statistical evidence, whether a particular significance level, in the context of a particular study in a particular case, is too low to make the study worth the consideration of judge or jury. 255 F.3d at 363.

91 *H. B. Rowe*, 615 F.3d 233 at 241, citing *Croson*, 488 U.S. at 509 (plurality opinion), and citing *Concrete Works*, 321 F.3d at 958; see, e.g.; *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041; *Concrete Works II*, 321 F.3d at 970; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605; Concrete Works, 36 F.3d at 1529 (10th Cir. 1994); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d. Cir. 1993); see also *Western States Paving*, 407 F.3d at 1001; *Kossman Contracting*, 2016 WL 1104363 (S.D. Tex. 2016).

92 *Id*. at 973.

93 *Id*.

94 *Id*., quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added).

do not read Croson as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination."[95]

The court stated that the local government could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination.[96] Thus, the local government was not required to demonstrate that it is "guilty of prohibited discrimination" to meet its initial burden.[97]

Additionally, the court had previously concluded that the local government's statistical studies, which compared utilization of MBE/WBEs to availability, supported the inference that "local prime contractors" are engaged in racial and gender discrimination.[98] Thus, the court held the local government's disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination.[99]

The court held the district court, *inter alia,* erroneously concluded that the disparity studies upon which the local government relied were significantly flawed because they measured discrimination in the overall local government metropolitan statistical area (MSA) construction industry, not discrimination by the municipality itself.[100] The court found that the district court's conclusion was directly contrary to the holding in *Adarand VII* that evidence of both public and private discrimination in the construction industry is relevant.[101]

In *Adarand VII,* the Tenth Circuit noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation.[102] ("[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*"[103] Further, the court pointed out that it earlier rejected the argument that marketplace data are irrelevant, and remanded the case to the district court to determine whether the local government could link its public spending to "the Denver MSA evidence of industry-wide discrimination."[104] The court stated that evidence explaining "the Denver government's role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*" was relevant to the local government's burden of producing strong evidence.[105]

Consistent with the court's mandate in *Concrete Works II,* the local government attempted to show at trial that it "indirectly contributed to private discrimination by awarding public contracts to firms that in

95 *Concrete Works*, 321 F.3d 950, 973 (10th Cir. 2003), quoting *Concrete Works II*, 36 F.3d at 1529 (10th Cir. 1994).

96 *Id.* at 973.

97 *Id.*

98 *Id.* at 974, quoting *Concrete Works II*, 36 F.3d at 1529.

99 *Id.*

100 *Id.* at 974.

101 *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67.

102 *Concrete Works*, 321 F.3d at 976, citing *Adarand VII*, 228 F.3d at 1166-67.

103 *Id.* (emphasis added).

104 *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

105 *Id.*, quoting *Concrete Works II*, 36 F.3d at 1530 (emphasis added).

turn discriminated against MBE and/or WBE subcontractors in other private portions of their business."[106] The Tenth Circuit ruled that the local government can demonstrate that it is a "'passive participant" in a system of racial exclusion practiced by elements of the local construction industry" by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination.[107]

The court in *Concrete Works* rejected the argument that the lending discrimination studies and business formation studies presented by the local government were irrelevant. In *Adarand VII,* the Tenth Circuit concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition between MBE/WBEs and majority-owned construction firms shows a "strong link" between a government's "disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination."[108]

The court found that evidence that private discrimination resulted in barriers to business formation is relevant because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for public construction contracts. The court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the local government MSA construction industry, studies showing that discriminatory barriers to business formation exist in the local government construction industry are relevant to the municipality's showing that it indirectly participates in industry discrimination.[109]

The local government also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The court held that the district court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in *Adarand VII*. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiable) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion.[110]

In sum, the Tenth Circuit held the district court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the local government's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary.[111]

iv. Anecdotal evidence*.* Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness' perspective. Anecdotal evidence of discrimination, standing alone,

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106 *Id*.

107 *Concrete Works*, 321 F.3d at 976, quoting *Croson*, 488 U.S. at 492.

108 *Id*. at 977, quoting *Adarand VII*, 228 F.3d at 1167-68.

109 *Id*. at 977.

110 *Id*. at 979, quoting *Adarand VII*, 228 F.3d at 1174.

111 *Id*. at 979-80.

generally is insufficient to show a systematic pattern of discrimination.[112] But personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.[113] It has been held that anecdotal evidence of a local or state government's institutional practices that exacerbate discriminatory market conditions are often particularly probative, and that the combination of anecdotal and statistical evidence is "potent."[114]

Examples of anecdotal evidence may include:

- Testimony of MBE/WBE or DBE owners regarding whether they face difficulties or barriers;
- Descriptions of instances in which MBE/WBE or DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender or believe they were treated fairly without regard to race, ethnicity, or gender;
- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from MBE/WBEs or DBEs on non-goal projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.[115]

Courts have accepted and recognize that anecdotal evidence is the witness's narrative of incidents told from his or her perspective, including the witness's thoughts, feelings, and perceptions, and thus anecdotal evidence need not be verified.[116]

b. The narrow tailoring requirement. The second prong of the strict scrutiny analysis requires that a race- or ethnicity-based program or legislation implemented to remedy past identified discrimination in the relevant market be "narrowly tailored" to reach that objective.

The narrow tailoring requirement has several components and the courts, including the Ninth Circuit Court of Appeals, analyze several criteria or factors in determining whether a program or legislation satisfies this requirement including:

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112 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *Eng'g Contractors Ass'n*, 122 F.3d at 924-25; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d. Cir. 1993); *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); *O'Donnel Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).

113 See, e.g., *Midwest Fence*, 840 F.3d 932, 953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *H. B. Rowe*, 615 F.3d 233, 248-249; *Concrete Works*, 321 F.3d 950, 989-990 (10th Cir. 2003); *Eng'g Contractors Ass'n*, 122 F.3d at 925-26; *Concrete Works*, 36 F.3d at 1520 (10th Cir. 1994); *Contractors Ass'n*, 6 F.3d at 1003; *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

114 *Concrete Works I*, 36 F.3d at 1520; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d Cir. 1993); *Coral Construction Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

115 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242; 249-251; *Northern Contracting*, 2005 WL 2230195, at 13-15 (N.D. Ill. 2005), affirmed, 473 F.3d 715 (7th Cir. 2007); see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d Cir. 1993); *Concrete Works*, 321 F.3d at 989; *Adarand VII*, 228 F.3d at 1166-76. For additional examples of anecdotal evidence, see *Eng'g Contractors Ass'n*, 122 F.3d at 924; *Concrete Works*, 36 F.3d at 1520; *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 915 (11th Cir. 1990); *DynaLantic*, 885 F.Supp.2d 237; *Florida A.G.C. Council, Inc. v. State of Florida*, 303 F. Supp.2d 1307, 1325 (N.D. Fla. 2004).

116 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242, 248-249; *Concrete Works II*, 321 F.3d at 989; *Eng'g Contractors Ass'n*, 122 F.3d at 924-26; *Cone Corp.*, 908 F.2d at 915; *Northern Contracting, Inc. v. Illinois*, 2005 WL 2230195 at *21, N. 32 (N.D. Ill. Sept. 8, 2005), *aff'd* 473 F.3d 715 (7th Cir. 2007).

- The necessity for the relief and the efficacy of alternative race-, ethnicity-, and gender-neutral remedies;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of a race-, ethnicity-, or gender-conscious remedy on the rights of third parties.[117]

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of the Federal DBE Program, which is instructive to the study, the federal courts that have evaluated state and local DBE programs and their implementation of the Federal DBE Program held the following factors are pertinent:

- Evidence of discrimination or its effects in the state transportation contracting industry;
- Flexibility and duration of a race- or ethnicity-conscious remedy;
- Relationship of any numerical DBE goals to the relevant market;
- Effectiveness of alternative race- and ethnicity-neutral remedies;
- Impact of a race- or ethnicity-conscious remedy on third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.[118]

The Eleventh Circuit described the "the essence of the 'narrowly tailored' inquiry [as] the notion that explicitly racial preferences … must only be a 'last resort' option."[119] Courts have found that "[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake."[120]

Similarly, the Sixth Circuit Court of Appeals in *Associated Gen. Contractors v. Drabik (Drabik II)*, stated: "*Adarand* teaches that a court called upon to address the question of narrow tailoring must ask, "for example, whether there was 'any consideration of the use of race-neutral means to increase minority

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[117] See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Rothe*, 545 F.3d at 1036; *Western States Paving*, 407 F3d at 993-995; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181(10th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng'g Contractors Ass'n,* 122 F.3d at 927 (internal quotations and citations omitted); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 605-610 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1008-1009 (3d. Cir. 1993); see also, *Geyer Signal, Inc.*, 2014 WL 1309092.

[118] See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 243-245, 252-255; *Western States Paving*, 407 F.3d at 998; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services*, 140 F.Supp.2d at 1247-1248; see also *Geyer Signal, Inc.*, 2014 WL 1309092.

[119] *Eng'g Contractors Ass'n*, 122 F.3d at 926 (internal citations omitted); see also *Virdi v. DeKalb County School District*, 135 Fed. Appx. 262, 264, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion); *Webster v. Fulton County*, 51 F. Supp.2d 1354, 1380 (N.D. Ga. 1999), aff'd per curiam 218 F.3d 1267 (11th Cir. 2000).

[120] See *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509-10 (1989); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; see also *Adarand I*, 515 U.S. at 237-38.

business participation' in government contracting … or whether the program was appropriately limited such that it 'will not last longer than the discriminatory effects it is designed to eliminate.'"[121]

The Supreme Court in *Parents Involved in Community Schools v. Seattle School District* also found that race- and ethnicity-based measures should be employed as a last resort.[122] The majority opinion stated: "Narrow tailoring requires 'serious, good faith consideration of workable race-neutral alternatives,' and yet in Seattle several alternative assignment plans—many of which would not have used express racial classifications—were rejected with little or no consideration."[123] The Court found that the District failed to show it seriously considered race-neutral measures.

The "narrowly tailored" analysis is instructive in terms of developing any potential legislation or programs that involve MBE/WBE/DBEs or in connection with determining appropriate remedial measures to achieve legislative objectives.

i. Implementation of the Federal DBE Program: Narrow tailoring. The second prong of the strict scrutiny analysis requires the implementation of the Federal DBE Program by state and local government recipients of federal funds be "narrowly tailored" to remedy identified discrimination in the particular state or local government recipient's contracting and procurement market.[124] The cases considering challenges to a state government's implementation of the Federal DBE Program are instructive to the study, as stated above, in connection with establishing a compelling governmental interest and narrow tailoring, which are the two prongs of the strict scrutiny standard.

In *Northern Contracting,* the Seventh Circuit Court of Appeals cited its earlier precedent in *Milwaukee County Pavers v. Fielder* to hold "that a state is insulated from [a narrow tailoring] constitutional attack, absent a showing that the state exceeded its federal authority. IDOT [Illinois DOT] here is acting as an instrument of federal policy and Northern Contracting (NCI) cannot collaterally attack the federal regulations through a challenge to IDOT's program."[125] The Seventh Circuit distinguished both the Ninth Circuit Court of Appeals decision in *Western States* and the Eighth Circuit Court of Appeals decision in *Sherbrooke Turf*, relating to an as-applied narrow tailoring analysis.

The Seventh Circuit held that IDOT's application of a federally mandated program is limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program.[126] The Seventh Circuit analyzed IDOT's compliance with the federal regulations regarding calculation of the availability of DBEs, adjustment of its goal based on local market conditions, and its use of race-neutral methods set forth in the federal regulations.[127] The court held NCI failed to demonstrate that

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121 *Associated Gen. Contractors of Ohio, Inc. v. Drabik ("Drabik II")*, 214 F.3d 730, 738 (6th Cir. 2000).

122 551 U.S. 701, 734-37, 127 S.Ct. 2738, 2760-61 (2007).

123 551 U.S. 701, 734-37, 127 S.Ct. at 2760-61; see also *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Grutter v. Bollinger*, 539 U.S. 305 (2003).

124 *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199 (9th Cir. 2013); *Western States Paving*, 407 F3d at 995-998; *Sherbrooke Turf*, 345 F.3d at 970-71; see, e.g., *Midwest Fence*, 840 F.3d 932, 949-953.

125 473 F.3d at 722.

126 *Id.* at 722.

127 *Id.* at 723-24.

IDOT did not satisfy compliance with the federal regulations (49 CFR Part 26).[128] Accordingly, the Seventh Circuit affirmed the district court's decision upholding the validity of IDOT's DBE program.[129]

The 2015 and 2016 Seventh Circuit decisions in *Dunnet Bay* and *Midwest Fence* followed the ruling in *Northern Contracting* that a state DOT implementing the Federal DBE Program is insulated from a constitutional challenge absent a showing that the state exceeded its federal authority.[130] The court held the IDOT DBE Program implementing the Federal DBE Program was valid, finding there was not sufficient evidence to show IDOT exceeded its authority under the federal regulations.[131]

The court found Dunnet Bay had not established sufficient evidence that IDOT's implementation of the Federal DBE Program constituted unlawful discrimination.[132] In addition, the court in *Midwest Fence* upheld the constitutionality of the Federal DBE Program, and upheld the IDOT DBE Program and the Illinois State Tollway Highway Authority DBE Program that did not involve federal funds under the Federal DBE Program.[133]

It is noteworthy that there appears to be a split in approach regarding implementation of the Federal DBE Program by state and local governments between the Ninth Circuit regarding the legal standard, burden, and analysis in connection with a state government implementing the Federal DBE Program, and the Seventh Circuit Court of Appeals in *Midwest Fence* and in *Dunnet Bay*, which upheld the implementation of the Federal DBE Program by IDOT.[134, 135, 136]

The court in *Dunnet Bay* held the Plaintiff lacked standing to challenge the IDOT DBE Program, and that even if it had standing, any other federal claims were foreclosed by the *Northern Contracting* decision because there was no evidence IDOT exceeded its authority under federal law.[137] The Seventh Circuit in *Midwest Fence* also held the Federal DBE Program is facially constitutional and upheld the implementation of that federal program by IDOT in its DBE Program following the *Northern Contracting* decision. The Seventh Circuit agreed with the Eighth, Ninth, and Tenth Circuits that the Federal DBE Program is narrowly tailored on its face, and thus survives strict scrutiny.[138]

ii. Race-, ethnicity-, and gender-neutral measures. To the extent a "strong basis in evidence" exists concerning discrimination in a local or state government's relevant contracting and procurement market, the courts analyze several criteria or factors to determine whether a state's implementation of a

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128 *Id.*

129 *Id.*; See, e.g., *Midwest Fence*, 840 F.3d 932 (7th Cir. 2016); *Midwest Fence*, 84 F. Supp. 3d 705, 2015 WL 1396376 (N.D. Ill. 2015), affirmed, 840 F.3d 932 (7th Cir. 2016); *Geod Corp. v. New Jersey Transit Corp., et al.*, 746 F.Supp 2d 642 (D.N.J. 2010); *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F.Supp.2d 1336 (S.D. Fla. 2008).

130 *Midwest Fence*, 840 F.3d 932 (7th Cir. 2016); *Dunnet Bay Construction Company v. Borggren, Illinois DOT, et al.*, 799 F. 3d 676, 2015 WL 4934560 at **18-22 (7th Cir. 2015).

131 *Dunnet Bay*, 799 F.3d 676, 2015 WL 4934560 at **18-22.

132 *Id.*

133 840 F.3d 932 (7th Cir. 2016).

134 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

135 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

136 799 F. 3d 676, 2015 WL 4934560 (7th Cir. 2015).

137 *Id.*

138 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016)

race- or ethnicity-conscious program is necessary and thus narrowly tailored to achieve remedying identified discrimination. One of the key factors discussed above is consideration of race-, ethnicity-, and gender-neutral measures.

The courts require that a local or state government seriously consider race-, ethnicity-, and gender-neutral efforts to remedy identified discrimination.[139] And the courts have held unconstitutional those race- and ethnicity-conscious programs implemented without consideration of race- and ethnicity-neutral alternatives to increase minority business participation in state and local contracting.[140]

The Court in *Croson*, followed by decisions from federal courts of appeal, found that local and state governments have at their disposal a "whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races."[141]

Examples of race-, ethnicity-, and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial, and financial assistance;
- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- "How to do business" seminars;
- Sponsoring networking sessions throughout the state to acquaint small firms with large firms;
- Creation and distribution of MBE/WBE and DBE directories; and

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139 See, e.g., *Midwest Fence*, 840 F.3d 932, 937-938, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Adarand VII*, 228 F.3d at 1179 (10th Cir. 2000); *Eng'g Contractors Ass'n*, 122 F.3d at 927; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass'n (CAEP I)*, 6 F.3d at 1008-1009 (3d. Cir. 1993); *Coral Constr.*, 941 F.2d at 923.

140 See, *Croson*, 488 U.S. at 507; Drabik I, 214 F.3d at 738 (citations and internal quotations omitted); see also, *Eng'g Contractors Ass'n*, 122 F.3d at 927; *Virdi*, 135 Fed. Appx. At 268; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass'n(CAEP (I)*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

141 *Croson*, 488 U.S. at 509-510.

- Streamlining and improving the accessibility of contracts to increase small business participation.[142]

The courts have held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race-, ethnicity-, and gender-neutral alternative, it does "require serious, good faith consideration of workable race-neutral alternatives.[143]

iii. Additional factors considered under narrow tailoring. In addition to the required consideration of the necessity for the relief and the efficacy of alternative remedies (race- and ethnicity-neutral efforts), the courts require evaluation of additional factors as listed above.[144] For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility; (2) good faith efforts provisions; (3) waiver provisions; (4) a rational basis for goals; (5) graduation provisions; (6) remedies only for groups for which there were findings of discrimination; (7) sunset provisions; and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.[145,146, 147,148, 149, 150, 151, 152]

Several federal court decisions have upheld the Federal DBE Program and its implementation by state DOTs and recipients of federal funds, including satisfying the narrow tailoring factors.[153]

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142 See, e.g., *Croson*, 488 U.S. at 509-510; *H. B. Rowe*, 615 F.3d 233, 252-255; *N. Contracting*, 473 F.3d at 724; *Adarand VII*, 228 F.3d 1179(10th Cir. 2000); 49 CFR § 26.51(b); see also, *Eng'g Contractors Ass'n*, 122 F.3d at 927-29; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

143 *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 732-47, 127 S.Ct 2738, 2760-61 (2007); *AGC, SDC v. Caltrans*, 713 F.3d at 1199, citing *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Eng'g Contractors Ass'n*, 122 F.3d at 927.

144 See *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 252-255; *Sherbrooke Turf*, 345 F.3d at 971-972; *Eng'g Contractors Ass'n*, 122 F.3d at 927; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

145 *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1009; *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality ("AGC of Ca.")*, 950 F.2d 1401, 1417 (9th Cir. 1991); *Coral Constr. Co. v. King County*, 941 F.2d 910, 923 (9th Cir. 1991); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 917 (11th Cir. 1990).

146 *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1019; *Cone Corp.*, 908 F.2d at 917.

147 *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *AGC of Ca.*, 950 F.2d at 1417; *Cone Corp.*, 908 F.2d at 917; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

148 *Id*; *Sherbrooke Turf*, 345 F.3d at 971-973; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

149 *Id*.

150 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 253-255; *Western States Paving*, 407 F.3d at 998; *AGC of Ca.*, 950 F.2d at 1417; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 593-594, 605-609 (3d. Cir. 1996); *Contractors Ass'n (CAEP I)*, 6 F.3d at 1009, 1012 (3d. Cir. 1993); *Kossman Contracting Co., Inc., v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016); *Sherbrooke Turf*, 2001 WL 150284 (unpublished opinion), aff'd 345 F.3d 964.

151 See, e.g., *H. B. Rowe*, 615 F.3d 233, 254; *Sherbrooke Turf*, 345 F.3d at 971-972; *Peightal*, 26 F.3d at 1559; . see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016).

152 *Coral Constr.*, 941 F.2d at 925.

153 *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); see, e.g., *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), cert. denied, 2017 WL 497345 (2017); *Dunnet Bay Construction Co. v. Borggren, Illinois DOT,*

These decisions regarding state DOTs, transit and transportation authorities, and recipients of federal financial assistance implementing the Federal DBE Program and MBE/WBE/DBE cases throughout the country are instructive to the legal framework and analysis and the study.

3. Intermediate scrutiny analysis. Certain Federal Courts of Appeal, including the Fourth Circuit Court of Appeals, apply intermediate scrutiny to gender-conscious programs.[154] The courts, including the Fourth Circuit, have applied "intermediate scrutiny" to classifications based on gender.[155] Restrictions subject to intermediate scrutiny are permissible so long as they are substantially related to serve an important governmental interest.[156]

The courts have interpreted this intermediate scrutiny standard to require that gender-based classifications be:

1. Supported by both "sufficient probative" evidence or "exceedingly persuasive justification" in support of the stated rationale for the program; and

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et al., 799 F.3d 676, 2015 WL 4934560 (7th Cir. 2015), cert. denied, 2016 WL 193809 (2016); *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. 2013); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006); *Mountain West Holding Co., Inc. v. The State of Montana, Montana DOT, et al.*, 2017 WL 2179120 Memorandum Opinion (Not for Publication) (9th Cir. May 16, 2017); *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007); *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147 (10th Cir. 2000) ("*Adarand VII*"); *Dunnet Bay Construction Co. v. Illinois DOT*, et. al. 2014 WL 552213 (C. D. Ill. 2014), affirmed by *Dunnet Bay*, 2015 WL 4934560 (7th Cir. 2015); *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014); *M. K. Weeden Construction v State of Montana, Montana DOT*, 2013 WL 4774517 (D. Mont. 2013); *Geod Corp. v. New Jersey Transit Corp.*, 766 F. Supp.2d. 642 (D. N.J. 2010); South Florida Chapter of the *A.G.C. v. Broward County, Florida*, 544 F. Supp.2d 1336 (S.D. Fla. 2008).

154 *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); See generally, *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng'g Contractors Ass'n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)("exceedingly persuasive justification."); *Geyer Signal*, 2014 WL 1309092.

155 *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); *see, e.g.*, *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); see, generally, *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988), cert. denied, 489 U.S. 1067 (1989) (citing *Craig v. Boren*, 429 U.S. 190 (1976), and *Lalli v. Lalli*, 439 U.S. 259(1978)); *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017)).

156 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see, also *Serv. Emp. Int'l Union, Local 5 v. City of Hous.*, 595 F.3d 588, 596 (5th Cir. 2010); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); .); see also, *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996 *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017)

2. Substantially related to the achievement of that underlying objective.[157]

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the state actor to present "sufficient probative" evidence in support of its stated rationale for the program.[158]

Intermediate scrutiny, as interpreted by federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective.[159] The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.[160]

The Fourth Circuit in *H. B. Rowe*, found that the disparity analysis demonstrated women-owned businesses won far more than their expected share of subcontracting dollars during the study period.[161] Therefore, the court concluded that prime contractors substantially overutilized women subcontractors on public road construction projects.[162] The court held the public-sector evidence did not evince the "exceedingly persuasive justification" the Supreme Court requires.[163]

The Fourth Circuit cites with approval the guidance from the Eleventh Circuit that has held "[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort …. Additionally, under intermediate scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market."[164]

The Seventh Circuit Court of Appeals, however, in *Builders Ass'n of Greater Chicago v. County of Cook, Chicago* (*Builders Ass'n*), did not hold there is a different level of scrutiny for gender discrimination or

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157 *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); see, e.g., *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng'g Contractors Ass'n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)("exceedingly persuasive justification."); *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017)

158 *Id.*

159 See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng'g Contractors Ass'n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Assoc. Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F.Supp 2d 613, 619-620 (2000); see, also, *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)("exceedingly persuasive justification.")

160 *Coral Constr. Co.*, 941 F.2d at 931-932; see *Eng'g Contractors Ass'n*, 122 F.3d at 910.

161 615 F.3d 233 at 254.

162 *Id.*

163 *Id.* at 255.

164 615 F.3d 233, 242; 122 F.3d at 929 (internal citations omitted).

gender-based programs in connection with a challenge to the MBE Program involved in that case[165]. The Court in *Builders Ass'n* rejected the distinction applied by the Eleventh Circuit in *Engineering Contractors*.[166]

The Tenth Circuit in *Concrete Works* stated as follows in connection with the type of evidence involving the participation of woman-owned business enterprises:

> *"We do not have the benefit of relevant authority with which to compare Denver's disparity indices for WBEs. See Contractors Ass'n, 6 F.3d at 1009–11 (reviewing case law and noting that "it is unclear whether statistical evidence as well as anecdotal evidence is required to establish the discrimination necessary to satisfy intermediate scrutiny, and if so, how much statistical evidence is necessary"). Nevertheless, Denver's data indicates significant WBE underutilization such that the Ordinance's gender classification arises from "reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions." Mississippi Univ. of Women, 458 U.S. at 726, 102 S.Ct. at 3337 (striking down, under the intermediate scrutiny standard, a state statute that excluded males from enrolling in a state-supported professional nursing school)."*

The Supreme Court has stated that an affirmative action program survives intermediate scrutiny if the proponent can show it was "a product of analysis rather than a stereotyped reaction based on habit."[167] The Third Circuit found this standard required the City of Philadelphia to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.[168] The Court in *Contractors Ass'n of E. Pa.* (*CAEP I*) held the City had not produced enough evidence of discrimination, noting that in its brief, the City relied on statistics in the City Council Finance Committee Report and one affidavit from a woman engaged in the catering business, but the Court found this evidence only reflected the participation of women in City contracting generally, rather than in the construction industry, which was the only cognizable issue in that case.[169]

The Third Circuit in *CAEP I* held the evidence offered by the City of Philadelphia regarding women-owned construction businesses was insufficient to create an issue of fact. The study in *CAEP I* contained no disparity index for women-owned construction businesses in City contracting, such as that presented for minority-owned businesses.[170] Given the absence of probative statistical evidence, the City, according to the Court, must rely solely on anecdotal evidence to establish gender discrimination necessary to support the Ordinance.[171] But the record contained only one three-page affidavit alleging gender discrimination in the construction industry.[172] The only other testimony on this subject, the Court found in *CAEP I*, consisted of a single, conclusory sentence of one witness who appeared at a City

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165 *Builders Ass'n of Greater Chicago v. County of Cook, Chicago* , 256 F.3d 642, 644-45 (7th Cir. 2001).

166 *256 F.3d 642, 644-45 (7th Cir. 2001).*

167 *Contractors Ass'n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

168 *Contractors Ass'n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

169 *Contractors Ass'n of E. Pa. (CAEP I),* 6 F.3d at 1011 (3d. Cir. 1993).

170 *Contractors Ass'n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993).

171 *Id.*

172 *Id.*

Council hearing.[173] This evidence the Court held was not enough to create a triable issue of fact regarding gender discrimination under the intermediate scrutiny standard.

Therefore, the Court in *CAEP I* affirmed the grant of summary judgment invalidating the gender preference for construction contracts.[174] The Third Circuit noted that it saw no impediment to the City re-enacting the gender preference if it could provide probative evidence of discrimination.[175]

4. Rational basis analysis. Where a challenge to the constitutionality of a statute or a regulation does not involve a fundamental right or a suspect class, the appropriate level of scrutiny to apply is the rational basis standard.[176] When applying rational basis review under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, a court is required to inquire whether the challenged classification has a legitimate purpose and whether it was reasonable for the legislature to believe that use of the challenged classification would promote that purpose.[177]

Courts, including in Virginia and the Fourth Circuit Court of Appeals, in applying the rational basis test generally find that a challenged law is upheld "as long as there could be some rational basis for enacting [it]," that is, that "the law in question is rationally related to a legitimate government purpose."[178] So

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173 *Id.*

174 *Id.*

175 *Id.*

176 See, e.g., *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1096 (9th Cir. 2019); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012); *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233 at 254; (4th Cir. 2010); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998); *Cunningham v. Beavers* 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a 'highly deferential rational basis' standard of review."); *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017) **;** *see, e.g., Gray v. Commonwealth of Virginia,* 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007); Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (Va. 1986).

177 See, *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a 'highly deferential rational basis' standard of review."); *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233 at 254; *Contractors Ass'n of E. Pa.*, 6 F.3d at 1011 (3d Cir. 1993); *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017); *see, Gray v. Commonwealth of Virginia,* 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007); Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (Va. 1986).

178 See, e.g., *Gray v. Commonwealth of Virginia,* 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007), citing *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1998); Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (1986); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998)see also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985) (citations omitted); *Heller v. Doe*, 509 U.S. 312, 318-321 (1993) (Under rational basis standard, a legislative classification is accorded a strong presumption of validity); *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017).

long as a government legislature had a reasonable basis for adopting the classification, the law will pass constitutional muster.[179]

"[T]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record."[180] Moreover, "courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality."[181]

Under a rational basis review standard, a legislative classification will be upheld "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose."[182] Because all legislation classifies its objects, differential treatment is justified by "any reasonably conceivable state of facts."[183]

Under the federal standard of review, a court will presume the "legislation is valid and will sustain it if the classification drawn by the statute is rationally related to a legitimate [government] interest."[184]

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179 *Id.*; *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013), (citing FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993)); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); see e.g. *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017); *see, Gray v. Commonwealth of Virginia,* 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007); *Finn v. Virginia Retirement SVS,* 259 Va. 144, 155, 524 S.E. 2d 125, 131 (Va. 2000); Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (Va. 1986).

180 *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *United States v. Timms*, 664 F.3d 436, 448-49 (4th Cir. 2012), cert. denied, 133 S. Ct. 189 (2012) (citing *Heller v. Doe*, 509 U.S. 312, 320-21 (1993)) (quotation marks and citation omitted); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); see e.g., *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017; *Gray v. Commonwealth of Virginia,* 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007); Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (Va. 1986).

181 *Heller v. Doe*, 509 U.S. 312, 321 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); see e.g. *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017).

182 *Heller v. Doe*, 509 U.S. 312, 320 (1993); see, e.g., *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); see e.g., *Contractors Association of Eastern Pennsylvania, Inc., et. al. v. City of Philadelphia*, et. al., 91 F. 3d 586 (3d Cir. 1996); *Contractors Association of Eastern Pennsylvania, Inc, et. al. v. City of Philadelphia*, 6 F. 3d 990 (3d Cir. 1993); *United States v. Taylor*, 232 F.Supp. 3d 741 (W.D. Penn. 2017).

183 *Id*; *see, Gray v. Commonwealth of Virginia,* 274 Va. at 308, 645 S.E. 2d at 459; Carter v. Carter, 232 Va. 166, 171–72, 349 S.E.2d 95, 98 (Va. 1986).

184 *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Chance Mgmt., Inc. v. S. Dakota*, 97 F.3d 1107, 1114 (8th Cir. 1996); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *U.S. v. Brucker*, 646 F.3d 1012, 1017 (7th Cir. 2010); *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006); see also *Lawrence v. Texas*, 539 U.S. 558, 580, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) ("Under our rational basis standard of review, legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate

An informative example of the application of the rational basis standard is the Third Circuit in *CAEP I* ruling regarding the City's 2 percent preference for businesses owned by "handicapped" persons.[185] The district court struck down this preference under the rational basis test, based on the belief, according to the Third Circuit, that *Croson* required some evidence of discrimination against business enterprises owned by "handicapped" persons, and therefore that the City could not rely on testimony of discrimination against "handicapped" individuals.[186] The Court in *CAEP I* stated, however, that a classification will pass the rational basis test if it is "rationally related to a legitimate government purpose."[187]

The Third Circuit noted that the Supreme Court affirmed the permissiveness of this test in *Heller v. Doe,* indicating that "a [statutory] classification" subject to rational basis review "is accorded a strong presumption of validity," and that "a state ... has no obligation to produce evidence to sustain the rationality of [the] classification."[188] Moreover, "the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record."[189]

The City of Philadelphia in *CAEP I* stated it sought to minimize discrimination against businesses owned by "handicapped" persons and encourage them to seek City contracts. The Court in *CAEP I* agreed with the district court that these were legitimate goals, but unlike the district court, the Third Circuit held the 2 percent preference was rationally related to this goal.[190]

A federal court decision, which is instructive to the study, involved a challenge to and the application of a small business goal in a pre-bid process for a federal procurement. *Firstline Transportation Security, Inc. v. United States* is instructive and analogous to some of the issues in a small business program. The case is informative as to the use, estimation, and determination of goals (small business goals, including veteran preference goals) in a procurement under the Federal Acquisition Regulations (FAR).[191]

Firstline involved a solicitation that established a small business subcontracting goal requirement. In *Firstline*, the Transportation Security Administration (TSA) issued a solicitation for security screening services at the Kansas City Airport. The solicitation stated that the "Government anticipates an overall Small Business goal of 40 percent," and that "[w]ithin that goal, the government anticipates further small

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state interest . . . . Laws such as economic or tax legislation that are scrutinized under rational basis review normally pass constitutional muster." (internal citations and quotations omitted)) (O'Connor, J., concurring); *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012) ("Under rational basis review, the classification must only be rationally related to a legitimate government interest.").

185 6 F.3d *Id.* at 1011 (3d. Cir. 1993).

186 *Contractors Ass'n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993)., citing 735 F.Supp. at 1308.

187 *Id*., citing, *Cleburne*, 473 U.S. at 440.

188 6 F.3d at 1011, citing, 509 U.S. 312–43 (1993)

189 *Id*. at 1011; see, e.g., *United States v. Timms*, 664 F.3d 436, 448-49 (4th Cir. 2012), cert. denied, 133 S. Ct. 189 (2012) (citing *Heller v. Doe*, 509 U.S. 312, 320-21 (1993) (quotation marks and citation omitted).

190 6 F.3d at 1011.

191 2012 WL 5939228 (Fed. Cl. 2012).

business goals of: Small, Disadvantaged business[:] 14.5 percent; Woman Owned[:] 5 percent: HUBZone[:] 3 percent; Service Disabled, Veteran Owned[:] 3 percent."[192]

The court applied the rational basis test in construing the challenge to the establishment by the TSA of a 40 percent small business participation goal as unlawful and irrational.[193] The court stated it "cannot say that the agency's approach is clearly unlawful, or that the approach lacks a rational basis."[194]

The court found that "an agency may rationally establish aspirational small business subcontracting goals for prospective offerors … ." Consequently, the court held one rational method by which the Government may attempt to maximize small business participation (including veteran preference goals) is to establish a rough subcontracting goal for a given contract, and then allow potential contractors to compete in designing innovate ways to structure and maximize small business subcontracting within their proposals.[195] The court, in an exercise of judicial restraint, found the "40 percent goal is a rational expression of the Government's policy of affording small business concerns…the maximum practicable opportunity to participate as subcontractors…."[196]

a. Veterans preferences. The City of Virginia Beach considers the utilization of service-disabled veteran (SDV)-owned businesses in its contracting and procurement programs. The rational basis standard has been applied by courts to preferences, bonuses, or benefits based on the status as a veteran in connection with legislation by state governments.

For example, in *Hooper v. Bernalillo County Assessor*, the Supreme Court in an instructive case addressed the constitutionality of a veterans preference statute.[197] In *Hooper*, a New Mexico statute exempted from the State's property tax the taxable value of property of veterans who served on active duty during the Vietnam War, but limited the exemption to veterans who were New Mexico residents before 1976.[198] The Court considered whether the New Mexico statute that grants a tax exemption limited to those Vietnam veterans who resided in the state before 1976 violated the Equal Protection Clause of the Fourteenth Amendment.[199] The Court held New Mexico statute's residence requirement violates the guarantees of the Equal Protection Clause applying a rational basis standard analysis.[200]

The Court in *Hooper* noted that when a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. Generally, a law will survive that scrutiny if the distinction rationally furthers a legitimate state purpose.[201] The distinction New Mexico made between veterans who established residence before 1976 and those veterans who arrived in the state thereafter, the Court found bears no rational relationship to one of the State's objectives of encouraging Vietnam veterans to move to New Mexico. *Id. at 619.* The legislature set

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192 *Id.*

193 *Id.*

194 *Id.*

195 *Id.*

196 *Id.*

197 *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985).

198 *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985)

199 *Id.* at 614.

200 *Id.* at 624.

201 *Id.* at 618.

this eligibility date long after the triggering event occurred.[202]

The Court found that one component of the second purpose rationale of the statute—rewarding veterans who resided in the state before 1976 for their military service to support—the statute's distinction between resident veterans was legitimate; the Court observed that "[o]ur country has a longstanding policy of compensating veterans for their past contributions by providing them with numerous advantages."[203] The various preferences for veterans are grounded in a "[d]esire to compensate in some measure for the disruption of a way of life ... and to express gratitude ... ."[204] Consistent with this policy, the State may award certain benefits to all its bona fide veterans, because it then is making neither an invidious nor irrational distinction among its residents.[205] Resident veterans, as a group, may well deserve preferential treatment, and such differential treatment vis-à-vis non-veterans does not offend the Equal Protection Clause.[206]

Even assuming that the State may legitimately grant benefits on the basis of a coincidence between military service and past residence, the Court said the New Mexico statute's distinction between resident veterans was not rationally related to the State's asserted legislative goal.[207] The statute was not written to require any connection between the veteran's prior residence and military service. *Id*. The veteran who resided in New Mexico as an infant long ago would immediately qualify for the exemption upon settling in the State at any time in the future, regardless of where he resided before, during, or after military service.[208]

The Court found the New Mexico statute creates two tiers of resident Vietnam veterans, identifying resident veterans who settled in the state after 1976, as in a sense "second-class citizens."[209] This discrimination on the basis of residence was not supported by any identifiable state interest; the statute is not written to benefit only those residents who suffered dislocation within the State's borders by reason of military service.[210] The Court stated it has made clear that the Constitution will not tolerate a state benefit program that "creates fixed, permanent distinctions ... between ... classes of concededly bona fide residents, based on how long they have been in the State." *Id*. The Court held that neither the Equal Protection Clause nor the Court's precedents permit the State to prefer established resident veterans over newcomers in the retroactive apportionment of an economic benefit.[211]

The Court held that the New Mexico veterans' tax exemption statute violated the guarantees of the Equal Protection Clause of the Fourteenth Amendment ruling the statute did not satisfy the rational basis standard analysis.

In another instructive case regarding a civil rights action where a plaintiff challenged the

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202 *Id.*

203 *Id*. at 620 (*internal citations omitted*).

204 *Id., quoting, Russell v. Hodges*, 470 F.2d 212, 218 (CA2 1972).

205 *Id.*

206 *Id.*

207 *Id*. at 622.

208 *Id.*

209 *Id*. at 623.

210 *Id.*

211 *Id.*

constitutionality of giving a preference to veterans in civil service examinations, a district court held that provisions of Pennsylvania Veterans' Preference Act granting a ten-point bonus to score of any veteran receiving a passing grade on state civil service examination were not violative of equal protection.[212] The court also held the bonus preference did not discriminate against women by reason of "acute" disproportion between men and women in armed forces, and even if provisions did discriminate against women, the court said they may be justified as a recognition that experience, discipline, and loyalty that veterans gain in military service is conducive to better performance of public duties.[213] The court denied the request for declaratory and injunctive relief.[214]

The court in *Feinerman v. Jones,* in considering the analysis to apply to a veteran preference, stated that an essential element of any analysis involving the Equal Protection Clause requires a determination of the appropriate standard to be used by which to gauge the constitutionality of a given statute. The Court stated the traditional equal protection standard looks to the reasonableness of the classification in light of its possible intended purposes.[215] The classification must bear some rational relationship to a legitimate end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to that goal.[216] Under this test, the Court said, the party challenging the constitutionality of a statute has the burden of proving that the statute denies him equal protection, and it will not be set aside if it is reasonably related to some permissible legislative or administrative purpose.[217]

Since the abstract right to be fairly considered for public employment, according to the court, did not involve a "fundamental right" or "fundamental interest," the "rational basis" test must be applied to test the validity of the Veterans' Preference Act.[218] The plaintiff has the burden of overcoming the presumption of constitutionality and of proving that veterans' preference is arbitrary and not reasonably related to some permissible legislative or administrative purpose.[219]

The Veterans' Preference Act, which awards a ten-point bonus to all veterans who have scored a passing grade on civil service tests, the court found was typical of the many State and Federal statutory provisions giving veterans' preference in public employment. Plaintiff contended that such a bonus for veterans was unconstitutional in that it denied equal protection of the law by creating two classes, veterans and non-veterans, extending to the former benefits which it denied to others.[220]

The court found that there are three underlying justifications in most of these cases upholding the various Veterans' Preference Acts: (1) As a recognition that the experience, discipline, and loyalty which veterans gain in military service is conducive to the better performance of public duties; (2) As a reward for those veterans who, either involuntarily or through enlistment, have served their country in time of

[212] *Feinerman v. Jones*, 356 F.Supp. 252 (1973) (M.D. Penn. 1973).

[213] *Id.*

[214] *Id.*

[215] *Id., citing, Shapiro v. Thompson*, 394 U.S. 618(1969).

[216] *Id. citing, McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969).

[217] *Id. citing, McGowan v. Maryland*, 366 U.S. 420 (1961).

[218] *Id.* at 258.

[219] *Id*. at 259.

[220] *Id*. at 259.

war; and (3) As an aid in the rehabilitation and relocation of the veteran whose normal lifestyle has been disrupted by military service.[221]

In adopting the Veterans' Preference Act, the court found the state legislature expressly recognized the first two reasons set out above as justifying giving preference to veterans. Section 2 of the Act provides that credit will be given to a veteran on appointment "for the discipline and experience represented by his military training and for the loyalty and public spirit demonstrated by his service for the preservation of his country."[222] Similarly, in a case challenging the validity of granting a bonus to veterans under a prior veterans' preference provision, the court stated its purpose in this manner: "As a basis for appointment it is not unreasonable to select war veterans from candidates for office and to give them a certain credit in recognition of the discipline, experience and service represented by their military activity. No one should deny that these advantages are conducive to the better performance of public duties, where discipline, loyalty, and public spirit are likewise essential."[223]

The court sustained the validity of granting a fifteen-point bonus to veterans taking appointment examinations, so long as the applicants initially received a passing grade. At the same time, however, the court struck down a provision of the statute granting 15 percent credit to all veterans taking the examinations, regardless of whether they achieved a passing grade.[224]

5. Pending cases (at the time of this report) and informative recent decisions. There are recent court decisions and pending cases in the federal courts at the time of this report involving challenges to MBE/WBE/DBE Programs and federal programs with minority- and woman-owned business and social and economic disadvantaged business programs that may potentially impact and are informative and instructive to the study, including the following:

a. *Christian Bruckner et al. v. Joseph R. Biden Jr. et al.* U.S. District Court for the Middle District of Florida, Case No. 8:22-cv-01582. filed July 13, 2022. Dismissed, 2023 WL 2744026 (March 31, 2023). This was a challenge to the Federal DBE Program. Federal Defendants' Motion to Dismiss was Granted and Plaintiffs' Motion for Preliminary Injunction Denied on March 31, 2023. Judgment entered on April 3, 2023. Case did not reach merits.

b. *Antonio Vitolo, et al. v. Isabella Guzman, Administrator of the Small Business Administration (SBA)* 993 F.3d 353, 2021 WL 2172181 (6th Cir. May 27, 2021). The President signed the American Rescue Plan Act of 2021 (ARPA). H.R. 1319, 117th Cong. (2021). As part of ARPA, Congress appropriated $28.6 billion to a Restaurant Revitalization Fund (RRF) and tasked the Administrator of the SBA with disbursing funds to restaurants and other eligible entities that suffered COVID-19 pandemic-related revenue losses. Under ARPA, the SBA Administrator prioritized awarding grants to eligible entities that are small business concerns owned and controlled by women, veterans, or socially and economically disadvantaged small business concerns.

The Court stated that the government has a compelling interest in remedying past discrimination only when three criteria are met: First, the policy must target a specific episode of past discrimination. It

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[221] *Id.* at 259 *citing, Koelfgen v. Jackson*, 355 F.Supp. 243 (D.Minn. 1972).

[222] *Id.*

[223] *Id.* at 259 *quoting*, *Commonwealth ex rel. Graham v. Schmid*, 333 Pa. 568, at 573, 3 A.2d 701, at 704 (1938).

[224] *Id.*

cannot rest on a "generalized assertion that there has been past discrimination in an entire industry." Second, there must be evidence of intentional discrimination in the past. Third, the government must have had a hand in the past discrimination it now seeks to remedy. The Court said that if the government "show[s] that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of [a] local ... industry," then the government can act to undo the discrimination. Even if the government had shown a compelling state interest in remedying some specific episode of discrimination, the court held the discriminatory disbursement of RRF funds was not narrowly tailored to further that interest.

c. *Greer's Ranch Café v. Guzman*, 2021 WL 2092995 (N.D. Tex. 5/18/21), United States District Court for the Northern District of Texas. Similar to Vitolo, above, Greer sought monetary relief under the $28.6-billion RRF created by ARPA and administered by the SBA. The court held that Plaintiffs were likely to succeed on the merits of their claim that Defendants' use of race-based and sex-based preferences in the administration of the RRF violated the Equal Protection Clause of the Constitution. The court granted Plaintiffs' motion for temporary restraining order (TRO), and enjoined Defendants to process Plaintiffs' application for an RRF grant.

d. *Faust v. Vilsack*, 2021 WL 2409729, United States District Court for the Eastern District of Wisconsin (June 10, 2021). The court granted Plaintiffs' motion for a TRO holding the federal government's use of racial classifications in awarding funds under the United States Department of Agriculture loan forgiveness program was unconstitutional. The court held, "Defendants have not established that the loan forgiveness program … is narrowly tailored and furthers compelling government interests."

e. *Wynn v. Vilsack* 2021 WL 2580678, (M.D. Fla. June 23, 2021), Case No. 3:21-cv-514-MMH-JRK, United States District Court for the Middle District of Florida. This is virtually the same case as the *Faust v. Vilsack*, 2021 WL 2409729 (June 10, 2021) case in district court in Wisconsin. The court granted the Plaintiffs' Motion for Preliminary Injunction holding the federal Defendants (the United States Secretary of Agriculture) enjoined from issuing any payments, loan assistance, or debt relief pursuant to Section 1005(a)(2) of ARPA. The court held the government did not satisfy the strict scrutiny standard as it did not establish a compelling government interest or that the program was narrowly tailored.

f. *Ultima Services Corp. v. United States Department of Agriculture, United States Small Business Administration, et. al.*, 2023 WL 4633481 (July 19, 2023), United States District Court for the Eastern District of Tennessee, 2:20-cv-00041-DCLC-CRW. The court declared that Defendants' use of the rebuttable presumption of social disadvantage to certain minority groups to qualify them for inclusion in the federal Section 8(a) Program violated Ultima's Fifth Amendment right to equal protection of the law. The court ordered that Defendants were enjoined from using the rebuttable presumption of social disadvantage in administering the SBA's 8(a) Program holding the federal defendants did not satisfy the strict scrutiny standard as they did not establish a compelling government interest for their use of the rebuttable presumption and that presumption was not narrowly tailored to serve the asserted interest.

g. *Nuziard, et al. v. Minority Business Development Agency (MBDA), et al.,* 721 F. Supp. 3d 431 (N.D. Tex. 2004), appeal dismissed, 2024 WL 5279784 (5th Cir. 2024); 2023 WL 3869323 (June 5, 2023), United States District Court for the Northern District of Texas, Fort Worth Division, Case No. 4:23-cv-00278. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (Infrastructure Act), creating the newest federal agency, the MBDA. Plaintiffs alleged this agency is dedicated to helping only certain businesses based on race or ethnicity. The court granted the Plaintiffs'

Motion for Preliminary Injunction in June 2023 and Motion for Summary Judgment in March 2024, holding the MBDA statute is unconstitutional, finding the federal defendants did not produce sufficient evidence of a compelling government interest, that the MBDA's racial presumption is not narrowly tailored, and thus the MBDA did not satisfy the strict scrutiny standard.

h. *Mid-America Milling Company LLC (MAMCO) and Bagshaw Trucking Inc. v. USDOT, et. al.*, 2024 WL 4635430 (E.D. Ky. Oct. 31, 2024); 2024 WL 4267183 (Sept. 23, 2024), United States District Court for the Eastern District of Kentucky, Frankfort Division; Case No: 3:23 -cv-00072-GFV. Plaintiffs filed this suit challenging the Federal DBE Program. Plaintiffs sought a preliminary and permanent injunction, and a declaratory judgment, that the Federal DBE Program, including Sections 11101(e)(2) and (3) of the Infrastructure Act and corresponding federal regulations, are unconstitutional because they violate the Equal Protection Clause of the United States Constitution. Plaintiffs' Motion for Preliminary Injunction was granted that enjoined enforcement of the Federal DBE Program as applied to the Plaintiffs in each in state which they bid or operate. The court enjoined USDOT from mandating the use of race- and gender-based rebuttable presumptions for certain groups regarding its contracts impacted by DBE goals. The parties filed a joint motion to stay the case for 90 days as USDOJ is considering its position whether or not to defend the Federal DBE Program in light of the Executive Orders issued by the President on January 21, 2025 prohibiting diversity, equity and inclusion (DEI); affirmative action; and preference programs based on race or gender. A motion to intervene was filed by certain groups seeking to join the case and support and defend the Federal DBE Program. Plaintiffs opposed the motion. The motion to intervene (referred to as Intervenor DBEs) was granted by the United States Magistrate Judge on May 21, 2025.

On May 28, 2025, Plaintiffs and Defendants filed a motion for entry of a proposed consent order as a final order and judgment in the case. The proposed consent order states that the parties are aware of the order filed by the Magistrate Judge granting the Intervenor DBEs' motion to intervene as Defendants in this case, and that Plaintiffs and the DOT make no representation as to the position of the Intervenor-Defendants.

The proposed consent order provides in part that the Defendants have determined the DBE Program's use of race- and sex-based presumptions is unconstitutional. The proposed consent order requests the court hold that Defendants may not approve any federal, state, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption.

The case is pending at the time of this report.

i. *Landscape Consultants of Texas, Inc. et. al. v. City of Houston, Texas, et. al.* United States. District Court for the Southern District of Texas, Houston Division; Civil Action No. 4:23-cv-3516. Challenge to the Houston MBE Program. Pending.

j. *Mechanical Contractors Assoc. of Memphis, Inc. v. Shelby County, Tennessee, et al.*, United States District Court for the Western District of Tennessee, Case No. 2:24 -cv- 02420 -JTF, Complaint filed November 6, 2024. Challenge to the County MBE Program. Pending.

k. ***Aerospace Solutions, LLC v. Abott in his official capacity as Governor of the state of Texas, et al.*****, United Stats District Court for the Western District of Texas, Civ. Action No. 1:24-cv-1383, Complaint filed November 13, 2024.** Challenge to the Texas HUB Program. Pending.

l. ***Landscape Consultants of Texas Inc. v. Harris County Texas, et al.*****, United States District Court for the Southern District of Texas, Houston Division; Civil Action No. 4:25cv479. Complaint filed February 5, 2025.** Challenge to the County MBE Program. Pending.

This list of pending cases and informative recent decisions is not exhaustive, but in addition to the cases cited previously and discussed *infra* may potentially have an impact on the study and implementation of MBE/WBE/DBE Programs, related legislation, implementation of the Federal DBE Program by state and local governments and public authorities and agencies, and other types of programs impacting participation of MBE/WBE/DBEs.

For example, there are other recent cases similar to *Faust v. Vilsack*, 21-cv.-548 (E.D. Wis.) and *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.) cited and discussed above, including a class action filed in *Miller v. Vilsack*, 2021 WL 11115194, 4:21-cv-595 (N.D. Tex. 2021), and separate lawsuits seeking to enjoin USDA officials from implementing a loan forgiveness program for farmers and ranchers under Section 1005 of ARPA by asserting eligibility to participate in program based solely on racial classifications violated equal protection. *Carpenter v. Vilsack*, 21-cv-103-F (D. Wyo.); *Holman v. Vilsack*, 1:21-cv-1085 (W.D. Tenn.); *Kent v. Vilsack*, 3:21-cv-540 (S.D. Ill.); *McKinney v. Vilsack*, 2:21-cv-212 (E.D. Tex.); *Joyner v. Vilsack*, 1:21-cv-1089 (W.D. Tenn.); *Dunlap v. Vilsack*, 2:21-cv-942 (D. Or.); *Rogers v. Vilsack*, 1:21-cv-1779 (D. Colo.); *Tiegs v. Vilsack*, 3:21-cv-147 (D.N.D.); *Nuest v. Vilsack*, 21-cv-1572 (D. Minn.).

Many of these cases had granted the federal Defendants Motions to Stay pending resolution of the class action challenge to Section 1005 of ARPA in the *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.) class action litigation. As a result of the federal government's later repeal of ARPA Section 1005 and the subsequent Dismissal of the related Class Action in *Miller v. Vilsack*, the parties in many of these cases filed Stipulations of Dismissal, and the cases in September 2022 have been dismissed by the Courts.

m. January 2025 Executive Orders. At the time of this report, the President has issued multiple Executive Orders (EOs) involving prohibiting and eliminating DEI programs and preferences and affirmative action programs concerning federal contractors and subcontractors in connection with federally funded projects. These EOs include a January 21, 2025 EO No. 14173, eliminating EO No. 11246. EO No. 11246 required federal contractors to take affirmative action to ensure applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.

On January 21, 2025, the president issued EO No. 14173 entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." The Order instructs federal agencies to take administrative and legal action against DEI programs, which it defines as systems of race- and sex-based preferences. The Order is directed at both public- and private-sector conduct. The Order "instructs the Office of Federal Contract Compliance Programs to immediately cease: "(A) Promoting 'diversity;' (B) Holding Federal contractors and subcontractors responsible for taking 'affirmative action;' and (C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion or national origin." It also instructs the Attorney General to submit a report containing recommendations for "enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including [diversity equity and inclusion]." That report is due on May 21, 2025.

On January 20, 2025, the President issued the EO "Ending Radical and Wasteful Government DEI Programs and Preferencing" that terminates "all discriminatory programs, including illegal DEI" and "diversity, equity, inclusion, and accessibility" (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government …." and terminates all "equity action plans," " equity" actions, initiatives, or programs, equity-related grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.

Certain of these EOs and their application are being challenged in court in cases pending at the time of this report. It is not clear if these EOs specifically may impact local and state government programs that implement contracting goals and do not involve federal funds or financial assistance.

n. February 5, 2025 Attorney General Memorandum. On February 5, 2025, the United States Attorney General issued a Memorandum titled " Ending Illegal DEI And DEIA Discrimination and Preferences." The Memorandum provides: "To fulfill the Nation's promise of equality for all Americans, the Department of Justice's Civil Rights Division will investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds."

This Attorney General Memorandum "is intended to encompass programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex."

The Attorney General Memorandum provides that by March 1, 2025, "consistent with Executive Order 14173, the Civil Rights Division and the Office of Legal Policy shall jointly submit a report to the Associate Attorney General containing recommendations for enforcing federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA"

It is not clear at the time of this report whether this Memorandum and any report issued by the Attorney General will impact or potentially apply to certain local and state government programs that use contracting goals for contractors and do not involve federal funds or financial assistance.

Thus, this Appendix report does not address these EOs and the Attorney General Memorandum. There have been challenges in court to these EOs, for which cases are pending.

A federal district court in the District of Maryland has entered a nationwide preliminary injunction against the EOs that target DEI-type programs. See, *Nat'l Ass'n of Diversity Officers in Higher Education v. Trump*, 2025 WL 573764 (D. Md. Feb. 21, 2025). This order was based on finding EO 14173 void for vagueness and violates the First Amendment.

In addition, there is a February 13, 2025 letter from 16 states Attorneys General regarding: "Multi-State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiatives." The letter provides guidance supporting "the continued viability and important role of diversity, equity, inclusion, and accessibility efforts (sometimes referred to as "DEI" or "DEIA" initiatives) in creating and maintaining legally compliant and thriving workplaces." The letter appears to be in response to the recent EOs. The Attorney General of the state of Minnesota is one of the signatories to the February 13, 2025 letter.

o. Title VI Complaints against the State of New York Minority and Women-Owned Business Enterprise (MWBE) Program and Wisconsin Department of Administration (DOA) for Supplier Diversity Program. Title VI Complaints have been filed with USDOJ by Contractors for Equal Opportunity, a nationwide association of companies alleged to have negatively been impacted by race discrimination in government contracting programs. A separate civil-rights complain under Title VI of the Civil Rights Act of 1964 was filed against both the New York Department of Economic Development (DED) and the Wisconsin DOA for their alleged respective discriminatory MWBE Program and Supplier Diversity Program. DED and DOA are recipients of federal funds, and therefore, the Complaints allege are subject to the nondiscrimination provisions of Title VI. The complaints state they are being filed with USDOJ because DED and DOA receive federal grants from multiple federal agencies.

The complaints ask USDOJ to open an investigation into a state-based supplier and procurement program they allege discriminates against small businesses based on race. The complaints allege that many states operate similar programs, which are similar to the Federal DBE Program. If that federal program is unconstitutional, then the complaints allege, these state-based counterparts are similarly unconstitutional. The complaints request that USDOJ investigate these programs and determine they are operating in violation of Title VI. Each state agency operating such a program, the complaints allege, receives federal funds and is therefore bound by Title VI and subject to the DOJ's jurisdiction.

The complaints allege that DED and DOA cannot offer any justification to defend their MWBE and Supplier Diversity type Programs, which illegally discriminate by enforcing a percentage goal utilization rate for minority- and women-owned businesses in state procurement and contracting. The complaints allege that under *Students for Fair Admission v. Harvard* (which was a Title VI case), programs like these must pass several independent tests, which DED and DOA cannot satisfy.

First, the complaints allege that DED's and DOA's programs are illegal because they do not remedy "specific, identified instances of past discrimination that violated the Constitution or a statute." Second, the complaints allege, DED or DOA cannot "articulate a meaningful connection between the means they employ and the goals they pursue." For example, DED and DOA, the complaints allege, employ the same type of "overbroad" and "imprecise" racial categories employed by Harvard and North Carolina.

Third, the complaints allege, DED's and DOA's programs use race as a "negative." White business owners cannot bid on equal footing with minority-owned firms, which the complaints allege, have a preference and exclusive access to resources based on race.

Fourth, the complaints allege DED's and DOA's programs further "stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution." Fifth, DED's and DOA's programs allegedly have no "logical end point. Under *SFFA*, the complaints allege, a race-based government program must meet all five of these requirements to comply with Title VI, and DED and DOA cannot meet any of these requirements.

Based on this evidence, the complaints ask that the DOJ open a formal investigation and find that DED's and DOA's MWBE and Supplier Diversity Programs violate Title VI. The complaints assert that corrective action should include, at a minimum, a requirement that the program be open to all businesses regardless of race, or that the programs should be terminated immediately so that all procurement and contracting decisions at DED and DOA are race-neutral.

This Appendix report does not address further the Eos,, the Attorney General Memorandum, or USDOJ investigations referenced above, which are in flux at this time. There have been challenges to the EOs, which are pending. For example, a federal district court in the District of Maryland has entered a nationwide preliminary injunction against the EOs that target DEI type programs. See, *Nat'l Ass'n of Diversity Officers in Higher Education v. Trump*, 2025 WL 573764 (D. Md. Feb. 21, 2025). This order is based on finding EO No. 14173 is void for vagueness and violates the First Amendment.

p. Ongoing review. The above represents a summary of the legal framework pertinent to the study and implementation of DBE/MBE/WBE programs, or race-, ethnicity-, or gender-neutral programs, and the implementation of the Federal DBE and ACDBE Programs by state and local government recipients of federal funds, including public agencies, commissions, and authorities. Because this is a dynamic area of the law, the framework is subject to ongoing review as the law continues to evolve. The following provides more detailed summaries of key recent decisions.

D. Recent Decisions Involving State or Local Government MBE/WBE/DBE Programs in the Fourth Circuit Court of Appeals

The following section summarizes recent decisions involving state or local government MBE, WBE, or DBE Programs in the Fourth Circuit Court of Appeals.

1. *H.B. Rowe Co., Inc. v. W. Lyndo Tippett, North Carolina Department of Transportation (NCDOT), et al.*, 615 F.3d 233 (4th Cir. 2010). The State of North Carolina enacted statutory legislation that required prime contractors to engage in good faith efforts to satisfy participation goals for minority and women subcontractors on state-funded projects. (See facts as detailed in the decision of the United States District Court for the Eastern District of North Carolina discussed below.). The plaintiff, a prime contractor, brought this action after being denied a contract because of its failure to demonstrate good faith efforts to meet the participation goals set on a particular contract that it was seeking an award to perform work with NCDOT. Plaintiff asserted that the participation goals violated the Equal Protection Clause and sought injunctive relief and money damages.

After a bench trial, the district court held the challenged statutory scheme constitutional both on its face and as applied, and the plaintiff prime contractor appealed. 615 F.3d 233 at 236. The Court of Appeals held that the State did not meet its burden of proof in all respects to uphold the validity of the state legislation. But, the Court agreed with the district court that the State produced a strong basis in evidence justifying the statutory scheme on its face, and as applied to African American and Native American subcontractors, and that the State demonstrated that the legislative scheme is narrowly tailored to serve its compelling interest in remedying discrimination against these racial groups. The Court thus affirmed the decision of the district court in part, reversed it in part and remanded for further proceedings consistent with the opinion. *Id*.

The Court found that the North Carolina statutory scheme "largely mirrored the federal Disadvantaged Business Enterprise ("DBE") program, with which every state must comply in awarding highway construction contracts that utilize federal funds." 615 F.3d 233 at 236. The Court also noted that federal courts of appeal "have uniformly upheld the Federal DBE Program against equal-protection challenges." *Id*., at footnote 1, *citing*, *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

In 2004, the State retained a consultant to prepare and issue a third study of subcontractors employed in North Carolina's highway construction industry. The study, according to the Court, marshaled evidence to conclude that disparities in the utilization of minority subcontractors persisted. 615 F.3d 233 at 238. The Court pointed out that in response to the study, the North Carolina General Assembly substantially amended state legislation section 136-28.4 and the new law went into effect in 2006. The new statute modified the previous statutory scheme, according to the Court in five important respects. *Id*.

First, the amended statute expressly conditions implementation of any participation goals on the findings of the 2004 study. Second, the amended statute eliminates the 5 and 10 percent annual goals that were set in the predecessor statute. 615 F.3d 233 at 238-239. Instead, as amended, the statute requires NCDOT to "establish annual aspirational goals, not mandatory goals, … for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses … [that] shall not be applied rigidly on specific contracts or projects." *Id*. at 239, *quoting*, N.C. Gen.Stat. § 136-28.4(b)(2010). The statute further mandates that the NCDOT set "contract-specific goals or project-specific goals … for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization" based on availability, as determined by the study. *Id*.

Third, the amended statute narrowed the definition of "minority" to encompass only those groups that have suffered discrimination. *Id*. at 239. The amended statute replaced a list of defined minorities to any certain groups by defining "minority" as "only those racial or ethnicity classifications identified by [the study] … that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department." *Id*. at 239 *quoting* section 136-28.4(c)(2)(2010).

Fourth, the amended statute required NCDOT to reevaluate the Program over time and respond to changing conditions. 615 F.3d 233 at 239. Accordingly, NCDOT must conduct a study similar to the 2004 study at least every five years. *Id*. § 136-28.4(b). Finally, the amended statute contained a sunset provision which was set to expire on August 31, 2009, but the General Assembly subsequently extended the sunset provision to August 31, 2010. *Id*. Section 136-28.4(e) (2010).

The Court also noted that the statute required only good faith efforts by the prime contractors to utilize subcontractors, and that the good faith requirement, the Court found, proved permissive in practice: prime contractors satisfied the requirement in 98.5 percent of cases, failing to do so in only 13 of 878 attempts. 615 F.3d 233 at 239.

a. Strict scrutiny. The Court stated the strict scrutiny standard was applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically "fatal in fact." 615 F.3d 233 at 241. The Court pointed out that "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." *Id*. at 241 *quoting Alexander v. Estepp*, 95 F.3d 312, 315 (4th Cir. 1996). In so acting, a governmental entity must demonstrate it had a compelling interest in "remedying the effects of past or present racial discrimination." *Id*., *quoting Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

Thus, the Court found that to justify a race-conscious measure, a state must identify that discrimination, public or private, with some specificity, and must have a strong basis in evidence for its conclusion that remedial action is necessary. 615 F.3d 233 at 241 *quoting*, *Croson*, 488 U.S. at 504 and *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986)(plurality opinion).

The Court significantly noted that: "There is no 'precise mathematical formula to assess the quantum of evidence that rises to the *Croson* 'strong basis in evidence' benchmark.'" 615 F.3d 233 at 241, *quoting Rothe Dev. Corp. v. Department of Defense,* 545 F.3d 1023, 1049 (Fed. Cir. 2008). The Court stated that the sufficiency of the State's evidence of discrimination "must be evaluated on a case-by-case basis." *Id*. at 241. (internal quotation marks omitted).

The Court held that a state "need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary. 615 F.3d 233 at 241, *citing Concrete Works*, 321 F.3d at 958. "Instead, a state may meet its burden by relying on "a significant statistical disparity" between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors. *Id*. at 241, *citing Croson*, 488 U.S. at 509 (plurality opinion). The Court stated that we "further require that such evidence be 'corroborated by significant anecdotal evidence of racial discrimination.'" *Id*. at 241, *quoting Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993).

The Court pointed out that those challenging race-based remedial measures must "introduce credible, particularized evidence to rebut" the state's showing of a strong basis in evidence for the necessity for remedial action. *Id*. at 241-242, *citing Concrete Works*, 321 F.3d at 959. Challengers may offer a neutral explanation for the state's evidence, present contrasting statistical data, or demonstrate that the evidence is flawed, insignificant, or not actionable. *Id*. at 242 (citations omitted). However, the Court stated "that mere speculation that the state's evidence is insufficient or methodologically flawed does not suffice to rebut a state's showing. *Id*. at 242, *citing Concrete Works*, 321 F.3d at 991.

The Court held that to satisfy strict scrutiny, the state's statutory scheme must also be "narrowly tailored" to serve the state's compelling interest in not financing private discrimination with public funds. 615 F.3d 233 at 242, *citing Alexander*, 95 F.3d at 315 (*citing Adarand*, 515 U.S. at 227).

b. Intermediate scrutiny. The Court held that courts apply "intermediate scrutiny" to statutes that classify on the basis of gender. *Id*. at 242. The Court found that a defender of a statute that classifies on the basis of gender meets this intermediate scrutiny burden "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." *Id*., *quoting Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982). The Court noted that intermediate scrutiny requires less of a showing than does "the most exacting" strict scrutiny standard of review. *Id*. at 242. The Court found that its "sister circuits" provide guidance in formulating a governing evidentiary standard for intermediate scrutiny. These courts agree that such a measure "can rest safely on something less than the 'strong basis in evidence' required to bear the weight of a race- or ethnicity-conscious program." *Id*. at 242, *quoting Engineering Contractors*, 122 F.3d at 909 (other citations omitted).

In defining what constitutes "something less" than a 'strong basis in evidence,' the courts, … also agree that the party defending 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." 615 F.3d 233 at 242 *quoting Engineering Contractors*, 122 F.3d at 910 and *Concrete Works*, 321 F.3d at 959. The gender-based measures must be based on "reasoned analysis rather than on the mechanical application of traditional, often inaccurate, assumptions." *Id*. at 242 *quoting Hogan*, 458 U.S. at 726.

c. Plaintiff's burden. The Court found that when a plaintiff alleges that a statute violates the Equal Protection Clause as applied and on its face, the plaintiff bears a heavy burden. In its facial challenge, the Court held that a plaintiff "has a very heavy burden to carry, and must show that [a statutory scheme] cannot operate constitutionally under any circumstance." *Id*. at 243, *quoting West Virginia v. U.S. Department of Health & Human Services*, 289 F.3d 281, 292 (4th Cir. 2002).

d. Statistical evidence. The Court examined the State's statistical evidence of discrimination in public-sector subcontracting, including its disparity evidence and regression analysis. The Court noted that the statistical analysis analyzed the difference or disparity between the amount of subcontracting dollars minority- and women-owned businesses actually won in a market and the amount of subcontracting dollars they would be expected to win given their presence in that market. 615 F.3d 233 at 243. The Court found that the study grounded its analysis in the "disparity index," which measures the participation of a given racial, ethnic, or gender group engaged in subcontracting. *Id*. In calculating a disparity index, the study divided the percentage of total subcontracting dollars that a particular group won by the percent that group represents in the available labor pool, and multiplied the result by 100. *Id*. The closer the resulting index is to 100, the greater that group's participation. *Id*.

The Court held that after *Croson*, a number of our sister circuits have recognized the utility of the disparity index in determining statistical disparities in the utilization of minority- and women-owned businesses. *Id*. at 243-244 (Citations to multiple federal circuit court decisions omitted.) The Court also found that generally "courts consider a disparity index lower than 80 as an indication of discrimination." *Id*. at 244. Accordingly, the study considered only a disparity index lower than 80 as warranting further investigation. *Id*.

The Court pointed out that after calculating the disparity index for each relevant racial or gender group, the consultant tested for the statistical significance of the results by conducting standard deviation analysis through the use of t-tests. The Court noted that standard deviation analysis "describes the probability that the measured disparity is the result of mere chance." 615 F.3d 233 at 244, *quoting Eng'g Contractors*, 122 F.3d at 914. The consultant considered the finding of two standard deviations to demonstrate "with 95 percent certainty that disparity, as represented by either overutilization or underutilization, is actually present." *Id*., *citing Eng'g Contractors*, 122 F.3d at 914.

The study analyzed the participation of minority and women subcontractors in construction contracts awarded and managed from the central NCDOT office in Raleigh, North Carolina. 615 F.3d 233 at 244. To determine utilization of minority and women subcontractors, the consultant developed a master list of contracts mainly from State-maintained electronic databases and hard copy files; then selected from that list a statistically valid sample of contracts, and calculated the percentage of subcontracting dollars awarded to minority- and women-owned businesses during the five-year period ending in June 2003. (The study was published in 2004). *Id*. at 244.

The Court found that the use of data for centrally awarded contracts was sufficient for its analysis. It was noted that data from construction contracts awarded and managed from NCDOT divisions across the state and from preconstruction contracts, which involve work from engineering firms and architectural firms on the design of highways, was incomplete and not accurate. 615 F.3d 233 at 244, n.6. These data were not relied upon in forming the opinions relating to the study. *Id*. at 244, n. 6.

To estimate availability, which the Court defined as the percentage of a particular group in the relevant market area, the consultant created a vendor list comprising: (1) subcontractors approved by the department to perform subcontract work on state-funded projects, (2) subcontractors that performed such work during the study period, and (3) contractors qualified to perform prime construction work on state-funded contracts. 615 F.3d 233 at 244. The Court noted that prime construction work on state-funded contracts was included based on the testimony by the consultant that prime contractors are qualified to perform subcontracting work and often do perform such work. *Id*. at 245. The Court also noted that the consultant submitted its master list to NCDOT for verification. *Id*. at 245.

Based on the utilization and availability figures, the study prepared the disparity analysis comparing the utilization based on the percentage of subcontracting dollars over the five-year period, determining the availability in numbers of firms and their percentage of the labor pool, a disparity index which is the percentage of utilization in dollars divided by the percentage of availability multiplied by 100, and a t value. 615 F.3d 233 at 245.

The Court concluded that the figures demonstrated prime contractors underutilized all of the minority subcontractor classifications on state-funded construction contracts during the study period. 615 F.3d 233 245. The disparity index for each group was less than 80 and, thus, the Court found warranted further investigation. *Id*. The t-test results, however, demonstrated marked underutilization only of African American and Native American subcontractors. *Id*. For African Americans, the t-value fell outside of two standard deviations from the mean and, therefore, was statistically significant at a 95 percent confidence level. *Id*. The Court found there was at least a 95 percent probability that prime contractors' underutilization of African American subcontractors was *not* the result of mere chance. *Id*.

For Native American subcontractors, the t-value of 1.41 was significant at a confidence level of approximately 85 percent. 615 F.3d 233 at 245. The t-values for Hispanic American and Asian American subcontractors demonstrated significance at a confidence level of approximately 60 percent. The disparity index for women subcontractors found that they were overutilized during the study period. The overutilization was statistically significant at a 95 percent confidence level. *Id*.

To corroborate the disparity study, the consultant conducted a regression analysis studying the influence of certain company and business characteristics—with a particular focus on owner race and gender—on a firm's gross revenues. 615 F.3d 233 at 246. The consultant obtained the data from a telephone survey of firms that conducted or attempted to conduct business with NCDOT. The survey pool consisted of a random sample of such firms. *Id*.

The consultant used the firms' gross revenues as the dependent variable in the regression analysis to test the effect of other variables, including company age and number of full-time employees, and the owners' years of experience, level of education, race, ethnicity, and gender. 615 F.3d 233 at 246. The analysis revealed that minority and women ownership universally had a negative effect on revenue, and African American ownership of a firm had the largest negative effect on that firm's gross revenue of all the independent variables included in the regression model. *Id*. These findings led to the conclusion that, for African Americans, the disparity in firm revenue was not due to capacity-related or managerial characteristics alone. *Id*.

The Court rejected the arguments by the plaintiffs attacking the availability estimates. The Court rejected the plaintiff's expert, Dr. George LaNoue, who testified that bidder data—reflecting the number of subcontractors that actually bid on Department subcontracts—estimates availability better than "vendor data." 615 F.3d 233 at 246. Dr. LaNoue conceded, however, that the State does not compile bidder data and that bidder data actually reflects skewed availability in the context of a goals program that urges prime contractors to solicit bids from minority and women subcontractors. *Id*. The Court found that the plaintiff's expert did not demonstrate that the vendor data used in the study was unreliable, or that the bidder data would have yielded less support for the conclusions reached. In sum, the Court held that the plaintiffs' challenge to the availability estimate failed because it could not demonstrate that the 2004 study's availability estimate was inadequate. *Id*. at 246. The Court cited *Concrete Works*, 321 F.3d at 991 for the proposition that a challenger cannot meet its burden of proof through conjecture and unsupported criticisms of the state's evidence," and that the plaintiff Rowe presented no viable alternative for determining availability. *Id*. at 246-247, *citing Concrete Works*, 321 F.3d 991 and *Sherbrooke Turf, Inc. v. Minn. Department of Transportation*, 345 F.3d 964, 973 (8th Cir. 2003).

The Court also rejected the plaintiff's argument that minority subcontractors participated on state-funded projects at a level consistent with their availability in the relevant labor pool, based on the state's response that evidence as to the *number* of minority subcontractors working with state-funded projects does not effectively rebut the evidence of discrimination in terms of subcontracting *dollars*. 615 F.3d 233 at 247. The State pointed to evidence indicating that prime contractors used minority businesses for low-value work in order to comply with the goals, and that African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience. *Id*. The Court concluded the plaintiff did not offer any contrary evidence. *Id*.

The Court found that the State bolstered its position by presenting evidence that minority subcontractors have the capacity to perform higher-value work. 615 F.3d 233 at 247. The study concluded, based on a sample of subcontracts and reports of annual firm revenue, that exclusion of minority subcontractors from contracts under $500,000 was not a function of capacity. *Id*. at 247. Further, the State showed that over 90 percent of NCDOT's subcontracts were valued at $500,000 or less, and that capacity constraints do not operate with the same force on subcontracts as they may on prime contracts because subcontracts tend to be relatively small. *Id*. at 247. The Court pointed out that the Court in *Rothe II*, 545 F.3d at 1042-45, faulted disparity analyses of total construction dollars, including prime contracts, for failing to account for the relative capacity of firms in that case. *Id*. at 247.

The Court pointed out that in addition to the statistical evidence, the State also presented evidence demonstrating that from 1991 to 1993, during the Program's suspension, prime contractors awarded substantially fewer subcontracting dollars to minority and women subcontractors on state-funded projects. The Court rejected the plaintiff's argument that evidence of a decline in utilization does not raise an inference of discrimination. 615 F.3d 233 at 247-248. The Court held that the very significant decline in utilization of minority and women-subcontractors—nearly 38 percent—"surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors' reduced utilization of these groups during the suspension." *Id*. at 248, *citing Adarand v. Slater*, 228 F.3d at 1174 (finding that evidence of declining minority utilization after a program has been discontinued "strongly supports the government's claim that there are significant barriers to minority competition in the public subcontracting market, raising the specter of racial discrimination.") The Court found such an inference is particularly compelling for minority-owned businesses because, even during the study period, prime contractors continue to underutilize them on state-funded road projects. *Id*. at 248.

e. Anecdotal evidence. The State additionally relied on three sources of anecdotal evidence contained in the study: a telephone survey, personal interviews, and focus groups. The Court found the anecdotal evidence showed an informal "good old boy" network of White contractors that discriminated against minority subcontractors. 615 F.3d 233 at 248. The Court noted that three-quarters of African American respondents to the telephone survey agreed that an informal network of prime and subcontractors existed in the State, as did the majority of other minorities, that more than half of African American respondents believed the network excluded their companies from bidding or awarding a contract as did many of the other minorities. *Id*. at 248. The Court found that nearly half of non-minority male respondents corroborated the existence of an informal network, however, only 17 percent of them believed that the network excluded their companies from bidding or winning contracts. *Id*.

Anecdotal evidence also showed a large majority of African American respondents reported that double standards in qualifications and performance made it more difficult for them to win bids and contracts, that prime contractors view minority firms as being less competent than nonminority firms, and that nonminority firms change their bids when not required to hire minority firms. 615 F.3d 233 at 248. In addition, the anecdotal evidence showed African American and Native American respondents believed that prime contractors sometimes dropped minority subcontractors after winning contracts. *Id*. at 248. The Court found that interview and focus-group responses echoed and underscored these reports. *Id*.

The anecdotal evidence indicated that prime contractors already know who they will use on the contract before they solicit bids: that the "good old boy network" affects business because prime contractors just pick up the phone and call their buddies, which excludes others from that market completely; that prime contractors prefer to use other less qualified minority-owned firms to avoid subcontracting with African American-owned firms; and that prime contractors use their preferred subcontractor regardless of the bid price. 615 F.3d 233 at 248-249. Several minority subcontractors reported that prime contractors do not treat minority firms fairly, pointing to instances in which prime contractors solicited quotes the day before bids were due, did not respond to bids from minority subcontractors, refused to negotiate prices with them, or gave minority subcontractors insufficient information regarding the project. *Id*. at 249.

The Court rejected the plaintiffs' contention that the anecdotal data was flawed because the study did not verify the anecdotal data and that the consultant oversampled minority subcontractors in collecting the data. The Court stated that the plaintiffs offered no rationale as to why a fact finder could not rely on the State's "unverified" anecdotal data, and pointed out that a fact finder could very well conclude that anecdotal evidence need not- and indeed cannot-be verified because it "is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions." 615 F.3d 233 at 249, *quoting Concrete Works*, 321 F.3d at 989.

The Court held that anecdotal evidence simply supplements statistical evidence of discrimination. *Id*. at 249. The Court rejected plaintiffs' argument that the study oversampled representatives from minority groups, and found that surveying more non-minority men would not have advanced the inquiry. *Id*. at

249. It was noted that the samples of the minority groups were randomly selected. *Id*. The Court found the State had compelling anecdotal evidence that minority subcontractors face race-based obstacles to successful bidding. *Id*. at 249.

f. Strong basis in evidence that the minority participation goals were necessary to remedy discrimination. The Court held that the State presented a "strong basis in evidence" for its conclusion that minority participation goals were necessary to remedy discrimination against African American and Native American subcontractors." 615 F.3d 233 at 250. Therefore, the Court held that the State satisfied the strict scrutiny test. The Court found that the State's data demonstrated that prime contractors grossly underutilized African American and Native American subcontractors in public sector subcontracting during the study. *Id*. at 250. The Court noted that these findings have particular resonance because, since 1983, North Carolina has encouraged minority participation in state-funded highway projects, and yet African American and Native American subcontractors continue to be underutilized on such projects. *Id.* at 250.

In addition, the Court found the disparity index in the study demonstrated statistically significant underutilization of African American subcontractors at a 95 percent confidence level, and of Native American subcontractors at a confidence level of approximately 85 percent. 615 F.3d 233 at 250. The Court concluded the State bolstered the disparity evidence with regression analysis demonstrating that African American ownership correlated with a significant, negative impact on firm revenue, and demonstrated there was a dramatic decline in the utilization of minority subcontractors during the suspension of the program in the 1990s. *Id*.

Thus, the Court held the State's evidence showing a gross statistical disparity between the availability of qualified American and Native American subcontractors and the amount of subcontracting dollars they win on public sector contracts established the necessary statistical foundation for upholding the minority participation goals with respect to these groups. 615 F.3d 233 at 250.

The Court then found that the State's anecdotal evidence of discrimination against these two groups sufficiently supplemented the State's statistical showing. *Id*. The survey in the study exposed an informal, racially exclusive network that systemically disadvantaged minority subcontractors. *Id*. at 251. The Court held that the State could conclude with good reason that such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action. *Id*. The Court found the anecdotal evidence indicated that racial discrimination is a critical factor underlying the gross statistical disparities presented in the study. *Id*. at 251. Thus, the Court held that the State presented substantial statistical evidence of gross disparity, corroborated by "disturbing" anecdotal evidence.

The Court held, in circumstances like these, the Supreme Court has made it abundantly clear that a state can remedy a public contracting system that withholds opportunities from minority groups because of their race. 615 F.3d 233 at 251-252.

g. Narrowly tailored. The Court then addressed whether the North Carolina statutory scheme was narrowly tailored to achieve the State's compelling interest in remedying discrimination against African American and Native American subcontractors in public-sector subcontracting. The following factors were considered in determining whether the statutory scheme was narrowly tailored.

h. Neutral measures. The Court held that narrowly tailoring requires "serious, good faith consideration of workable race-neutral alternatives," but a state need not "exhaust [ ] … every conceivable race-neutral alternative." 615 F.3d 233 at 252 *quoting Grutter v. Bollinger*, 539 U.S. 306, 339 (2003). The Court found that the study details numerous alternative race-neutral measures aimed at enhancing the development and competitiveness of small or otherwise disadvantaged businesses in North Carolina. *Id*. at 252. The Court pointed out various race-neutral alternatives and measures, including a Small Business Enterprise Program; waiving institutional barriers of bonding and licensing requirements on certain small business contracts of $500,000 or less; and the Department contracts for support services to assist disadvantaged business enterprises with bookkeeping and accounting, taxes, marketing, bidding, negotiation, and other aspects of entrepreneurial development. *Id*. at 252.

The Court found that the plaintiff identified no viable race-neutral alternatives that North Carolina had failed to consider and adopt. The Court also found that the State had undertaken most of the race-neutral alternatives identified by USDOT in its regulations governing the Federal DBE Program. 615 F.3d 233 at 252, *citing* 49 CFR § 26.51(b). The Court concluded that the State gave serious good faith consideration to race-neutral alternatives prior to adopting the statutory scheme. *Id*.

The Court concluded that despite these race-neutral efforts, the study demonstrated disparities continue to exist in the utilization of African American and Native American subcontractors in state-funded highway construction subcontracting, and that these "persistent disparities indicate the necessity of a race-conscious remedy." 615 F.3d 233 at 252.

i. Duration. The Court agreed with the district court that the program was narrowly tailored in that it set a specific expiration date and required a new disparity study every five years. 615 F.3d 233 at 253. The Court found that the program's inherent time limit and provisions requiring regular reevaluation ensure it is carefully designed to endure only until the discriminatory impact has been eliminated. *Id*. at 253, *citing Adarand Constructors v. Slater*, 228 F.3d at 1179 (*quoting United States v. Paradise*, 480 U.S. 149, 178 (1987)).

j. Program's goals related to percentage of minority subcontractors. The Court concluded that the State had demonstrated that the Program's participation goals are related to the percentage of minority subcontractors in the relevant markets in the State. 615 F.3d 233 at 253. The Court found that NCDOT had taken concrete steps to ensure that these goals accurately reflect the availability of minority-owned businesses on a project-by-project basis. *Id.*

k. Flexibility. The Court held that the Program was flexible and thus satisfied this indicator of narrow tailoring. 615 F.3d 233 at 253. The Program contemplated a waiver of project-specific goals when prime contractors make good faith efforts to meet those goals, and that the good faith efforts essentially require only that the prime contractor solicit and consider bids from minorities. *Id*. The State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. *Id*. The Court found there was a lenient standard and flexibility of the "good faith" requirement, and noted the evidence showed only 13 of 878 good faith submissions failed to demonstrate good faith efforts. *Id*.

l. Burden on non-MWBE/DBEs. The Court rejected the two arguments presented by plaintiff that the Program created onerous solicitation and follow-up requirements, finding that there was no need for additional employees dedicated to the task of running the solicitation program to obtain MBE/WBEs, and that there was no evidence to support the claim that plaintiff was required to subcontract millions of dollars of work that it could perform itself for less money. 615 F.3d 233 at 254. The State offered evidence from the study that prime contractors need not submit subcontract work that they can self-perform. *Id.*

m. Overinclusive. The Court found by its own terms the statutory scheme is not overinclusive because it limited relief to only those racial or ethnicity classifications that have been subjected to discrimination in the relevant marketplace and that had been adversely affected in their ability to obtain contracts with the Department. 615 F.3d 233 at 254. The Court concluded that in tailoring the remedy this way, the legislature did not randomly include racial groups that may never have suffered from discrimination in the construction industry, but rather, contemplated participation goals only for those groups shown to have suffered discrimination. *Id.*

In sum, the Court held that the statutory scheme is narrowly tailored to achieve the State's compelling interest in remedying discrimination in public-sector subcontracting against African American and Native American subcontractors. *Id*. at 254.

n. Women-owned businesses overutilized. The study's public-sector disparity analysis demonstrated that women-owned businesses won far more than their expected share of subcontracting dollars during the study period. 615 F.3d 233 at 254. In other words, the Court concluded that prime contractors substantially overutilized women subcontractors on public road construction projects. *Id*. The Court found the public-sector evidence did not evince the "exceedingly persuasive justification" the Supreme Court requires. *Id.* at 255.

The Court noted that the State relied heavily on private-sector data from the study attempting to demonstrate that prime contractors significantly underutilized women subcontractors in the general construction industry statewide and in the Asheville, North Carolina area. 615 F.3d 233 at 255. However, because the study did not provide a t-test analysis on the private-sector disparity figures to calculate statistical significance, the Court could not determine whether this private underutilization was "the result of mere chance." *Id*. at 255. The Court found troubling the "evidentiary gap" that there was no evidence indicating the extent to which women-owned businesses competing on public-sector road projects vied for private-sector subcontracts in the general construction industry. *Id*. at 255. The Court also found that the State did not present any anecdotal evidence indicating that women subcontractors successfully bidding on State contracts faced private-sector discrimination. *Id*. In addition, the Court found missing any evidence prime contractors that discriminate against women subcontractors in the private sector nevertheless win public-sector contracts. *Id*.

The Court pointed out that it did not suggest that the proponent of a gender-conscious program "must always tie private discrimination to public action." 615 F.3d 233 at 255, n. 11. But, the Court held where, as here, there existed substantial probative evidence of overutilization in the relevant public sector, a state must present something more than generalized private-sector data unsupported by compelling anecdotal evidence to justify a gender-conscious program. *Id*. at 255, n. 11.

Moreover, the Court found the state failed to establish the amount of overlap between general construction and road construction subcontracting. 615 F.3d 233 at 256. The Court said that the dearth of evidence as to the correlation between public road construction subcontracting and private general construction subcontracting severely limits the private data's probative value in this case. *Id*.

Thus, the Court held that the State could not overcome the strong evidence of overutilization in the public sector in terms of gender participation goals, and that the proffered private-sector data failed to establish discrimination in the particular field in question. 615 F.3d 233 at 256. Further, the anecdotal evidence, the Court concluded, indicated that most women subcontractors do not experience discrimination. *Id*. Thus, the Court held that the State failed to present sufficient evidence to support the Program's current inclusion of women subcontractors in setting participation goals. *Id*.

o. Holding. The Court held that the state legislature had crafted legislation that withstood the constitutional scrutiny. 615 F.3d 233 at 257. The Court concluded that in light of the statutory scheme's flexibility and responsiveness to the realities of the marketplace, and given the State's strong evidence of discrimination against African American and Native American subcontractors in public-sector subcontracting, the State's application of the statute to these groups is constitutional. *Id.* at 257. However, the Court also held that because the State failed to justify its application of the statutory scheme to women, Asian American, and Hispanic American subcontractors, the Court found those applications were not constitutional.

Therefore, the Court affirmed the judgment of the district court with regard to the facial validity of the statute, and with regard to its application to African American and Native American subcontractors. 615 F.3d 233 at 258. The Court reversed the district court's judgment insofar as it upheld the constitutionality of the state legislature as applied to women, Asian American, and Hispanic American subcontractors. *Id*. The Court thus remanded the case to the district court to fashion an appropriate remedy consistent with the opinion. *Id*.

p. Concurring opinions. It should be pointed out that there were two concurring opinions by the three-judge panel: one judge concurred in the judgment, and the other judge concurred fully in the majority opinion and the judgment.

2. *H.B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al.*, 589 F. Supp.2d 587 (E.D.N.C. 2008), *affirmed in part, reversed in part, and remanded*, 615 F.3d 233 (4th Cir. 2010). In *H.B. Rowe Company v. Tippett, NCDOT, et al.* (*Rowe*), the United States District Court for the Eastern District of North Carolina, Western Division, heard a challenge to the State of North Carolina MBE and WBE Program, which is a State of North Carolina "affirmative action" program administered by NCDOT. The NCDOT MWBE Program challenged in *Rowe* involves projects funded solely by the State of North Carolina and not funded by USDOT. 589 F.Supp.2d 587.

a. Background. In this case, plaintiff, a family-owned road construction business, bid on an NCDOT-initiated state-funded project. NCDOT rejected plaintiff's bid in favor of the next low bid that had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff's bid was rejected because of plaintiff's failure to demonstrate "good faith efforts" to obtain pre-designated levels of minority participation on the project.

As a prime contractor, plaintiff Rowe was obligated under the MWBE Program to either obtain participation of specified levels of MBE and WBE participation as subcontractors, or to demonstrate good faith efforts to do so. For this particular project, NCDOT had set MBE and WBE subcontractor participation goals of 10 percent and 5 percent, respectively. Plaintiff's bid included 6.6 percent WBE participation, but no MBE participation. The bid was rejected after a review of plaintiff's good faith efforts to obtain MBE participation. The next lowest bidder submitted a bid including 3.3 percent MBE participation and 9.3 percent WBE participation, and although not obtaining a specified level of MBE participation, it was determined to have made good faith efforts to do so. (Order of the District Court, dated March 29, 2007).

NCDOT's MWBE Program "largely mirrors" the Federal DBE Program, which NCDOT is required to comply with in awarding construction contracts that utilize federal funds. (589 F.Supp.2d 587; Order of the District Court, dated September 28, 2007). Like the Federal DBE Program, under NCDOT's MWBE Program, the goals for minority and female participation are aspirational rather than mandatory. *Id*. An individual target for MBE participation was set for each project. *Id*.

Historically, NCDOT had engaged in several disparity studies. The most recent study was done in 2004. *Id*. The 2004 study, which followed the study in 1998, concluded that disparities in utilization of MBEs persist and that a basis remains for continuation of the MWBE Program. The new statute as revised was approved in 2006, which modified the previous MBE statute by eliminating the 10 percent and 5 percent goals and establishing a fixed expiration date of 2009.

Plaintiff filed its complaint in this case in 2003 against NCDOT and individuals associated with NCDOT, including the Secretary of NCDOT, W. Lyndo Tippett. In its complaint, plaintiff alleged that the MWBE statute for NCDOT was unconstitutional on its face and as applied. 589 F.Supp.2d 587.

b. March 29, 2007 Order of the District Court. The matter came before the district court initially on several motions, including the defendants' Motion to Dismiss or for Partial Summary Judgment, defendants' Motion to Dismiss the Claim for Mootness and plaintiff's Motion for Summary Judgment. The court in its October 2007 Order granted in part and denied in part defendants' Motion to Dismiss or for partial summary judgment; denied defendants' Motion to Dismiss the Claim for Mootness; and dismissed without prejudice plaintiff's Motion for Summary Judgment.

The court held the Eleventh Amendment to the United States Constitution bars plaintiff from obtaining any relief against defendant NCDOT, and from obtaining a retrospective damages award against any of the individual defendants in their official capacities. The court ruled that plaintiff's claims for relief against NCDOT were barred by the Eleventh Amendment, and NCDOT was dismissed from the case as a defendant. Plaintiff's claims for interest, actual damages, compensatory damages, and punitive damages against the individual defendants sued in their official capacities also was held barred by the Eleventh Amendment and were dismissed. But, the court held that plaintiff was entitled to sue for an injunction to prevent state officers from violating a federal law, and under the *Ex Parte Young* exception, plaintiff's claim for declaratory and injunctive relief was permitted to go forward as against the individual defendants who were acting in an official capacity with NCDOT. The court also held that the individual defendants were entitled to qualified immunity, and therefore dismissed plaintiff's claim for money damages against the individual defendants in their individual capacities. Order of the District Court, dated March 29, 2007.

Defendants argued that the recent amendment to the MWBE statute rendered plaintiff's claim for declaratory injunctive relief moot. The new MWBE statute adopted in 2006, according to the court, does away with many of the alleged shortcomings argued by the plaintiff in this lawsuit. The court found the amended statute has a sunset date in 2009; specific aspirational participation goals by women and minorities are eliminated; defines "minority" as including only those racial groups which disparity studies identify as subject to underutilization in state road construction contracts; explicitly references the findings of the 2004 Disparity Study and requires similar studies to be conducted at least once every five years; and directs NCDOT to enact regulations targeting discrimination identified in the 2004 and future studies.

The court held, however, that the 2004 Disparity Study and amended MWBE statute do not remedy the primary problem which the plaintiff complained of: the use of remedial race- and gender- based preferences allegedly without valid evidence of past racial and gender discrimination. In that sense, the court held the amended MWBE statute continued to present a live case or controversy, and accordingly denied the defendants' Motion to Dismiss Claim for Mootness as to plaintiff's suit for prospective injunctive relief. Order of the District Court, dated March 29, 2007.

The court also held that since there had been no analysis of the MWBE statute apart from the briefs regarding mootness, plaintiff's pending Motion for Summary Judgment was dismissed without prejudice. Order of the District Court, dated March 29, 2007.

c. September 28, 2007 Order of the District Court. On September 28, 2007, the district court issued a new order in which it denied both the plaintiff's and the defendants' Motions for Summary Judgment. Plaintiff claimed that the 2004 Disparity Study is the sole basis of the MWBE statute, that the study is flawed, and therefore it does not satisfy the first prong of strict scrutiny review. Plaintiff also argued that the 2004 study tends to prove non-discrimination in the case of women; and finally, the MWBE Program fails the second prong of strict scrutiny review in that it is not narrowly tailored.

The court found summary judgment was inappropriate for either party and that there are genuine issues of material fact for trial. The first and foremost issue of material fact, according to the court, was the adequacy of the 2004 Disparity Study as used to justify the MWBE Program. Therefore, because the court found there was a genuine issue of material fact regarding the 2004 Study, summary judgment was denied on this issue.

The court also held there was confusion as to the basis of the MWBE Program, and whether it was based solely on the 2004 Study or also on the 1993 and 1998 Disparity Studies. Therefore, the court held a genuine issue of material fact existed on this issue and denied summary judgment. Order of the District Court, dated September 28, 2007.

d. December 9, 2008 Order of the District Court (589 F.Supp.2d 587). The district court on December 9, 2008, after a bench trial, issued an Order that found as a fact and concluded as a matter of law that plaintiff failed to satisfy its burden of proof that the North Carolina Minority and Women's Business Enterprise Program, enacted by the state legislature to affect the awarding of contracts and subcontracts in state highway construction, violated the United States Constitution.

Plaintiff, in its complaint filed against NCDOT, alleged that N.C. Gen. St. § 136-28.4 is unconstitutional on its face and as applied, and that NCDOT while administering the MWBE Program violated plaintiff's rights under the federal law and the United States Constitution. Plaintiff requested a declaratory judgment that the MWBE Program is invalid and sought actual and punitive damages.

As a prime contractor, plaintiff was obligated under the MWBE Program to either obtain participation of specified levels of MBE and WBE subcontractors, or to demonstrate that good faith efforts were made to do so. Following a review of plaintiff's good faith efforts to obtain minority participation on the particular contract that was the subject of plaintiff's bid, the bid was rejected. Plaintiff's bid was rejected in favor of the next lowest bid, which had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff's bid was rejected because of plaintiff's failure to demonstrate good faith efforts to obtain pre-designated levels of minority participation on the project. 589 F.Supp.2d 587.

e. North Carolina's MWBE Program. The MWBE Program was implemented following amendments to N.C. Gen. Stat. §136-28.4. Pursuant to the directives of the statute, NCDOT promulgated regulations governing administration of the MWBE Program. See N.C. Admin. Code tit. 19A, § 2D.1101, *et seq*. The regulations had been amended several times and provide that NCDOT shall ensure that MBEs and WBEs have the maximum opportunity to participate in the performance of contracts financed with non-federal funds. N.C. Admin. Code Tit. 19A § 2D.1101.

North Carolina's MWBE Program, which affected only highway bids and contracts funded solely with state money, according to the district court, largely mirrored the Federal DBE Program, which NCDOT is required to comply with in awarding construction contracts that utilize federal funds. 589 F.Supp.2d 587. Like the Federal DBE Program, under North Carolina's MWBE program, the targets for minority and female participation were aspirational rather than mandatory, and individual targets for disadvantaged business participation were set for each individual project. N.C. Admin. Code tit. 19A § 2D.1108. In determining what level of MBE and WBE participation was appropriate for each project, NCDOT would take into account "the approximate dollar value of the contract, the geographical location of the proposed work, a number of the eligible funds in the geographical area, and the anticipated value of the items of work to be included in the contract." *Id*. NCDOT would also consider "the annual goals mandated by Congress and the North Carolina General Assembly." *Id*.

A firm could be certified as an MBE or WBE by showing NCDOT that it is "owner controlled by one or more socially and economically disadvantaged individuals." NC Admin. Code tit. 1980, § 2D.1102.

The district court stated the MWBE Program did not directly discriminate in favor of minority and women contractors, but rather "encouraged prime contractors to favor MBEs and WBEs in subcontracting before submitting bids to NCDOT." 589 F.Supp.2d 587. In determining whether the lowest bidder is "responsible," NCDOT would consider whether the bidder obtained the level of certified MBE and WBE participation previously specified in the NCDOT project proposal. If not, NCDOT would consider whether the bidder made good faith efforts to solicit MBE and WBE participation. N.C. Admin. Code tit. 19A§ 2D.1108.

There were multiple studies produced and presented to the North Carolina General Assembly in the years 1993, 1998, and 2004. The 1998 and 2004 studies concluded that disparities in the utilization of minority and women contractors persist, and that there remains a basis for continuation of the MWBE program. The MWBE program as amended after the 2004 study includes provisions that eliminated the 10 percent and 5 percent goals and instead replaced them with contract-specific participation goals created by NCDOT; established a sunset provision that has the statute expiring on August 31, 2009; and provides reliance on a disparity study produced in 2004.

The MWBE Program, as it stood at the time of this decision, provides that NCDOT "dictates to prime contractors the express goal of MBE and WBE subcontractors to be used on a given project. However, instead of the state hiring the MBE and WBE subcontractors itself, NCDOT makes the prime contractor solely responsible for vetting and hiring these subcontractors. If a prime contractor fails to hire the goal amount, it must submit efforts of 'good faith' attempts to do so." 589 F.Supp.2d 587.

f. Compelling interest. The district court held that NCDOT established a compelling governmental interest to have the MWBE Program. The court noted that the United States Supreme Court in Croson made clear that a state legislature has a compelling interest in eradicating and remedying private discrimination in the private subcontracting inherent in the letting of road construction contracts. 589 F.Supp.2d 587*, citing Croson*, 488 U.S. at 492. The district court found that the North Carolina Legislature established it relied upon a strong basis of evidence in concluding that prior race discrimination in North Carolina's road construction industry existed so as to require remedial action.

The court held that the 2004 Disparity Study demonstrated the existence of previous discrimination in the specific industry and locality at issue. The court stated that disparity ratios provided for in the 2004 Disparity Study highlighted the underutilization of MBEs by prime contractors bidding on state funded highway projects. In addition, the court found that evidence relied upon by the legislature demonstrated a dramatic decline in the utilization of MBEs during the program's suspension in 1991. The court also found that anecdotal support relied upon by the legislature confirmed and reinforced the general data demonstrating the underutilization of MBEs. The court held that the NCDOT established that, "based upon a clear and strong inference raised by this Study, they concluded minority contractors suffer from the lingering effects of racial discrimination." 589 F.Supp.2d 587.

With regard to WBEs, the court applied a different standard of review. The court held the legislative scheme as it relates to MWBEs must serve an important governmental interest and must be substantially related to the achievement of those objectives. The court found that NCDOT established an important governmental interest. The 2004 Disparity Study provided that the average contracts awarded WBEs are significantly smaller than those awarded non-WBEs. The court held that NCDOT established, based upon a clear and strong inference raised by the Study, women contractors suffer from past gender discrimination in the road construction industry.

g. Narrowly tailored. The district court noted that the Fourth Circuit of Appeals lists a number of factors to consider in analyzing a statute for narrow tailoring: (1) the necessity of the policy and the efficacy of alternative race-neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties. 589 F.Supp.2d 587, *quoting Belk v. Charlotte-Mecklenburg Board of Education*, 269 F.3d 305, 344 (4th Cir. 2001).

The district court held that the legislative scheme in N.C. Gen. Stat. § 136-28.4 is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts. The district court's analysis focused on narrowly tailoring factors (2) and (4) above, namely the duration of the policy and the flexibility of the policy. With respect to the former, the court held the legislative scheme provides the program be reviewed at least every five years to revisit the issue of utilization of MWBEs in the road construction industry. N.C. Gen. Stat. §136-28.4(b). Further, the legislative scheme includes a sunset provision so that the program will expire on August 31, 2009, unless renewed by an act of the legislature. *Id*. at § 136-28.4(e). The court held these provisions ensured the legislative scheme last no longer than necessary.

The court also found that the legislative scheme enacted by the North Carolina legislature provides flexibility insofar as the participation goals for a given contract or determined on a project-by-project basis. § 136-28.4(b)(1). Additionally, the court found the legislative scheme in question is not overbroad because the statute applies only to "those racial or ethnicity classifications identified by a study conducted in accordance with this section that had been subjected to discrimination in a relevant marketplace and that had been adversely affected in their ability to obtain contracts with the Department." § 136-28.4(c)(2). The court found that plaintiff failed to provide any evidence that indicates minorities from non-relevant racial groups had been awarded contracts as a result of the statute.

The court held that the legislative scheme is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts, and therefore found that § 136-28.4 is constitutional.

The decision of the district court was appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed in part and reversed in part the decision of the district court. *See* 615 F3d 233 (4th Cir. 2010), discussed above.

3. *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore*, 218 F. Supp.2d 749 (D. Md. 2002). This case is instructive because the court found the Executive Order of the Mayor of the City of Baltimore was precatory in nature (creating no legal obligation or duty) and contained no enforcement mechanism or penalties for noncompliance and imposed no substantial restrictions; the Executive Order announced goals that were found to be aspirational only.

The Associated Utility Contractors of Maryland, Inc. (AUC) sued the City of Baltimore challenging its ordinance providing for minority and women-owned business enterprise (MWBE) participation in city contracts. Previously, an earlier City of Baltimore MWBE program was declared unconstitutional. *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore*, 83 F. Supp.2d 613 (D. Md. 2000). The City adopted a new ordinance that provided for the establishment of MWBE participation goals on a contract-by-contract basis, and made several other changes from the previous MWBE Program declared unconstitutional in the earlier case.

In addition, the Mayor of the City of Baltimore issued an Executive Order that announced a goal of awarding 35 percent of all City contracting dollars to MBE/WBEs. The court found this goal of 35 percent participation was aspirational only and the Executive Order contained no enforcement mechanism or penalties for noncompliance. The Executive Order also specified many "noncoercive" outreach measures to be taken by the City agencies relating to increasing participation of MBE/WBEs. These measures were found to be merely aspirational and no enforcement mechanism was provided.

The court addressed in this case only a motion to dismiss filed by the City of Baltimore arguing that AUC had no standing. The court denied the motion to dismiss holding that the association had standing to challenge the new MBE/WBE ordinance, although the court noted that it had significant issues with AUC having representational standing because of the nature of the MBE/WBE plan and the fact AUC did not have any of its individual members named in the suit. The court also held that AUC was entitled to bring an as applied challenge to the Executive Order of the Mayor, but rejected it having standing to bring a facial challenge based on a finding that it imposes no requirement, creates no sanctions, and does not inflict an injury upon any member of AUC in any concrete way. Therefore, the Executive Order did not create a "case or controversy" in connection with a facial attack. The court found the wording of the Executive Order to be precatory and imposing no substantive restrictions.

After this decision, the City of Baltimore and AUC entered into a settlement agreement and a dismissal with prejudice of the case. An order was issued by the court on October 22, 2003 dismissing the case with prejudice.

4. *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore and Maryland Minority Contractors Association, Inc.*, 83 F. Supp.2d 613 (D. Md. 2000). Plaintiff AUC filed this action to challenge the continued implementation of the affirmative action program created by Baltimore City Ordinance (the Ordinance). 83 F.Supp.2d 613 (D. Md. 2000).

The Ordinance was enacted in 1990 and authorized the City to establish annually numerical set-aside goals applicable to a wide range of public contracts, including construction subcontracts. *Id.*

AUC filed a motion for summary judgment, which the City and intervening defendant Maryland Minority Contractors Association, Inc. (MMCA) opposed. *Id.* at 614. In 1999, the court issued an order granting in part and denying in part the motion for summary judgment (the December injunction). *Id.* Specifically, as to construction contracts entered into by the City, the court enjoined enforcement of the Ordinance (and, consequently, continued implementation of the affirmative action program it authorized) in respect to the City's 1999 numerical set-aside goals for Minority-and Women–Owned Business Enterprises (MWBEs), which had been established at 20 percent and 3 percent, respectively. *Id.* The court denied the motion for summary judgment as to the plaintiff's facial attack on the constitutionality of the Ordinance, concluding that there existed "a dispute of material fact as to whether the enactment of the Ordinance was adequately supported by a factual record of unlawful discrimination properly remediable through race- and gender-based affirmative action." *Id.*

The City appealed the entry of the December injunction to the United States Court of Appeals for the Fourth Circuit. In addition, the City filed a motion for stay of the injunction. *Id.* In support of the motion for stay, the City contended that AUC lacked organizational standing to challenge the Ordinance. The court held the plaintiff satisfied the requirements for organizational standing as to the set-aside goals established by the City for 1999. *Id.*

The City also contended that the court erred in failing to forebear from the adjudication of this case and of the motion for summary judgment until after it had completed an alleged disparity study which, it contended, would establish a justification for the set-aside goals established for 1999. *Id.* The court said this argument, which the court rejected, rested on the notion that a governmental entity might permissibly adopt an affirmative action plan including set-aside goals and wait until such a plan is challenged in court before undertaking the necessary studies upon which the constitutionality of the plan depends. *Id.*

Therefore, because the City offered no contemporaneous justification for the 1999 set-aside goals it adopted on the authority of the Ordinance, the court issued an injunction in its 1999 decision and declined to stay its effectiveness. *Id.* Since the injunction awarded complete relief to AUC, and any effort to adjudicate the issue of whether the City would adopt revised set-aside goals on the authority of the Ordinance was wholly speculative undertaking, the court dismissed the case without prejudice. *Id.*

a. Facts and procedural history. In 1986, the City Council enacted in Ordinance 790 the first city-wide affirmative action set-aside goals, which required, *inter alia*, that for all City contracts, 20 percent of the value of subcontracts be awarded to MBEs and 3 percent to WBEs. *Id.* at 615. As permitted under then then-controlling Supreme Court precedent, the court said Ordinance 790 was justified by a finding that general societal discrimination had disadvantaged MWBEs. Apparently, no disparity statistics were offered to justify Ordinance 790. *Id.*

After the Supreme Court announced its decision in *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989), the City convened a Task Force to study the constitutionality of Ordinance 790. *Id.* The Task Force held hearings and issued a Public Comment Draft Report on November 1, 1989. *Id.* It held additional hearings, reviewed public comments and issued its final report on April 11, 1990, recommending several amendments to Ordinance 790. *Id.* The City Council conducted hearings, and in June 1990, enacted Ordinance 610, the law under attack in this case. *Id.*

In enacting Ordinance 610, the City Council found that it was justified as an appropriate remedy of "[p]ast discrimination in the City's contracting process by prime contractors against minority and women's business enterprises ... ." *Id.* The City Council also found that "[m]inority and women's business enterprises ... have had difficulties in obtaining financing, bonding, credit and insurance;" that "[t]he City of Baltimore has created a number of different assistance programs to help small businesses with these problems ... [but that t]hese assistance programs have not been effective in either remedying the effects of past discrimination ... or in preventing ongoing discrimination." *Id.*

The operative section of Ordinance 610 relevant to this case mandated a procedure by which set-aside goals were to be established each year for minority- and women-owned business participation in City contracts. *Id.* The Ordinance itself did not establish any goals, but directed the Mayor to consult with the Chief of Equal Opportunity Compliance and "contract authorities" and to annually specify goals for each separate category of contracting "such as public works, professional services, concession and purchasing contracts, as well as any other categories that the Mayor deems appropriate." *Id.*

In 1990, upon its enactment of the Ordinance, the City established across-the-board set-aside goals of 20 percent MBE and 3 percent WBE for all City contracts with no variation by market. *Id.* The court found the City simply readopted the 20 percent MBE and 3 percent WBE subcontractor participation goals from the prior law, Ordinance 790, which the Ordinance had specifically repealed. *Id.* at 616. These same set-aside goals, the court said, were adopted without change and without factual support in each succeeding year since 1990. *Id.*

No annual study ever was undertaken to support the implementation of the affirmative action program generally or to support the establishment of any annual goals, the court concluded, and the City did not collect the data that could have permitted such findings. *Id.* No disparity study existed or was undertaken until the commencement of this lawsuit. *Id.* Thus, the court held the City had no reliable record of the availability of MWBEs for each category of contracting, and thus no way of determining whether its 20 percent and 3 percent goals were rationally related to extant discrimination (or the continuing effects thereof) in the letting of public construction contracts. *Id.*

b. AUC has associational standing. AUC established that it had associational standing to challenge the set-aside goals adopted by the City in 1999. *Id.* Specifically, AUC sufficiently established that its members were "ready and able" to bid for City public works contracts. *Id.* No more, the court noted, was required. *Id.*

The court found that AUC's members were disadvantaged by the goals in the bidding process, and this alone was a cognizable injury. *Id.* For the purposes of an equal protection challenge to affirmative action set-aside goals, the court stated the Supreme Court has held that the "'injury in fact' is the inability to compete on an equal footing in the bidding process ... ." *Id.* at 617, *quoting Northeastern Florida Chapter*, 508 U.S. at 666, and *citing Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 211 (1995).

The Supreme Court in *Northeastern Florida Chapter* held that individual standing is established to challenge a set-aside program when a party demonstrates "that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis." *Id.* at 616 *quoting*, *Northeastern*, 508 U.S. at 666. The Supreme Court further held that once a party shows it is "ready and able" to bid in this context, the party will have sufficiently shown that the set-aside goals are "the 'cause' of its injury and that a judicial decree directing the city to discontinue its program would 'redress' the injury," thus satisfying the remaining requirements for individual standing. *Id. quoting Northeastern*, at 666 & n.5.

The court found there was ample evidence that AUC members were "ready and able" to bid on City public works contracts based on several documents in the record, and that members of AUC would have individual standing in their own right to challenge the constitutionality of the City's set-aside goals applicable to construction contracting, satisfying the associational standing test. *Id.* at 617-18. The court held AUC had associational standing to challenge the constitutionality of the public works contracts set-aside provisions established in 1999. *Id.* at 618.

c. Strict scrutiny analysis. AUC complained that since their initial promulgation in 1990, the City's set-aside goals required AUC members to "select or reject certain subcontractors based upon the race, ethnicity, or gender of such subcontractors" in order to bid successfully on City public works contracts for work exceeding $25,000 (City public works contracts). *Id.* at 618. AUC claimed, therefore, that the City's set-aside goals violated the Fourteenth Amendment's guarantee of equal protection because they required prime contractors to engage in discrimination which the government itself cannot perpetrate. *Id.*

The court stated that government classifications based upon race and ethnicity are reviewed under strict scrutiny, citing the Supreme Court in *Adarand*, 515 U.S. at 227; and that those based upon gender are reviewed under the less stringent intermediate scrutiny. *Id.* at 618 , *citing United States v. Virginia*, 518 U.S. 515, 531 (1996). *Id.* "[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." *Id.* at 619, *quoting Adarand*, 515 U.S. at 227. The government classification must be narrowly tailored to achieve a compelling government interest. *Id. citing Croson*, 488 U.S. at 493–95. The court then noted that the Fourth Circuit has explained:

> *The rationale for this stringent standard of review is plain. Of all the criteria by which men and women can be judged, the most pernicious is that of race. The injustice of judging human beings by the color of their skin is so apparent that racial classifications cannot be rationalized by the casual invocation of benign remedial aims ... . While the inequities and indignities visited by past discrimination are undeniable, the use of race*

as a reparational device risks perpetuating the very race-consciousness such a remedy purports to overcome.

Id. at 619, quoting Maryland Troopers Ass'n, Inc. v. Evans, 993 F.2d 1072, 1076 (4th Cir.1993) (citation omitted).

The court also pointed out that in *Croson*, a plurality of the Supreme Court concluded that state and local governments have a compelling interest in remedying identified past and present race discrimination within their borders. *Id.* at 619, *citing Croson*, 488 U.S. at 492. The plurality of the Supreme Court, according to the court, explained that the Fourteenth Amendment permits race-conscious programs that seek both to eradicate discrimination by the governmental entity itself, and to prevent the public entity from acting as a "'passive participant' in a system of racial exclusion practiced by elements of the local construction industry" by allowing tax dollars "to finance the evil of private prejudice." *Id.* at 619, *quoting Croson*, 488 U.S. at 492. Thus, the court found *Croson* makes clear that the City has a compelling interest in eradicating and remedying *private discrimination* in the *private subcontracting* inherent in the letting of City construction contracts. *Id.*

The Fourth Circuit, the court stated, has interpreted Croson to impose a "two-step analysis for evaluating a race-conscious remedy." *Id.* at 619 *citing Maryland Troopers Ass'n*, 993 F.2d at 1076. "First, the [government] must have a 'strong basis in evidence for its conclusion that remedial action [is] necessary....' 'Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are ... in fact motivated by illegitimate notions of racial inferiority or simple racial politics.'" *Id.* at 619, *quoting Maryland Troopers Ass'n*, 993 F.2d at 1076 (*citing Croson*).

The second step in the Croson analysis, according to the court, is to determine whether the government has adopted programs that " 'narrowly tailor' any preferences based on race to meet their remedial goal." *Id.* at 619. The court found that the Fourth Circuit summarized Supreme Court jurisprudence on "narrow tailoring" as follows:

The preferences may remain in effect only so long as necessary to remedy the discrimination at which they are aimed; they may not take on a life of their own. The numerical goals must be waivable if qualified minority applications are scarce, and such goals must bear a reasonable relation to minority percentages in the relevant qualified labor pool, not in the population as a whole. Finally, the preferences may not supplant race-neutral alternatives for remedying the same discrimination.

Id. at 620, quoting Maryland Troopers Ass'n, 993 F.2d at 1076–77 (citations omitted).

d. Intermediate scrutiny analysis. The court stated the intermediate scrutiny analysis for gender-based discrimination as follows: "Parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action." *Id.* at 620, *quoting Virginia*, 518 U.S. at 531, 116. This burden is a "demanding [one] and it rests entirely on the State." *Id.* at 620 *quoting Virginia*, 518 U.S. at 533.

Although gender is not "a proscribed classification," in the way race or ethnicity is, the courts nevertheless "carefully inspect[ ] official action that closes a door or denies opportunity" on the basis of gender. *Id.* at 620, *quoting Virginia*, 518 U.S. at 532-533. At bottom, the court concluded, a government wishing to discriminate on the basis of gender must demonstrate that its doing so serves "important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Id.* at 620, *quoting Virginia*, 518 U.S. at 533 (citations and quotations omitted).

As with the standards for race-based measures, the court found no formula exists by which to determine what evidence will justify every different type of gender-conscious measure. *Id.* at 620. However, as the Third Circuit has explained, "[l]ogically, a city must be able to rely on less evidence in enacting a gender preference than a racial preference because applying Croson's evidentiary standard to a gender preference would eviscerate the difference between strict and intermediate scrutiny." *Id.* at 620, *quoting Contractors Ass'n*, 6 F.3d at 1010.

The court pointed out that the Supreme Court has stated an affirmative action program survives intermediate scrutiny if the proponent can show it was "a product of analysis rather than a stereotyped reaction based on habit." *Id.* at 620, *quoting Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. 547, 582–83 (1990)(internal quotations omitted). The Third Circuit, the court said, determined that "this standard requires the City to present probative evidence in support of its stated rationale for the [10 percent gender set-aside] preference, discrimination against women-owned contractors." *Id.* at 620, *quoting Contractors Ass'n*, 6 F.3d at 1010.

e. Preenactment versus postenactment evidence. In evaluating the first step of the Croson test, whether the City had a "strong basis in evidence for its conclusion that [race-conscious] remedial action was necessary," the court held that it must limit its inquiry to evidence which the City actually considered before enacting the numerical goals. *Id.* at 620. The court found the Supreme Court has established the standard that preenactment evidence must provide the "strong basis in evidence" that race-based remedial action is necessary. *Id.* at 620-621.

The court noted the Supreme Court in *Wygant*, the plurality opinion, joined by four justices including Justice O'Connor, held that a state entity "must ensure that, before it embarks on an affirmative-action program, it has convincing evidence that remedial action is warranted. That is, it must have sufficient evidence to justify the conclusion that there has been prior discrimination." *Id.* at 621*, quoting Wygant*, 476 U.S. at 277.

The court stated that because of this controlling precedent, it was compelled to analyze the evidence before the City when it adopted the 1999 set-aside goals specifying the 20 percent MBE participation in City construction subcontracts, and for analogous reasons, the 3 percent WBE preference must also be justified by preenactment evidence. *Id.* at 621.

The court said the Fourth Circuit has not ruled on the issue whether affirmative action measures must be justified by a strong basis in preenactment evidence. The court found that in the Fourth Circuit decisions invalidating state affirmative action policies in *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir.1994), and *Maryland Troopers Ass'n, Inc. v. Evans*, 993 F.2d 1072 (4th Cir.1993), the court apparently relied without comment upon post enactment evidence when evaluating the policies for *Croson* "strong basis in evidence." *Id*. at 621, n.6, *citing Podberesky*, 38 F.3d at 154 (referring to post enactment surveys of African–American students at College Park campus); *Maryland Troopers*, 993 F.2d at 1078 (evaluating statistics about the percentage of Black troopers in 1991 when deciding whether there was a statistical disparity great enough to justify the affirmative action measures in a 1990 consent decree). The court concluded, however, this issue was apparently not raised in these cases, and both were decided before the 1996 Supreme Court decision in *Shaw v. Hunt*, 517 U.S. 899, which clarified that the *Wygant* plurality decision was controlling authority on this issue. *Id.* at 621, n.6.

The court noted that three courts had held, prior to *Shaw*, that post enactment evidence may be relied upon to satisfy the *Croson* "strong basis in evidence" requirement. *Concrete Works of Colorado, Inc. v. Denver*, 36 F.3d 1513 (10th Cir.1994), *cert. denied*, 514 U.S. 1004, 115 S.Ct. 1315, 131 L.Ed.2d 196 (1995); *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 60 (2d Cir.1992); *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir.1991). *Id.* In addition, the Eleventh Circuit held in 1997 that "post enactment evidence is admissible to determine whether an affirmative action program" satisfies Croson. *Engineering Contractors Ass'n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 911–12 (11th Cir.1997), *cert. denied*, 523 U.S. 1004 (1998). Because the court believed that *Shaw* and *Wygant* provided controlling authority on the role of post enactment evidence in the "strong basis in evidence" inquiry, it did not find these cases persuasive. *Id.* at 621.

f. City did not satisfy strict or intermediate scrutiny: no disparity study was completed or preenactment evidence established. In this case. the court found that the City considered no evidence in 1999 before promulgating the construction subcontracting set-aside goals of 20 percent for MBEs and 3 percent for WBEs. *Id.* at 621. Based on the absence of any record of what evidence the City considered prior to promulgating the set-aside goals for 1999, the court held there was no dispute of material fact foreclosing summary judgment in favor of plaintiff. *Id.* The court thus found that the 20% preference is not supported by a "strong basis in evidence" showing a need for a race-conscious remedial plan in 1999; nor is the 3 percent preference shown to be "substantially related to achievement" of the important objective of remedying gender discrimination in 1999, in the construction industry in Baltimore. *Id.*

The court rejected the City's assertions throughout the case that the court should uphold the set-aside goals based upon statistics, which the City was in the process of gathering in a disparity study it had commissioned. *Id.* at 622. The court said the City did not provide any legal support for the proposition that a governmental entity might permissibly adopt an affirmative action plan including set-aside goals and wait until such a plan is challenged in court before undertaking the necessary studies upon which the constitutionality of the plan depends. *Id.* The in-process study was not complete as of the date of this decision by the court. *Id.* The court thus stated the study could not have produced data upon which the City actually relied in establishing the set-aside goals for 1999. *Id.*

The court noted that if the data the study produced were reliable and complete, the City could have the statistical basis upon which to make the findings Ordinance 610 required, and which could satisfy the constitutionally required standards for the promulgation and implementation of narrowly tailored set-aside race-and gender conscious goals. *Id.* at 622. Nonetheless, as the record stood when the court entered the December 1999 injunction and as it stood as of the date of the decision, there were no data in evidence showing a disparity, let alone a gross disparity, between MWBE availability and utilization in the subcontracting construction market in Baltimore City. *Id.* The City possessed no such evidence when it established the 1999 set-aside goals challenged in the case. *Id.*

A percentage set-aside measure, like the MWBE goals at issue, the court held could only be justified by reference to the overall availability of minority- and women-owned businesses in the relevant markets.

Id. In the absence of such figures, the 20 percent MBE and 3 percent WBE set aside figures were arbitrary and unenforceable in light of controlling Supreme Court and Fourth Circuit authority. *Id.*

g. Holding. The court held that for these reasons it entered the injunction against the City on December 1999 and it remained fully in effect. *Id.* at 622. Accordingly, the City's motion for stay of the injunction order was denied and the action was dismissed without prejudice. *Id.* at 622.

The court held unconstitutional the City of Baltimore's "affirmative action" program, which had construction subcontracting "set-aside" goals of 20 percent for MBEs and 3 percent for WBEs. The court held there was no data or statistical evidence submitted by the City prior to enactment of the Ordinance. There was no evidence showing a disparity between MBE/WBE availability and utilization in the subcontracting construction market in Baltimore. The court enjoined the City Ordinance.

APPENDIX C.
Availability Analysis Approach

BBC Research & Consulting (BBC) used a custom census approach to estimate the availability of businesses located in Virginia Beach for the construction, architecture and engineering (A/E), professional services, and goods and services prime contracts and subcontracts the City of Virginia Beach (the City) awards. Appendix C expands on the information presented in Chapter 6 to further describe:

A. Availability data;

B. Representative businesses;

C. Availability survey instrument; and

D. Survey execution.

A. Availability Data

BBC partnered with Davis Research to conduct telephone and online surveys with hundreds of businesses throughout the City's *relevant geographic market area* (*RGMA*), which we identified as the cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, and Suffolk in Virginia. Davis Research surveyed businesses with locations in the RGMA that perform work in fields closely related to the types of contracts and procurements the City awarded between July 1, 2020 and June 30, 2024 (i.e., the *study period*). We began the survey process by determining the work specializations, or *subindustries*, relevant to each prime contract and subcontract the City awarded during the study period and identifying 8-digit Dun & Bradstreet (D&B) work specialization codes that best corresponded to those subindustries. We then compiled information about local businesses D&B listed as having their primary lines of business within those work specializations. Davis Research then attempted surveys with each business multiple times on different days of the business week and at different times of the business day to maximize response rates.

B. Representative Businesses

The objective of the availability analysis was not to collect information about every business operating in the RGMA but instead was to collect information from a large, unbiased subset of local businesses that appropriately represented the entire relevant business population. That approach allowed BBC to estimate the availability of minority-, woman-, and service-disabled veteran (SDV)-owned businesses for City work in an accurate, statistically valid manner.[1] In addition, we did not design the survey effort to contact every local business possibly performing construction, A/E, professional services, or goods and services work. Instead, we reviewed the relevant prime contract and subcontract dollars the City awarded during the study period, determined the types of work most relevant to those projects, and limited our survey efforts to those businesses that perform work consistent with those work types. Figure C-1 lists 8-digit work specialization codes within construction, A/E, professional services, and

[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race/ethnic groups.

goods and services most related to the contract and procurement dollars the City awarded during the study period, which we included as part of the availability analysis. We grouped those specializations into distinct subindustries, which are shown as headings in Figure C-1.

C. Availability Survey Instrument

BBC created an availability survey instrument to collect extensive information from relevant businesses located in the RGMA. As an example, the instrument the study team used with construction businesses is presented at the end of Appendix C. We modified the construction survey instrument slightly for use with businesses working in A/E, professional services, and goods and services to reflect terms more commonly used in those industries and to collect information specifically relevant to them.[2] (For example, BBC substituted the words "prime contractor" and "subcontractor" with "prime consultant" and "subconsultant" when surveying A/E and professional services businesses.)

1. Survey structure. The availability survey included 15 sections, and Davis Research attempted to cover all sections with each business the firm successfully contacted.

a. Identification of purpose. The surveys began by identifying the City as the survey sponsor and describing the purpose of the study. (e.g., "The City of Virginia Beach is conducting a disparity study to assess barriers that businesses might face in the local marketplace. As part of that research, the City wants to understand the availability of different types of businesses for the contracts and procurements it awards. We are conducting a survey to collect information about businesses qualified and interested in performing construction-related work for government and other public agencies, entities, and offices in Virginia Beach.")

b. Verification of correct business name. The surveyor verified he or she had reached the correct business. If the business was not correct, surveyors asked if the respondent knew how to contact the correct business. Davis Research then followed up with the correct business based on the new contact information if the business representative provided it (see areas "X" and "Y" of the survey).

c. Verification of for-profit business status. The surveyor asked whether the entity was a for-profit business as opposed to a government or non-profit organization (Question A1). Surveyors continued the survey only with those entities that responded "yes" to that question.

d. Verification of business age. The surveyor asked in what year the business was originally established (Question A2).

e. Verification of active business status. The surveyor asked whether the entity was in business and operational (Question A3). Surveyors continued the survey only with those entities that responded "yes" to that question.

f. Interest in future work. The surveyor asked businesses about their interest in future prime contract and subcontract work with the City or other government agencies (Question A4). Surveyors continued the survey only with those businesses that responded "yes" to that question.

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[2] BBC also developed e-mail versions of the survey instruments for businesses that preferred to complete the survey online.

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Architecture and engineering			
Engineering		**Environmental services (continued)**	
87119901	Acoustical engineering	89990703	Natural resource preservation service
87120100	Architectural engineering	87310300	Natural resource research
87120101	Architectural engineering	87110101	Pollution control engineering
73349901	Blueprinting service	87420405	Public utilities consultant
87110401	Building construction consultant		
87110402	Civil engineering	**Landscape architecture**	
87110400	Construction and civil engineering	07810102	Horticultural counseling services
87119903	Consulting engineer	07810100	Horticulture services
87119904	Designing: ship, boat, machine, and product	07810201	Landscape architects
87119905	Electrical or electronic engineering	07810000	Landscape counseling and planning
87110000	Engineering services	07810202	Landscape counseling services
87119907	Fire protection engineering	07810203	Landscape planning services
87110403	Heating and ventilation engineering	07810200	Landscape services
87119908	Marine engineering		
87110202	Mechanical engineering	**Other architecture and engineering**	
87119909	Professional engineer	87480201	City planning
87110404	Structural engineering	87419902	Construction management
		87420402	Construction project management consultant
Environmental services		73899907	Contractors' disbursement control
73890201	Air pollution measuring service	87480203	Industrial development planning
89990700	Earth science services	87429907	Site location consultant
87489904	Energy conservation consultant	87480204	Traffic consultant
87119906	Energy conservation engineering	87420410	Transportation consultant
87310301	Energy research	87480200	Urban planning and consulting services
87489905	Environmental consultant		
87310302	Environmental research		
89990701	Geological consultant		

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Architecture and engineering (continued)			
Surveying and mapmaking		**Surveying and mapmaking (continued)**	
87139902	Aerial digital imaging	87139901	Photogrammetric engineering
73899913	Drafting service, except temporary help	87130000	Surveying services
73890800	Mapmaking services		
73899930	Marine reporting	**Testing and inspection**	
73890802	Photogrammatic mapping	73890200	Inspection and testing services
Construction			
Concrete work		**Highway, street, and bridge construction (continued)**	
17710301	Blacktop (asphalt) work	16110202	Concrete construction: roads, highways, sidewalks
17710000	Concrete work	16119901	General contractor, highway and street construction
		16110203	Grading
Electrical work		16110207	Gravel or dirt road construction
17310000	Electrical work	16110000	Highway and street construction
17310302	Fiber optic cable installation	16119902	Highway and street maintenance
17319903	General electrical contractor	16110204	Highway and street paving contractor
		16110102	Highway and street sign installation
Excavation, drilling, wrecking, and demolition		16110200	Surfacing and paving
17990900	Building site preparation		
17959902	Demolition, buildings and other structures	**Marine and related construction**	
17999907	Dewatering	16290100	Dams, waterways, docks, and other marine construct
17949901	Excavation and grading, building construction	16290104	Dock construction
17940000	Excavation work	16290106	Dredging contractor
17950000	Wrecking and demolition work	16290108	Irrigation system construction
		16290402	Land reclamation
Highway, street, and bridge construction		16290110	Marine construction
16229901	Bridge construction	16290113	Waterway construction
16220000	Bridge, tunnel, and elevated highway construction		

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Construction (continued)			
Nonresidential building construction		**Other special trade contractors (continued)**	
15420100	Commercial and office building contractors	17919902	Concrete reinforcement, placing of
15420101	Commercial and office building, new construction	17999910	Epoxy application
15420102	Commercial and office buildings, prefabricated erection	17919904	Exterior wall system installation
15420103	Commercial and office buildings, renovation and repair	17999912	Fence construction
15410000	Industrial buildings and warehouses	17990206	Fireproofing buildings
15419905	Industrial buildings, new construction, nec	17990207	Glazing of concrete surfaces
15429903	Institutional building construction	17919905	Iron work, structural
15420000	Nonresidential construction, nec	17919907	Precast concrete structural framing or panels, placing
15419909	Renovation, remodeling and repairs: industrial buildings	17910000	Structural steel erection
15420400	Specialized public building contractors	17990209	Waterproofing
15419910	Steel building construction		
		Plumbing and HVAC	
Other heavy construction		17110301	Fire sprinkler system installation
16290000	Heavy construction, nec	17110400	Heating and air conditioning contractors
16299903	Land clearing contractor	17110103	Heating systems repair and maintenance
16290400	Land preparation construction	17110401	Mechanical contractor
16299904	Pile driving contractor	17110000	Plumbing, heating, air-conditioning
16299905	Power plant construction		
16290202	Railroad and railway roadbed construction	**Roofing, siding, and sheet metal work**	
16290403	Rock removal	17610103	Roofing contractor
16290504	Waste disposal plant construction		
16290505	Waste water and sewage treatment plant construction	**Water, sewer, and utility lines**	
		16230201	Cable laying construction
Other special trade contractors		16230202	Cable television line construction
17990201	Caulking (construction)	16230200	Communication line and transmission tower construction
17990203	Coating of metal structures at construction site	17819901	Geothermal drilling
17990200	Coating, caulking, and weather, water, and fireproofing	16239904	Pipeline construction, nsk

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description
Construction (continued)	
Water, sewer, and utility lines (continued)	
16239905	Pumping station construction
76990402	Septic tank cleaning service
17819902	Servicing, water wells
76990403	Sewer cleaning and rodding
16230302	Sewer line construction
16230203	Telephone and communication line construction
16239906	Underground utilities contractor
16230300	Water and sewer line construction
16230303	Water main construction
17810000	Water well drilling
16230000	Water, sewer, and utility lines
Goods and services	
Automobiles	
55119901	Automobiles, new and used
50120403	Motorcycles
55110000	New and used car dealers
55119903	Trucks, tractors, and trailers: new and used
55219904	Trucks, tractors, and trailers: used
Cleaning and janitorial services	
73490104	Janitorial service, contract basis
50870300	Cleaning and maintenance equipment and supplies
35890200	Commercial cleaning equipment
51690300	Detergents and soaps, except specialty cleaning
73590100	Home cleaning and maintenance equipment rental services
50870304	Janitors' supplies
51690402	Sanitation preparations
51690400	Specialty cleaning and sanitation preparations
Communications equipment	
36630102	Amplifiers, RF power and IF
59990601	Audio-visual equipment and supplies
73590501	Audio-visual equipment and supply rental
36630104	Cellular radio telephone
50650200	Communication equipment
59990602	Communication equipment
36610102	Communication headgear, telephone
36690000	Communications equipment, nec
36699901	Intercommunication systems, electric
59990605	Mobile telephones and equipment
36630000	Radio and t.v. communications equipment
50640203	Radios, nec
57319907	Radios, two-way, citizens band, weather, short-wave
50659904	Tapes, audio and video recording
36639912	Telemetering equipment, electronic
59990603	Telephone equipment and systems

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Goods and services (continued)			
Furniture		**Industrial equipment and machinery (continued)**	
25410200	Cabinets, lockers, and shelving	50850303	Valves and fittings
25210202	Cabinets, office: wood		
50210000	Furniture	**Landscaping services**	
50210100	Office and public building furniture	07839901	Arborist services
57129904	Office furniture	07829903	Landscape contractors
25220000	Office furniture, except wood	07839902	Removal services, bush and tree
50210106	Office furniture, nec		
25310000	Public building and related furniture	**Other construction materials**	
25210000	Wood office furniture	50329901	Aggregate
		29510000	Asphalt paving mixtures and blocks
Heavy construction equipment rental		32410000	Cement, hydraulic
50820000	Construction and mining machinery	50630000	Electrical apparatus and equipment
35310000	Construction machinery	50630205	Electrical construction materials
73539901	Cranes and aerial lift equipment, rental or leasin	50630206	Electrical supplies, nec
50820303	Cranes, construction	50650000	Electronic parts and equipment, nec
35370205	Cranes, industrial truck	51930200	Flowers and nursery stock
35310604	Cranes, nec	01810202	Flowers, grown in field nurseries
35310607	Dredging machinery	36690201	Highway signals, electric
50820304	Excavating machinery and equipment	50830202	Landscaping equipment
50820300	General construction machinery and equipment	52610100	Lawn and garden equipment
73530000	Heavy construction equipment rental	52610103	Lawnmowers and tractors
50829905	Mixers, construction and mining	36480000	Lighting equipment, nec
		51930202	Nursery stock
Industrial equipment and machinery		01810104	Nursery stock, growing of
50850000	Industrial supplies	52610302	Nursery stock, seeds and bulbs
50840800	Materials handling machinery	01810000	Ornamental nursery products
35890300	Sewage and water treatment equipment	32730000	Ready-mixed concrete

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Goods and services (continued)			
Other construction materials (continued)		**Other nonprofessional services**	
36250000	Relays and industrial controls	49539905	Recycling, waste materials
52610300	Retail nurseries	49530302	Sanitary landfill operation
52610000	Retail nurseries and garden stores		
		Other transit services	
Other goods		41420000	Bus charter service, except local
59991401	Business machines and equipment	47299901	Carpool/vanpool arrangement
50440200	Copying equipment	41110000	Local and suburban transit
51430000	Dairy products, except dried or canned	41410000	Local bus charter service
39930100	Electric signs		
51469902	Fish, fresh	**Printing, copying, and mailing**	
20929904	Fish, fresh: prepared	27520000	Commercial printing, lithographic
51419901	Food brokers	73310000	Direct mail advertising services
20920100	Fresh or frozen fish or seafood chowders, soups	27520101	Offset printing
20920000	Fresh or frozen packaged fish		
51120405	Laser printer supplies	**Safety Equipment**	
51430100	Milk	59990100	Alarm and safety equipment stores
50440000	Office equipment	59990101	Alarm signal systems
50449900	Office equipment, nec	50630501	Alarm systems, nec
51120500	Office filing supplies	50990101	Ammunition, except sporting
51129907	Office supplies, nec	38420101	Bulletproof vests
50440207	Photocopy machines	50630502	Burglar alarm systems
51110000	Printing and writing paper	38420102	Clothing, fire resistant and protective
51450200	Snack foods	36690100	Emergency alarms
51120000	Stationery and office supplies	36999902	Fire control or bombing equipment, electronic
57220208	Vacuum cleaners	73899919	Fire extinguisher servicing
		59990102	Fire extinguishers
		28999918	Fire retardant chemicals

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Goods and services (continued)			
Safety equipment (continued)		**Staffing services (continued)**	
50990100	Firearms and ammunition, except sporting	73630103	Temporary help service
50990102	Firearms, except sporting		
50870500	Firefighting equipment	**Trucking, hauling, and storage**	
51999912	First aid supplies	42120000	Local trucking, without storage
76992100	Gun services		
34849902	Guns (firearms) or gun parts, 30 mm. and below	**Vehicle maintenance and repair**	
76992102	Gunsmith shop	75330000	Auto exhaust system repair shops
50499903	Law enforcement equipment and supplies	75370000	Automotive transmission repair shops
50990302	Lifesaving and survival equipment (non-medical)	75360000	Automotive glass replacement shops
38420100	Personal safety equipment	75340000	Tire retreading and repair shops
34849904	Pistols or pistol parts, 30 mm. and below		
50849912	Safety equipment	**Vehicle parts and supplies**	
50990300	Safety equipment and supplies	50149901	Automobile tires and tubes
59990103	Safety supplies and equipment	55310103	Automotive parts
34840000	Small arms	50130108	Automotive supplies
50870501	Sprinkler systems	50130100	Automotive supplies and parts
		50150102	Automotive supplies, used: wholesale and retail
Security guard services		50840602	Engines and parts, diesel
73810000	Detective and armored car services	37140000	Motor vehicle parts and accessories
73810100	Guard services	55310107	Truck equipment and parts
73810104	Protective services, guard	50130119	Truck parts and accessories
73810105	Security guard service		
Staffing services			
73610000	Employment agencies		
73639905	Medical help service		
73610204	Nurses' registry		

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description
Professional services	
Advertising, marketing, and public relations	
73110000	Advertising agencies
73119901	Advertising consultant
89990301	Advertising copy writing
73190000	Advertising, nec
73890300	Advertising, promotional, and trade show services
73360100	Art design services
78129901	Audio-visual program production
73129901	Billboard advertising
79410201	Boxing and wrestling arena
73190101	Bus card advertising
73360000	Commercial art and graphic design
73369901	Commercial art and illustration
78129903	Commercials, television: tape or film
78190103	Consultants, motion picture
73890301	Convention and show services
73360102	Creative services to advertisers, except writers
78190500	Developing and laboratory services, motion picture
73190200	Distribution of advertising material or sample services
73130100	Electronic media advertising representatives
73890304	Embroidery advertising
73899915	Engraving service
79220105	Entertainment promotion
73890305	Exhibit construction by industrial contractors
73840202	Film processing and finishing laboratory
73360103	Graphic arts and related design
73130201	Magazine advertising representative
87420300	Marketing consulting services
Advertising, marketing, and public relations (continued)	
73199902	Media buying service
73899932	Microfilm recording and developing services
78120000	Motion picture and video production
78120100	Motion picture production
78120201	Music video production
78120108	Non-theatrical motion picture production, television
73360104	Package design
78190100	Personnel services, motion picture production
73130200	Printed media advertising representatives
73890308	Promoters of shows and exhibitions
87439902	Promotion service
87439903	Public relations and publicity
87430000	Public relations services
73130101	Radio advertising representative
73891105	Recording studio, noncommercial records
87439904	Sales promotion
73360105	Silk screen design
78199901	Sound effects and music production, motion picture
79410202	Sports field or stadium operator, promoting sports
79419902	Sports promotion
79410200	Stadium event operator services
73891005	Telemarketing services
73130102	Television and radio time sales
78120110	Television film production
73890309	Trade show arrangement
78120111	Training motion picture production
78120200	Video production

Figure C-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Professional services			
Advertising, marketing, and public relations (continued)		**IT and data services (continued)**	
78190201	Video tape or disk reproduction	73710301	Computer software development
78120202	Video tape production	73710300	Computer software development and applications
78199902	Visual effects production	73710101	Computer software systems analysis and design, custom
		73710202	Computer software writers, freelance
Business and management consulting		73710200	Computer software writing services
87410100	Business management	73730101	Computer systems analysis and design
87429902	Business management consultant	73730401	Computer-aided design (CAD) systems service
87429904	General management consultant	73710000	Custom computer programming services
87420000	Management consulting services	73710100	Custom computer programming services
87429905	Management information systems consultant	73749901	Data entry service
87429906	Productivity improvement consultant	73740000	Data processing and preparation
		73790202	Data processing consultant
IT and data services		73749902	Data processing service
73740101	Calculating service (computer)	73730201	Local area network (LAN) systems integrator
73789901	Computer and data processing equipment repair/main	73790203	Online services technology consultants
73710201	Computer code authors	73749905	Optical scanning data service
73760000	Computer facilities management	73740104	Service bureau, computer
73740102	Computer graphics service	73710302	Software programming applications
73790201	Computer hardware requirements analysis	87480400	Systems analysis and engineering consulting services
17319902	Computer installation	87480401	Systems analysis or design
73730000	Computer integrated systems design	87480402	Systems engineering consultant, ex. computer or professional
73780000	Computer maintenance and repair	73730102	Systems engineering, computer related
73789902	Computer peripheral equipment repair and maintenance	73730200	Systems integration services
73740100	Computer processing services	73730100	Systems software development services
73790200	Computer related consulting services		
73790100	Computer related maintenance services		
73790000	Computer related services, nec		

Note: A text description of Figure C-1 is provided in Appendix E.

g. Confirmation of primary lines of work. Next, businesses confirmed their primary lines of work according to D&B (Question A5a). If D&B's work specialization codes were incorrect, businesses described their primary lines of work (Question A5b). Surveyors then asked businesses about other types of work they perform (Question A5c). BBC coded information on primary lines of work and additional types of work (if any) into appropriate 8-digit D&B work specialization codes.

h. Locations and affiliations. The surveyor asked participants if their businesses had other locations (Questions A6 through A7b) and if their businesses were subsidiaries or affiliates of other businesses (Questions A8a and A8b).

i. Willingness and ability to work. The surveyor asked businesses that do construction-related and professional services-related work whether they are willing and able to work in various roles—that is, as prime contractors, subcontractors, or suppliers (Questions B1 through B3; not included in the goods and services survey instruments).

j. Geographic area. The surveyor asked businesses whether they could serve customers in Virginia Beach and other regions of Virginia (Questions C1 through C11).

k. Capacity. The surveyor asked businesses about the values of the largest prime contracts and subcontracts they can perform as well as the maximum volume of work they can perform at any given time. The surveyor also asked businesses which factors, if any, might limit their ability to compete for larger pieces of work (Questions D1a through D1c).

l. Ownership. The surveyor asked whether businesses were at least 51 percent owned and controlled by minorities, women, or SDVs (Questions E1 through E5). If businesses indicated they were minority-owned, they were also asked about the race of the business' owner(s) (Question E3). BBC confirmed that information through several other data sources, including:

- City contract and vendor data;
- Small-, Woman- and Minority-owned Procurement Program directories;
- D&B business listings and other business information sources;
- Information from other available certification directories and business lists; and
- Business websites and other secondary research.

m. Business revenue. The surveyor asked questions about businesses' sizes in terms of their revenues and number of employees across all their locations (Questions F1 through F4).

n. Potential barriers in the marketplace. The surveyor asked an open-ended question about businesses' experiences working with the City and other local government agencies as well as general insights about conditions in the Virginia Beach marketplace (Question G1). In addition, the survey included a question asking whether respondents would be willing to participate in follow-up interviews about conditions in the local marketplace, which BBC used to recruit participants for in-depth interviews (Question G2).

o. Contact information. The survey concluded with questions about the participant's name, position, and contact information (Questions H1 through H3).

D. Survey Execution

Davis Research conducted all availability surveys between February 2024 and May 2025. The firm attempted to survey the owner, manager, or other officer of each business that could provide accurate responses to survey questions.

1. Businesses the study team successfully contacted. Figure C-2 presents the disposition of the 5,567 businesses the study team attempted to contact for availability surveys and how that number resulted in the 1,112 businesses the study team was able to successfully contact.

Figure C-2.
Disposition of attempts to contact businesses for availability surveys

Note:
A text description of Figure C-2 is provided in Appendix E.

	Number of businesses
Beginning list	5,567
Less non-working phone numbers	730
Less wrong number/business	402
Unique business listings with working phone numbers	4,435
Less no answer	2,631
Less could not reach responsible staff member	687
Less language barrier	5
Businesses successfully contacted	**1,112**

a. Non-working or wrong phone numbers. Some of the business listings BBC purchased from D&B were:

- Non-working phone numbers (730 listings); or
- Wrong numbers for the desired businesses (402 listings).

Some non-working phone numbers and wrong numbers resulted from businesses going out of business or changing their names and phone numbers between the time D&B listed them and the time the study team attempted to contact them.

b. Working phone numbers. As shown in Figure C-2, there were 4,435 businesses with working phone numbers Davis Research attempted to contact. They were unsuccessful in contacting many of those businesses for various reasons:

- The firm could not reach anyone after multiple attempts for 2,631 businesses.
- The firm could not reach a responsible staff member after multiple attempts for 687 businesses.
- The firm could not conduct the availability survey due to language barriers for five businesses.

Thus, Davis Research was able to successfully contact 1,112 businesses.

2. Businesses included in the availability database. Figure C-3 presents the disposition of the 1,112 businesses Davis Research successfully contacted and how that number resulted in the 468 businesses BBC considered potentially available for City work.

Figure C-3.
Disposition of successfully contacted businesses

Note:
A text description of Figure C-3 is provided in Appendix E.

	Number of businesses
Businesses successfully contacted	1,112
Less businesses not interested in discussing availability for work	355
Less companies no longer in business	203
Less not a for-profit business	6
Businesses that completed surveys	548
Less line of work outside of study scope	7
Less no interest in future work	59
Less does not work in Virginia Beach area	10
Less multiple locations of same business	4
Businesses potentially available for City of Virginia Beach work	**468**

a. Businesses not eligible or interested in discussing availability for City work. Of the 1,112 businesses the study team successfully contacted:

- BBC excluded 355 businesses from the analysis because they reported that they were not interested in discussing their availability for City work.
- We excluded 203 businesses from the analysis that indicated they were no longer in business.
- We excluded six businesses from the analysis that indicated they were not-for-profit businesses.

b. Businesses available for City work. A total of 548 businesses completed availability surveys, but BBC deemed only a portion of those businesses as potentially available for the prime contracts and subcontracts the City awarded during the study period. We excluded many of the businesses that completed surveys from the analysis for various reasons:

- BBC excluded seven businesses that reported primary lines of work outside the study scope.[3]
- We excluded 59 businesses that reported they were not interested in contracting opportunities with the City or other government organizations.
- BBC excluded 10 businesses that reported that they did not work in the Virginia Beach area.
- Four survey participants represented different locations of the same businesses. Prior to analyzing results, we combined responses from multiple locations of the same business into a single data record according to the following rules:
  - If different locations of the same business indicated different lines of work, BBC conducted additional secondary research to reconcile that information into one primary line of work.

[3] Examples include legal services, airports, medical providers, and nonprofits.

- BBC combined the different roles of work (i.e., prime contractor or subcontractor) different participants representing the same business reported into a single response. For example, if one participant reported that the business works as a prime contractor and another participant reported that the business works as a subcontractor, then BBC considered the business as available for both prime contracts and subcontracts.
- BBC considered the largest project any participants representing the same business reported being able to perform as the business' capacity (i.e., the largest project for which the business could be considered available).

After those exclusions and reconciliations, BBC compiled a database of 468 businesses we considered potentially available for City work.

AVAILABILITY SURVEY INSTRUMENT. Construction

Hello. My name is [INTERVIEWER NAME] from Davis Research, calling on behalf of the City of Virginia Beach. This is not a sales call. The City is conducting a disparity study to assess barriers that businesses might face in the local marketplace. As part of that research, The City wants to understand the *availability* of different types of businesses for the contracts and procurements it awards. We are conducting a survey to collect information about businesses qualified and interested in performing construction-related work for government and other public agencies, entities, and offices in Virginia Beach and in other parts of Virginia.

The survey is designed only to gather information and will have no impact on present or future work opportunities with the City or any other organizations. Your participation in the survey would be very valuable to the process, and it should only take 15 minutes to complete.

Whom can I speak with to gather information about your business' characteristics and potential interest in working with government and other public agencies, entities, and offices in the region?

[AFTER REACHING AN APPROPRIATELY SENIOR STAFF MEMBER, THE INTERVIEWER SHOULD RE-INTRODUCE THE PURPOSE OF THE SURVEY AND BEGIN WITH QUESTIONS.]

[IF ASKED, THE INFORMATION DEVELOPED IN THE SURVEYS WILL RESULT IN DATA ON BUSINESSES QUALIFIED AND INTERESTED IN WORKING WITH GOVERNMENT AND OTHER PUBLIC AGENCIES, ENTITIES, AND OFFICES IN THE REGION AND WILL INFORM VARIOUS ANALYSES AS PART OF THE RESEARCH.]

Please answer each question as honestly and accurately as possible so the City can develop a realistic understanding of the businesses potentially available for government and other public agency work in the region.

X1. I have a few basic questions about your business and the type of work you do. Can you confirm this is [BUSINESS NAME]?

1=Correct business [SKIP TO Y4]

2=Incorrect business

99=Refused [TERMINATE]

Y1. What is the name of this business?

1=Verbatim

Y2. Is [NEW BUSINESS NAME] associated with [OLD BUSINESS NAME] in any way?

1=Yes, same owner doing business under a different name

2=Yes, can give information about new business

3=Business bought/sold/changed ownership

98=No, does not have information [TERMINATE]

99=Refused to give information [TERMINATE]

Y3. Do you work for [NEW BUSINESS NAME]?

1=Yes

2=No [TERMINATE]

Y4. Can you give me the address for [BUSINESS NAME/NEW BUSINESS NAME]?

[NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT]:

. STREET ADDRESS

. CITY

. STATE

. ZIP

1=VERBATIM]

A1. Let me confirm [BUSINESS NAME/NEW BUSINESS NAME] is a for-profit business, as opposed to a non-profit organization, a foundation, or government office. Is that correct?

1=Yes, a for-profit business

2=No, other [TERMINATE]

A2. In what year was your business established?

1=VERBATIM

A3. Is your company currently in business and operational?

1=Yes

2=No [TERMINATE]

A4. I'm also interested in the sectors in which your business works. Specifically, is your business interested in performing work on projects for government or other public agencies, entities, or offices in the region?

1=Yes

2=No [TERMINATE]

98=Don't know

99=Refused

[NOTE TO INTERVIEWER: IF ASKED, EXAMPLES INCLUDE STATES, CITIES, COUNTIES, PUBLIC SCHOOLS AND UNIVERSITIES, TRANSPORTATION ORGANIZATIONS, AND OTHERS]

A5a. Let me also confirm what kind of business this is. The information we have from Dun & Bradstreet indicates your main line of work is [SIC DESCRIPTION]. Is that correct?

[NOTE TO INTERVIEWER – IF ASKED, DUN & BRADSTREET OR D&B, IS A COMPANY THAT COMPILES INFORMATION ON BUSINESSES THROUGHOUT THE COUNTRY]

1=Yes [SKIP TO A5c]

2=No

98=Don't know

99=Refused

A5b. What would you say is the main line of work at [BUSINESS NAME/NEW BUSINESS NAME]?

[NOTE TO INTERVIEWER – IF RESPONDENT INDICATES BUSINESS' MAIN LINE OF WORK IS "GENERAL CONSTRUCTION" OR "GENERAL CONTRACTOR," PROBE TO FIND OUT MORE DETAIL ABOUT TYPES OF WORK THEY PERFORM.]

1=VERBATIM

A5c. What other types of work, if any, does your business perform?

1=VERBATIM

97=(NONE)

A6. Is this the sole location of your business, or do you have offices in other locations?

1=Sole location [SKIP to A8]

2=Have other locations

98=Don't know

99=Refused

A7a. Is this location the principal location for your business, or is your business primarily conducted at another location?

[NOTE TO INTERVIEWER – "PRINCIPAL LOCATION" MEANS THE OFFICE AT WHICH SENIOR MANAGEMENT AND LEADERSHIP ARE LOCATED AND WHERE MANAGEMENT AND FINANCIAL RECORDS ARE MAINTAINED.]

1=Yes [SKIP TO A8]

2=No

98=(DON'T KNOW) [SKIP TO A8]

99=(REFUSED) [SKIP TO A8]

A7b. What is the city and state of your business' principal location?

[NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT]:

. CITY

. STATE

1=VERBATIM

A8. Is your business a subsidiary or affiliate of another business?

1=Independent [SKIP TO B1]

2=Subsidiary or affiliate of another business

98=Don't know [SKIP TO B1]

99=Refused [SKIP TO B1]

A9. What is the name of the parent company?

1=VERBATIM

98=Don't know

99=Refused

A prime or general contractor is a business that contracts directly with the project owner. In contrast, a subcontractor is a business that contracts with a prime or general contractor as part of a larger project. Some businesses work in both roles on different projects. Based on these definitions:

B1. Is your business willing and able to work as a <u>prime contractor or general contractor</u>?

1=Yes

2=No

98=Don't know

99=Refused

B2. Is your business willing and able to work as a <u>subcontractor</u>?

1=Yes

2=No

98=Don't know

99=Refused

B3. Is your business willing and able to supply construction materials or goods?

1=Yes

2=No

98=Don't know

99=Refused

As you answer the following questions, please think about the geographic areas in Virginia your business is able to perform work or serve customers in.

C1. Is your business able to perform work in Virginia Beach?

1=Yes

2=No

We are also interested in other parts of Virginia in which your business might be able to perform work.

C2. Is your business able to perform work throughout Virginia or only in certain parts of the state?

1=All of the state [SKIP to D1a]

2=Only parts of the state

3=None of the state [SKIP TO D1a]

98=Don't know

99=Refused

I'm going to go through several regions of Virginia. For each one, please tell me if your business is able to work there.

C3. Is your business able to perform work in <u>any part</u> of the Hampton Roads region, which, in addition to Virginia Beach, includes Newport News, Norfolk, and other nearby cities and towns?

1=Yes

2=No

98=Don't know

99=Refused

C4. Is your company able to do work in <u>any part</u> of the Southern region of Virginia, which includes Danville and Martinsville?

1=Yes

2=No

98=Don't know

99=Refused

C5. Is your company able to do work in <u>any part</u> of the Southwest region of Virginia, which includes Bristol and Galax?

1=Yes

2=No

98=Don't know

99=Refused

C6. Is your company able to do work in <u>any part</u> of the West Central region of Virginia, which includes Lynchburg and Roanoke?

1=Yes

2=No

98=Don't know

99=Refused

C7. Is your company able to do work in <u>any part</u> of the Central region of Virginia, which includes Richmond and Charlottesville?

1=Yes

2=No

98=Don't know

99=Refused

C8. Is your company able to do work in <u>any part</u> of the Valley region of Virginia, which includes Harrisonburg, Staunton, and Winchester?

1=Yes

2=No

98=Don't know

99=Refused

C9. Is your company able to do work in <u>any part</u> of the Northern region of Virginia, which includes Alexandria and Fairfax?

1=Yes

2=No

98=Don't know

99=Refused

C10. Is your company able to do work in <u>any part</u> of the Eastern region of Virginia, which includes Essex, Northumberland, and Lancaster counties <u>but does not include</u> the Eastern shore?

1=Yes

2=No

98=Don't know

99=Refused

C11. Is your company able to do work in <u>any part</u> of the Eastern shore of Virginia, which includes Accomack and Northampton counties?

1=Yes

2=No

98=Don't know

99=Refused

D1a. Now I'd like to ask you about the size of work your business is able to compete for or perform. In terms of dollar value, what is the <u>largest</u> prime contract, subcontract, or other piece of work your company is able to compete for or perform?

1=VERBATIM

[NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY]

1=$100,000 or less

2=More than $100,000 to $250,000

3=More than $250,000 to $500,000

4=More than $500,000 to $1 million

5=More than $1 million to $2 million

6=More than $2 million to $5 million

7=More than $5 million to $10 million

8=More than $10 million to $20 million

9=More than $20 million to $50 million

10=More than $50 million to $100 million

11= More than $100 million to $200 million

12=Greater than $200 million

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)

D1b. What are some of the factors, if any, that might limit your ability to be able to compete for or perform even larger pieces of work?

[MULTIPUNCH]

1=Access to operating capital or financing

2=Bonding costs

3=Insurance costs

4=Difficulties hiring qualified staff

5=Lack of experience or prequalification requirements

6=Lack of opportunities

7=Lack of desire

8=Other (specify): ______________________________

9=None

D1c. Now, what is the <u>smallest</u> prime contract, subcontract, or other piece of work your company is willing to compete for or perform?

1=VERBATIM

[NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY]

1=$100,000 or less

2=More than $100,000 to $250,000

3=More than $250,000 to $500,000

4=More than $500,000 to $1 million

5=More than $1 million to $2 million

6=More than $2 million to $5 million

7=More than $5 million to $10 million

8=More than $10 million to $20 million

9=More than $20 million to $50 million

10=More than $50 million to $100 million

11= More than $100 million to $200 million

12=Greater than $200 million

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)

E1. My next questions are about the ownership of your business. A business is defined as a woman-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by individuals who identify as women. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a woman-owned business?

1=Yes

2=No

98=Don't know

99=Refused

E2. A business is defined as a person of color-, or POC-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by individuals who identify as Asian, Black, Hispanic, Native American, Middle Eastern or North African, or another non-White race or ethnicity. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a POC-owned business?

1=Yes

2=No – [SKIP TO E4]

98=Don't know [SKIP TO E4]

99=Refused [SKIP TO E4]

E3. Which of the following best represents the race/ethnicity of the business' owner(s)?

1=Black

2=Asian Pacific (examples include persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic or Latin (examples include persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race)

4=Native American (examples include American Indians, Alaska Natives, or Native Hawaiians)

5=Subcontinent Asian (examples include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka)

6=Middle Eastern or North African (examples include persons whose origins are from Afghanistan, Algeria, Armenia, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen)

7=Other, specify ________________

98=Don't know

99=Refused

E4. A business is defined as a veteran-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by veterans of the United States military. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a veteran-owned business?

[NOTE TO INTERVIEWER – U.S. MILITARY SERVICES INCLUDE THE U.S. ARMY, AIR FORCE, NAVY, MARINES, AND COAST GUARD.]

1=Yes

2=No [SKIP TO F1]

98=Don't know [SKIP TO F1]

99=Refused [SKIP TO F1]

E5. Does the owner(s) have a mental or physical disability that resulted directly from their service in the United States military?

1=Yes

2=No

98=Don't know

99=Refused

F1. Now I want to ask you a few questions about your business' size. Dun & Bradstreet indicates that your business has about [number] employees across all its locations. Is that an accurate estimate of the number of employees who work at your business, including both full-time and part-time employees?

1=Yes [SKIP TO F3]

2=No

98=Don't know [SKIP TO F3]

99=Refused [SKIP TO F3]

F2. About how many employees work at your business, including both full-time and part-time employees, across all your locations?

1=VERBATIM

[NOTE TO INTERVIEWER – READ CATEGORIES IF NECESSARY]

1=Sole proprietorship/no employees

2=1-4 employees

3=5-9 employees

4=10-25 employees

5=26-50 employees

6=51-100 employees

7=101-150 employees

8=151-200 employees

9=201-250 employees
10=251-500 employees
11=501-750 employees
12=751-1,000 employees
13=1,001-1,250 employees
14=1,251-1,500 employees
15=1,501 or more employee
98=(DON'T KNOW)
99=(REFUSED)

F3. Dun & Bradstreet lists the average annual gross revenue of your business, including all your locations, as [DOLLAR AMOUNT]. Is that an accurate estimate of your business' average annual gross revenue?

1=Yes [SKIP TO G1a]

2=No

98=Don't know [SKIP TO G1a]

99=Refused [SKIP TO G1a]

F4. Roughly, what was the average annual gross revenue of your business over the past three years, including all of your locations?

1=VERBATIM

[READ LIST IF NECESSARY]

1=$1 Million or less
2=More than $1 Million to $3 Million
3=More than $3 Million to $6 Million
4=More than $6 Million to $9 Million
5=More than $9 Million to $12 Million
6=More than $12 Million to $19 Million
7= More than $19 Million to $25 Million
8= More than $25 Million to $30 Million
9=More than $30 Million
98= (DON'T KNOW)
99= (REFUSED)

G1. We're interested in whether your business has experienced barriers or difficulties related to working with, or attempting to work with the City of Virginia Beach or other government or public agencies, entities, or offices in Virginia. Do you have any thoughts to share?

1=VERBATIM [PROBE FOR COMPLETE THOUGHTS]

97=No comments

G2. Would you be willing to participate in a follow-up interview about any of those topics?

1=Yes

2=No

H1. Just a few final questions. What is your name?

1=VERBATIM

H2. What is your position at [BUSINESS NAME/NEW BUSINESS NAME]?

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

10=Other, specify ________________

99=Refused

H3. At what email address can you be reached?

1= VERBATIM

Thank you very much for your participation. If you have any questions or concerns, please contact

SWaM Business Office of the City of Virginia Beach
(757) 385-4438; swam@vbgov.com.

If you have any questions for the Disparity Study project team or wish to submit written questions, comments, or insights about the marketplace, please email:

VBdisparitystudy@bbcresearch.com

or online at:

https://forms.gle/5brdkcRbv2un5N8C6

APPENDIX D.
Disparity Analysis Results Tables

As part of the disparity analysis, BBC Research & Consulting (BBC) compared the actual participation, or *utilization*, of minority-, woman-, and service-disabled veteran (SDV)-owned businesses in construction, architecture and engineering (A/E), professional services, and goods and services prime contracts and subcontracts the City of Virginia Beach (the City) awarded between July 1, 2020 and June 30, 2024 (the *study period*) with the percentage of contract and procurement dollars one might expect it to award to those businesses based on their availability for that work.[1] Appendix D presents results from the disparity analysis for relevant business groups and various sets of projects the City awarded during the study period.

A. Format and Information

Each table in Appendix D presents disparity analysis results for a different set of projects. For example, Figure D-1 presents disparity analysis results for all relevant projects the City awarded during the study period. A review of Figure D-1 introduces the calculations and format of all disparity analysis tables in Appendix D. Figure D-1 presents results for each relevant business group in separate rows:

- "All businesses" in row (1) pertains to information about all businesses regardless of the race/ethnicity or gender of their owners.
- Row (2) presents results for all minority-owned businesses considered together, regardless of whether they were certified as Small, Woman-owned, or Minority-owned (SWaM) Businesses.
- Rows (3) through (8) present results for businesses of each relevant race group, regardless of whether they were certified as SWaM businesses.
- Row (9) presents results for all White woman-owned businesses, regardless of whether they were certified as SWaM businesses.
- Row (10) presents results for SDV-owned businesses, regardless of whether they were certified as SWaM businesses.

1. Utilization analysis results. Each results table includes the same columns of information:

- Column (a) presents the total number of prime contracts and subcontracts (i.e., *contract elements*) BBC analyzed as part of the set. As shown in row (1) of column (a) of Figure D-1, we analyzed 36,485 contract elements the City awarded during the study period. The values presented in column (a) represent the number of contract elements in which businesses of each group participated. For example, as shown in row (4) of column (a), Black-owned businesses participated in 385 contract elements the City awarded during the study period.
- Column (b) presents the dollars (in thousands) associated with the set of contract elements. As shown in row (1) of column (b) of Figure E-1, BBC examined approximately $1.64 billion associated

[1] "Woman-owned businesses" refers to White woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding race groups.

with the 36,485 relevant contract elements the City awarded during the study period. The value presented in column (b) for each individual business group represents the dollars the City awarded to that particular group on the set of contract elements. For example, as shown in row (4) of column (b), the City awarded approximately $40.8 million to Black-owned businesses during the study period.

- Column (c) presents the participation of each business group as a percentage of total dollars associated with the set of contract elements. BBC calculated each percentage in column (c) by dividing the dollars going to a particular group in column (b) by the total dollars shown in row (1) of column (b) and multiplying the result by 100. For example, the City awarded Black-owned businesses $40.8 million, by which the study team divided $1.6 billion and multiplied by 100 for a result of 2.5 percent, as shown in row (4) of column (c).

2. Availability results. Column (d) of Figure D-1 presents the availability of each relevant group for all the contract elements BBC analyzed as part of the project set. Availability represents the percentage of dollars one might expect the City to award to businesses of a particular group based on their specific characteristics and the characteristics of the contract elements included in a particular set of projects. Availability estimates, which are represented as percentages of the total dollars associated with the project set, serve as benchmarks against which to compare the participation of specific groups in those projects. For example, as shown in row (4) of column (e), the availability of Black-owned businesses for City work is 12.5 percent. That is, one might expect the City to award 12.5 percent of relevant contract dollars to Black-owned businesses based on their availability for that work.

3. Disparity indices. BBC calculated a *disparity index*, or ratio, for each relevant business group, which compares the participation of minority-, woman-, or SDV-owned businesses in agency work to their estimated availability for that work. Column (e) of Figure D-1 presents the disparity index for each group. For example, as reported in row (4) of column (e), the disparity index for Black-owned businesses was $0.20, indicating that the City awarded approximately $0.20 to Black-owned businesses for every dollar one might expect it to award to those businesses based on their availability for that work. For disparity indices exceeding $2.00, BBC reported an index of "$2.00+." When there was no participation and no availability for a particular group for a particular set of projects, BBC reported a disparity index of "$1.00," indicating parity.

B. Index and Tables

The table of contents presents an index of the sets of projects for which BBC analyzed disparity analysis results. In addition, the heading of each table in Appendix D provides a description of the subset of projects BBC analyzed for that particular set of projects. A text description of each table is provided in Appendix E.

Table of Contents

Table	Contract area	Local	Contract role	Contract size	MBE goals
D-1	All industries	Local	Prime contracts and subcontracts	N/A	Goals and no goals
D-2	**Construction**	Local	Prime contracts and subcontracts	N/A	Goals and no goals
D-3	Construction	Local	Prime contracts and subcontracts	**Large**	**Goals**
D-4	Construction	Local	Prime contracts and subcontracts	**Large**	**No goals**
D-5	Construction	Local and Non-local	Prime contracts and subcontracts	**Large**	**Goals**
D-6	Construction	Local and Non-local	Prime contracts and subcontracts	**Large**	**No goals**
D-7	**Architecture and engineering**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-8	**Professional services**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-9	**Goods and Other services**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-10	All industries	Local	**Prime contracts**	N/A	Goals and no goals
D-11	All industries	Local	**Subcontracts**	N/A	Goals and no goals
D-12	All industries	Local	**Prime contracts**	**Large**	Goals and no goals
D-13	All industries	Local	**Prime contracts**	**Small**	**No goals**
D-14	All industries	Local	**Prime contracts**	**Micro**	**No goals**

Note: A text description of this table of contents is provided in Appendix E.

Figure D-1.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts and subcontracts in all contracting industries

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**36,485**	**$1,638,275**			
	Race and Gender					
(2)	Minority	772	$73,582	4.5 %	25.2 %	$0.18
(3)	Asian Pacific	209	$15,453	0.9 %	4.5 %	$0.21
(4)	Black	385	$40,784	2.5 %	12.5 %	$0.20
(5)	Hispanic	173	$15,563	0.9 %	5.1 %	$0.19
(6)	MENA	1	$203	0.0 %	1.0 %	$0.01
(7)	Native American	3	$140	0.0 %	1.6 %	$0.01
(8)	Subcontinent Asian	1	$1,438	0.1 %	0.4 %	$0.20
(9)	White woman	1,648	$103,663	6.3 %	13.7 %	$0.46
	Veteran status					
(10)	Service-disabled veteran	405	$17,493	1.1 %	12.6 %	$0.08

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-1 is provided in Appendix E.

Figure D-2.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts and subcontracts in construction

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**1,968**	**$734,270**			
	Race and Gender					
(2)	Minority	360	$23,087	3.1 %	21.2 %	$0.15
(3)	Asian Pacific	202	$10,190	1.4 %	1.9 %	$0.73
(4)	Black	125	$7,023	1.0 %	9.5 %	$0.10
(5)	Hispanic	33	$5,874	0.8 %	7.4 %	$0.11
(6)	MENA	0	$0	0.0 %	0.9 %	$0.00
(7)	Native American	0	$0	0.0 %	1.1 %	$0.00
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	313	$41,383	5.6 %	8.8 %	$0.64
	Veteran status					
(10)	Service-disabled veteran	74	$6,818	0.9 %	2.3 %	$0.41

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-2 is provided in Appendix E.

Figure D-3. **Large contracts with goals**
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Construction prime contracts and associated subcontracts

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**196**	**$258,034**			
	Race and Gender					
(2)	Minority	14	$6,036	2.3 %	21.6 %	$0.11
(3)	Asian Pacific	0	$0	0.0 %	1.7 %	$0.00
(4)	Black	13	$5,833	2.3 %	10.9 %	$0.21
(5)	Hispanic	0	$0	0.0 %	6.9 %	$0.00
(6)	MENA	1	$203	0.1 %	0.9 %	$0.09
(7)	Native American	0	$0	0.0 %	0.9 %	$0.00
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	33	$19,205	7.4 %	8.9 %	$0.83
	Veteran status					
(10)	Service-disabled veteran	2	$80	0.0 %	2.5 %	$0.01

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-3 is provided in Appendix E.

Figure D-4. **Large contracts without goals**
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Construction prime contracts and associated subcontracts

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**394**	**$436,722**			
	Race and Gender					
(2)	Minority	16	$5,269	1.2 %	22.2 %	$0.05
(3)	Asian Pacific	4	$1,558	0.4 %	2.5 %	$0.14
(4)	Black	7	$1,771	0.4 %	10.2 %	$0.04
(5)	Hispanic	4	$1,903	0.4 %	7.0 %	$0.06
(6)	MENA	0	$0	0.0 %	1.0 %	$0.00
(7)	Native American	1	$37	0.0 %	1.2 %	$0.01
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	56	$19,354	4.4 %	9.8 %	$0.45
	Veteran status					
(10)	Service-disabled veteran	5	$4,391	1.0 %	4.8 %	$0.21

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-4 is provided in Appendix E.

Figure D-5.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Construction prime contracts and associated subcontracts

Large contracts with goals
Including non-local utilization

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**196**	**$258,034**			
	Race and Gender					
(2)	Minority	32	$25,557	9.9 %	21.6 %	$0.46
(3)	Asian Pacific	0	$0	0.0 %	1.7 %	$0.00
(4)	Black	24	$23,618	9.2 %	10.9 %	$0.84
(5)	Hispanic	6	$1,572	0.6 %	6.9 %	$0.09
(6)	MENA	1	$203	0.1 %	0.9 %	$0.09
(7)	Native American	1	$165	0.1 %	0.9 %	$0.07
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	42	$23,487	9.1 %	8.9 %	$1.02
	Veteran status					
(10)	Service-disabled veteran	2	$80	0.0 %	2.5 %	$0.01

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-5 is provided in Appendix E.

Figure D-6.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Construction prime contracts and associated subcontracts

Large contracts without goals
Including non-local utilization

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**394**	**$436,722**			
	Race and Gender					
(2)	Minority	27	$19,873	4.6 %	22.2 %	$0.20
(3)	Asian Pacific	5	$1,684	0.4 %	2.5 %	$0.16
(4)	Black	9	$10,284	2.4 %	10.2 %	$0.23
(5)	Hispanic	11	$7,287	1.7 %	7.0 %	$0.24
(6)	MENA	0	$0	0.0 %	1.0 %	$0.00
(7)	Native American	2	$619	0.1 %	1.2 %	$0.11
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	69	$22,810	5.2 %	9.8 %	$0.53
	Veteran status					
(10)	Service-disabled veteran	5	$4,391	1.0 %	4.8 %	$0.21

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-6 is provided in Appendix E.

Figure D-7.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts and subcontracts in architecture and engineering

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**513**	**$417,487**			
	Race and Gender					
(2)	Minority	20	$11,393	2.7 %	30.2 %	$0.09
(3)	Asian Pacific	4	$5,194	1.2 %	10.8 %	$0.12
(4)	Black	4	$52	0.0 %	14.5 %	$0.00
(5)	Hispanic	8	$5,803	1.4 %	2.9 %	$0.48
(6)	MENA	1	$203	0.0 %	1.1 %	$0.05
(7)	Native American	3	$140	0.0 %	0.6 %	$0.06
(8)	Subcontinent Asian	0	$0	0.0 %	0.4 %	$0.00
(9)	White woman	45	$29,393	7.0 %	17.7 %	$0.40
	Veteran status					
(10)	Service-disabled veteran	2	$5,662	1.4 %	29.2 %	$0.05

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-7 is provided in Appendix E.

Figure D-8.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts and subcontracts in professional services

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**362**	**$85,942**			
	Race and Gender					
(2)	Minority	20	$5,772	6.7 %	39.9 %	$0.17
(3)	Asian Pacific	0	$0	0.0 %	5.2 %	$0.00
(4)	Black	10	$910	1.1 %	21.7 %	$0.05
(5)	Hispanic	9	$3,424	4.0 %	4.1 %	$0.97
(6)	MENA	0	$0	0.0 %	1.1 %	$0.00
(7)	Native American	0	$0	0.0 %	6.3 %	$0.00
(8)	Subcontinent Asian	1	$1,438	1.7 %	1.5 %	$1.12
(9)	White woman	168	$12,962	15.1 %	21.6 %	$0.70
	Veteran status					
(10)	Service-disabled veteran	0	$0	0.0 %	20.5 %	$0.00

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-8 is provided in Appendix E.

Figure D-9.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts and subcontracts in goods and services

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**33,642**	**$400,577**			
	Race and Gender					
(2)	Minority	372	$33,330	8.3 %	24.1 %	$0.35
(3)	Asian Pacific	3	$69	0.0 %	2.5 %	$0.01
(4)	Black	246	$32,799	8.2 %	14.0 %	$0.59
(5)	Hispanic	123	$461	0.1 %	3.2 %	$0.04
(6)	MENA	0	$0	0.0 %	1.2 %	$0.00
(7)	Native American	0	$0	0.0 %	2.7 %	$0.00
(8)	Subcontinent Asian	0	$0	0.0 %	0.5 %	$0.00
(9)	White woman	1,122	$19,926	5.0 %	16.9 %	$0.29
	Veteran status					
(10)	Service-disabled veteran	329	$5,013	1.3 %	12.4 %	$0.10

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-9 is provided in Appendix E.

Figure D-10.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts in all contracting industries

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**35,751**	**$1,362,983**			
	Race and Gender					
(2)	Minority	718	$31,590	2.3 %	25.0 %	$0.09
(3)	Asian Pacific	197	$9,082	0.7 %	4.8 %	$0.14
(4)	Black	355	$7,502	0.6 %	11.9 %	$0.05
(5)	Hispanic	165	$13,567	1.0 %	5.0 %	$0.20
(6)	MENA	0	$0	0.0 %	1.1 %	$0.00
(7)	Native American	0	$0	0.0 %	1.7 %	$0.00
(8)	Subcontinent Asian	1	$1,438	0.1 %	0.5 %	$0.23
(9)	White woman	1,531	$77,897	5.7 %	13.8 %	$0.41
	Veteran status					
(10)	Service-disabled veteran	396	$15,761	1.2 %	13.3 %	$0.09

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-10 is provided in Appendix E.

Figure D-11.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Subcontracts in all contracting industries

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**734**	**$275,292**			
	Race and Gender					
(2)	Minority	54	$41,992	15.3 %	26.2 %	$0.58
(3)	Asian Pacific	12	$6,371	2.3 %	3.0 %	$0.78
(4)	Black	30	$33,282	12.1 %	15.4 %	$0.79
(5)	Hispanic	8	$1,996	0.7 %	5.4 %	$0.13
(6)	MENA	1	$203	0.1 %	1.0 %	$0.08
(7)	Native American	3	$140	0.1 %	1.1 %	$0.04
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	117	$25,766	9.4 %	13.3 %	$0.70
	Veteran status					
(10)	Service-disabled veteran	9	$1,733	0.6 %	9.3 %	$0.07

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-11 is provided in Appendix E.

Figure D-12.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts in all contracting industries

Large contracts

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**193**	**$1,049,516**			
	Race and Gender					
(2)	Minority	3	$7,815	0.7 %	25.9 %	$0.03
(3)	Asian Pacific	0	$0	0.0 %	5.3 %	$0.00
(4)	Black	2	$2,158	0.2 %	12.0 %	$0.02
(5)	Hispanic	1	$5,657	0.5 %	5.3 %	$0.10
(6)	MENA	0	$0	0.0 %	0.9 %	$0.00
(7)	Native American	0	$0	0.0 %	1.8 %	$0.00
(8)	Subcontinent Asian	0	$0	0.0 %	0.5 %	$0.00
(9)	White woman	14	$58,680	5.6 %	13.8 %	$0.41
	Veteran status					
(10)	Service-disabled veteran	4	$12,768	1.2 %	14.7 %	$0.08

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-12 is provided in Appendix E.

Figure D-13.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts in all contracting industries

Small contracts without goals

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**349**	**$209,287**			
	Race and Gender					
(2)	Minority	22	$17,263	8.2 %	23.3 %	$0.35
(3)	Asian Pacific	9	$6,997	3.3 %	3.1 %	$1.09
(4)	Black	5	$2,633	1.3 %	12.3 %	$0.10
(5)	Hispanic	7	$6,195	3.0 %	4.5 %	$0.66
(6)	MENA	0	$0	0.0 %	1.5 %	$0.00
(7)	Native American	0	$0	0.0 %	1.6 %	$0.00
(8)	Subcontinent Asian	1	$1,438	0.7 %	0.3 %	$2.00 +
(9)	White woman	15	$10,351	4.9 %	13.4 %	$0.37
	Veteran status					
(10)	Service-disabled veteran	4	$2,443	1.2 %	8.9 %	$0.13

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-13 is provided in Appendix E.

Figure D-14.
Time period: 07/01/2020 - 06/30/2024
Contract area and contract role: Prime contracts in all contracting industries

Micro contracts without goals

	Business ownership by group	(a) Contract elements	(b) Dollars (thousands)	(c) Participation	(d) Availability	(e) Disparity index
(1)	**All businesses**	**35,209**	**$104,180**			
	Race and Gender					
(2)	Minority	693	$6,512	6.3 %	19.3 %	$0.32
(3)	Asian Pacific	188	$2,085	2.0 %	2.9 %	$0.70
(4)	Black	348	$2,712	2.6 %	10.3 %	$0.25
(5)	Hispanic	157	$1,715	1.6 %	3.3 %	$0.50
(6)	MENA	0	$0	0.0 %	1.3 %	$0.00
(7)	Native American	0	$0	0.0 %	1.2 %	$0.00
(8)	Subcontinent Asian	0	$0	0.0 %	0.3 %	$0.00
(9)	White woman	1,502	$8,866	8.5 %	14.7 %	$0.58
	Veteran status					
(10)	Service-disabled veteran	388	$550	0.5 %	7.6 %	$0.07

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

A text description of Figure D-14 is provided in Appendix E.

APPENDIX E.
Americans with Disabilities Act (ADA) Section 508 Figure Descriptions

Appendix E presents a comprehensive list of figures and tables from the report along with corresponding ADA Section 508 descriptions.

A. Chapter ES – Executive Summary

Figure ES-1. Figure ES-1 is a data table titled, "Availability estimates for City work." It presents estimated availability percentages across different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-1 estimated availability results include:

- *Minority*: 25.2%
- *Asian Pacific*: 4.5%
- *Black*: 12.5%
- *Hispanic*: 5.1%
- *Middle East North African (MENA)*: 1.0%
- *Native American*: 1.6%
- *Subcontinent Asian*: 0.4%
- *White woman*: 13.7%
- *SDV*: 12.6%

Figure ES-2. Figure ES-2 is a data table titled, "Availability estimates for goals and no goals contracts." It presents estimated availability percentages across different demographic groups categorized by race and gender. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-2 estimated availability results include:

- *Minority*: 21.6% for goals contracts and 22.2% for no goals contracts
- *Asian Pacific*: 1.7% for goals contracts and 2.5% for no goals contracts
- *Black*: 10.9% for goals contracts and 10.2% for no goals contracts
- *Hispanic*: 6.9% for goals contracts and 7.0% for no goals contracts
- *Middle East North African (MENA)*: 0.9% for goals contracts and 1.0% for no goals contracts
- *Native American*: 0.9% for goals contracts and 1.2% for no goals contracts

- *Subcontinent Asian*: 0.3% for goals contracts and 0.3% for no goals contracts
- *White woman*: 8.9% for goals contracts and 9.8% for no goals contracts

Figure ES-3. Figure ES-3 is a data table titled, "Utilization analysis results for City work." It presents utilization percentages across different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-3 utilization results include:

- *Minority*: 4.5%
- *Asian Pacific*: 0.9%
- *Black*: 2.5%
- *Hispanic*: 0.9%
- *Middle East North African (MENA)*: 0.0%
- *Native American*: 0.0%
- *Subcontinent Asian*: 0.1%
- *White woman*: 6.3%
- *SDV*: 1.1%

Figure ES-4. Figure ES-4 is a data table titled, "Utilization analysis results for goals and no goals contracts." It presents utilization analysis results across different demographic groups categorized by race and gender. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-4 utilization analysis results include:

- *Minority*: 2.3% for goals contracts and 1.2% for no goals contracts
- *Asian Pacific*: 0.0% for goals contracts and 0.4% for no goals contracts
- *Black*: 2.3% for goals contracts and 0.4% for no goals contracts
- *Hispanic*: 0.0% for goals contracts and 0.4% for no goals contracts
- *Middle East North African (MENA)*: 0.1% for goals contracts and 0.0% for no goals contracts
- *Native American*: 0.0% for goals contracts and 0.0% for no goals contracts
- *Subcontinent Asian*: 0.0% for goals contracts and 0.0% for no goals contracts
- *White woman*: 7.4% for goals contracts and 4.4% for no goals contracts

Figure ES-5. Figure ES-5 is a bar graph titled, "Overall disparity analysis results for City work." The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figure D-1 in Appendix D.

Figure ES-5 overall disparity analysis results include:

- *Minority*: $0.18
- *Asian Pacific*: $0.21
- *Black*: $0.20
- *Hispanic*: $0.19
- *Middle East North African (MENA)*: $0.01
- *Native American*: $0.01
- *Subcontinent Asian*: $0.20
- *White woman*: $0.46
- *SDV*: $0.08

Figure ES-6. Figure ES-6 is a bar graph titled, "Disparity analysis results by contract goal status." It consists of two sets of bars representing goals contracts (dark blue bars) and no goals contracts (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race and gender, and intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figures D-10 and D-11 in Appendix D.

Figure ES-6 overall disparity analysis results include:

- *Minority*: $0.11 for goals contracts and $0.05 for no goals contracts
- *Asian Pacific*: $0.00 for goals contracts and $0.14 for no goals contracts
- *Black*: $0.21 for goals contracts and $0.04 for no goals contracts
- *Hispanic*: $0.00 for goals contracts and $0.00 for no goals contracts
- *Middle East North African (MENA)*: $0.09 for goals contracts and $0.00 for no goals contracts
- *Native American*: $0.00 for goals contracts and $0.01 for no goals contracts
- *Subcontinent Asian*: $0.00 for goals contracts and $0.00 for no goals contracts
- *White woman*: $0.83 for goals contracts and $0.45 for no goals contracts

Figure ES-7. Figure ES-7 is a bar graph titled, "Disparity analysis results for goals and no goals projects, local and non-local participation." It consists of two sets of bars representing goals contracts (dark blue bars) and no goals contracts (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race and gender, and intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figures D-5 and D-6 in Appendix D. Additionally, this figure presents disparity indices for goals projects and no goals projects considering both local (i.e., businesses with a location inside of the RGMA) and non-local (i.e., businesses that do not have a location inside of the RGMA) utilized minority- and woman-owned businesses.

Figure ES-7 overall disparity analysis results include:

- *Minority*: $0.46 for goals contracts and $0.20 for no goals contracts
- *Asian Pacific*: $0.00 for goals contracts and $0.16 for no goals contracts
- *Black*: $0.84 for goals contracts and $0.23 for no goals contracts
- *Hispanic*: $0.09 for goals contracts and $0.24 for no goals contracts
- *Middle East North African (MENA)*: $0.09 for goals contracts and $0.00 for no goals contracts
- *Native American*: $0.07 for goals contracts and $0.11 for no goals contracts
- *Subcontinent Asian*: $0.00 for goals contracts and $0.00 for no goals contracts
- *White woman*: $1.02 for goals contracts and $0.53 for no goals contracts

Figure ES-8. Figure ES-8 is a bar graph titled, "Distribution of available businesses based on their annual revenues." It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents business availability capacities (in millions) for 18 revenue tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line above the "up to $0.5 million" bar indicates that approximately 50% of businesses have a maximum capacity of $500,000. Another dashed line that overlaps the "$3 to $4 million" bar indicates that approximately 80% of businesses have a maximum capacity of $3.5 million. Please note, values may not sum exactly to 100 percent due to rounding.

Figure ES-8 distribution of available businesses by capacity results include:

- *Up to $0.5 million*: 53%
- *$0.5 to $1 million*: 18%
- *$1 to $2 million*: 7%
- *$2 to $3 million*: 1%
- $3 to $4 million: 5%
- *$4 to $5 million*: 4%
- *$5 to $7 million*: 1%
- *$7 to $9 million*: 2%
- *$9 to $12 million*: 2%
- *$12 to $15 million*: 1%
- *$15 to $20 million*: 1%
- *$20 million to $25 million*: 1%

- *$25 million to $30 million*: 1%
- *$30 million to $40 million*: 1%
- *$40 million to $50 million*: 1%
- *$50 million to $75 million*: 2%
- *$75 million to $100 million*: 1%
- *More than $100 million*: 2%

Figure ES-9. Figure ES-9 is a bar graph titled, "Distribution of available businesses based on their capacities." It consists of bars representing the percentage of business' availability capacity in millions. The y-axis represents business availability capacities (in millions) for 21 availability capacity tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line above the "up to $0.5 million" bar indicates that approximately 50% of businesses have a maximum capacity of $500,000. Another dashed line that overlaps the "$3 to $4 million" bar indicates that approximately 80% of businesses have a maximum capacity of $3.5 million. Please note, values may not sum exactly to 100 percent due to rounding.

Figure ES-9 distribution of businesses by availability capacity results include:

- *Up to $0.5 million*: 50%
- *$0.5 to $1 million*: 12%
- *$1 to $2 million*: 11%
- *$2 to $3 million*: 7%
- $3 to $4 million: 2%
- *$4 to $5 million*: 3%
- *$5 to $6 million*: 2%
- *$6 to $7 million*: 2%
- *$7 to $8 million*: 1%
- *$8 to $9 million*: 0%
- *$9 to $10 million*: 1%
- *$10 million to $12 million*: 1%
- *$12 million to $14 million*: 1%
- *$14 million to $16 million*: 1%
- *$16 million to $18 million*: 1%
- *$18 million to $20 million*: 1%
- *$20 million to $25 million*: 1%
- *$25 to $30 million*: 3%

- *$30 million to $35 million*: 1%
- *$35 million to $40 million*: 0%
- *More than $40 million*: 3%

Figure ES-10. Figure ES-10 is a distribution chart titled, "Cumulative distribution of businesses based on the volume of contract dollars the City awarded to the (contracts worth less than $1 million)." It consists of a curved line depicting where businesses land based on City-awarded contract dollars. The y-axis represents the percentage of contracts awarded to businesses, ranging from 0% to 100% in 10% increments. The x-axis represents the percentage of businesses that were awarded City contracts, ranging from 0% to 100% in 10% increments. A dashed line intersects with the curved line at the 50% marker, indicating that 4.2% of businesses were awarded 50% of the City's contracts. Another dashed intersects with the curved line at the 80% marker, indicating that 16.3% of businesses were awarded 80% of the City's contracts.

B. Chapter 3 – Marketplace Conditions

Figure 3-1. Figure 3-1 is a series of bar graphs titled, "Rates of educational attainment of all workers aged 25 and older, Virginia Beach marketplace, 2018-2022." It presents education attainment percentages across different demographic groups categorized by race/ethnicity, gender, and service-disabled veteran (SDV) status. The figure includes four distinct educational levels: Less than a high school diploma, high school diploma, associate's degree, and bachelor's degree or higher. The x-axis for figure 3-1 (a) represents race/ethnicity, 3-1 (b) represents gender, and 3-1 (c) represents SDV status. The y-axes for these three figures represent the educational attainment percentages on a scale from 0% to 100% with 10% increments broken out. Please note, the single asterisk and double asterisks denote that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Figure 3-1 (a) demographics results include:

- *Asian Pacific*: Less than high school diploma equals 8%**, high school diploma equals 92%**, associate's degree equals 74%*, and bachelor's degree or higher equals 46%.
- *Black*: Less than high school diploma equals 7%**, high school diploma equals 93%**, associate's degree equals 58%**, and bachelor's degree or higher equals 28%**.
- *Hispanic*: Less than high school diploma equals 13%**, high school diploma equals 87%**, associate's degree equals 63%**, and bachelor's degree or higher equals 31%**.
- *Middle East North African (MENA)*: Less than high school diploma equals 2%, high school diploma equals 98%, associate's degree equals 87%**, and bachelor's degree or higher equals 62%**.
- *Native American*: Less than high school diploma equals 6%*, high school diploma equals 94%*, associate's degree equals 61%**, and bachelor's degree or higher equals 33%**.

- *Subcontinent Asian*: Less than high school diploma equals 1%**, high school diploma equals 99%**, associate's degree equals 92%**, and bachelor's degree or higher equals 85%**.
- *Other race minority*: Less than high school diploma equals 3%, high school diploma equals 97%, associate's degree equals 74%, and bachelor's degree or higher equals 44%.
- *White*: Less than high school diploma equals 3%, high school diploma equals 97%, associate's degree equals 71%, and bachelor's degree or higher equals 44%.

The results for Figure 3-1 (b) genders include:

- *Women*: Less than high school diploma equals 4%**, high school diploma equals 96%**, associate's degree equals 70%**, and bachelor's degree or higher equals 43%**.
- *Men*: Less than high school diploma equals 6%, high school diploma equals 94%, associate's degree equals 64%, and bachelor's degree or higher equals 35%.

The results for Figure 3-1 (c) SDV groups include:

- *SDV:* Less than high school diploma equals 0%**, high school diploma equals 100%**, associate's degree equals 72%**, and bachelor's degree or higher equals 49%**.
- *All others:* Less than high school diploma equals 5%, high school diploma equals 95%, associate's degree equals 67%, and bachelor's degree or higher equals 38%.

Figure 3-2. Figure 3-2 is a data table titled, "Demographic characteristics of workers in study-related contracting industries and all industries, Virginia Beach marketplace, 2018-2022." The table presents percentage distributions of demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status across multiple industries. The table includes overall data for all industries (n=29,256 respondents) and four specific industry categories: Architecture and engineering (A/E) (n=511 respondents), construction (n=1,582 respondents), professional services (n=678 respondents), and goods and services (n=1,415 respondents). Please note, the single asterisk and double asterisks denote that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-2 demographics include:

- *Asian Pacific*: All industries 5.1%, A/E 5.0%, construction 2.0%**, professional services 6.5%, and goods and services 4.7%.
- *Black*: All industries 30.5%, A/E 12.9%**, construction 21.2%**, professional services 24.0%**, and goods and services 34.7%**.
- *Hispanic*: All industries 7.6%, A/E 6.7%, construction 14.2%**, professional services 5.3%**, and goods and services 5.2%**.
- *Middle East North African (MENA):* All industries 0.4%, A/E 0.6%, construction 0.2%, professional services 0.3%, and goods and services 0.7%.

- *Native American*: All industries 0.8%, A/E 0.8%, construction 0.9%, professional services 1.4%, and goods and services 1.0%.
- *Subcontinent Asian*: All industries 0.7%, A/E 1.6%, construction 0.2%**, professional services 3.4%**, and goods and Services 0.4%.
- *Other race minority*: All industries 0.8%, A/E 0.8%, construction 0.5%, professional services 1.1%, and goods and services 1.1%.
- *Total Minority*: All industries 45.9%, A/E 28.4%, construction 39.3%, professional services 41.9%, and goods and services 47.7%.
- *White*: All industries 54.1%, A/E 71.6%**, construction 60.7%**, professional services 58.1%*, and goods and services 52.3%.

The results for Figure 3-2 genders include:

- *Women*: All industries 47.0%, A/E 25.2%**, construction 13.2%**, professional services 31.7%**, and goods and services 29.6%**.
- *Men*: All industries 53.0%, A/E 74.8%**, construction 86.8%**, professional services 68.3%**, and goods and services 70.4%**.

The results for Figure 3-2 SDV groups include:

- *SDV*: All industries 5.0%, A/E 19.7%**, construction 2.0%**, professional services 14.1%**, and goods and Services 5.5%.
- *All others*: All industries 95.0%, A/E 80.3%**, construction 98.0%**, professional services 85.9%**, and goods and Services 94.5%.

Figure 3-3. Figure 3-3 is a bar chart titled, "Unemployment rates, Virginia Beach Marketplace, 2018-2022." The bar graph presents unemployment rates by demographic group, categorized by race/ethnicity, gender, and service-disabled Veteran (SDV) status. The x-axis represents race/ethnicity, gender, and SDV status. The y-axis represents unemployment rate percentages on a scale from 0% to 100% with 10% increments broken out. Please note, the single asterisk and double asterisks denote that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-3 demographics include:

- *Asian Pacific*: 3%
- *Black*: 8%**
- *Hispanic*: 5%*
- *Middle East North African (MENA)*: 4%
- *Native American*: 3%

- *Subcontinent Asian*: 2%
- *Other race minority*: %
- *White*: 3.4%

The results for Figure 3-3 genders include:

- *Women*: 4.9%
- *Men*: 4.8%

The results for Figure 3-3 SDV groups include:

- *SDV*: 2.9%**
- *All others*: 5.0%

Figure 3-4. Figure 3-4 is a data table titled, "Predictors of unemployment, Virginia Beach Marketplace, 2018-2022." The table presents predictors of unemployment rates by demographic group—categorized by race/ethnicity, gender, and service-disabled Veteran (SDV) status—using the following variables: High school diploma for education, White for race, and manufacturing for industry. Please note, the regression included 26,199 observations. The double asterisks denote statistical significance at the 95% confidence level. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-4 consist of variables along with their corresponding coefficients for the following demographics:

- *Asian Pacific*: 0.0273
- *Black*: 0.3537**
- *Hispanic*: 0.0061
- *Middle East North African (MENA)*: 0.1875
- *Native American*: -0.1204
- *Subcontinent Asian*: -0.0875
- *Other race minority*: -0.1418
- *Women*: 0.1137**

Figure 3-5. Figure 3-5 is a data table titled, "Percentage of non-owner workers who worked as a manager in each study-related industry, Virginia Beach Marketplace, 2018-2022." The table presents percentage distributions across demographic groups categorized by race/ethnicity, gender, and service-disabled veteran (SDV) status, within the following four industry sectors: Architecture and engineering (A/E), construction, professional services, and goods and services. Please note, the single asterisk and double asterisks denote that the difference in proportions between the minority group and White workers, between women and men, or between SDVs and other people is statistically significant at the

90% and 95% confidence levels, respectively. The dagger symbol denotes significant differences in proportions not reported due to small sample size. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-5 demographics include:

- *Asian Pacific*: A/E 2.8%†, construction 4.4%*, professional services 2.6%**, and goods and services 2.3%.
- *Black*: A/E 0.9%**, construction 2.2%**, professional services 3.0%**, and goods and services 0.1%**.
- *Hispanic*: A/E 3.9%†, construction 4.3%**, professional services 12.9%, and goods and services 0.0%.
- *Middle East North African (MENA)*: A/E 0.0%†, construction 30.0%†, professional services 0.0%†, and goods and services 30.1%†.
- *Native American*: A/E 0.0%†, construction 7.9%†, professional services 2.7%†, and goods and services 1.3%†.
- *Subcontinent Asian*: A/E 0.0%†, construction 0.0%, professional services 3.7%†, and goods and services 0.0%†.
- *Other race minority*: A/E 10.2%†, construction 20.0%†, professional services 36.9%†, and goods and services 0.0%†.
- *White*: A/E 6.1%, construction 11.6%, professional services 10.9%, and goods and services 3.5%.

The results for Figure 3-5 genders include:

- *Women*: A/E 8.3%, construction 4.8%**, professional services 5.5%, and goods and services 0.8%**.
- *Men*: A/E 3.8%, construction 8.8%, professional services 9.8%, and goods and services 2.8%.

The results for Figure 3-5 SDV groups include:

- *SDV*: A/E 1.1%**, construction 12.4%, professional services 8.3%, and goods and services 0.0%.
- *All others*: A/E 5.9%, construction 8.1%, professional services 8.4%, and goods and services 2.3%.

The results for Figure 3-5 across all individuals include:

- *A/E*: 4.9%
- *Construction*: 8.2%
- *Professional services*: 8.4%
- *Goods and services*: 2.2%

Figure 3-6. Figure 3-6 is a data table titled, "Predictors of management in study-related industries, Virginia Beach Marketplace, 2018-2022." The table lists coefficients for various demographic variables (i.e., high school diploma for education and White for race) across four industries: Architecture and engineering (A/E), construction, professional services, and goods and services. Please note, the single asterisk and double asterisks denote statistical significance at the 90% and 95% confidence level, respectively. The dagger symbol denotes significant differences in proportions not reported due to small sample size. The results are based on the following number of observations for each industry: A/E with 361 observations, construction with 952 observations, professional services with 493 observations, and goods and services with 859 observations. The referent for each set of categorical variables is as follows: high school diploma for the education variables and White for the race variables.The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-6 consist of variables along with their corresponding coefficients for the following demographics:

- *Asian Pacific*: A/E -0.2612, construction 0.0000†, professional services 0.3588, and goods and services -0.0545.
- *Black*: A/E 0.0000†, construction -1.0678**, professional services -0.3432, and goods and services 0.8513**.
- *Hispanic*: A/E 0.1538, construction 0.1880, professional services -0.0112, goods and services 0.0000†.
- *Middle East North African (MENA)*: 0.0000†, construction -0.2815, professional services 0.0000†, and goods and services 0.8906.
- *Native American*: A/E 0.0000†, construction 0.0000†, professional services -0.5788, and goods and services -0.1935.
- *Subcontinent Asian*: A/E 0.0000†, construction 0.0000†, professional services -0.7327, and goods and services 0.0000†.
- *Other race minority*: A/E 0.0000†, construction 1.1000*, professional services 1.4524, and goods and services 0.0000†.
- *Women*: A/E 0.5245*, construction -0.6192**, professional services -0.0175, and goods and services -0.5698**.

Figure 3-7. Figure 3-7 is a bar chart titled, "Mean annual wages, Virginia Beach marketplace, 2018-2022." The bar graph presents mean annual wages by demographic group, categorized by race/ethnicity, gender, and service-disabled Veteran (SDV) status. The x-axis represents race/ethnicity, gender, and SDV status. The y-axis represents mean annual wages on a scale from $0.00 to $150,000 with $50,000 increments broken out. Please note, the sample universe includes all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed. The double asterisks denote that the difference in mean between the minority group and White workers, between women and men, or between SDVs and other people is statistically significant at the 95% confidence level. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use

Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-7 demographics include:

- *Asian Pacific*: $65,121**
- *Black*: $51,712**
- *Hispanic*: $56,384**
- *Middle East North African (MENA)*: $88,673
- *Native American*: $57,435**
- *Subcontinent Asian*: $109,760**
- *Other race minority*: $67,137
- *White*: $74,658

The results for Figure 3-7 genders include:

- *Women*: $54,852**
- *Men*: $77,429

The results for Figure 3-7 SDV groups include:

- *SDV*: $88,832**
- *All others*: $64,620

Figure 3-8. Figure 3-8 is a data table titled, "Predictors of annual wages (regression), Virginia Beach Marketplace, 2018-2022." The table presents predictors of annual wages by demographic group using exponentiated coefficients. Please note, the regression includes 13,773 observations. The sample universe includes all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed. For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure. The double asterisks denote statistical significance at the 95% confidence level. The referent for race variables is White. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-8 consist of variables along with their corresponding exponentiated coefficients for the following demographics:

- *Asian Pacific*: 0.862**
- *Black*: 0.820**
- *Hispanic*: 0.917**
- *Middle East North African (MENA)*: 0.921
- *Native American*: 0.800**

- *Subcontinent Asian*: 0.910
- *Other race MINORITY*: 0.909
- *Women*: 0.754**

Figure 3-9. Figure 3-9 is a bar graph titled, "Home ownership rates, Virginia Beach Marketplace, 2018-2022." It presents home ownership percentage values for demographic groups including race/ethnicity and gender. The x-axis represents race/ethnicity and gender categories. The y-axis represents homeownership rate percentages on a scale from 0% to 100% with 10% increments broken out. Please note, the sample universe is all households. The single asterisk and double asterisks denote statistically significant differences from White at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-9 consist of percentage values for the following demographics:

- *Asian Pacific*: 73%
- *Black*: 46%**
- *Hispanic*: 51%**
- *Middle East North African (MENA)*: 64%
- *Native American*: 66%*
- *Subcontinent Asian*: 42%**
- *Other race MINORITY*: 57%**
- *White*: 73%

Figure 3-10. Figure 3-10 is a bar graph titled, "Median home values, Virginia Beach Marketplace, 2018-2022." It presents median home values for various race/ethnicity groups for the years 2018 to 2022. The x-axis represents race/ethnicity categories. The y-axis represents median home values on a scale from $0.00 to $600,000 with $200,000 increments broken out. Please note, the sample universe is all households. The single asterisk and double asterisks denote statistically significant differences from White at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-10 consist of median home values for the following demographics:

- *Asian Pacific*: $300,000
- *Black*: $250,000
- *Hispanic*: $290,000
- *Middle East North African (MENA)*: $280,000
- *Native American*: $285,000

- *Subcontinent Asian*: $430,000
- *Other race minority*: $335,000
- *White*: $300,000

Figure 3-11. Figure 3-11 is a bar graph titled, "Denial rates of conventional purchase loans for high-income households, Virginia Beach Marketplace, 2023." It presents percentage values for various race/ethnicity groups in the Virginia Beach Marketplace for the year 2023. The x-axis represents race/ethnicity categories. The y-axis represents loan denial rate percentages on a scale from 0% to 100% with 20% increments broken out. Please note, high-income borrowers are those households with 120% or more of the HUD/FFIEC area median family income (MFI). The MFI data are calculated by the FFIEC. The data is sourced from FFIEC HMDA data 2023. The raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: https://ffiec.cfpb.gov/data-browser/.

The results for Figure 3-11 consist of percentage values for conventional purchase loan denial rates for high-income borrowers from the following demographics:

- *Asian*: 6%
- *Black*: 17%
- *Hispanic*: 14%
- *Native American*: 60%
- *White*: 4%

Figure 3-12. Figure 3-12 is a bar graph titled, "Loan, line of credit, and cash advance denial rates, United States, 2022." It presents percentages for business loan, line of credit, and cash advance denial rates across various demographics throughout the United States for the year 2022. The y-axis features demographic groups based on race/ethnicity and gender. The x-axis represents denial rate percentages on a scale from 0% to 100% with 10% increments broken out. The data was obtained from a 2022 Small Business Credit Survey.

The results for Figure 3-12 consist of percentage values for business loan, line of credit, and cash advance denial rates across the following demographics:

- *Asian*: 31%
- *Black*: 50%
- *Hispanic*: 32%
- *Native American*: 44%
- *White*: 18%
- *Women*: 25%
- *Men*: 19%

Figure 3-13. Figure 3-13 is a bar graph titled, "Businesses that did not apply for loans due to fear of denial, United States, 2022." It presents percentages for businesses that did not apply for loans due to fear of denial across various demographics throughout the United States in 2022. The y-axis features demographic groups based on race/ethnicity and gender. The x-axis represents percentages on a scale from 0% to 100% with 10% increments broken out. The data was obtained from a 2022 BBC Small Business Credit Survey.

The results for Figure 3-13 consist of percentage values for businesses that did not apply for loans due to fear of denial across the following demographics:

- *Asian*: 22%
- *Black*: 40%
- *Hispanic*: 24%
- *Native American*: 25%
- *White*: 12%
- *Women*: 17%
- *Men*: 13%

Figure 3-14. Figure 3-14 is a data table titled, "Self-employment rates in study-related contracting industries, Virginia Beach Marketplace, 2018-2022." The table presents self-employment percentages by demographic group—categorized by race/ethnicity, gender, and service-disabled Veteran (SDV) status—across industries including architecture and engineering (A/E), construction, professional services, and goods and services from 2018-2022. Please note, the single asterisk and double asterisks denote statistical significance at the 90% and 95% confidence level, respectively. The dagger symbol denotes significant differences in proportions not reported due to small sample size. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-14 demographics include:

- *Asian Pacific*: A/E 8.8%, construction 19.6%, professional services 6.4%, and goods and services 3.9%**.
- *Black*: A/E 1.1%**, construction 13.5%**, professional services 4.3%, and goods and services 15.2%.
- *Hispanic*: A/E 6.2%†, construction 10.2%**, professional services 2.3%, and goods and services 15.7%.
- *Middle East North African (MENA)*: A/E 0.0%†, construction 59.5%†, professional services 0.0%†, and goods and services 37.9%†.
- *Native American*: A/E 0.0%†, construction 23.8%†, professional services 8.0%†, and goods and services 9.1%†.

- *Subcontinent Asian*: A/E 0.0%†, construction 49.3%†, professional services 0.0%†, and goods and services 0.0%†.
- *Other race MINORITY*: A/E 0.0%†, construction 4.9%†, professional services 30.2%†, and goods and services 0.0%†.
- *White*: A/E 5.3%, construction 21.5%, professional services 4.6%, and goods and services 11.6%.

The results for Figure 3-14 genders include:

- *Women*: A/E 2.8%, construction 12.5%**, professional services 4.0%, and goods and services 6.1%**.
- *Men*: A/E 5.4%, construction 19.1%, professional services 5.0%, and goods and services 15.4%.

The results for Figure 3-14 SDV groups include:

- *SDV*: A/E 1.8%*, construction 11.7%, professional services 7.2%, and goods and services 13.5%.
- *All others*: A/E 5.5%, construction 18.4%, professional services 4.3%, and goods and services 12.6%.

The results for Figure 3-14 across all groups combined include:

- *All individuals*: A/E 4.8%, construction 18.2%, professional services 4.7%, and goods and services 12.7%.

Figure 3-15. Figure 3-15 is a data table titled, "Predictors of business ownership in study-related industries (regression), Virginia Beach Marketplace, 2018-2022." It lists coefficients for various demographic groups across four industries: Architecture and engineering (A/E), construction, professional services, and goods and services. Please note, the results are based on the following number of observations for each industry: A/E with 436 observations, construction with 1,319 observations, professional services with 552 observations, and goods and services with 1,148 observations. The single asterisk and double asterisks denote statistical significance at the 90% and 95% confidence level, respectively. The dagger symbol denotes significant differences in proportions not reported due to small sample size. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-15 consist of corresponding coefficients for the following demographics:

- *Asian Pacific*: A/E 0.2146, construction -0.1348, professional services 0.2664, and goods and services -0.8986**.
- *Black*: A/E -0.9290, construction -0.2430, professional services 0.0955, and goods and services 0.0744.
- *Hispanic*: A/E 0.1591, construction -0.1401, professional services -0.7435, goods and services -0.2647.

- *Middle East North African (MENA)*: 0.0000†, construction 0.9390, professional services 0.0000†, and goods and services 0.2114.
- *Native American*: A/E 0.0000†, construction -0.0064, professional services 0.1730, and goods and services 0.1395.
- *Subcontinent Asian*: A/E 0.0000†, construction 0.9025, professional services 0.0000†, and goods and services 0.0000†.
- *Other race minority*: A/E 0.0000†, construction 0.0000†, professional services 1.0295, and goods and services 0.0000†.
- *Women*: A/E -0.3981, construction -0.4162**, professional services -0.0256, and goods and services -0.5782**.

Figure 3-16. Figure 3-16 is a bar graph titled, "Businesses in poor financial condition, United States, 2022." It presents percentages for businesses in poor financial condition across various demographics throughout the United States for the year 2022. The y-axis features demographic groups based on race/ethnicity and gender. The x-axis represents percentages on a scale from 0% to 100% with 10% increments broken out. The data was obtained from a 2022 Small Business Credit Survey.

The results for Figure 3-16 consist of percentage values for businesses in poor financial condition across the following demographics:

- *Asian*: 30% (based on 565 responses)
- *Black*: 33% (based on 1,466 responses)
- *Hispanic*: 23% (based on 915 responses)
- *Native American*: 23% (based on 135 responses)
- *White*: 16% (based on 4,783 responses)
- *Women*: 22% (based on 3,497 responses)
- *Men*: 17% (based on 3,554 responses)

Figure 3-17. Figure 3-17 is a bar chart titled, "Mean annual business receipts (in thousands), Virginia Beach-Chesapeake-Norfolk, VA-NC Metro Area." It presents mean annual business receipts for various race/ethnicity groups in the greater Virginia Beach metro region. The y-axis features demographic groups based on race/ethnicity and gender. The x-axis represents business receipt values on a scale from $0.00 to $4,000,000 with $1,000,000 increments broken out. Please note, it includes employer firms but excludes publicly traded companies or other firms not classifiable by race/ethnicity and gender. The data was obtained from a 2022 Small Business Credit Survey.

The results for Figure 3-17 consist of mean annual business receipts (in thousands) for the following demographics:

- *Asian Pacific*: $1,256,000
- *Black*: $624,000
- *Hispanic*: $1,071,000

- *Native American and Other Pacific Islander*: $1,898,000
- *White*: $2,674,000
- *Women*: $1,013,000
- *Men*: $3,076,000

Figure 3-18. Figure 3-18 is a bar graph titled, "Mean annual business owner earnings, Virginia Beach Marketplace, 2018-2022." It presents mean annual business owner earnings for various race/ethnicity groups in the Virginia Beach Marketplace. The y-axis features demographic groups based on race/ethnicity, gender, and SDV status. The x-axis represents business ownership earnings on a scale from $0.00 to $100,000 with $20,000 increments broken out. Please note, the sample universe includes business owners age 16 and over who reported positive earnings in 2022. The single asterisk and double asterisks denote the difference in mean between the minority group and White owners, between women and men, or between SDV and other people is statistically significant at the 90% and 95% confidence levels, respectively. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-18 demographics include:

- *Asian Pacific*: $57,788
- *Black*: $30,116**
- *Hispanic*: $56,438
- *Middle East North African (MENA)*: $42,063
- *Native American*: $87,444
- *Subcontinent Asian*: $35,169
- *Other race minority*: $61,242
- *White*: $49,782

The results for Figure 3-18 genders include:

- *Women*: $27,232**
- *Men*: $61,720

The results for Figure 3-18 SDV groups include:

- *SDV*: $72,403*
- *All others*: $44,494

Figure 3-19. Figure 3-19 is a data table titled, "Predictors of business owner earnings (regression), Virginia Beach Marketplace, 2018-2022." The table presents predictors of business owner earnings by demographic group using a regression analysis. Please note, the regression includes 1,142 observations. For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure. The sample universe is business owners aged 16 and over who reported positive earnings. The double asterisks denote statistical significance at the 95% confidence level. The referent for race variables is White. The data is sourced from BBC Research & Consulting from 2018-2022 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The results for Figure 3-19 consist of variables along with their corresponding exponentiated coefficients for the following demographics:

- *Asian Pacific*: 1.249
- *Black*: 1.001
- *Hispanic*: 2.004**
- *Middle East North African (MENA)*: 1.235
- *Native American*: 2.338**
- *Subcontinent Asian*: 0.862
- *Other race MINORITY*: 0.580
- *Women*: 0.511**

C. Chapter 5 – Data Collection and Analysis

Figure 5-1. Figure 5-1 is a data table titled, "Contract elements and associated dollars included in the disparity study." It presents the number of contract elements and associated dollars BBC included in our analyses for the following categories: Construction, architecture and engineering (A/E), professional services, and goods and services. Please note, numbers rounded to nearest dollar and thus may not sum exactly to totals.

The following results for Figure 5-1 consist of contract types, number of contracts, and contract dollars:

- *Construction*: 1,968 contracts totaling $734,269,689
- *A/E*: 513 contracts totaling $417,486,657
- *Professional services*: 362 contracts totaling $85,941,997
- *Goods and services*: 33,642 contracts totaling $400,576,963
- *Total*: 36,485 contracts totaling $1,638,275,306

Figure 5-2. Figure 5-2 is a data table titled, "Contract and procurement dollars by subindustry." It presents subindustry classifications for the following contract and procurement categories: Construction, architecture and engineering (A/E), professional services, and goods and services. Please note, numbers rounded to nearest dollar and thus may not sum exactly to totals.

The following results for Figure 5-2(a) consist of construction classifications and contracting and procurement totals:

Construction	Total
Water, sewer, and utility lines	$167,595,772
Highway, street, and bridge construction	$146,366,007
Marine and related construction	$123,798,211
Nonresidential building construction	$94,060,606
Electrical work	$65,956,680
Plumbing and HVAC	$43,458,946
Concrete work	$34,520,429
Excavation, drilling, wrecking, and demolition	$11,123,508
Roofing, siding, and sheet metal work	$3,309,449
Other special trade contractors	$31,761,578
Other heavy construction	$10,113,360
Other building construction	$2,205,142
Total	**$734,269,689**

The following results for Figure 5-2(b) consist of A/E classifications and contracting and procurement totals:

A/E	Total
Engineering	$346,510,987
Surveying and mapmaking	$23,884,128
Landscape architecture	$13,735,180
Environmental services	$13,296,600
Testing and inspection	$5,035,713
Other architecture and engineering	$15,024,048
Total A/E	**$417,486,657**

The following results for Figure 5-2(c) consist of professional services classifications and contracting and procurement totals:

Professional services	Total
IT and data services	$40,075,045
Advertising, marketing, and public relations	$35,282,091
Business and management consulting	$3,513,216
Other professional services	$7,071,645
Total professional services	**$85,941,997**

The following results for Figure 5-2(d) consist of goods and services classifications and contracting and procurement totals:

Goods and services	Total
Automobiles	$43,568,842
Communications equipment	$39,012,439
Trucking, hauling, and storage	$32,282,379
Staffing services	$32,281,812
Cleaning and janitorial services	$30,463,338
Safety equipment	$28,100,944
Heavy construction equipment rental	$24,229,361
Vehicle parts and supplies	$21,358,547
Furniture	$13,403,418
Industrial equipment and machinery	$10,463,027
Landscaping services	$8,788,043
Printing, copying, and mailing	$6,977,295
Total goods and services	**$394,281,444**

D. Chapter 6 – Availability Analysis

Figure 6-1 is a data table titled, "Percent of businesses in the availability database by relevant business group." It presents availability percentages across different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure 6-1 availability results include:

- *Minority*: 26.8%
- *Asian Pacific*: 2.4%
- *Black*: 18.4%
- *Hispanic*: 4.3%
- *Middle East North African (MENA)*: 1.1%
- *Native American*: 1.7%
- *Subcontinent Asian*: 0.6%
- *White woman*: 14.3%
- *SDV*: 9.2%

Figure 6-2 is a callout box titled, "Example of calculating availability for a City subcontract." It includes the following text:

On a contract the City awarded during the study period, the prime contractor awarded a subcontract worth $598,107 for excavation, drilling, wrecking, and demolition work. To determine the overall availability of minority-owned businesses for the subcontract, BBC identified businesses in the availability database that indicated they:

a. Perform excavation, drilling, wrecking, and demolition work;

b. Perform work as subcontractors;

c. Are able to perform work of equal size or larger than the size of contract element; and

d. Perform work or serve customers in Virginia Beach.

We found seven businesses in the availability database that met those criteria, two of which were minority-owned. Thus, the availability of minority-owned businesses for the subcontract was 28.6 percent (i.e., 2/7 x 100 = 28.6).

Figure 6-3 is a data table titled, "Availability estimates for City work." It presents estimated availability percentages across different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure 6-3 estimated availability results include:

- *Minority*: 25.2%
- *Asian Pacific*: 4.5%
- *Black*: 12.5%
- *Hispanic*: 5.1%
- *Middle East North African (MENA)*: 1.0%
- *Native American*: 1.6%
- *Subcontinent Asian*: 0.4%
- *White woman*: 13.7%
- *SDV*: 12.6%

Figure 6-4. Figure 6-4 is a data table titled, "Availability estimates for construction, A/E, professional services, and goods and services work." It presents availability estimates for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status.

The results for Figure 6-4 demographics include:

- Minority: Construction 21.2%, A/E 30.2%, professional services 39.9%, and goods and services 24.1%
- Asian *Pacific*: Construction 1.9%, A/E 10.8%, professional services 5.2%, and goods and services 2.5%.
- *Black*: Construction 9.5%, A/E 14.5%, professional services 21.7%, and goods and services 14.0%.
- *Hispanic*: **C**onstruction 7.4%, A/E 2.9%, professional services 4.1%, and goods and services 3.2%.
- *Middle East North African (MENA):* Construction 0.9%, A/E 1.1%, professional services 1.1%, and goods and services 1.2%.

- *Native American*: Construction 1.1%, A/E 0.6%, professional services 6.3%, and goods and services 2.7%.
- *Subcontinent Asian*: Construction 0.3%, A/E 0.4%, professional services 1.5%, and goods and Services 0.5%.
- *White woman*: Construction 8.8%, A/E 17.7%, professional services 21.6%, and goods and services 16.9%.
- *SDV*: Construction 2.3%, A/E 29.2%, professional services 20.5%, and goods and Services 12.4%.

Figure 6-5. Figure 6-5 is a data table titled, "Availability estimates for prime contracts and subcontracts." It presents availability estimates for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The results for Figure 6-5 availability estimates include:

- Minority: 25.0% for prime contracts and 26.2% for subcontracts
- Asian *Pacific*: 4.8% for prime contracts and 3.0% for subcontracts
- *Black*: Construction 11.9% for prime contracts and 15.4% for subcontracts
- *Hispanic*: 5.0% for prime contracts and 5.4% for subcontracts
- *Middle East North African (MENA):* 1.1% for prime contracts and 1.0% for subcontracts
- *Native American*: 1.7% for prime contracts and 1.1% for subcontracts
- *Subcontinent Asian*: 0.5% for prime contracts and 0.3% for subcontracts
- *White woman*: 13.8% for prime contracts and 13.3% for subcontracts
- *SDV*: 13.3% for prime contracts and 9.3% for subcontracts

Figure 6-6. Figure 6-6 is a data table titled, "Availability estimates by prime contract size." It presents availability estimates for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The results for Figure 6-5 availability estimates include:

- Minority: 19.3% for micro contracts, 23.3% for small contracts, and 25.9% for large contracts
- Asian *Pacific*: 2.9% for micro contracts, 3.1% for small contracts, and 5.3% for large contracts
- *Black*: 10.3% for micro contracts, 12.3% for small contracts, and 12.0% for large contracts
- *Hispanic*: 3.3% for micro contracts, 4.5% for small contracts, and 5.3% for large contracts
- *Middle East North African (MENA):* 1.3% for micro contracts, 1.5% for small contracts, and 0.9% for large contracts
- *Native American*: 1.2% for micro contracts, 1.6% for small contracts, and 1.8% for large contracts

- *Subcontinent Asian*: 0.3% for micro contracts, 0.3% for small contracts, and 0.5% for large contracts
- *White woman*: 14.7% for micro contracts, 8.9% for small contracts, and 13.8% for large contracts
- *SDV*: 7.6% for micro contracts, 9.3% for small contracts, and 14.7% for large contracts

Figure 6-7. Figure 6-7 is a data table titled, "Availability estimates for goals and no goals projects." It presents availability estimates for demographic groups by race/ethnicity and gender. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The results for Figure 6-7 availability estimates include:

- Minority: 21.6% for goals projects and 22.2% no goals projects
- Asian *Pacific*: 1.7% for goals projects and 2.5% for no goals projects
- *Black*: 10.9% for goals projects and 10.2% for no goals projects
- *Hispanic*: 6.9% for goals projects and 7.0% for no goals projects
- *Middle East North African (MENA):* 0.9% for goals projects and 1.0% for no goals projects
- *Native American*: 0.9% for goals projects and 1.2% for no goals projects
- *Subcontinent Asian*: 0.3% for goals projects and 0.3% for no goals projects
- *White woman*: 8.9% for goals projects and 9.8% for no goals projects

D. Chapter 7 – Utilization Analysis

Figure 7-1. Figure 7-1 is a data table titled, "Utilization analysis results for Virginia Beach projects." It presents utilization percentages across different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure 7-1 utilization results include:

- *Minority*: 4.5%
- *Asian Pacific*: 0.9%
- *Black*: 2.5%
- *Hispanic*: 0.9%
- *Middle East North African (MENA)*: 0.0%
- *Native American*: 0.0%
- *Subcontinent Asian*: 0.1%
- *White woman*: 6.3%
- *SDV*: 1.1%

Figure 7-2. Figure 7-2 is a data table titled, "Utilization analysis results by industry." It presents availability estimates for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status.

The results for Figure 7-2 demographics include:

- Minority: Construction 3.1%, A/E 2.7%, professional services 6.7%, and goods and services 8.3%
- Asian *Pacific*: Construction 1.4%, A/E 1.2%, professional services 0.0%, and goods and services 0.0%.
- *Black*: Construction 1.0%, A/E 0.0%, professional services 1.1%, and goods and services 8.2%.
- *Hispanic*: **C**onstruction 0.8%, A/E 1.4%, professional services 4.0%, and goods and services 0.1%.
- *Middle East North African (MENA):* Construction 0.0%, A/E 0.0%, professional services 0.0%, and goods and services 0.0%.
- *Native American*: Construction 0.0%, A/E 0.0%, professional services 0.0%, and goods and services 0.0%.
- *Subcontinent Asian*: Construction 0.0%, A/E 0.0%, professional services 1.7%, and goods and Services 0.0%.
- *White woman*: Construction 5.6%, A/E 7.0%, professional services 15.1%, and goods and services 5.0%.
- *SDV*: Construction 0.9%, A/E 1.4%, professional services 0.0%, and goods and Services 1.3%.

Figure 7-3. Figure 7-3 is a data table titled, "Utilization analysis results by contract role." It presents utilization results for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The results for Figure 7-3 utilization results include:

- Minority: 2.3% for prime contracts and 15.3% for subcontracts
- Asian *Pacific*: 0.7% for prime contracts and 2.3% for subcontracts
- *Black*: 0.6% for prime contracts and 12.1% for subcontracts
- *Hispanic*: 1.0% for prime contracts and 0.7% for subcontracts
- *Middle East North African (MENA):* 0.0% for prime contracts and 0.1% for subcontracts
- *Native American*: 0.0% for prime contracts and 0.1% for subcontracts
- *Subcontinent Asian*: 0.1% for prime contracts and 0.0% for subcontracts
- *White woman*: 5.7% for prime contracts and 9.4% for subcontracts
- *SDV*: 1.2% for prime contracts and 0.6% for subcontracts

Figure 7-4. Figure 7-4 is a data table titled, "Utilization analysis results by contract size." It presents utilization results for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The results for Figure 7-4 utilization results include:

- Minority: 6.3% for micro contracts, 8.2% for small contracts, and 0.7% for large contracts
- Asian *Pacific*: 2.0% for micro contracts, 3.3% for small contracts, and 0.0% for large contracts
- *Black*: 2.6% for micro contracts, 1.3% for small contracts, and 0.2% for large contracts
- *Hispanic*: 1.6% for micro contracts, 3.0% for small contracts, and 0.5% for large contracts
- *Middle East North African (MENA):* 0.0% for micro contracts, 0.0% for small contracts, and 0.0% for large contracts
- *Native American*: 0.0% for micro contracts, 0.0% for small contracts, and 0.0% for large contracts
- *Subcontinent Asian*: 0.0% for micro contracts, 0.7% for small contracts, and 0.0% for large contracts
- *White woman*: 8.5% for micro contracts, 4.9% for small contracts, and 5.6% for large contracts
- *SDV*: 0.5% for micro contracts, 1.2% for small contracts, and 1.2% for large contracts

Figure 7-5. Figure 7-5 is a data table titled, "Utilization analysis results for goals and no goals contracts." It presents utilization analysis results across different demographic groups categorized by race and gender. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-4 utilization analysis results include:

- *Minority*: 2.3% for goals contracts and 1.2% for no goals contracts
- *Asian Pacific*: 0.0% for goals contracts and 0.4% for no goals contracts
- *Black*: 2.3% for goals contracts and 0.4% for no goals contracts
- *Hispanic*: 0.0% for goals contracts and 0.4% for no goals contracts
- *Middle East North African (MENA)*: 0.1% for goals contracts and 0.0% for no goals contracts
- *Native American*: 0.0% for goals contracts and 0.0% for no goals contracts
- *Subcontinent Asian*: 0.0% for goals contracts and 0.0% for no goals contracts
- *White woman*: 7.4% for goals contracts and 4.4% for no goals contracts

Figure 7-6. Figure 7-6 is a data table titled, "Utilization analysis results for goals and no goals contracts, local and non-local participation." It presents utilization analysis results across different demographic groups categorized by race and gender. Please note, numbers rounded to the nearest tenth of 1 percent and thus may not sum exactly to totals.

Figure ES-4 utilization analysis results include:

- *Minority*: 9.9% for goals contracts and 4.6% for no goals contracts
- *Asian Pacific*: 0.0% for goals contracts and 0.4% for no goals contracts
- *Black*: 9.2% for goals contracts and 2.4% for no goals contracts
- *Hispanic*: 0.6% for goals contracts and 1.7% for no goals contracts
- *Middle East North African (MENA)*: 0.1% for goals contracts and 0.0% for no goals contracts
- *Native American*: 0.1% for goals contracts and 0.1% for no goals contracts
- *Subcontinent Asian*: 0.0% for goals contracts and 0.0% for no goals contracts
- *White woman*: 9.1% for goals contracts and 5.2% for no goals contracts

E. Chapter 8 – Disparity Analysis

Figure 8-1. Figure 8-1 is a bar graph titled, "Overall disparity analysis results for City work." The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figure D-1 in Appendix D.

Figure 8-1 overall disparity analysis results include:

- *Minority*: $0.18
- *Asian Pacific*: $0.21
- *Black*: $0.20
- *Hispanic*: $0.19
- *Middle East North African (MENA)*: $0.01
- *Native American*: $0.01
- *Subcontinent Asian*: $0.20
- *White woman*: $0.46
- *SDV*: $0.08

Figure 8-2. Figure 8-2 is a series of bar graphs titled, "Disparity analysis results by industry," which highlights results for construction, A/E, professional services, and goods and services. The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figure D-1 in Appendix D.

Figure 8-2(a) construction disparity analysis results include:

- *Minority*: $0.15

- *Asian Pacific*: $0.73
- *Black*: $0.10
- *Hispanic*: $0.11
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $0.00
- *White woman*: $0.64
- *SDV*: $0.41

Figure 8-2(b) A/E disparity analysis results include:

- *Minority*: $0.09
- *Asian Pacific*: $0.12
- *Black*: $0.00
- *Hispanic*: $0.48
- *Middle East North African (MENA)*: $0.05
- *Native American*: $0.06
- *Subcontinent Asian*: $0.00
- *White woman*: $0.40
- *SDV*: $0.05

Figure 8-2(c) professional services disparity analysis results include:

- *Minority*: $0.17
- *Asian Pacific*: $0.00
- *Black*: $0.05
- *Hispanic*: $0.97
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $1.12
- *White woman*: $0.70
- *SDV*: $0.00

Figure 8-2(d) goods and services disparity analysis results include:

- *Minority*: $0.35

- *Asian Pacific*: $0.01
- *Black*: $0.59
- *Hispanic*: $0.04
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $0.00
- *White woman*: $0.29
- *SDV*: $0.10

Figure 8-3. Figure 8-3 is a bar graph titled, "Disparity analysis results by contract role." It consists of two sets of bars representing prime contracts (dark blue bars) and subcontracts (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/ethnicity, gender, and service-disabled veteran (SDV) status intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figures D-10 and D-11 in Appendix D.

Figure 8-3 disparity analysis results include:

- Minority: $0.09 for prime contracts and $0.58 for subcontracts
- Asian *Pacific*: $0.14 for prime contracts and $0.78 for subcontracts
- *Black*: $0.05 for prime contracts and $0.79 for subcontracts
- *Hispanic*: $0.20 for prime contracts and $0.13 for subcontracts
- *Middle East North African (MENA):* $0.00 for prime contracts and $0.08 for subcontracts
- *Native American*: $0.00 for prime contracts and $0.04 for subcontracts
- *Subcontinent Asian*: $0.23 for prime contracts and $0.00 for subcontracts
- *White woman*: $0.41 for prime contracts and $0.70 for subcontracts
- *SDV*: $0.09 for prime contracts and $0.07 for subcontracts

Figure 8-4. Figure 8-4 is a series of bar graphs titled, "Disparity analysis results by contract size," which highlights results for large prime contracts, small prime contracts, and micro prime contracts. The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/gender and service-disabled veteran (SDV) status. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figure D-1 in Appendix D.

Figure 8-4(a) large prime contracts disparity analysis results include:

- *Minority*: $0.03

- *Asian Pacific*: $0.00
- *Black*: $0.02
- *Hispanic*: $0.10
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $0.00
- *White woman*: $0.41
- *SDV*: $0.08

Figure 8-4(b) small prime contracts disparity analysis results include:

- *Minority*: $0.35
- *Asian Pacific*: $1.09
- *Black*: $0.10
- *Hispanic*: $0.66
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $2.00+
- *White woman*: $0.37
- *SDV*: $0.13

Figure 8-4(c) micro prime contracts disparity analysis results include:

- *Minority*: $0.32
- *Asian Pacific*: $0.70
- *Black*: $0.25
- *Hispanic*: $0.50
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.00
- *Subcontinent Asian*: $0.00
- *White woman*: $0.58
- *SDV*: $0.07

Figure 8-5. Figure 8-5 is a bar graph titled, "Disparity analysis results by contract goal status." It consists of two sets of bars representing goals (dark blue bars) and no goals (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/ethnicity and gender and intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figures D-3 and D-4 in Appendix D.

Figure 8-4 disparity analysis results include:

- Minority: $0.11 for goals contracts and $0.05 for no goals contracts
- Asian *Pacific*: $0.00 for goals contracts and $0.14 for no goals contracts
- *Black*: $0.21 for goals contracts and $0.04 for no goals contracts
- *Hispanic*: $0.00 for goals contracts and $0.06 for no goals contracts
- *Middle East North African (MENA):* $0.09 for goals contracts and $0.00 for no goals contracts
- *Native American*: $0.00 for goals contracts and $0.01 for no goals contracts
- *Subcontinent Asian*: $0.00 for goals contracts and $0.00 for no goals contracts
- *White woman*: $0.83 for goals contracts and $0.45 for no goals contracts

Figure 8-6. Figure 8-6 is a bar graph titled, "Disparity analysis results by contract goal status, local and non-local participation." It consists of two sets of bars representing goals (dark blue bars) and no goals (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/ethnicity and gender and intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, more details are available in Figures D-5 and D-6 in Appendix D.

Figure 8-6 disparity analysis results include:

- Minority: $0.46 for goals contracts and $0.20 for no goals contracts
- Asian *Pacific*: $0.00 for goals contracts and $0.16 for no goals contracts
- *Black*: $0.84 for goals contracts and $0.23 for no goals contracts
- *Hispanic*: $0.09 for goals contracts and $0.24 for no goals contracts
- *Middle East North African (MENA):* $0.09 for goals contracts and $0.00 for no goals contracts
- *Native American*: $0.07 for goals contracts and $0.11 for no goals contracts
- *Subcontinent Asian*: $0.00 for goals contracts and $0.00 for no goals contracts
- *White woman*: $1.02 for goals contracts and $0.53 for no goals contracts

Figure 8-7. Figure 8-7 is a bar graph titled, "Overall disparity indices from 2018 to 2025 disparity studies." It consists of two sets of bars representing 2018 (dark blue bars) and 2025 (light blue bars). The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race/ethnicity, gender, and service-disabled veteran (SDV) status and intersects at $1.00 on the y-axis. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure. Please note, for the purpose of this figure, 2025 disparity analysis results for Asian Pacific and Subcontinent Asian were combined as they were for disparity results in the 2018 disparity study. Similarly, MENA was excluded from these results, as this business group was not studied as part of the 2018 disparity study.

Figure 8-7 disparity analysis results include:

- Minority: $0.89 for 2018 and $0.49 for 2025
- Asian *Pacific*: $2.00 for 2018 and $0.27 for 2025
- *Black*: $0.56 for 2018 and $0.68 for 2025
- *Hispanic*: $0.20 for 2018 and $1.13 for 2025
- *Native American*: $0.05 for 2018 and $0.02 for 2025
- *White woman*: $0.62 for 2018 and $0.08 for 2025
- *SDV*: $0.06 for 2018 and $0.08 for 2025

F. Chapter 10 – Analysis of the Business Community

Figure 10-1. Figure 10-1 is a data table titled, "General characteristics of potentially available businesses." It presents descriptive characteristics of all businesses BBC considered potentially available or City contracts. It includes business group breakouts for all, non minority-owned/non woman-owned, and minority-owned/woman-owned businesses. Please note, n=468 for race/gender, capacity, prime contract interest, subcontract interest, and location in the RGMA; n=434 for age; n=397 for revenue. Numbers rounded to the nearest one-tenth of 1 percent and thus may not sum exactly to 100 percent.

Figure 10-1 features results for the following characteristics by business group:

- *Ownership*: N/A for all, 57.3% for non minority-owned/non woman-owned, and 42.7% for minority-owned/woman-owned
- *Revenue (median)*: $500,000 for all, $1.1 million for non minority-owned/non woman-owned, and $300,000 for minority-owned/woman-owned
- *Age (median)*: 19 years for all, 24 years for non minority-owned/non woman-owned, and 14 years for minority-owned/woman-owned
- *Capacity (median)*: $750,000 for all, $750,000 for non minority-owned/non woman-owned, and $500,000 for minority-owned/woman-owned
- *Prime contractor interest (%)*: 96.1% for all, 95.4% for non minority-owned/non woman-owned, and 96.8% for minority-owned/woman-owned
- *Subcontractor interest (%)*: 89.2% for all, 88.9% for non minority-owned/non woman-owned, and 89.5% for minority-owned/woman-owned
- *Participated in Virginia Beach work (%)*: 17.3% for all, 22.8% for non minority-owned/non woman-owned, and 10.0% for minority-owned/woman-owned

Figure 10-2. Figure 10-2 is a bar graph titled, "Distribution of potentially available businesses based on their reported raw revenues." It consists of bars representing the percentage of available businesses based on business revenue. The y-axis represents annual revenue (in millions) for 21 revenue tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line above the "up to $0.5 million" bar indicates that approximately 50% of businesses have a maximum revenue of $500,000 or less. Another dashed line that overlaps the "$3 to $4 million" bar indicates that approximately 80% of businesses have a maximum revenue of $3.1 million or less. Please note, numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-2 distribution of available businesses by capacity results include:

- *Up to $0.5 million*: 50%
- *$0.5 to $1 million*: 12%
- *$1 to $2 million*: 11%
- *$2 to $3 million*: 7%
- $3 to $4 million: 2%
- *$4 to $5 million*: 3%
- *$5 to $6 million*: 2%
- *$6 to $7 million*: 2%
- *$7 to $8 million*: 1%
- *$8 to $9 million*: 0%
- *$9 to $10 million*: 1%
- *$10 to $12 million*: 1%
- *$12 to $14 million*: 1%
- *$14 to $16 million*: 1%
- *$16 million to $18 million*: 1%
- *$18 million to $20 million*: 1%
- *$20 million to $25 million*: 1%
- *$25 million to $30 million*: 3%
- *$30 million to $35 million*: 1%
- *$35 million to $40 million*: 0%
- *More than $40 million*: 3%

Figure 10-3. Figure 10-3 is a bar graph titled, "Distribution of potentially available minority- and woman-owned businesses based on their reported raw revenues." It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents annual revenue (in millions) for 21 revenue tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line above the "up to $0.5 million" bar indicates that approximately 50% of businesses have a maximum revenue of $300,000 or less. Another dashed line that overlaps the "$1 to $2 million" bar indicates that approximately 80% of businesses have a maximum revenue of $1.1 million or less. Please note, n=181. Numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-3 distribution of potentially available minority- and woman-owned businesses include:

- *Up to $0.5 million*: 66%
- *$0.5 to $1 million*: 11%
- *$1 to $2 million*: 9%
- *$2 to $3 million*: 5%
- $3 to $4 million: 1%
- *$4 to $5 million*: 2%
- *$5 to $6 million*: 1%
- *$6 to $7 million*: 0%
- *$7 to $8 million*: 1%
- *$8 to $9 million*: 0%
- *$9 to $10 million*: 0%
- *$10 to $12 million*: 0%
- *$12 to $14 million*: 1%
- *$14 to $16 million*: 1%
- *$16 million to $18 million*: 0%
- *$18 million to $20 million*: 1%
- *$20 million to $25 million*: 1%
- *More than $25 million*: 2%

Figure 10-4. Figure 10-4 is a bar graph titled, "Distribution of potentially available businesses based on their reported ages." It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents business age (years) for 11 revenue tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 18% with 3% increments broken out. A dashed line intersects "16-20 years" bar, indicating that approximately 50% of businesses have an age of 19 years or younger. Another dashed line that overlaps the "31-35 years" bar, indicating that approximately 80% of businesses have an age of 34 years or younger. Please note, n=427. Numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-4 distribution of potentially available businesses based on their reported ages include:

- *Up to 5 years*: 11%
- *6-10 years*: 15%

- *11-15 years*: 15%
- *16-20 years*: 13%
- *21-25 years*: 10%
- *26-30 years*: 8%
- *31-35 years*: 9%
- *36-40 years*: 7%
- *41-45 years*: 2%
- *46-50 years*: 3%
- *Older than 50 years*: 6%

Figure 10-5. Figure 10-5 is a bar graph titled, "Distribution of potentially available minority- and woman-owned businesses based on their reported ages." It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents business age (years) for 11 revenue tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 25% with 5% increments broken out. A dashed line intersects "11-15 years" bar, indicating that approximately 50% of businesses have an age of 13 years or younger. Another dashed line appears above the "21-25 years" bar, indicating that approximately 80% of businesses have a maximum revenue of 25 years or younger. Please note, n=182. Numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-4 distribution of potentially available businesses based on their reported ages include:

- *Up to 5 years*: 17%
- *6-10 years*: 19%
- *11-15 years*: 18%
- *16-20 years*: 14%
- *21-25 years*: 9%
- *26-30 years*: 6%
- *31-35 years*: 6%
- *36-40 years*: 4%
- *41-45 years*: 1%
- *46-50 years*: 0%
- *Older than 50 years*: 3%

Figure 10-6. Figure 10-6 is a bar graph titled, "Distribution of potentially available businesses based on their reported capacities." It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents business capacity (in millions) for 18 capacity tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line intersects the "$0.5 to $1 million" bar, indicating that approximately 50% of businesses have a maximum capacity of $750,000 or less. Another dashed line is positioned below the “$4 to $5 million” bar, indicating that approximately 80% of businesses have a maximum capacity of $4 million or less. Please note, n=424. Numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-6 distribution of available businesses by capacity results include:

- *Up to $0.5 million*: 49%
- *$0.5 to $1 million*: 17%
- *$1 to $2 million*: 8%
- *$2 to $3 million*: 2%
- $3 to $4 million: 4%
- *$4 to $5 million*: 5%
- *$5 to $7 million*: 1%
- *$7 to $9 million*: 3%
- *$9 to $12 million*: 3%
- *$12 to $15 million*: 1%
- *$15 to $20 million*: 1%
- *$20 to $25 million*: 0%
- *$25 to $30 million*: 0%
- *$30 to $40 million*: 2%
- *$40 million to $50 million*: 0%
- *$50 million to $75 million*: 1%
- *$75million to $100 million*: 1%
- *More than $100 million*: 2%

Figure 10-7. Figure 10-7 is a bar graph titled, “Distribution of potentially available minority- and woman-owned businesses based on their reported capacities.” It consists of bars representing the percentage of available businesses based on business revenue capacity. The y-axis represents business capacity (in millions) for 18 capacity tiers. The x-axis represents the percentage of businesses available, ranging from 0% to 60% with 10% increments broken out. A dashed line is positioned above the “up to $0.5 million” bar, indicating that approximately 50% of businesses have a maximum capacity of $500,000 or less. Another dashed line intersects the “$3 to $4 million” bar, indicating that approximately 80% of businesses have a maximum capacity of $3.5 million or less. Please note, n=184. Numbers rounded to nearest whole percent and thus may not sum to 100 percent.

Figure 10-7 distribution of available businesses by capacity results include:

- *Up to $0.5 million*: 53%

- *$0.5 to $1 million*: 18%
- *$1 to $2 million*: 7%
- *$2 to $3 million*: 1%
- $3 to $4 million: 5%
- *$4 to $5 million*: 4%
- *$5 to $7 million*: 1%
- *$7 to $9 million*: 2%
- *$9 to $12 million*: 2%
- *$12 to $15 million*: 1%
- *$15 to $20 million*: 1%
- *$20 to $25 million*: 1%
- *$25 to $30 million*: 1%
- *$30 to $40 million*: 1%
- *$40 million to $50 million*: 1%
- *$50 million to $75 million*: 2%
- *$75million to $100 million*: 1%
- *More than $100 million*: 2%

Figure 10-8. Figure 10-8 is a data table titled, "Characteristics of businesses to which the City awarded contracts during the study period." It presents descriptive characteristics of the businesses to which the Cit awarded work during the study period. It includes business group breakouts for all, non minority-owned/non woman-owned, and minority-owned/woman-owned businesses. Please note, n=757. Numbers rounded to the nearest one-tenth of 1 percent and thus may not sum exactly to 100 percent.

Figure 10-8 features results for the following characteristics by business group:

- *Ownership*: N/A for all, 76.6% for non minority-owned/non woman-owned, and 23.4% for minority-owned/woman-owned
- *Contracts awarded (%)*: N/A for all, 76.5% for non minority-owned/non woman-owned, and 19.2% for minority-owned/woman-owned
- *Contract dollars awarded (%)*: N/A for all, 88.4% for non minority-owned/non woman-owned, and 11.6% for minority-owned/woman-owned
- *Dollars per business (avg.)*: $587,487 for all, $678,473 for non minority-owned/non woman-owned, and $289,960 for minority-owned/woman-owned
- *Revenue (median)*: $3,144,079 for all, $4,491,430 for non minority-owned/non woman-owned, and $1,500,000 for minority-owned/woman-owned

Figure 10-9. Figure 10-9 is a distribution chart titled, “Cumulative distribution of businesses based on the number of contracts worth less than $1 million the City awarded to them.” It consists of a curved line depicting where businesses land based on City-awarded contracts. The y-axis represents the percentage of contracts awarded to businesses, ranging from 0% to 100% in 10% increments. The x-axis represents the percentage of businesses that were awarded City contracts, ranging from 0% to 100% in 10% increments. A dashed line intersects with the curved line at the 50% marker, indicating that 4.2% of businesses were awarded 50% of the City’s contracts. Another dashed intersects with the curved line at the 80% marker, indicating that 16.3% of businesses were awarded 80% of the City’s contracts.

Figure 10-10. Figure 10-10 is a distribution chart titled, “Cumulative distribution of minority- and woman-owned businesses based on the number of contracts worth less than $1 million the City awarded to them.” It consists of a curved line depicting where businesses land based on City-awarded contracts. The y-axis represents the percentage of contracts awarded to businesses, ranging from 0% to 100% in 10% increments. The x-axis represents the percentage of businesses that were awarded City contracts, ranging from 0% to 100% in 10% increments. A dashed line intersects with the curved line at the 50% marker, indicating that 4.4% of businesses were awarded 50% of the City’s contracts. Another dashed intersects with the curved line at the 80% marker, indicating that 17.6% of businesses were awarded 80% of the City’s contracts.

Figure 10-11. Figure 10-11 is a distribution chart titled, “Cumulative distribution of businesses based on the dollars associated with contracts worth less than $1 million the City awarded to them.” It consists of a curved line depicting where businesses land based on the percentage of City-awarded contract dollars. The y-axis represents the percentage of contract dollars awarded to businesses, ranging from 0% to 100% in 10% increments. The x-axis represents the percentage of businesses that were awarded City contracts, ranging from 0% to 100% in 10% increments. A dashed line intersects with the curved line at the 50% marker, indicating that 9.9% of businesses were awarded 50% of the City’s contracts. Another dashed intersects with the curved line at the 80% marker, indicating that 27.3% of businesses were awarded 80% of the City’s contracts. Please note, n=11,809 contracts.

Figure 10-12. Figure 10-12 is a distribution chart titled, “Cumulative distribution of minority- and woman-owned businesses based on the dollars associated with contracts worth less than $1 million the City awarded to them.” It consists of a curved line depicting where businesses land based on the percentage of City-awarded contract dollars. The y-axis represents the percentage of contract dollars awarded to businesses, ranging from 0% to 100% in 10% increments. The x-axis represents the percentage of businesses that were awarded City contracts, ranging from 0% to 100% in 10% increments. A dashed line intersects with the curved line at the 50% marker, indicating that 14.7% of businesses were awarded 50% of the City’s contracts. Another dashed intersects with the curved line at the 80% marker, indicating that 31.6% of businesses were awarded 80% of the City’s contracts. Please note, n=2,386 contracts.

G. Chapter 11 – Implications and Recommendations

Figure 11-1. Figure 11-1 is a data table titled, “Availability of potential SWaM businesses for City work.” It presents the estimates availability results for demographic groups by race/ethnicity, gender, and service-disabled veteran (SDV) status. Please note, numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals. The availability of MENA-owned businesses is not included in this figure as the City does not currently certify those businesses as MBEs.

The results for Figure 11-1 estimated availability results include:

- Minority: 24.1%
- Asian *Pacific*: 4.5%
- *Black*: 12.5%
- *Hispanic*: 5.1%
- *Native American*: 1.6%
- *Subcontinent Asian*: 0.4%
- *White woman*: 13.7%
- *SDV*: 12.6%

Figure 11-2. Figure 11-2 is a bar graph titled, "Disparity indices for minority-owned businesses on no goals projects." The y-axis represents participation per one dollar of availability in 20 cent increments ranging from $0.00 to $2.00. The x-axis represents different demographic groups categorized by race and gender. Results that range from $0.00 to $0.80 are considered substantial disparities, as indicated by the salmon-colored rectangular shading in the figure.

Figure 8-1 disparity indices for minority-owned businesses on no goals projects results include:

- *Minority*: $0.05
- *Asian Pacific*: $0.14
- *Black*: $0.04
- *Hispanic*: $0.06
- *Middle East North African (MENA)*: $0.00
- *Native American*: $0.01
- *Subcontinent Asian*: $0.00

H. Appendix C – Availability Analysis Approach

Figure C-1. Figure C-1 is a data table titled, "Subindustries included in the availability analysis." It presents subindustry classifications for the following contract and procurement categories: Architecture and engineering (A/E), professional services, and goods and services. Please note, numbers rounded to nearest dollar and thus may not sum exactly to totals.

The following results for Figure C-1(a) consist of A/E subindustries included in the availability analysis:

A/E	Industry Code	Industry Description
Engineering	87119901	Acoustical engineering
Engineering	87120100	Architectural engineering
Engineering	87120101	Architectural engineering
Engineering	73349901	Blueprinting service

Engineering	87110401	Building construction consultant
Engineering	87110402	Civil engineering
Engineering	87110400	Construction and civil engineering
Engineering	87119903	Consulting engineer
Engineering	87119904	Designing: ship, boat, machine, and product
Engineering	87119905	Electrical or electronic engineering
Engineering	87110000	Engineering services
Engineering	87119907	Fire protection engineering
Engineering	87110403	Heating and ventilation engineering
Engineering	87119908	Marine engineering
Engineering	87110202	Mechanical engineering
Engineering	87119909	Professional engineer
Engineering	87110404	Structural engineering
Environmental services	73890201	Air pollution measuring service
Environmental services	89990700	Earth science services
Environmental services	87489904	Energy conservation consultant
Environmental services	87119906	Energy conservation engineering
Environmental services	87310301	Energy research
Environmental services	87489905	Environmental consultant
Environmental services	87310302	Environmental research
Environmental services	89990701	Geological consultant
Environmental services	89990703	Natural resource preservation service
Environmental services	87310300	Natural resource research
Environmental services	87110101	Pollution control engineering
Environmental services	87420405	Public utilities consultant
Landscape architecture	07810102	Horticultural counseling services
Landscape architecture	07810100	Horticulture services
Landscape architecture	07810201	Landscape architects
Landscape architecture	07810000	Landscape counseling and planning
Landscape architecture	07810202	Landscape counseling services
Landscape architecture	07810203	Landscape planning services
Landscape architecture	07810200	Landscape services
Other architecture and engineering	87480201	City planning
Other architecture and engineering	87419902	Construction management
Other architecture and engineering	87420402	Construction project management consultant
Other architecture and engineering	73899907	Contractors' disbursement control
Other architecture and engineering	87480203	Industrial development planning
Other architecture and engineering	87429907	Site location consultant
Other architecture and engineering	87480204	Traffic consultant
Other architecture and engineering	87420410	Transportation consultant
Other architecture and engineering	87480200	Urban planning and consulting services
Surveying and mapmaking	87139902	Aerial digital imaging
Surveying and mapmaking	73899913	Drafting service, except temporary help
Surveying and mapmaking	73890800	Mapmaking services

Surveying and mapmaking	73899930	Marine reporting
Surveying and mapmaking	73890802	Photogrammatic mapping
Surveying and mapmaking	87139901	Photogrammetric engineering
Surveying and mapmaking	87130000	Surveying services
Testing and inspection	73890200	Inspection and testing services

The following results for Figure C-1(b) consist of construction subindustries included in the availability analysis:

Construction	Industry Code	Industry Description
Concrete work	17710301	Blacktop (asphalt) work
Concrete work	17710000	Concrete work
Electrical work	17310000	Electrical work
Electrical work	17310302	Fiber optic cable installation
Electrical work	17319903	General electrical contractor
Excavation, drilling, wrecking, & demolition	17990900	Building site preparation
Excavation, drilling, wrecking, & demolition	17959902	Demolition, buildings and other structures
Excavation, drilling, wrecking, & demolition	17999907	Dewatering
Excavation, drilling, wrecking, & demolition	17949901	Excavation and grading, building construction
Excavation, drilling, wrecking, & demolition	17940000	Excavation work
Excavation, drilling, wrecking, & demolition	17950000	Wrecking and demolition work
Excavation, drilling, wrecking, & demolition	17990900	Building site preparation
Highway, street, and bridge construction	16229901	Bridge construction
Highway, street, and bridge construction	16220000	Bridge, tunnel, and elevated highway construction
Highway, street, and bridge construction	16110202	Concrete construction: roads, highways, sidewalks
Highway, street, and bridge construction	16119901	General contractor, highway and street construction
Highway, street, and bridge construction	16110203	Grading
Highway, street, and bridge construction	16110207	Gravel or dirt road construction
Highway, street, and bridge construction	16110000	Highway and street construction
Highway, street, and bridge construction	16119902	Highway and street maintenance
Highway, street, and bridge construction	16110204	Highway and street paving contractor
Highway, street, and bridge construction	16110102	Highway and street sign installation
Highway, street, and bridge construction	16110200	Surfacing and paving
Marine and related construction	16290100	Dams, waterways, docks, and other marine construct
Marine and related construction	16290104	Dock construction
Marine and related construction	16290106	Dredging contractor
Marine and related construction	16290108	Irrigation system construction
Marine and related construction	16290402	Land reclamation
Marine and related construction	16290110	Marine construction

Marine and related construction	16290113	Waterway construction
Nonresidential building construction	15420100	Commercial and office building contractors
Nonresidential building construction	15420101	Commercial and office building, new construction
Nonresidential building construction	15420102	Commercial and office buildings, prefabricated erection
Nonresidential building construction	15420103	Commercial and office buildings, renovation and repair
Nonresidential building construction	15410000	Industrial buildings and warehouses
Nonresidential building construction	15419905	Industrial buildings, new construction, nec
Nonresidential building construction	15429903	Institutional building construction
Nonresidential building construction	15420000	Nonresidential construction, nec
Nonresidential building construction	15419909	Renovation, remodeling and repairs: industrial buildings
Nonresidential building construction	15420400	Specialized public building contractors
Nonresidential building construction	15419910	Steel building construction
Other heavy construction	16290000	Heavy construction, nec
Other heavy construction	16299903	Land clearing contractor
Other heavy construction	16290400	Land preparation construction
Other heavy construction	16299904	Pile driving contractor
Other heavy construction	16299905	Power plant construction
Other heavy construction	16290202	Railroad and railway roadbed construction
Other heavy construction	16290403	Rock removal
Other heavy construction	16290504	Waste disposal plant construction
Other heavy construction	16290505	Waste water and sewage treatment plant construction
Other special trade contractors	17990201	Caulking (construction)
Other special trade contractors	17990203	Coating of metal structures at construction site
Other special trade contractors	17990200	Coating, caulking, and weather, water, and fireproofing
Other special trade contractors	17919902	Concrete reinforcement, placing of
Other special trade contractors	17999910	Epoxy application
Other special trade contractors	17919904	Exterior wall system installation
Other special trade contractors	17999912	Fence construction
Other special trade contractors	17990206	Fireproofing buildings
Other special trade contractors	17990207	Glazing of concrete surfaces
Other special trade contractors	17919905	Iron work, structural
Other special trade contractors	17919907	Precast concrete structural framing or panels, placing
Other special trade contractors	17910000	Structural steel erection
Other special trade contractors	17990209	Waterproofing
Plumbing and HVAC	17110301	Fire sprinkler system installation
Plumbing and HVAC	17110400	Heating and air conditioning contractors
Plumbing and HVAC	17110103	Heating systems repair and maintenance

Plumbing and HVAC	17110401	Mechanical contractor
Plumbing and HVAC	17110000	Plumbing, heating, air-conditioning
Roofing, siding, and sheet metal work	17610103	Roofing contractor
Water, sewer, and utility lines	16230201	Cable laying construction
Water, sewer, and utility lines	16230202	Cable television line construction
Water, sewer, and utility lines	16230200	Communication line and transmission tower construction
Water, sewer, and utility lines	17819901	Geothermal drilling
Water, sewer, and utility lines	16239904	Pipeline construction, nsk
Water, sewer, and utility lines	16239905	Pumping station construction
Water, sewer, and utility lines	76990402	Septic tank cleaning service
Water, sewer, and utility lines	17819902	Servicing, water wells
Water, sewer, and utility lines	76990403	Sewer cleaning and rodding
Water, sewer, and utility lines	16230302	Sewer line construction
Water, sewer, and utility lines	16230203	Telephone and communication line construction
Water, sewer, and utility lines	16239906	Underground utilities contractor
Water, sewer, and utility lines	16230300	Water and sewer line construction
Water, sewer, and utility lines	16230303	Water main construction
Water, sewer, and utility lines	17810000	Water well drilling
Water, sewer, and utility lines	16230000	Water, sewer, and utility lines

The following results for Figure 5-2(c) consist of goods and services subindustries included in the availability analysis:

Goods and services	Industry Code	Industry Description
Automobiles	55119901	Automobiles, new and used
Automobiles	50120403	Motorcycles
Automobiles	55110000	New and used car dealers
Automobiles	55119903	Trucks, tractors, and trailers: new and used
Automobiles	55219904	Trucks, tractors, and trailers: used
Cleaning and janitorial services	73490104	Janitorial service, contract basis
Cleaning and janitorial services	50870300	Cleaning and maintenance equipment and supplies
Cleaning and janitorial services	35890200	Commercial cleaning equipment
Cleaning and janitorial services	51690300	Detergents and soaps, except specialty cleaning
Cleaning and janitorial services	73590100	Home cleaning and maintenance equipment rental services
Cleaning and janitorial services	50870304	Janitors' supplies
Cleaning and janitorial services	51690402	Sanitation preparations
Cleaning and janitorial services	51690400	Specialty cleaning and sanitation preparations
Communications equipment	36630102	Amplifiers, RF power and IF
Communications equipment	59990601	Audio-visual equipment and supplies
Communications equipment	73590501	Audio-visual equipment and supply rental
Communications equipment	36630104	Cellular radio telephone

Communications equipment	50650200	Communication equipment
Communications equipment	59990602	Communication equipment
Communications equipment	36610102	Communication headgear, telephone
Communications equipment	36690000	Communications equipment, nec
Communications equipment	36699901	Intercommunication systems, electric
Communications equipment	59990605	Mobile telephones and equipment
Communications equipment	36630000	Radio and t.v. communications equipment
Communications equipment	50640203	Radios, nec
Communications equipment	57319907	Radios, two-way, citizens band, weather, short-wave
Communications equipment	50659904	Tapes, audio and video recording
Communications equipment	36639912	Telemetering equipment, electronic
Communications equipment	59990603	Telephone equipment and systems
Furniture	25410200	Cabinets, lockers, and shelving
Furniture	25210202	Cabinets, office: wood
Furniture	50210000	Furniture
Furniture	50210100	Office and public building furniture
Furniture	57129904	Office furniture
Furniture	25220000	Office furniture, except wood
Furniture	50210106	Office furniture, nec
Furniture	25310000	Public building and related furniture
Furniture	25210000	Wood office furniture
Heavy construction equipment rental	50820000	Construction and mining machinery
Heavy construction equipment rental	35310000	Construction machinery
Heavy construction equipment rental	73539901	Cranes and aerial lift equipment, rental or leasing
Heavy construction equipment rental	50820303	Cranes, construction
Heavy construction equipment rental	35370205	Cranes, industrial truck
Heavy construction equipment rental	35310604	Cranes, nec
Heavy construction equipment rental	35310607	Dredging machinery
Heavy construction equipment rental	50820304	Excavating machinery and equipment
Heavy construction equipment rental	50820300	General construction machinery and equipment
Heavy construction equipment rental	73530000	Heavy construction equipment rental
Heavy construction equipment rental	50829905	Mixers, construction and mining
Industrial equipment and machinery	50850000	Industrial supplies
Industrial equipment and machinery	50840800	Materials handling machinery
Industrial equipment and machinery	35890300	Sewage and water treatment equipment
Industrial equipment and machinery	50850303	Valves and fittings
Landscaping services	07839901	Arborist services
Landscaping services	07829903	Landscape contractors
Landscaping services	07839902	Removal services, bush and tree
Other construction materials	50329901	Aggregate
Other construction materials	29510000	Asphalt paving mixtures and blocks
Other construction materials	32410000	Cement, hydraulic

Other construction materials	50630000	Electrical apparatus and equipment
Other construction materials	50630205	Electrical construction materials
Other construction materials	50630206	Electrical supplies, nec
Other construction materials	50650000	Electronic parts and equipment, nec
Other construction materials	51930200	Flowers and nursery stock
Other construction materials	01810202	Flowers, grown in field nurseries
Other construction materials	36690201	Highway signals, electric
Other construction materials	50830202	Landscaping equipment
Other construction materials	52610100	Lawn and garden equipment
Other construction materials	52610103	Lawnmowers and tractors
Other construction materials	36480000	Lighting equipment, nec
Other construction materials	51930202	Nursery stock
Other construction materials	01810104	Nursery stock, growing of
Other construction materials	52610302	Nursery stock, seeds and bulbs
Other construction materials	01810000	Ornamental nursery products
Other construction materials	32730000	Ready-mixed concrete
Other construction materials	36250000	Relays and industrial controls
Other construction materials	52610300	Retail nurseries
Other construction materials	52610000	Retail nurseries and garden stores
Other goods	59991401	Business machines and equipment
Other goods	50440200	Copying equipment
Other goods	51430000	Dairy products, except dried or canned
Other goods	39930100	Electric signs
Other goods	51469902	Fish, fresh
Other goods	20929904	Fish, fresh: prepared
Other goods	51419901	Food brokers
Other goods	20920100	Fresh or frozen fish or seafood chowders, soups
Other goods	20920000	Fresh or frozen packaged fish
Other goods	51120405	Laser printer supplies
Other goods	51430100	Milk
Other goods	50440000	Office equipment
Other goods	50449900	Office equipment, nec
Other goods	51120500	Office filing supplies
Other goods	51129907	Office supplies, nec
Other goods	50440207	Photocopy machines
Other goods	51110000	Printing and writing paper
Other goods	51450200	Snack foods
Other goods	51120000	Stationery and office supplies
Other goods	57220208	Vacuum cleaners
Other nonprofessional services	49539905	Recycling, waste materials
Other nonprofessional services	49530302	Sanitary landfill operation
Other transit services	41420000	Bus charter service, except local
Other transit services	47299901	Carpool/vanpool arrangement
Other transit services	41110000	Local and suburban transit

Other transit services	41410000	Local bus charter service
Printing, copying, and mailing	27520000	Commercial printing, lithographic
Printing, copying, and mailing	73310000	Direct mail advertising services
Printing, copying, and mailing	27520101	Offset printing
Safety Equipment	59990100	Alarm and safety equipment stores
Safety Equipment	59990101	Alarm signal systems
Safety Equipment	50630501	Alarm systems, nec
Safety Equipment	50990101	Ammunition, except sporting
Safety Equipment	38420101	Bulletproof vests
Safety Equipment	50630502	Burglar alarm systems
Safety Equipment	38420102	Clothing, fire resistant and protective
Safety Equipment	36690100	Emergency alarms
Safety Equipment	36999902	Fire control or bombing equipment, electronic
Safety Equipment	73899919	Fire extinguisher servicing
Safety Equipment	59990102	Fire extinguishers
Safety Equipment	28999918	Fire retardant chemicals
Safety Equipment	50990100	Firearms and ammunition, except sporting
Safety Equipment	50990102	Firearms, except sporting
Safety Equipment	50870500	Firefighting equipment
Safety Equipment	51999912	First aid supplies
Safety Equipment	76992100	Gun services
Safety Equipment	34849902	Guns (firearms) or gun parts, 30 mm. and below
Safety Equipment	76992102	Gunsmith shop
Safety Equipment	50499903	Law enforcement equipment and supplies
Safety Equipment	50990302	Lifesaving and survival equipment (non-medical)
Safety Equipment	38420100	Personal safety equipment
Safety Equipment	34849904	Pistols or pistol parts, 30 mm. and below
Safety Equipment	50849912	Safety equipment
Safety Equipment	50990300	Safety equipment and supplies
Safety Equipment	59990103	Safety supplies and equipment
Safety Equipment	34840000	Small arms
Safety Equipment	50870501	Sprinkler systems
Security guard services	73810000	Detective and armored car services
Security guard services	73810100	Guard services
Security guard services	73810104	Protective services, guard
Security guard services	73810105	Security guard service
Staffing services	73610000	Employment agencies
Staffing services	73639905	Medical help service
Staffing services	73610204	Nurses' registry
Staffing services	73630103	Temporary help service
Trucking, hauling, and storage	42120000	Local trucking, without storage
Vehicle maintenance and repair	75330000	Auto exhaust system repair shops
Vehicle maintenance and repair	75370000	Automotive transmission repair shops

Vehicle maintenance and repair	75360000	Automotive glass replacement shops
Vehicle maintenance and repair	75340000	Tire retreading and repair shops
Vehicle parts and supplies	50149901	Automobile tires and tubes
Vehicle parts and supplies	55310103	Automotive parts
Vehicle parts and supplies	50130108	Automotive supplies
Vehicle parts and supplies	50130100	Automotive supplies and parts
Vehicle parts and supplies	50150102	Automotive supplies, used: wholesale and retail
Vehicle parts and supplies	50840602	Engines and parts, diesel
Vehicle parts and supplies	37140000	Motor vehicle parts and accessories
Vehicle parts and supplies	55310107	Truck equipment and parts
Vehicle parts and supplies	50130119	Truck parts and accessories

The following results for Figure 5-2(d) consist of professional services subindustries included in the availability analysis:

Professional services	Industry Code	Industry Description
Advertising, marketing, and public relations	73110000	Advertising agencies
Advertising, marketing, and public relations	73119901	Advertising consultant
Advertising, marketing, and public relations	89990301	Advertising copy writing
Advertising, marketing, and public relations	73190000	Advertising, nec
Advertising, marketing, and public relations	73890300	Advertising, promotional, and trade show services
Advertising, marketing, and public relations	73360100	Art design services
Advertising, marketing, and public relations	78129901	Audio-visual program production
Advertising, marketing, and public relations	73129901	Billboard advertising
Advertising, marketing, and public relations	79410201	Boxing and wrestling arena
Advertising, marketing, and public relations	73190101	Bus card advertising
Advertising, marketing, and public relations	73360000	Commercial art and graphic design
Advertising, marketing, and public relations	73369901	Commercial art and illustration
Advertising, marketing, and public relations	78129903	Commercials, television: tape or film
Advertising, marketing, and public relations	78190103	Consultants, motion picture
Advertising, marketing, and public relations	73890301	Convention and show services
Advertising, marketing, and public relations	73360102	Creative services to advertisers, except writers
Advertising, marketing, and public relations	78190500	Developing and laboratory services, motion picture
Advertising, marketing, and public relations	73190200	Distribution of advertising material or sample services
Advertising, marketing, and public relations	73130100	Electronic media advertising representatives
Advertising, marketing, and public relations	73890304	Embroidery advertising
Advertising, marketing, and public relations	73899915	Engraving service
Advertising, marketing, and public relations	79220105	Entertainment promotion
Advertising, marketing, and public relations	73890305	Exhibit construction by industrial contractors
Advertising, marketing, and public relations	73840202	Film processing and finishing laboratory
Advertising, marketing, and public relations	73360103	Graphic arts and related design
Advertising, marketing, and public relations	73130201	Magazine advertising representative

Advertising, marketing, and public relations	87420300	Marketing consulting services
Advertising, marketing, and public relations	73199902	Media buying service
Advertising, marketing, and public relations	73899932	Microfilm recording and developing services
Advertising, marketing, and public relations	78120000	Motion picture and video production
Advertising, marketing, and public relations	78120100	Motion picture production
Advertising, marketing, and public relations	78120201	Music video production
Advertising, marketing, and public relations	78120108	Non-theatrical motion picture production, television
Advertising, marketing, and public relations	73360104	Package design
Advertising, marketing, and public relations	78190100	Personnel services, motion picture production
Advertising, marketing, and public relations	73130200	Printed media advertising representatives
Advertising, marketing, and public relations	73890308	Promoters of shows and exhibitions
Advertising, marketing, and public relations	87439902	Promotion service
Advertising, marketing, and public relations	87439903	Public relations and publicity
Advertising, marketing, and public relations	87430000	Public relations services
Advertising, marketing, and public relations	73130101	Radio advertising representative
Advertising, marketing, and public relations	73891105	Recording studio, noncommercial records
Advertising, marketing, and public relations	87439904	Sales promotion
Advertising, marketing, and public relations	73360105	Silk screen design
Advertising, marketing, and public relations	78199901	Sound effects and music production, motion picture
Advertising, marketing, and public relations	79410202	Sports field or stadium operator, promoting sports
Advertising, marketing, and public relations	79419902	Sports promotion
Advertising, marketing, and public relations	79410200	Stadium event operator services
Advertising, marketing, and public relations	73891005	Telemarketing services
Advertising, marketing, and public relations	73130102	Television and radio time sales
Advertising, marketing, and public relations	78120110	Television film production
Advertising, marketing, and public relations	73890309	Trade show arrangement
Advertising, marketing, and public relations	78120111	Training motion picture production
Advertising, marketing, and public relations	78120200	Video production
Advertising, marketing, and public relations	78190201	Video tape or disk reproduction
Advertising, marketing, and public relations	78120202	Video tape production
Advertising, marketing, and public relations	78199902	Visual effects production
Business and management consulting	87410100	Business management
Business and management consulting	87429902	Business management consultant
Business and management consulting	87429904	General management consultant
Business and management consulting	87420000	Management consulting services
Business and management consulting	87429905	Management information systems consultant
Business and management consulting	87429906	Productivity improvement consultant
IT and data services	73740101	Calculating service (computer)
IT and data services	73789901	Computer and data processing equipment repair/main
IT and data services	73710201	Computer code authors

IT and data services	73760000	Computer facilities management
IT and data services	73740102	Computer graphics service
IT and data services	73790201	Computer hardware requirements analysis
IT and data services	17319902	Computer installation
IT and data services	73730000	Computer integrated systems design
IT and data services	73780000	Computer maintenance and repair
IT and data services	73789902	Computer peripheral equipment repair and maintenance
IT and data services	73740100	Computer processing services
IT and data services	73790200	Computer related consulting services
IT and data services	73790100	Computer related maintenance services
IT and data services	73790000	Computer related services, nec
IT and data services	73710301	Computer software development
IT and data services	73710300	Computer software development and applications
IT and data services	73710101	Computer software systems analysis and design, custom
IT and data services	73710202	Computer software writers, freelance
IT and data services	73710200	Computer software writing services
IT and data services	73730101	Computer systems analysis and design
IT and data services	73730401	Computer-aided design (CAD) systems service
IT and data services	73710000	Custom computer programming services
IT and data services	73710100	Custom computer programming services
IT and data services	73749901	Data entry service
IT and data services	73740000	Data processing and preparation
IT and data services	73790202	Data processing consultant
IT and data services	73749902	Data processing service
IT and data services	73730201	Local area network (LAN) systems integrator
IT and data services	73790203	Online services technology consultants
IT and data services	73749905	Optical scanning data service
IT and data services	73740104	Service bureau, computer
IT and data services	73710302	Software programming applications
IT and data services	87480400	Systems analysis and engineering consulting services
IT and data services	87480401	Systems analysis or design
IT and data services	87480402	Systems engineering consultant, ex. computer or professional
IT and data services	73730102	Systems engineering, computer related
IT and data services	73730200	Systems integration services
IT and data services	73730100	Systems software development services

Figure C-2. Figure C-2 is a data table titled, "Disposition of attempts to contact businesses for availability surveys." It presents the disposition of the 5,567 businesses the study team attempted to contact for availability surveys and how that number resulted in 1,112 businesses the study team was able to successfully contact.

Figure C-2 results include the following:

Disposition status	Number of businesses
Beginning list	5,567
Less non-working phone numbers	730
Less wrong number/business	402
Unique business listings with working numbers	4,435
Less no answer	2,631
Less could not reach responsible staff member	687
Less language barrier	5
Businesses successfully contacted	**1,112**

Figure C-3. Figure C-3 is a data table titled, "Disposition of successfully contacted businesses." It presents the disposition of the 1,112 businesses Davis Research successfully contacted and how that number resulted in the 468 businesses BBC considered potentially available for City work.

Figure C-3 results include the following:

Disposition status	Number of businesses
Businesses successfully contacted	1,112
Less businesses not interested in discussing availability for work	355
Less companies no longer in business	203
Less not a for-profit business	6
Businesses that completed surveys	548
Less line of work outside of study scope	7
Less no interest in future work	59
Less does not work in Virginia Beach area	10
Less multiple locations of same business	4
Businesses potentially available for City of Virginia Beach work	**468**

I. Appendix D – Disparity Analysis Results Tables

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Table	Contract area	Local	Contract role	Contract size	MBE goals
D-1	All industries	Local	Prime contracts and subcontracts	N/A	Goals and no goals
D-2	**Construction**	Local	Prime contracts and subcontracts	N/A	Goals and no goals
D-3	Construction	Local	Prime contracts and subcontracts	**Large**	**Goals**
D-4	Construction	Local	Prime contracts and subcontracts	**Large**	**No goals**

D-5	Construction	Local and non-local	Prime contracts and subcontracts	**Large**	**Goals**
D-6	Construction	Local and non-local	Prime contracts and subcontracts	**Large**	**No goals**
D-7	**Architecture and engineering**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-8	**Professional services**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-9	**Goods and other services**	Local	Prime contracts and subcontracts	N/A	**No goals**
D-10	All industries	Local	**Prime contracts**	N/A	Goals and no goals
D-11	All industries	Local	**Subcontracts**	N/A	Goals and no goals
D-12	All industries	Local	**Prime contracts**	**Large**	Goals and no goals
D-13	All industries	Local	**Prime contracts**	**Small**	**No goals**
D-14	All industries	Local	**Prime contracts**	**Micro**	**No goals**

FIGURE D-1: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS AND SUBCONTRACTS IN ALL CONTRACTING INDUSTRIES, 07/01/2020 – 06/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	36,485	$1,638,275	N/A	N/A	N/A
Minority	772	$73,582	4.5%	25.2%	$0.18
Asian Pacific	209	$15,453	0.9%	4.5%	$0.21
Black	385	$40,784	2.5%	12.5%	$0.20
Hispanic	173	$15,563	0.9%	5.1%	$0.19
MENA	1	$203	0.0%	1.0%	$0.01
Native American	3	$140	0.0%	1.6%	$0.01
Subcontinent Asian	1	$1,438	0.1%	0.4%	$0.20
White woman	1,648	$103,663	6.3%	13.7%	$0.46
Service-disabled veteran	405	$17,493	1.1%	12.6%	$0.08

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-2: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS AND SUBCONTRACTS IN CONSTRUCTION, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	1,968	$734,270	N/A	N/A	N/A
Minority	360	$23,087	3.1%	21.2%	$0.15
Asian Pacific	202	$10,190	1.4%	1.9%	$0.73
Black	125	$7,023	1.0%	9.5%	$0.10
Hispanic	33	$5,874	0.8%	7.4%	$0.11
MENA	0	$0	0.0%	0.9%	$0.00
Native American	0	$0	0.0%	1.1%	$0.00
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00

White woman	313	$41,383	5.6%	8.8%	$0.64
Service-disabled veteran	74	$6,818	0.9%	2.3%	$0.41

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-3: CONTRACT AREA AND CONTRACT ROLE: CONSTRUCTION PRIME CONTRACTS AND ASSOCIATED SUBCONTRACTS (LARGE CONTRACTS WITH GOALS), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	196	$258,034	N/A	N/A	N/A
Minority	14	$6,036	2.3%	21.6%	$0.11
Asian Pacific	0	$0	0.0%	1.7%	$0.00
Black	13	$5,833	2.3%	10.9%	$0.21
Hispanic	0	$0	0.0%	6.9%	$0.00
MENA	1	$203	0.1%	0.9%	$0.09
Native American	0	$0	0.0%	0.9%	$0.00
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	33	$19,205	7.4%	8.9%	$0.83
Service-disabled veteran	2	$80	0.0%	2.5%	$0.01

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-4: CONTRACT AREA AND CONTRACT ROLE: CONSTRUCTION PRIME CONTRACTS AND ASSOCIATED SUBCONTRACTS (LARGE CONTRACTS WITHOUT GOALS), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	394	$436,722	N/A	N/A	N/A
Minority	16	$5,269	1.2%	22.2%	$0.05
Asian Pacific	4	$1,558	0.4%	2.5%	$0.14
Black	7	$1,771	0.4%	10.2%	$0.04
Hispanic	4	$1,903	0.4%	7.0%	$0.06
MENA	0	$0	0.0%	1.0%	$0.00
Native American	1	$37	0.0%	1.2%	$0.01
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	56	$19,354	4.4%	9.8%	$0.45
Service-disabled veteran	5	$4,391	1.0%	4.8%	$0.21

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-5: CONTRACT AREA AND CONTRACT ROLE: CONSTRUCTION PRIME CONTRACTS AND ASSOCIATED SUBCONTRACTS (LARGE CONTRACTS WITH GOALS, INCLUDING NON-LOCAL UTILIZATION), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	196	$258,034	N/A	N/A	N/A
Minority	32	$25,557	9.9%	21.6%	$0.46
Asian Pacific	0	$0	0.0%	1.7%	$0.00

Black	24	$23,618	9.2%	10.9%	$0.84
Hispanic	6	$1,572	0.6%	6.9%	$0.09
MENA	1	$203	0.1%	0.9%	$0.09
Native American	1	$165	0.1%	0.9%	$0.07
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	42	$23,487	9.1%	8.9%	$1.02
Service-disabled veteran	2	$80	0.0%	2.5%	$0.01

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in.1rows 2 through 10.

TABLE D-6: CONTRACT AREA AND CONTRACT ROLE: CONSTRUCTION PRIME CONTRACTS AND ASSOCIATED SUBCONTRACTS (LARGE CONTRACTS WITHOUT GOALS, INCLUDING NON-LOCAL UTILIZATION), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	394	$436,722	N/A	N/A	N/A
Minority	27	$19,873	4.6%	22.2%	$0.20
Asian Pacific	5	$1,684	0.4%	2.5%	$0.16
Black	9	$10,284	2.4%	10.2%	$0.23
Hispanic	11	$7,287	1.7%	7.0%	$0.24
MENA	0	$0	0.0%	1.0%	$0.00
Native American	2	$619	0.1%	1.2%	$0.11
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	69	$22,810	5.2%	9.8%	$0.53
Service-disabled veteran	5	$4,391	1.0%	4.8%	$0.21

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-7: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS AND SUBCONTRACTS IN ARCHITECTURE AND ENGINEERING, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	513	$417,487	N/A	N/A	N/A
Minority	20	$11,393	2.7%	30.2%	$0.09
Asian Pacific	4	$5,194	1.2%	10.8%	$0.12
Black	4	$52	0.0%	14.5%	$0.00
Hispanic	8	$5,803	1.4%	2.9%	$0.48
MENA	1	$203	0.0%	1.1%	$0.05
Native American	3	$140	0.0%	0.6%	$0.06
Subcontinent Asian	0	$0	0.0%	0.4%	$0.00
White woman	45	$29,393	7.0%	17.7%	$0.40
Service-disabled veteran	2	$5,662	1.4%	29.2%	$0.05

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-8: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS AND SUBCONTRACTS IN PROFESSIONAL SERVICES, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	362	$85,942	N/A	N/A	N/A
Minority	20	$5,772	6.7%	39.9%	$0.17
Asian Pacific	0	$0	0.0%	5.2%	$0.00
Black	10	$910	1.1%	21.7%	$0.05
Hispanic	9	$3,424	4.0%	4.1%	$0.97
MENA	0	$0	0.0%	1.1%	$0.00
Native American	0	$0	0.0%	6.3%	$0.00
Subcontinent Asian	1	$1,438	1.7%	1.5%	$1.12
White woman	168	$12,962	15.1%	21.6%	$0.70
Service-disabled veteran	0	$0	0.0%	20.5%	$0.00

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-9: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS AND SUBCONTRACTS IN GOODS AND SERVICES, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	33,642	$400,577	N/A	N/A	N/A
Minority	372	$33,330	8.3%	24.1%	$0.35
Asian Pacific	3	$69	0.0%	2.5%	$0.01
Black	246	$32,799	8.2%	14.0%	$0.59
Hispanic	123	$461	0.1%	3.2%	$0.04
MENA	0	$0	0.0%	1.2%	$0.00
Native American	0	$0	0.0%	2.7%	$0.00
Subcontinent Asian	0	$0	0.0%	0.5%	$0.00
White woman	1,122	$19,926	5.0%	16.9%	$0.29
Service-disabled veteran	329	$5,013	1.3%	12.4%	$0.10

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-10: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS IN ALL CONTRACTING INDUSTRIES, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	35,751	$1,362,983	N/A	N/A	N/A
Minority	718	$31,590	2.3%	25.0%	$0.09
Asian Pacific	197	$9,082	0.7%	4.8%	$0.14
Black	355	$7,502	0.6%	11.9%	$0.05
Hispanic	165	$13,567	1.0%	5.0%	$0.20
MENA	0	$0	0.0%	1.1%	$0.00
Native American	0	$0	0.0%	1.7%	$0.00
Subcontinent Asian	1	$1,438	0.1%	0.5%	$0.23

White woman	1,531	$77,897	5.7%	13.8%	$0.41
Service-disabled veteran	396	$15,761	1.2%	13.3%	$0.09

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-11: CONTRACT AREA AND CONTRACT ROLE: SUBCONTRACTS IN ALL CONTRACTING INDUSTRIES, 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	734	$275,292	N/A	N/A	N/A
Minority	54	$41,992	15.3%	26.2%	$0.58
Asian Pacific	12	$6,371	2.3%	3.0%	$0.78
Black	30	$33,282	12.1%	15.4%	$0.79
Hispanic	8	$1,996	0.7%	5.4%	$0.13
MENA	1	$203	0.1%	1.0%	$0.08
Native American	3	$140	0.1%	1.1%	$0.04
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	117	$25,766	9.4%	13.3%	$0.70
Service-disabled veteran	9	$1,733	0.6%	9.3%	$0.07

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-12: CONTRACT AREA AND CONTRACT ROLE: PRIME IN ALL CONTRACTING INDUSTRIES (LARGE CONTRACTS), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	193	$1,049,516	N/A	N/A	N/A
Minority	3	$7,815	0.7%	25.9%	$0.03
Asian Pacific	0	$0	0.0%	5.3%	$0.00
Black	2	$2,158	0.2%	12.0%	$0.02
Hispanic	1	$5,657	0.5%	5.3%	$0.10
MENA	0	$0	0.0%	0.9%	$0.00
Native American	0	$0	0.0%	1.8%	$0.00
Subcontinent Asian	0	$0	0.0%	0.5%	$0.00
White woman	14	$58,680	5.6%	13.8%	$0.41
Service-disabled veteran	4	$12,768	1.2%	14.7%	$0.08

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-13: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS IN ALL CONTRACTING INDUSTRIES (SMALL CONTRACTS WITHOUT GOALS), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	349	$209,287	N/A	N/A	N/A
Minority	22	$17,263	8.2%	23.3%	$0.35
Asian Pacific	9	$6,997	3.3%	3.1%	$1.09
Black	5	$2,633	1.3%	12.3%	$0.10

Hispanic	7	$6,195	3.0%	4.5%	$0.66
MENA	0	$0	0.0%	1.5%	$0.00
Native American	0	$0	0.0%	1.6%	$0.00
Subcontinent Asian	1	$1,438	0.7%	0.3%	$2.00+
White woman	15	$10,351	4.9%	13.4%	$0.37
Service-disabled veteran	4	$2,443	1.2%	8.9%	$0.13

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.

TABLE D-14: CONTRACT AREA AND CONTRACT ROLE: PRIME CONTRACTS IN ALL CONTRACTING INDUSTRIES (MICRO CONTRACTS WITHOUT GOALS), 07/01/2020 – 6/30/2024

Business ownership by group	Contract elements	Dollars (thousands)	Participation	Availability	Disparity Index
All businesses	35,209	$104,180	N/A	N/A	N/A
Minority	693	$6,512	6.3%	19.3%	$0.32
Asian Pacific	188	$2,085	2.0%	2.9%	$0.70
Black	348	$2,712	2.6%	10.3%	$0.25
Hispanic	157	$1,715	1.6%	3.3%	$0.50
MENA	0	$0	0.0%	1.3%	$0.00
Native American	0	$0	0.0%	1.2%	$0.00
Subcontinent Asian	0	$0	0.0%	0.3%	$0.00
White woman	1,502	$8,866	8.5%	14.7%	$0.58
Service-disabled veteran	388	$550	0.5%	7.6%	$0.07

Note: A business must have a location in the relevant geographic market area to be classified into the business groups in rows 2 through 10.