

## Executive Summary

### A. Introduction

The City of Baltimore (“the City” or “Baltimore”) commissioned this Study to evaluate whether minority-owned and women-owned business enterprises in the City’s market area have full and fair opportunities to compete for its prime contracts, purchases and associated subcontracts.

To ensure compliance with constitutional mandates and M/WBE program best practices, the City of Baltimore commissioned NERA Economic Consulting to examine the past and current status of M/WBEs in its geographic and product markets for contracting and procurement. The results of the Study provide the evidentiary record necessary for the City’s consideration of whether to implement renewed M/WBE policies that comply with the requirements of the courts and to assess the extent to which previous efforts have assisted M/WBEs to compete on a fair basis in the City’s contracting and procurement activity.

This Study finds statistical evidence consistent with the presence of business discrimination against M/WBEs in the private sector of the City of Baltimore’s market area. These findings are presented in Chapters IV and V. Statistical analyses of the City’s own contracting and purchasing, which also document evidence consistent with business discrimination, are contained in Chapters II, III and VI. As a check on our statistical findings, documented in Chapter VII, we surveyed the contracting experiences of M/WBEs and non-M/WBEs in the market area and also conducted a series of in-depth personal interviews with business enterprises throughout the market area, both M/WBE and non-M/WBE.

### B. Legal Standards for Government Affirmative Action Contracting Programs

To be legally defensible, a race-based program must meet the judicial test of constitutional strict scrutiny. Strict scrutiny is the highest level of judicial review and consists of two elements:

- The government must establish its “compelling interest”<sup>1</sup> in remedying race discrimination by showing “a strong basis in evidence”<sup>2</sup> of the persistence of discrimination. Such evidence may consist of demonstrating that the entity is a “passive participant” in a system of racial exclusion....<sup>3</sup>
- Any remedies adopted must be narrowly tailored to that discrimination; that is, “the means chosen to accomplish the government’s asserted purpose are specifically and narrowly framed to accomplish that purpose.”<sup>4</sup>

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<sup>1</sup> *Croson*, 488 U.S. at 492.

<sup>2</sup> *Id.* at 500 (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986)).

<sup>3</sup> *Id.* at 492.

<sup>4</sup> *Sherbrooke*, 345 F.3d at 971 (citing *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003)).

The compelling interest prong has been met through two types of proof:

- Statistical evidence of “identified discrimination in [the relevant] industry,”<sup>5</sup> typically established by showing the underutilization of minority-owned firms relative to their availability in the jurisdiction’s market area known as disparity indexes or disparity ratios.<sup>6</sup>
- Anecdotal evidence of race-based barriers to the full and fair participation of minority-owned firms in the market area and in seeking contract opportunities with the agency.<sup>7</sup>

The narrow tailoring prong has been met through the assessment of several factors:

- Consideration of alternative, race-neutral means to increase M/WBE participation;<sup>8</sup>
- The flexibility of the program requirements, including the availability of waiver provisions;<sup>9</sup>
- The duration of the proposed relief;<sup>10</sup>
- The relationship of numerical participation goals to the availability of M/WBEs in the relevant market;<sup>11</sup>
- The impact of the relief on third parties;<sup>12</sup> and
- The overinclusiveness or underinclusiveness of the racial classifications.<sup>13</sup>

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<sup>5</sup> *Croson*, 488 U.S. at 505.

<sup>6</sup> See J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academies, NCHRP Report, Issue No. 644, 2010, pp. 5-6.

<sup>7</sup> *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10<sup>th</sup> Cir. 1994) (“*Concrete Works II*”) (“Personal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a municipality’s institutional practices that exacerbate discriminatory market conditions are often particularly probative. Therefore, the government may include anecdotal evidence in its evidentiary mosaic of past or present discrimination.”). See also *Adarand VII*, 228 F.3d at 1166 (“Both statistical and anecdotal evidence are appropriate in the strict scrutiny calculus, although anecdotal evidence by itself is not.”).

<sup>8</sup> *Croson*, 488 U.S. at 507, citing *United States v. Paradise*, 480 U.S. 149, 171 (1987). See also *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237-238 (1995) (“*Adarand III*”).

<sup>9</sup> *Paradise*, 480 U.S. at 171; *Adarand VII*, 228 F.3d at 1177.

<sup>10</sup> *Croson*, 488 U.S. at 498, 509. See also *Paradise*, 480 U.S. at 171.

<sup>11</sup> *Paradise*, 480 U.S. at 171.

<sup>12</sup> *Id.*

<sup>13</sup> *Croson*, 488 U.S. at 506.

In *Adarand Constructors, Inc. v. Peña*,<sup>14</sup> the Court extended the analysis of strict scrutiny to race-based federal enactments such as the federal (“DBE”) Program. Just as in the state and local government context, the national government must have a compelling interest for the use of race, and the remedies adopted must be narrowly tailored to meet that interest.

Appendix B provides an overview of constitutional standards and case law and outlines the legal and program development issues the City of Baltimore should consider in evaluating its M/WBE Program, with emphasis on critical issues and evidentiary concerns.

### **C. Defining the Relevant Markets**

Chapter II describes how the relevant geographic and product markets were defined for this Study. These definitions were derived empirically, based on the Master Contract/Subcontract Database assembled for the Study. The relevant geographic and product markets were then used to focus and frame the quantitative and qualitative analyses in the remainder of the Study.

The Master Contract/Subcontract Database contains information on 7,477 prime contracts and 4,736 associated subcontracts active during 2007-2012. These contracts and purchases had a total award value of \$2.489 billion and a total payment value of \$1.959 billion (see Table 2.1).<sup>15</sup> Contracts and subcontracts in the database were catalogued according to fiscal year and whether they were for Construction; Architecture, Engineering and other Construction-related Professional Services (“AE-CRS”); Services; or Commodities, Supplies and Equipment (“CSE”). The firms performing these contracts and subcontracts were catalogued according to geographic location, primary industry, race and gender.

The Master Contract/Subcontract Database was analyzed to determine the geographic radius around the City of Baltimore that accounts for at least 75 percent of aggregate contract and subcontract spending. The City’s relevant geographic market area was determined to include the Baltimore-Towson, MD Metropolitan Statistical Area (“MSA”). The Baltimore-Towson, MD MSA includes the City of Baltimore, Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County and Queen Anne’s County (see Tables 2.4 and 2.5).

The Master Contract/Subcontract Database was also analyzed to determine those detailed industry categories that collectively account for 99 percent of contract and subcontract spending by the City of Baltimore. We determined that the City’s product market includes firms in 228 different North American Industrial Classification System (“NAICS”) Industry Groups and 523 NAICS Industries (see Tables 2.6 through 2.9).

### **D. M/WBE Availability in the City of Baltimore’s Market Area**

Chapter III estimates the percentage of firms in the City of Baltimore’s relevant market area that are owned by minorities or women. For each industry category, M/WBE availability is defined

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<sup>14</sup> 515 U.S. 200 (1995) (“*Adarand III*”).

<sup>15</sup> Payments on contracts that were not substantially complete at the time of the Study data collection were excluded from the paid dollar totals.

as the number of M/WBEs divided by the total number of businesses in the City's contracting market area, weighted by the dollars attributable to each detailed industry. Determining the total number of establishments in the relevant market is more straightforward than determining the number of minority- or women-owned establishments in those markets. The latter task has three main parts: (1) identifying all listed M/WBEs in the relevant market; (2) verifying the ownership status of listed M/WBEs; and (3) estimating the number of unlisted M/WBEs in the relevant market.

Table A below provides an executive level summary of the current M/WBE availability estimates derived in the Study. Availability estimates for more detailed industries within the major procurement categories appear in Tables 3.12 through 3.15.

**Table A. Overall Estimated M/WBE Availability Percentages in the City of Baltimore’s Market Area**

	African American	Hispanic	Asian/Pacific Islander	Native American	Minority	Non-minority Female	M/WBE	Non-M/WBE
<b>OVERALL</b>								
AWARD DOLLARS	10.27	1.89	3.97	0.33	16.46	11.83	28.28	71.72
PAID DOLLARS	11.10	1.76	3.63	0.34	16.83	12.85	29.68	70.32
<b>CONSTRUCTION</b>								
AWARD DOLLARS	10.64	2.11	1.86	0.32	14.93	11.33	26.25	73.75
PAID DOLLARS	11.26	2.06	1.81	0.33	15.47	11.88	27.34	72.66
<b>AE-CRS</b>								
AWARD DOLLARS	8.53	1.94	6.31	0.20	16.99	10.65	27.64	72.36
PAID DOLLARS	9.77	1.64	5.90	0.17	17.48	12.59	30.07	69.93
<b>SERVICES</b>								
AWARD DOLLARS	12.83	1.63	3.38	0.51	18.35	14.72	33.06	66.94
PAID DOLLARS	13.41	1.57	3.51	0.45	18.94	15.52	34.46	65.54
<b>CSE</b>								
AWARD DOLLARS	9.56	1.52	3.56	0.52	15.16	11.24	26.40	73.60
PAID DOLLARS	9.56	1.52	3.56	0.52	15.16	11.24	26.40	73.60

Source: See Table 3.11.

Notes: (1) “Award” indicates that the availability measures are weighted according to dollars awarded; (2) “Paid” indicates that the availability measures are weighted according to dollars paid; (3) For this Study, “Black” or “African American” refers to an individual having origins in any of the Black racial groups of Africa; “Hispanic” refers to an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; “Asian” or “Asian/Pacific Islander” refers to an individual having origins in the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; “Native American” refers to an individual having origins in any of the original peoples of North America or of Hawai’i. Businesses owned by members of these groups are collectively referred to as M/WBEs.

## **E. Statistical Disparities in Minority and Female Business Formation and Business Owner Earnings**

Chapter III demonstrates that current M/WBE availability levels in the City of Baltimore market area, as measured in Chapter II, are substantially lower in most instances than those that we would expect to observe if commercial markets operated in a race- and gender-neutral manner

and that these levels are statistically significant.<sup>16</sup> In other words, minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry. We find that these groups also suffer substantial and significant earnings disadvantages relative to comparable nonminority males, whether they work as employees or entrepreneurs.

For example, we found that annual average wages for African Americans in 2007–2011 in the construction sector were 34.7 percent lower in the City of Baltimore market area than for nonminority males who were otherwise similar in terms of geographic location, industry, age and education (see Table 4.2). This difference is large and statistically significant. Large, adverse, and statistically significant wage disparities were also observed for Hispanics, Asians/Pacific Islanders, Native Americans, persons reporting two or more races and nonminority women. These disparities are consistent with the presence of market-wide discrimination. Observed disparities for these groups ranged from a low of -20 percent for Hispanics to a high of -35 percent for African Americans and Asians/Pacific Islanders. Similar results were observed when the analysis was restricted to the goods and services sector or expanded to the economy as a whole. That is, large, adverse, and statistically significant wage disparities were observed for all minority groups and for nonminority women. All wage and salary disparity analyses were then repeated to test whether observed disparities in the City of Baltimore market area were different enough from elsewhere in the country or the economy to alter any of the basic conclusions regarding wage and salary disparities. They were not.

This analysis demonstrates that minorities and women earn substantially and significantly less than their nonminority male counterparts. Such disparities are symptoms of discrimination in the labor force that, in addition to its direct effect on workers, reduce the future availability of M/WBEs by stifling opportunities for minorities and women to progress through precisely those internal labor markets and occupational hierarchies that are most likely to lead to entrepreneurial opportunities. These disparities reflect more than mere “societal discrimination” because they demonstrate the nexus between discrimination in the job market and reduced entrepreneurial opportunities for minorities and women. Other things equal, these reduced entrepreneurial opportunities in turn lead to lower M/WBE availability levels than would be observed in a race- and gender-neutral market area.

Next, we analyzed race and gender disparities in business owner earnings. We found, for example, that annual earnings for self-employed African Americans in 2007–2011 in the construction sector were 37 percent lower in the City of Baltimore market area than for nonminority males who were otherwise similar in terms of geographic location, industry, age and education (see Tables 4.4 to 4.6). This difference is large and statistically significant. Large, adverse, and statistically significant wage disparities were also observed for Hispanics, Asians/Pacific Islanders, Native Americans, persons reporting two or more races and nonminority women. These disparities are consistent with the presence of market-wide discrimination. Observed disparities for these groups ranged from a low of -17 percent for

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<sup>16</sup> Typically, for a given disparity statistic to be considered “statistically significant” there must be a substantial probability that the value of that statistic is unlikely to be due to chance alone. *See also fn. 64.*

Hispanics to a high of -44 percent for nonminority women. Similar results were observed when the analysis was restricted to the goods and services sector or expanded to the economy as a whole. As with the wage and salary disparity analysis, we enhanced our basic statistical model to test whether minority and female business owners in the City of Baltimore market area differed significantly enough from business owners elsewhere in the U.S. economy to alter any of our basic conclusions regarding disparity. They did not.

As was the case for wage and salary earners, minority and female entrepreneurs earned substantially and significantly less from their efforts than similarly situated nonminority male entrepreneurs. These disparities are a symptom of discrimination in commercial markets that directly and adversely affect M/WBEs. Other things equal, if minorities and women cannot earn remuneration from their entrepreneurial efforts comparable to that of nonminority males, growth rates will slow, business failure rates will increase, and business formation rates may decrease. Combined, these phenomena result in lower M/WBE availability levels than would otherwise be observed in a race- and gender-neutral market area.

Next, we analyzed race and gender disparities in business formation (see Tables 4.7 to 4.12). As with earnings, in most cases we observed large, adverse, and statistically significant disparities consistent with the presence of discrimination in these markets in the overall economy, in the construction sector and in the goods and services sector. In the construction sector, for example, business formation rates for African Americans were 8.8 percentage points lower than for comparable nonminority males. For other groups, disparities ranged from a low of 5.2 percentage points lower for Asians/Pacific Islanders to a high of 9.7 percentage points lower for nonminority females. Overall, business formation rates for African Americans, Hispanics, Asians/Pacific Islanders, Native Americans, persons reporting two or more races and nonminority women, were substantially and statistically significantly lower than the corresponding nonminority male business formation rate. Similar results were observed in the goods and services sector and in the economy as a whole.<sup>17</sup>

As a further check on the statistical findings in this Chapter, we examined evidence from the Census Bureau's *Survey of Business Owners and Self-Employed Persons* (SBO) (see Tables 4.13 to 4.18). These data show large, adverse, and statistically significant disparities between M/WBEs' share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Maryland.<sup>18</sup> The size of the disparities facing minority-owned firms in Maryland is very large. For example, although 20.06 percent of all firms in Maryland are owned by African Americans, they earned only 3.44 percent of all sales and receipts. Hispanic-owned firms are 5.1 percent of all firms in Maryland, yet they earned only 2.2 percent of all sales and receipts. Asian-owned firms are 7.1 percent of all firms in Maryland, but earned only 5.8 percent of sales and receipts. Native American-owned firms are 0.65 percent of all firms in Maryland, but earned only 0.17 percent of sales and receipts. Women-owned firms were 33.8 percent of all firms in Maryland, but these firms earned only 11.3 percent of sales and receipts.

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<sup>17</sup> The only two exceptions to this were for Asians/Pacific Islanders in Goods and Services sector and in the economy-wide sector.

<sup>18</sup> In general, with this particular dataset, it is not possible to analyze geographies below the state level.

## F. Statistical Disparities in Credit/Capital Markets

In Chapter V, we analyzed current and historical data from the Survey of Small Business Finances (“SSBF”), conducted by the Federal Reserve Board and the U.S. Small Business Administration, along with data from nine customized matching mail surveys we have conducted throughout the nation since 1999. This data examines whether discrimination exists in the small business credit market.

Credit market discrimination can have an important effect on the likelihood that M/WBEs will succeed. Moreover, discrimination in the credit market might even prevent such businesses from opening in the first place. This analysis has been held by some courts to be probative of a public entity’s compelling interest in remedying discrimination.<sup>19</sup> We provide qualitative and quantitative evidence supporting the view that M/WBE firms, particularly African American-owned firms, suffer discrimination in this market.

The SSBF datasets are constructed for the nation as a whole and for nine Census divisions. The City of Baltimore market area is part of the South Atlantic division (SATL), which includes the State of Maryland and eight surrounding states.<sup>20</sup> To render the results as narrowly tailored as possible, we included indicator variables in our statistical analyses to determine whether the results for the SATL were different from those for the nation as a whole. We determined that the national results also apply in general to the SATL.

The main results are as follows:

- Minority-owned firms were particularly likely to report that they did not apply for a loan over the preceding three years because they feared the loan would be denied (see Tables 5.15, 5.22, 5.29).
- When minority-owned firms did apply for a loan, their loan requests were substantially more likely to be denied than non-minorities, even after accounting for differences like firm size and credit history (see Tables 5.8, 5.9, 5.18, 5.19, 5.25, 5.26).
- When minority-owned firms did receive a loan they were obligated to pay higher interest rates on the loans than comparable nonminority-owned firms (see Tables 5.13, 5.14, 5.21, 5.27).
- Far more minority-owned firms report that credit market conditions are a serious concern than is the case for nonminority-owned firms (see Tables 5.3, 5.4, 5.5, 5.6, 5.7, 5.17, 5.24).

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<sup>19</sup> See, e.g., *Northern Contracting, Inc. v. Illinois Department of Transportation*, No. 00-C-4515, 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005); *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950, cert. denied, (10<sup>th</sup> Cir. 2003).

<sup>20</sup> The SATL includes Maryland as well as Delaware, Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia and the District of Columbia.



- A greater share of minority-owned firms believed that the availability of credit was the most important issue likely to confront the firm in the near future (see Tables 5.5, 5.6).
- Judging from the analysis done using data from the SSBF, there is no reason to believe that evidence of discrimination in the market for credit is different in the SATL, which includes the City of Baltimore market area, than in the nation as a whole. The evidence from NERA’s own credit surveys in a variety of states and metropolitan areas across the country is entirely consistent with the results from the SSBF.

We conclude that there is evidence of discrimination against M/WBEs in the City of Baltimore market area in the small business credit market. This discrimination is particularly acute for African American-owned small businesses where, even after adjusting for differences in assets, liabilities, and creditworthiness, the loan denial rates remain substantially higher than for nonminority male-owned small businesses.

**G. M/WBE Public Sector Utilization vs. Availability in the City of Baltimore’s Contracting and Purchasing Markets, 2007–2012**

Chapter VI analyzes the extent to which M/WBEs were utilized on contracts active at the City of Baltimore during 2007-2012 and compares this utilization rate to the availability of M/WBEs in the relevant market area.

Tables B1 and B2 provide an executive summary of the utilization findings for the Study by industry category and M/WBE type. Table B1 shows M/WBE and non-M/WBE utilization measured by dollars awarded. Table B2 shows M/WBE and non-M/WBE utilization measured by dollars paid.

**Table B1. M/WBE Utilization in Contracting at the City of Baltimore (Dollars Awarded)**

M/WBE Type	Procurement Category				
	Construction (%)	AE-CRS (%)	Services (%)	CSE (%)	Overall (%)
African American	14.96	6.98	12.30	4.33	10.35
Hispanic	9.44	0.32	1.30	0.24	3.60
Asian/Pacific Islander	1.97	22.64	3.21	1.17	5.33
Native American	2.30	0.00	0.09	0.00	0.79
Minority Total	28.67	29.94	16.90	5.74	20.07
Nonminority female	5.55	4.67	5.00	2.69	4.55
M/WBE Total	34.22	34.61	21.90	8.43	24.62
Non-M/WBE Total	65.78	65.39	78.10	91.57	75.38
Total (%)	100.00	100.00	100.00	100.00	100.00
Total(\$)	831,339,375	390,992,888	641,029,665	626,037,253	2,489,399,181

Source and Notes: See Table 6.1.

**Table B2. M/WBE Utilization in Contracting at the City of Baltimore (Dollars Paid)**

M/WBE Type	Procurement Category				
	Construction (%)	AE-CRS (%)	Services (%)	CSE (%)	Overall (%)
African American	15.13	6.11	10.75	4.33	9.69
Hispanic	12.16	0.33	0.67	0.24	4.35
Asian/Pacific Islander	2.35	21.71	3.72	1.17	4.30
Native American	2.19	0.00	0.06	0.00	0.75
Minority Total	31.82	28.14	15.21	5.74	19.08
Nonminority female	5.92	3.55	6.26	2.69	4.73
M/WBE Total	37.75	31.69	21.46	8.43	23.81
Non-M/WBE Total	62.25	68.31	78.54	91.57	76.19
Total (%)	100.00	100.00	100.00	100.00	100.00
Total(\$)	656,536,439	201,663,015	475,008,803	626,037,253	1,959,245,510

Source and Notes: See Table 6.2.

Next, we compared the use of M/WBEs on City of Baltimore contracts and subcontracts to our measure of M/WBE availability in the City's market area. If M/WBE utilization is lower than measured availability in a given category, we report this result as a disparity. Table C1 provides a top-level summary of our disparity findings for the Study for each major procurement category using dollars awarded. Table C2 provides comparable results using dollars paid.

**Table C1. Utilization, Availability and Disparity Results for City of Baltimore Contracting, Overall and by Contracting Category (Dollars Awarded)**

Contracting Category & M/WBE Type	Utilization	Availability	Disparity Ratio
<b>OVERALL</b>			
African American	10.35	10.27	
Hispanic	3.60	1.89	
Asian/Pacific Islander	5.33	3.97	
Native American	0.79	0.33	
Minority	20.07	16.46	
Nonminority female	4.55	11.83	38.50 ****
M/WBE total	24.62	28.28	87.06 *
<b>CONSTRUCTION</b>			
African American	14.96	10.64	
Hispanic	9.44	2.11	
Asian/Pacific Islander	1.97	1.86	
Native American	2.30	0.32	
Minority	28.67	14.93	
Nonminority female	5.55	11.33	49.03 ****
M/WBE total	34.22	26.25	
<b>AE-CRS</b>			
African American	6.98	8.53	81.82
Hispanic	0.32	1.94	16.43 ****
Asian/Pacific Islander	22.64	6.31	
Native American	0.00	0.20	0.00 ****
Minority	29.94	16.99	
Nonminority female	4.67	10.65	43.87 ****
M/WBE total	34.61	27.64	
<b>SERVICES</b>			
African American	12.30	12.83	95.81
Hispanic	1.30	1.63	79.45
Asian/Pacific Islander	3.21	3.38	95.22
Native American	0.09	0.51	18.52 ****
Minority	16.90	18.35	92.11
Nonminority female	5.00	14.72	34.00 ****
M/WBE total	21.90	33.06	66.25 ****
<b>CSE</b>			
African American	4.33	9.56	45.31 ****
Hispanic	0.24	1.52	15.46 ****
Asian/Pacific Islander	1.17	3.56	32.77 ****
Native American	0.00	0.52	0.00 ****
Minority	5.74	15.16	37.83 ****
Nonminority female	2.69	11.24	23.98 ****
M/WBE total	8.43	26.40	31.93 ****

Source: Table 6.3.

Notes: (1) "\*" indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). "\*\*\*\*" indicates an adverse disparity that is statistically significant at the 10% level or better (90% confidence). "\*\*\*\*\*" indicates the disparity is significant at a 5% level or better (95% confidence). "\*\*\*\*\*" indicates significance at a 1% level or better (99% confidence). (2) An empty cell in the Disparity Ratio column indicates that no adverse disparity was observed for that category.

**Table C2. Utilization, Availability and Disparity Results for City of Baltimore Contracting, Overall and by Contracting Category (Dollars Paid)**

Contracting Category & M/WBE Type	Utilization	Availability	Disparity Ratio
<b>OVERALL</b>			
African American	9.69	11.10	87.31
Hispanic	4.35	1.76	
Asian/Pacific Islander	4.30	3.63	
Native American	0.75	0.34	
Minority	19.08	16.83	
Nonminority female	4.73	12.85	36.79 ****
M/WBE total	23.81	29.68	80.21 ***
<b>CONSTRUCTION</b>			
African American	15.13	11.26	
Hispanic	12.16	2.06	
Asian/Pacific Islander	2.35	1.81	
Native American	2.19	0.33	
Minority	31.82	15.47	
Nonminority female	5.92	11.88	49.89 ****
M/WBE total	37.75	27.34	
<b>AE-CRS</b>			
African American	6.11	9.77	62.50 ****
Hispanic	0.33	1.64	20.29 ****
Asian/Pacific Islander	21.71	5.90	
Native American	0.00	0.17	0.00 ****
Minority	28.14	17.48	
Nonminority female	3.55	12.59	28.19 ****
M/WBE total	31.69	30.07	
<b>SERVICES</b>			
African American	10.75	13.41	80.17 *
Hispanic	0.67	1.57	42.56 ***
Asian/Pacific Islander	3.72	3.51	
Native American	0.06	0.45	14.17 ****
Minority	15.21	18.94	80.29 ***
Nonminority female	6.26	15.52	40.32 ****
M/WBE total	21.46	34.46	62.29 ****
<b>CSE</b>			
African American	4.33	9.56	45.31 ****
Hispanic	0.24	1.52	15.46 ****
Asian/Pacific Islander	1.17	3.56	32.77 ****
Native American	0.00	0.52	0.00 ****
Minority	5.74	15.16	37.83 ****
Nonminority female	2.69	11.24	23.98 ****
M/WBE total	8.43	26.40	31.93 ****

Source and Notes: Table 6.4.

Finally, Chapter VI compares current levels of M/WBE availability in the City of Baltimore's market area with what we would expect to observe in a race- and gender-neutral market area. If there is full parity in the relevant market area, then the expected M/WBE availability rate (that is, the M/WBE availability level that would be observed in a non-discriminatory market area) will be equal to the actual current M/WBE availability rate. If there are adverse disparities facing M/WBEs in the market area, however, as documented in Chapters IV, V, VI and VII of this Study, then expected availability will *exceed* current availability. Expected availability percentages for the City of Baltimore's overall contracting and by major contracting category are presented below in Table D. Expected availability exceeds actual current availability in 26 of the 28 cases observed.

**Table D. Current Availability and Expected Availability for City of Baltimore Contracting**

Contracting Category & M/WBE Type	Award Dollar Weights		Paid Dollar Weights	
	Current Availability (%)	Expected Availability (%)	Current Availability (%)	Expected Availability (%)
<b>OVERALL</b>				
African American	10.27	14.72	11.26	16.14
Hispanic	1.89	2.28	2.06	2.49
Asian/Pacific Islander	3.97	3.50	1.81	1.60
Native American	0.33	0.47	0.33	0.47
Minority	16.46	24.35	15.47	22.89
Nonminority female	11.83	15.74	11.88	15.81
M/WBE total	28.28	40.78	27.34	39.43
<b>CONSTRUCTION</b>				
African American	10.64	16.58	9.77	15.23
Hispanic	2.11	3.40	1.64	2.64
Asian/Pacific Islander	1.86	2.36	5.90	7.49
Native American	0.32	1.99	0.17	1.06
Minority	14.93	22.59	17.48	26.44
Nonminority female	11.33	23.03	12.59	25.60
M/WBE total	26.25	43.68	30.07	50.04
<b>AE-CRS</b>				
African American	8.53	13.29	13.41	20.90
Hispanic	1.94	3.12	1.57	2.53
Asian/Pacific Islander	6.31	8.01	3.51	4.46
Native American	0.20	1.25	0.45	2.80
Minority	16.99	25.70	18.94	28.65
Nonminority female	10.65	21.65	15.52	31.55
M/WBE total	27.64	46.00	34.46	57.35

Contracting Category & M/WBE Type	Award Dollar Weights		Paid Dollar Weights	
	Current Availability (%)	Expected Availability (%)	Current Availability (%)	Expected Availability (%)
<b>SERVICES</b>				
African American	12.83	23.54	9.56	17.54
Hispanic	1.63	1.80	1.52	1.68
Asian/Pacific Islander	3.38	3.12	3.56	3.29
Native American	0.51	0.72	0.52	0.73
Minority	18.35	26.92	15.16	22.24
Nonminority female	14.72	19.81	11.24	15.13
M/WBE total	33.06	46.61	26.40	37.22
<b>CSE</b>				
African American	9.56	17.54	11.26	20.66
Hispanic	1.52	1.68	2.06	2.27
Asian/Pacific Islander	3.56	3.29	1.81	1.67
Native American	0.52	0.73	0.33	0.47
Minority	15.16	22.24	15.47	22.69
Nonminority female	11.24	15.13	11.88	15.99
M/WBE total	26.40	37.22	27.34	38.54

Source: Table 6.5.

## H. Anecdotal Evidence

Chapter VII presents the results of a large scale mail survey we conducted of M/WBEs and non-M/WBEs about their experiences and difficulties in obtaining contracts. The survey quantified and compared anecdotal evidence on the experiences of M/WBEs and non-M/WBEs as a method to examine whether any differences might be due to discrimination.

We found that M/WBEs that have been hired in the past by non-M/WBE prime contractors to work on public sector contracts with M/WBE goals are rarely hired—or even solicited—by these prime contractors to work on projects without M/WBE goals. The relative lack of M/WBE hiring and, moreover, the relative lack of solicitation of M/WBEs in the absence of affirmative efforts by the City of Baltimore and other public entities in the market area shows that business discrimination continues to fetter M/WBE business opportunities in the City’s relevant markets.

We found that M/WBEs in the City of Baltimore’s market area, and African Americans in particular, report suffering business-related discrimination in large numbers and with statistically significantly greater frequency than non-M/WBEs. These differences remain statistically significant when firm size and other “capacity”-related owner characteristics are held constant. Some of the largest disparities were observed in applying for surety bonds, applying for commercial loans, applying for commercial insurance, functioning without hindrance or harassment on the work site, working or attempting to work on private sector prime contracts and subcontracts, joining or dealing with trade associations, and having to meet quality standards not required of comparable non-M/WBE firms.

We also found that M/WBEs in these markets are more likely than similarly situated non-M/WBEs to report that specific aspects of the regular business environment make it harder for them to conduct their businesses, and less likely than similarly situated non-M/WBEs to report that specific aspects of the regular business environment make it easier for them to conduct their businesses.

Chapter VII also presents the results from a series of in-depth personal interviews conducted with M/WBEs and non-M/WBEs from the City of Baltimore's market area. Similar to the survey responses, the interviews strongly suggest that minorities and women continue to suffer discriminatory barriers to full and fair access to City of Baltimore, other public sector, and private sector contracts. Participants reported discriminatory attitudes and negative perceptions and expectations of minorities' and women's competence; workplace harassment; not being paid on equal terms; exclusion from industry and information networks; discrimination in access to commercial loans and surety bonds; barriers to obtaining public sector contracts; and barriers to obtaining work on contracts without goals or private sector projects.

We conclude that the statistical evidence presented in this report is consistent with these anecdotal accounts of contemporary business discrimination. The results of the surveys and the personal interviews are the types of anecdotal evidence that, especially in conjunction with the Study's extensive statistical evidence, the courts have found to be highly probative of whether, without affirmative interventions, the City of Baltimore would be a passive participant in a discriminatory local market area. It is also highly relevant for narrowly tailoring any M/WBE goals that are established.

### **I. The City of Baltimore's M/WBE Program: Overview and Feedback Interviews**

Chapter VIII provides a review of the City of Baltimore's M/WBE Program and Ordinance, followed by a summary of business owner experiences with these policies and procedures obtained from our interviews. We interviewed 145 business owners and representatives, as well as City staff, to solicit their feedback regarding these programs. Our interviews covered the following subjects:

- The significance of the City's M/WBE Program;
- Supportive Services;
- Certification standards and processes;
- Access to information about upcoming opportunities;
- Contract size, specifications and procurement methods;
- Meeting M/WBE goals;
- Contract solicitations;

- Contract monitoring;
- Payment; and
- Front companies.

## **J. Recommendations for Revised Contracting Policies and Procedures**

Finally, in Chapter IX we present the following suggested recommendations for revised contracting policies and procedures, based upon the Study's results and findings and upon our views on best practices contracting diversity programs.

### **1. Race- and Gender-Neutral Recommendations**

- ❖ Increase Efforts to Ensure Prompt Payment on City of Baltimore Contracts
- ❖ Ensure Bidder Non-Discrimination
- ❖ Review Surety Bonding, Insurance and Experience Requirements
- ❖ Increase Contract Unbundling
- ❖ Provide Greater Access to Information For Upcoming Contract Opportunities
- ❖ Facilitate Increased Access to Capital
- ❖ Adopt a Mentor-Protégé Program
- ❖ Continue to Provide Supportive Services for Construction Firms and Expand Supportive Services for Non-Construction Firms
- ❖ Implement a Small Local Business Reserve Program
- ❖ Improve Contract and Subcontract Data Collection and Retention

### **2. Race- and Gender-Conscious Remedies**

- ❖ Adopt a Renewed M/WBE Ordinance and Accompanying Program Regulations
- ❖ Revise Certification Eligibility Standards
  - Adopt a social disadvantage test
  - Adopt an economic disadvantage test
  - Review firm size standards
  - Review the certification waiting period



- Permit individual consideration of business location
- Increase certification outreach
- Consider reciprocal certification opportunities
- ❖ Contract Award Policies and Procedures
  - Standardize good faith efforts waiver requirements and related policies
  - Standardize M/WBE program implementation across City departments
  - Scrutinize commercially useful function and increase contract monitoring
- ❖ M/WBE Goal-Setting
  - Adopt annual aspirational M/WBE goals
  - Count M/WBE prime participation towards meeting M/WBE goals
  - Count lower tier M/WBE participation towards meeting M/WBE goals
  - Continue to set contract-specific goals
- ❖ MWBOO Authority and Operational Resources
- ❖ Continue the M/WBE Program Sunset Review Process