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2017 MINNESOTA JOINT DISPARITY STUDY Minnesota Department of Transportation 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 Minnesota Department of Transportation (MnDOT) and eight other state and local government entities. MnDOT can use study results when making decisions about programs to assist minority- and women-owned companies and other small businesses.

The disparity study for MnDOT focuses on state-funded highway construction and professional and technical services contracts. Contracts using U.S. Department of Transportation funds were not included. MnDOT operates the Federal Disadvantaged Business Enterprise (DBE) Program for those contracts.

MnDOT operates the Targeted Group Business (TGB) Program to address barriers to participation of minority- and women-owned businesses in its state-funded contracts and to assist companies owned by persons with disabilities. The study analyzes whether MnDOT's efforts have been effective in eliminating any disparities in the utilization of minority- and women-owned businesses (MBEs and WBEs) in its state-funded highway construction and professional services contracts.

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

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

A. Background on the Study

MnDOT periodically conducts disparity studies to determine whether there is sufficient need for programs that assist minority- and women-owned firms in its procurement. MnDOT last conducted a disparity study in 2009.¹

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

¹ MGT of America, Inc. *State of Minnesota Joint Availability and Disparity Study, Minnesota Department of Transportation*, October 23, 2009, revised January 11, 2010.

to programs for women-owned firms. Disparity studies help to provide state and local governments information to determine whether programs are needed and supportable.

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 public entity. 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 TGB Program provides price and evaluation preferences to certified minority- and women-owned firms and companies owned by people with a substantial physical disability. The VET Program provides preferences to veteran-owned businesses. MnDOT also sets TGB and VET contract goals. Bidders must either meet the TGB/VET goal for a contract or show good faith efforts to do so.

MnDOT uses the TGB directory administered by the Minnesota Department of Administration to identify eligible TGBs. Beginning in 2016, certified DBEs based in Minnesota were considered to be TGBs.² For the VET Program, MnDOT uses the VetBiz directory through the U.S. Department of Veteran Affairs as well as certification through the State of Minnesota.

In addition to the TGB Program and DBE Program, MnDOT has efforts that help all small businesses (race- and gender-neutral programs), such as its Small Business Resource Center.

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.

Department of Transportation contracts and subcontracts. Keen Independent examined procurements made with for-profit companies related to state-funded highway-related construction as well as professional and technical services contracts. All other contracts were excluded.

Keen Independent studied contracts awarded from July 1, 2011 through June 30, 2016, and any associated subcontracts. For construction, Keen Independent augmented MnDOT information with data from Contractor Affidavits (IC134 Forms) that prime contractors and subcontractors submit to the Minnesota Department of Revenue. Including subcontracts, Keen Independent examined 7,363 MnDOT procurements totaling \$1.6 billion over the study period.

Relevant geographic market area. About 94 percent of combined MnDOT procurement dollars went to firms with locations in Minnesota and two counties in Wisconsin (Pierce and St. Croix). This geographic area was the focus of the marketplace and availability analyses in the disparity study.

² Eligible DBEs still need to apply to the TGB program administered by the Minnesota Department of Administration.

Analysis of marketplace conditions. The study team compiled and analyzed quantitative information about outcomes for minorities and women, minority-owned businesses and women-owned firms in the Minnesota 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 potentially available for MnDOT 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 (27.6% MBE/WBE in total).
- Keen Independent then determined the availability of MBEs, WBEs and majority-owned firms for each of the 7,363 MnDOT 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 20.50 percent of MnDOT 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.

MnDOT applied the TGB Program to its contracts for a portion of the study period, so any lack of disparity in MnDOT procurements might indicate success of this race- and gender-conscious program. Therefore, Keen Independent reviewed results before and after MnDOT began administering the program. The study team also considered disparity analysis results from other participating entities. This information helped the study team evaluate whether there would have been disparities in MnDOT procurement but for the TGB Program.

C. Quantitative and Qualitative Information for the Minnesota 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 Minnesota 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 Minnesota marketplace.

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

- Compared with majority-owned companies, minority- and women-owned businesses in Minnesota 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. In particular, female business owners earned less than men who owned businesses.
- Success in Minnesota 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 MnDOT and other participating entities examine programs that assist MBE/WBE businesses.

Results for persons with disabilities and veterans. Persons with disabilities and veterans in Minnesota 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

MnDOT procurement. Minority- and women-owned businesses received 6.98 percent of the MnDOT procurement dollars examined in this study, including payments to non-certified MBE/WBEs. Utilization of minority- and women-owned firms in MnDOT procurement was below

the 20.50 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 MnDOT procurement is 34 (6.98% divided by 20.50%, multiplied by 100). Because the index is below 80, the disparity is “substantial,” according to guidance from the courts. The disparity occurred even though MnDOT operated the TGB Program for some of the study period.

Figure ES-1.
MBE/WBE utilization and availability for MnDOT state-funded construction and professional services procurements, July 2011–June 2016

Note:
 7,363 procurements examined.

Source:
 Keen Independent utilization and availability analyses for MnDOT procurements.

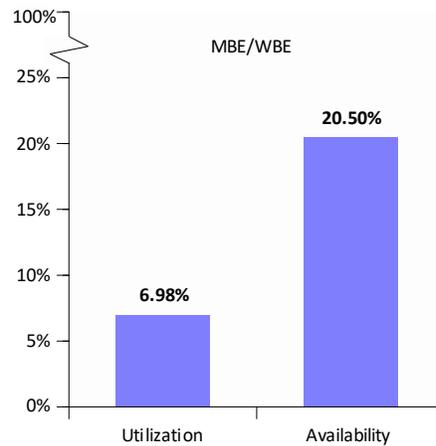


Figure ES-2 shows utilization, availability and disparity results for individual MBE groups as well as white women-owned firms. There were disparities for MBEs and WBEs overall, and for each MBE group except for Asian American-owned companies.

Figure ES-2.
Disparity analysis for MnDOT state-funded construction and professional services procurements, July 2011-June 2016

	Utilization	Availability	Disparity index
African American-owned	0.05 %	1.97 %	3
Asian American-owned	1.10	0.83	133
Hispanic American-owned	0.43	0.54	80
Native American-owned	0.05	5.13	1
Unknown MBE	0.01		
Total MBE	1.63 %	8.46 %	19
WBE (white women-owned)	5.36	12.03	45
Total MBE/WBE	6.98 %	20.50 %	34

Note: Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for MnDOT procurements.

Figure ES-3 presents results for MnDOT construction procurements before and after implementation of the TGB Program. There were substantial disparities for each group prior to implementation of the program in 2013. Utilization increased for MBEs and for WBEs with the program, but disparities persisted for each group except for Asian American-owned companies.

Figure ES-3.

Disparity analysis for MnDOT construction contracts before and with TGB Program

	Utilization	Availability	Disparity index
Without program			
Construction 2011–2012			
African American-owned	0.01 %	0.98 %	1
Asian American-owned	0.04	0.13	31
Hispanic American-owned	0.10	0.47	21
Native American-owned	0.06	6.30	1
Unknown MBE	0.00		
Total MBE	0.21 %	7.88 %	3
WBE (white women-owned)	3.92	11.56	34
Total MBE/WBE	4.13 %	19.44 %	21
With program			
Construction 2013–2016			
African American-owned	0.06 %	1.06 %	6
Asian American-owned	0.53	0.19	279
Hispanic American-owned	0.17	0.49	35
Native American-owned	0.04	6.78	1
Unknown MBE	0.01		
Total MBE	0.80 %	8.53 %	9
WBE (white women-owned)	5.18	11.27	46
Total MBE/WBE	5.97 %	19.80 %	30

Note: Disparity index = 100 x Utilization/Availability.

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

Implementation of the TGB Program did not appear to have a positive effect on MBE/WBE participation for MnDOT state-funded professional services contracts. Utilization dropped from 11.54 percent before the program to 6.39 percent with the program. The disparity index worsened to 31 for 2015 through June 2016.

In both time periods, there were substantial disparities for African American-, Native American- and white women-owned professional services firms. Utilization exceeded availability for Asian American-owned companies. In the most recent time period, there were substantial disparities in the utilization of Hispanic American-owned professional services firms.

Figure ES-4.

Disparity analysis for MnDOT professional services contracts, before and with TGB Program

	Utilization	Availability	Disparity index
Without program			
Professional services 2011–2014			
African American-owned	0.07 %	3.88 %	2
Asian American-owned	2.71	2.21	123
Hispanic American-owned	1.23	0.57	216
Native American-owned	0.05	2.41	2
Total MBE	4.05 %	9.06 %	45
WBE (white women-owned)	7.48	13.60	55
Total MBE/WBE	11.54 %	22.67 %	51
With program			
Professional services 2015–2016			
African American-owned	0.03 %	3.56 %	1
Asian American-owned	1.87	1.86	101
Hispanic American-owned	0.42	0.74	57
Native American-owned	0.08	1.65	5
Total MBE	2.40 %	7.82 %	31
WBE (white women-owned)	3.98	12.96	31
Total MBE/WBE	6.39 %	20.78 %	31

Note: Disparity index = 100 x Utilization/Availability.

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

Combined participating entity procurement. The study team also analyzed whether there were disparities between MBE/WBE utilization and availability for entity procurement combined. Figure ES-5 aggregates results for Admin, Minnesota State, Minnesota Department of Transportation, Metropolitan Airports Commission, Metropolitan Mosquito Control District, Metropolitan Council, City of Minneapolis, City of Saint Paul and Hennepin County.

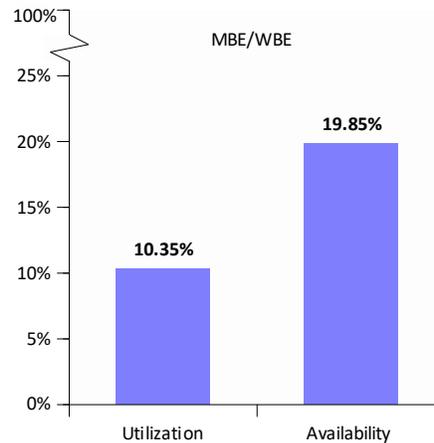
The combined utilization of minority- and women-owned firms in participating entity procurement during the study period — 10.35 percent of total procurement dollars — was below the 19.85 percent that might be expected from the availability analysis.

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 (Hennepin County) drew from a pool of certified firms that was largely MBE/WBEs.

Figure ES-5.
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
combined entity procurements.



E. Recommendations

The TGB Program has not eliminated disparities for minority- and women-owned firms in MnDOT’s state-funded highway construction and professional services contracts.

Keen Independent recommends that MnDOT 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 existing programs and fully implementing them;
3. Pursue opportunities for new and better tools to address barriers;
4. Track and report 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.

MnDOT 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 existing programs and fully implementing them. The Targeted Group Business Program includes provisions for:

- Contract goals;
- Price preferences;
- Direct procurement from TGBs for small purchases that do not require competitive bid; and
- For small procurements, the ability to restrict bidding to TGBs.

The contract goals program applies to construction and to professional and technical services contracts.

MnDOT currently has authority for the preference and small purchase programs for TGBs for state-funded construction contracts, but not other procurements. (Only the VET program can be applied to construction-related professional and technical services.) Under the small purchase program, MnDOT can restrict bidding to TGBs if at least three TGBs are likely to bid.

MnDOT might consider more broadly implementing these program measures, after reviewing the information it has from this report and other sources and conducting further legal review.

For example, MnDOT might:

- a. Further develop the new contract goals program for professional and technical services contracts.
- b. Develop a list of TGB-certified companies able to provide the types of small transportation construction projects and prequalify them for participation in the small purchase program. MnDOT district staff may need further training on the program, which can benefit districts through simplifying and accelerating the bidding process.

- c. Encourage direct procurement from TGBs for small purchases across MnDOT districts.
- d. Track each MnDOT district's use of direct procurement and small purchase programs to determine whether further encouragement is needed in certain districts.
- e. Review MnDOT qualifications requirements for construction and services contracts.

3. Pursue opportunities for new and better tools to address barriers. After reviewing all available information and legal issues, MnDOT might evaluate and consider seeking authority to:

- a. Increase the maximum amount of preference for TGB-certified businesses (currently up to 6%).
- b. Include TGBs in the price and evaluation preferences for its state-funded professional and technical services contracts.
- c. Extend the TGB Program, or requirements for TGB outreach, to local governments receiving state transportation funds through MnDOT.

4. Track and report results on MBE/WBE participation. MnDOT might improve its reports by including dollars for all businesses in its reports, providing information by race, ethnicity and gender, and developing and reporting data on non-certified MBE/WBEs utilized in MnDOT contracts.

5. Carefully consider study results and other information to determine future program eligibility by group. MnDOT should consider all of the results of the disparity study and other information when considering whether it should continue to operate race- and gender-conscious programs, and if so, which groups will be eligible for programs in specific industries.

- As discussed in Chapter 8, there were substantial disparities for each MBE group and for WBEs before MnDOT implemented the TGB Program for state-funded construction contracts.
- There were substantial disparities for African American-, Native American- and white women-owned firms for MnDOT's state-funded professional services contracts before and after extension of the TGB Program to those contracts. There were no disparities for Asian American-owned professional services businesses in either set of professional services contracts.

For Hispanic American-owned professional services companies, there was a substantial disparity with the program and no disparity without the program. Reviewing the results from other participating entities, there were substantial disparities for Hispanic American-owned professional services firms for each of the other entities.

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-6 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-6.
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.