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2017 MINNESOTA JOINT DISPARITY STUDY Metropolitan Council Draft Executive Summary

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DRAFT EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

The 2017 Minnesota Joint Disparity Study examines whether there is a level playing field for minority- and women-owned firms in the Minnesota marketplace and in public procurement. Keen Independent Research LLC (Keen Independent) performed the study for the Metropolitan Council (Met Council) and eight other state and local government entities. Met Council will use study results when making decisions about programs to assist minority- and women-owned companies and other small businesses. Met Council last conducted a disparity study in 2009.¹

Met Council makes a broad range of purchases for its mobility, wastewater treatment, parks and planning, and other operations. Met Council has operated the Metropolitan Council Underutilized Business (MCUB) Program to expand opportunities for minority- and women-owned companies and other small business in its locally-funded procurement. The MCUB Program includes Minnesota-based Targeted Group businesses (TGBs), firms certified as disadvantaged business enterprises (DBEs) and veteran-owned businesses.

This report is a draft released for public input, including comments received at public forums to be held in February 2017. This Executive Summary includes:

- A. Background on the study;
- B. Disparity Study research activities;
- C. Quantitative and qualitative information for the Twin Cities marketplace;
- D. Disparity analysis;
- E. Recommendations; and
- F. Public participation in the Disparity Study.

A. Background on the Study

Met Council periodically conducts disparity studies to determine whether there is sufficient need for programs that assist minority- and women-owned firms in its procurement.

Legal framework for the disparity study. In 1989, the U.S. Supreme Court established substantial limitations on the ability of state and local governments to have minority business programs or any other initiatives benefitting businesses based on the race of their owners. Legal restrictions also apply to programs for women-owned firms. Disparity studies help state and local governments determine whether programs are needed and supportable.

¹ MGT of America, Inc. *State of Minnesota Joint Availability and Disparity Study, Metropolitan Council*, October 22, 2009.

Even if a targeted business program does not consider race or gender, it can still be subject to legal challenge. However, such programs are more easily defended by the enacting jurisdiction. These types of programs include small business enterprise (SBE) programs and those that provide assistance to firms based on whether they are owned by veterans or by persons with disabilities. Although disparity studies typically do not examine these groups, the Minnesota Joint Disparity Study added analysis of marketplace conditions for businesses owned by veterans and persons with disabilities.

Programs. The MCUB program was created in 2012 for its non-U.S. Department of Transportation-funded construction contracts. It mirrors the Federal Disadvantaged Business Enterprise (DBE) Program that Met Council applies for USDOT-funded projects (which were not examined in the study). Met Council can set contract goals for MCUB businesses, and bidders must either meet those goals or show good faith efforts to do so. The Met Council expanded the scope of the MCUB program in 2016 to include professional and technical services contracts.

B. Disparity Study Research Activities

The Keen Independent study team began work in summer 2016 and completed draft reports in late 2017. Local team members included Felton Financial Forensics, CJ Petersen & Associates, Fondungallah & Kigham, and KLD Consulting. Team members from outside Minnesota were Holland & Knight, BBC Research & Consulting and Customer Research International.

Met Council contracts and subcontracts. Keen Independent examined 7,184 procurements totaling \$1.4 billion from July 2011 through June 2016, including subcontracts. This does not encompass all Met Council spending. For example, the study team excluded the types of purchases typically made from national markets (software, computers and buses) as well as utilities, leases, insurance, payments to banks and small purchases. Also excluded were payments to not-for-profit organizations and public agencies.

Relevant geographic market area. About 88 percent of Met Council procurement dollars went to firms with locations in the Twin Cities Metropolitan Area. This geographic area was the focus of the marketplace analyses in the Met Council disparity study.

Analysis of marketplace conditions. The study team compiled and analyzed quantitative information about outcomes for minorities and women, and minority- and women-owned firms in the Twin Cities marketplace. Keen Independent also researched conditions for firms owned by veterans and persons with disabilities.

The study team conducted in-depth interviews, surveys and focus groups that obtained input from 2,449 business owners and other individuals. Keen Independent also held public forums and received comments from the website, dedicated email address and dedicated telephone hotline for the study. Companies interviewed included minority- and women-owned firms, majority-owned firms, veteran-owned businesses and companies owned by persons with disabilities.

Availability, utilization and disparity analyses. Disparity analyses compare the percentage of entity contract dollars going to minority- and women-owned firms with what might be anticipated given the relative availability of MBEs and WBEs for individual entity contracts and subcontracts.

- Data for the availability analysis came from Keen Independent’s online and telephone surveys that reached thousands of companies in Minnesota. Firms were asked about their availability for different types, sizes and locations of prime contracts and subcontracts for public agencies in the state.
- After completing surveys with 20,527 businesses in Minnesota, the study team reviewed responses to develop a database of companies that are potentially available for Met Council and other participating entity work. The study team’s research identified 5,064 businesses reporting that they were available for specific types of public sector procurements and subcontracts. Of those businesses, 9 percent were minority-owned and 18 percent were white women-owned.
- Keen Independent then determined the availability of MBEs, WBEs and majority-owned firms for each of the 7,184 Met Council procurements examined in the study. For some procurements, MBE/WBEs were a relatively large percentage of total firms available. There were other contracts for which only a few firms were available and none were MBE/WBEs. Keen Independent combined the results of these contract-by-contract availability analyses to calculate overall availability benchmarks. From this analysis, one might expect MBE/WBEs to have received 16.56 percent of Met Council contract dollars, including subcontracts.

Keen Independent compared the share of procurement dollars going to minority- and women-owned firms (“utilization”) with what might be expected based on the availability analysis.

Met Council applied the MCUB program to some of its contracts during the study period, so any lack of disparity in Met Council procurements might indicate success of this race- and gender-conscious program. Therefore, Keen Independent reviewed the utilization of certified firms in Met Council procurements, examined types and time periods of Met Council procurements for which the program did not apply, and considered disparity analysis results from other participating entities. This information helped the study team evaluate whether there would have been disparities in Met Council procurement but for the MCUB Program.

C. Quantitative and Qualitative Information for the Twin Cities Marketplace

Keen Independent examined marketplace conditions based on U.S. Census data, information collected through surveys and in-depth interviews, public forums and other sources.

Marketplace conditions for minority- and women-owned businesses. There is quantitative and qualitative information suggesting that there is not a level playing field for minority- and women-owned businesses in the Twin Cities construction, professional services, goods and other services industries. This includes evidence of unequal opportunities to:

- Enter and advance as employees within certain study industries;
- Start and operate businesses within study industries; and
- Obtain financing and bonding.

As a result, there are fewer minority- and women-owned firms in certain industries than there would be if there were a level playing field for minorities and women in the Twin Cities marketplace.

Business outcomes also differed for MBE/WBEs compared with majority-owned companies.

- Compared with majority-owned companies, minority- and women-owned businesses in the Twin Cities area are more likely to be small. Therefore, any disadvantages for small businesses disproportionately affect MBEs and WBEs.
- There is evidence that outcomes for minority- and women-owned firms differ from similarly-situated white male-owned companies, even after controlling for other factors. In particular, female business owners earned less than men who owned businesses.
- Success in the Twin Cities marketplace depends on relationships with other individuals, including customers, suppliers, bankers, prime contractors and subcontractors, depending on the type of business. Some of the minority and female interviewees reported unequal access to these relationships, stereotyping and other unequal treatment based on their race or gender.

Such information is important when Met Council and other participating entities examine programs that assist MBE/WBE businesses.

Results for persons with disabilities and veterans. Persons with disabilities and veterans in the Twin Cities area are more likely than other groups to own businesses in the study industries. However, there is also evidence that persons with disabilities who own businesses earn less than other business owners. Veterans who own businesses have slightly lower earnings than non-veteran business owners.

D. Disparity Analysis

Met Council procurement. Minority- and women-owned businesses received 5.76 percent of the Met Council procurement dollars examined in this study, including payments to non-certified MBE/WBEs. Utilization of minority- and women-owned firms in Met Council procurement was below the 16.56 percent that might be expected from the availability analysis. Figure ES-1 presents these overall results from the disparity analysis.

The study team compared utilization and availability results using a “disparity index,” which is calculated by dividing utilization by availability and multiplying by 100 (“100” is parity). The disparity index for MBE/WBE utilization in Met Council procurement is 35 (5.76% divided by 16.56%, multiplied by 100). Because the index is below 80, the disparity is “substantial,” according to guidance from the courts. The disparity occurred even though Met Council operated the MCUB Program.

Figure ES-1.
 MBE/WBE utilization and availability for
 Met Council procurements,
 July 2011–June 2016

Note:
 7,184 procurements examined.

Source:
 Keen Independent utilization and availability analyses for
 Met Council procurements.

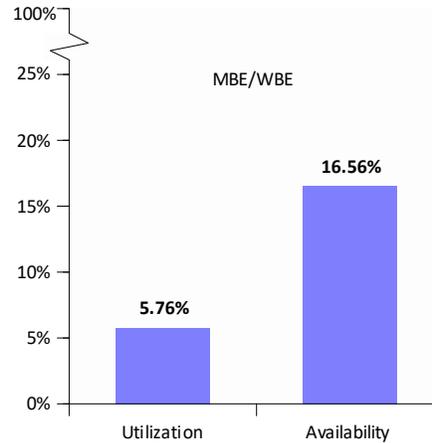


Figure ES-2 shows utilization, availability and disparity results for individual MBE groups as well as white women-owned firms.

Figure ES-2.
 Disparity analysis for Met Council procurements, July 2011-June 2016

	Utilization	Availability	Disparity index
African American-owned	0.80 %	2.55 %	32
Asian American-owned	1.00	0.47	213
Hispanic American-owned	0.34	0.44	76
Native American-owned	0.45	2.38	19
Unknown MBE	0.00		
Total MBE	2.59 %	5.86 %	44
WBE (white women-owned)	3.18	10.71	30
Total MBE/WBE	5.76 %	16.56 %	35

Note: Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for Met Council procurements.

Finally, Figure ES-3 presents results for Met Council construction, professional services, goods and other services procurements. There were substantial disparities for each MBE/WBE group in each industry except for:

- Asian American-owned construction and professional services firms;
- Hispanic American-owned goods firms; and
- African American- and Asian American-owned other services firms.

The MCUB Program was in place for construction contracts for most of the July 2011 through June 2016 study period. But for the program, there might have been a disparity for Asian American-owned firms in Met Council construction contracts.

Figure ES-3.

Disparity analysis for Met Council procurements by industry, July 2011–June 2016

	Utilization	Availability	Disparity index
Construction			
African American-owned	0.21 %	1.25 %	17
Asian American-owned	1.26	0.38	332
Hispanic American-owned	0.49	0.62	79
Native American-owned	1.13	5.56	20
Unknown MBE	<u>0.00</u>		
Total MBE	3.08 %	7.81 %	39
WBE (white women-owned)	<u>4.31</u>	<u>14.83</u>	29
Total MBE/WBE	7.39 %	22.64 %	33
Professional services			
African American-owned	0.17 %	2.45 %	7
Asian American-owned	1.71	1.16	147
Hispanic American-owned	0.19	0.43	44
Native American-owned	<u>0.00</u>	<u>0.73</u>	0
Total MBE	2.07 %	4.77 %	43
WBE (white women-owned)	<u>5.60</u>	<u>7.93</u>	71
Total MBE/WBE	7.67 %	12.70 %	60
Goods			
African American-owned	0.05 %	4.84 %	1
Asian American-owned	0.03	0.21	14
Hispanic American-owned	0.38	0.34	112
Native American-owned	<u>0.01</u>	<u>0.02</u>	50
Total MBE	0.48 %	5.41 %	9
WBE (white women-owned)	<u>0.51</u>	<u>11.31</u>	5
Total MBE/WBE	0.99 %	16.72 %	6
Other services			
African American-owned	4.82 %	2.51 %	192
Asian American-owned	0.76	0.09	844
Hispanic American-owned	0.06	0.14	43
Native American-owned	<u>0.00</u>	<u>0.05</u>	0
Total MBE	5.64 %	2.79 %	202
WBE (white women-owned)	<u>0.65</u>	<u>2.38</u>	27
Total MBE/WBE	6.30 %	5.17 %	122

Note: Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for Met Council procurements, including subcontracts.

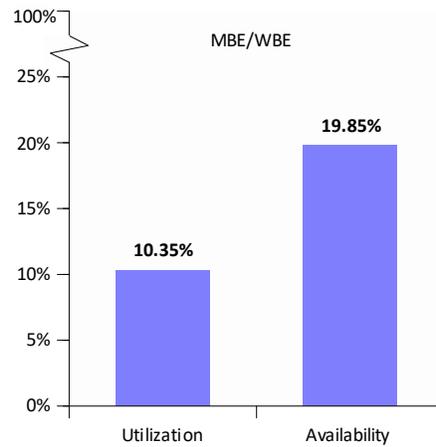
Combined participating entity procurement. The study team also analyzed whether there were disparities between MBE/WBE utilization and availability for combined participating entity procurement. Figure ES-4 reports aggregate results for participating entities.

The combined utilization of minority- and women-owned firms in participating entity procurement during the study period — 10.35 percent of total procurement dollars — was below the 19.85 percent that might be expected from the availability analysis. The resulting disparity index for MBE/WBEs is 52. The disparity occurred even though eight of the nine entities operated race- and gender-based programs during this time period and the ninth entity drew from a pool of certified firms that was mostly MBE/WBEs.

Figure ES-4.
MBE/WBE utilization and availability for combined entity procurements, July 2011–June 2016

Note:
125,474 procurements analyzed.

Source:
Keen Independent utilization and availability analyses for Minnesota Department of Administration, Minnesota Department of Transportation, Minnesota State Colleges and Universities, Metropolitan Airports Commission, Metropolitan Council, Metropolitan Mosquito Control District, City of Minneapolis, City of Saint Paul and Hennepin County procurements.



E. Recommendations

The MCUB Program has not eliminated disparities for minority- and women-owned firms in Met Council procurement. Keen Independent recommends that Met Council and other participating entities:

1. Work together to address barriers and open opportunities for minority- and women-owned firms and other small businesses;
2. Based on all information available, consider retaining and more fully implementing existing programs;
3. Pursue opportunities for new and better tools to address barriers;
4. Expand tracking and reporting of results on MBE/WBE participation; and
5. Carefully consider study results and other information to determine future program eligibility by group.

1. Work together to address barriers and open opportunities for MBE/WBEs and other small businesses. There is a need for a broad combined effort by participating entities and other partners to address the effects of race and gender discrimination in employment, entrepreneurship and business success. Met Council and other participating entities might work together to:

- a. Better communicate procurement opportunities, coordinate outreach and build a joint bidders list.

- b. Strengthen local technical assistance, financing, bonding assistance and other capacity-building efforts.
- c. Improve virtual assistance portals for businesses in Minnesota.
- d. Maintain efforts that enforce non-discrimination in employment as well as further training, employment and advancement for women and people of color in certain industries.
- e. Jointly work to streamline and simplify public procurement processes, including unbundling large contracts, removing unnecessary contract specifications, writing procurement documents in plain language, routinely providing feedback to bidders and proposers, and prompt payment.
- f. Share best practices and results of pilot programs among government entities.
- g. Streamline certification and pursue reciprocity or joint certification when possible.
- h. Jointly pursue action by the State Legislature to reduce barriers to public sector procurement embedded in state law.

2. Based on all information available, consider retaining and more fully implementing existing programs. The MCUB Program primarily uses contract goals to encourage participation of certified firms as subcontractors on Met Council contracts. Met Council began setting MCUB contract goals for construction in 2012 and for consultant, professional and technical services contracts in spring 2017. In addition:

- Met Council strongly encourages Procurement staff to include an MCUB firm among businesses solicited for quotes for procurements that are not publicly advertised.
- For its procurements not subject to federal DBE, MBE or WBE programs, Met Council has authority to implement price and evaluation preferences and a sheltered market program (restricting bidding to certified firms if there are at least three firms that are likely to bid).² It has yet to implement those programs.

Met Council has implemented a number of neutral measures such as outreach, workshops and other training, and creating directories. It proposed a working capital loan program and measures to reduce insurance cost barriers.

² Minnesota State Statutes section 473.142.

The Met Council might consider more fully implementing these program measures, and refining certain measures. For example, Met Council might:

- a. Expand its lists of MCUB businesses available for specific types of Met Council purchases and make them usable for Procurement staff for direct procurements.
- b. Implement its authorized sheltered market program that can restrict bidding to MCUB firms under certain conditions. (Met Council might also consider whether this program should be implemented as an SBE Program.)
- c. Implement its authorized price and evaluation preference program.
- d. Implement efforts such as a working capital loan program and measures to reduce insurance cost barriers.

3. Pursue opportunities for new and better tools to address barriers. Met Council might evaluate and consider:

- a. Creating a specialized prime contractor/prime consultant capacity-building program for specific types of small construction and professional services contracts. Such programs would prequalify eligible companies for participation, streamline the procurement process and require participation of companies in assistance programs as a condition of eligibility.
- b. Extend the MCUB Program, or requirements for TGB/DBE outreach efforts, to the non-federally-funded grants Met Council awards to local governments. Met Council does not currently require local governments receiving grants to follow the MCUB program, but it does ask local agencies to voluntarily extend the MCUB program and receives participation reports from subrecipients.

4. Expand tracking and reporting of results on MBE/WBE participation. Met Council prepares annual reports on participation of MCUB businesses in its locally-funded Transit and Environmental Services contracts. Met Council should consider the following additions to its reports:

- Include race, ethnicity and gender of certified firms, and disaggregate results for construction, professional services, goods and other services.
- Expand reports to encompass all of its locally-funded spending.
- Develop information about participation of non-certified MBE/WBEs in addition to MCUB companies.

5. Carefully consider study results and other information to determine future program eligibility by group.

The MCUB Program may have had a positive impact on the utilization of minority- and women-owned firms in Met Council construction contracts, but disparities persisted for some groups. Results for professional services, goods and other services procurements are largely unaffected by the MCUB Program as it was not in place during the study period.

- Even with application of the MCUB Program for construction, there was a substantial disparity for each MBE/WBE group except for Asian American-owned firms. Because of the participation of one certified firm, utilization of Asian American-owned firms exceeded availability. There would have been a substantial disparity for Asian American-owned firms absent the utilization of this firm.

Across participating entities, there were substantial disparities in the utilization of Asian American-owned firms for some entities, even with programs in place. For other participating entities, utilization of Asian American-owned firms exceeded availability.

- For professional services contracts, there were disparities for all MBE/WBE groups, except for Asian American-owned firms, and each was substantial.

The high participation of Asian American-owned firms was due to one certified company. The MCUB Program probably did not contribute to the high utilization of Asian American-owned firms during the study period since it did not have contract goals on professional services contracts until 2017. It should evaluate the lack of disparity for Asian American-owned firms in that light.

- There was very little participation of MBEs and WBEs in Met Council goods purchases. Results for each group except for Hispanic American-owned firms showed substantial disparities. Availability was very low for Hispanic American-owned firms (0.34%), and utilization barely exceeded that benchmark.

Results across all participating entities for Hispanic American-owned goods businesses might be instructive. There were substantial disparities for Hispanic American-owned firms for each of the other participating entities that had goods purchases.

- For other services contracts, there were substantial disparities for Hispanic American- and Native American-owned firms and WBEs. There were no disparities for African American- or Asian American-owned companies. It did not appear that the MCUB Program played a role in encouraging utilization of these firms during the study period.

Met Council should consider these results and other information it has when determining whether it should continue to operate race- and gender-conscious programs and eligibility of groups for any such programs.

F. Public Participation in the Disparity Study

In addition to considerable time devoted to the study by their own staff, the government entities participating in the Joint Disparity Study implemented an extensive public participation process. To date, these activities have included:

- Obtaining regular feedback from an External Stakeholder Group that met with the study team once per quarter throughout the project. The External Stakeholder Group included representatives of the local business community and community groups that had an interest in entity contracting and programs, and small business development.
- Distribution of information to interested groups through press releases, email blasts and presentations.
- A study website that posted information about the 2017 Joint Disparity Study from the outset of the study.
- A telephone hotline and dedicated email address for anyone wishing to comment.
- Public forums at the start of the study to obtain input from stakeholders and other interested groups (held at the Minneapolis Central Library on August 31, 2016).
- Through online and telephone surveys, opportunities for company owners and managers to provide information about their businesses and any perceived barriers in the marketplace (the study team successfully reached 20,527 businesses).
- In-depth interviews and focus groups with businesses, trade associations and others.

Keen Independent and the participating entities now seek public input regarding this draft Disparity Study report. The public can give feedback and provide written comments:

1. In person public forums (see mn.gov/admin/disparity-study for more information);
2. Online at mn.gov/admin/disparity-study;
3. Via email at JointMNDisparityStudy2017@keenindependent.com; and
4. Through regular mail to Keen Independent Research, 100 Fillmore Street, 5th Floor, Denver CO 80206.

Figure ES-5 on the following page shows dates, times and locations of the upcoming public forums. Visit mn.gov/admin/disparity-study for more information on the public forum held via webinar.

Figure ES-5.
Public forum dates and locations

Date	Time	Location
February 12, 2018	5 pm to 7 pm	Minneapolis Urban League Laura Scott Williams Room 2100 Plymouth Avenue North Minneapolis, MN 55411
February 13, 2018	5 pm to 7 pm	The Wellstone Center Room 30 179 Robie Street East St. Paul, MN 55107
February 15, 2018	10 am to 12 pm	MnDOT Rochester Headquarters East and West Mississippi Rooms 2900 48th Street NW Rochester, MN 55901
February 16, 2018	11 am to 1 pm	MnDOT Duluth Headquarters Lake Superior Room 1123 Mesaba Avenue Duluth, MN 55811
	To be scheduled	Statewide webinar

Keen Independent will review information from the public forums and written comments before preparing a final Disparity Study report. This information will aid the City and other participating entities in making decisions concerning continuation or enhancement of existing programs and implementation of new programs.