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2017 MINNESOTA JOINT DISPARITY STUDY Minnesota Department of Administration Executive Summary

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**EXECUTIVE SUMMARY
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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 Administration (Admin) and eight other state and local government entities. Admin will use study results when making decisions about programs to assist minority- and women-owned companies and other small businesses. Admin last conducted a disparity study in 2009.¹

Admin makes purchases for 88 business units in Minnesota state government.² It has operated the Targeted Group Business (TG) Program since the 1990s to address barriers in procurement. The TG Program includes minority- and women-owned businesses and companies owned by persons with physical disabilities. The study analyzes whether Admin's current programs are effective in eliminating any disparities in the utilization of minority- and women-owned businesses (MBEs and WBEs) in its contracts.

Admin operates parallel programs for businesses located in economically disadvantaged counties and firms owned by veterans (ED/VO Programs). The disparity study also analyzes marketplace conditions for veteran-owned businesses and companies owned by persons with disabilities.

This report was released as a draft for public comment on January 29, 2018. It has been expanded based on public input received through February 28, 2018. 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

Admin 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

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

² The study for Admin does not include Minnesota Department of Transportation highway construction and engineering contracts, which are examined in a separate report. Minnesota State contracts are also examined in a separate report.

to programs for women-owned firms. Disparity studies help state and local governments 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 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 TG/ED/VO Program applies to construction, professional services, goods and other services contracts. Certified businesses may receive up to a 6 percent price or evaluation preference when bidding on Admin procurements. Admin also sets TG/ED/VO contract goals on certain construction contracts. Based on Admin's review of the results of the 2009 disparity study, some minority groups have not been eligible for the program in certain industries.³

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, C J Petersen & Associates, LLC, Fondungallah & Kigham, and KLD Consulting. Team members from outside Minnesota were Holland & Knight, BBC Research & Consulting and Customer Research International.

Department of Administration contracts and subcontracts. Keen Independent examined payments Admin made to firms from July 1, 2011 through June 30, 2016. For construction, Keen Independent compiled information from Contractor Affidavits (IC134 Forms) that prime contractors and subcontractors submit to the Minnesota Department of Revenue.

In the Admin utilization analysis, Keen Independent included more than 76,010 procurements totaling \$3.1 billion over the study period. This does not encompass all State of Minnesota spending. For example, the study team excluded the types of purchases typically made from national markets (software and computers) as well as utilities, leases, insurance, payments to banks and small purchases. Also excluded were payments to not-for-profit organizations and public agencies and procurements from industries in Minnesota principally composed of those organizations (e.g., most type of health care and social services procurements).

Relevant geographic market area. About 80 percent of combined Admin 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.

³ Based on the 2009 State Agencies Disparity Study, Asian American-owned firms do not count toward the TGB contract goals for construction projects, African American-owned firms do not count as underutilized businesses for professional services contracts, and African American-, American Indian- and Asian American-owned firms do not count as underutilized businesses for other services.

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 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 that are potentially available for Admin 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 more than 76,000 Admin procurements examined in the study (including subcontracts). 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. Based on this availability analysis, one might expect MBE/WBEs to have received 22.32 percent of Admin contract dollars during the study period.

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.

Admin applies the TG Program to its contracts, so any lack of disparity in Admin procurements might indicate success of this race- and gender-conscious program. Therefore, Keen Independent also considered disparity analysis results from other participating entities. This information helped the study team evaluate whether there would have been disparities in Admin procurement but for the TG Program.

C. Quantitative and Qualitative Information for the Minnesota Marketplace

Keen Independent examined marketplace conditions based on U.S. Census data, survey information, 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.

Because of these barriers, there are fewer companies owned by minorities and women in Minnesota than might be expected.

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, even after controlling for other factors. 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 Admin 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

Admin procurement. Minority- and women-owned businesses received 11.47 percent of the Admin procurement dollars examined in this study, including payments to non-certified MBE/WBEs. Utilization of minority- and women-owned firms in Admin procurement was below

the 22.32 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 Admin procurement is 51 (11.47% divided by 22.32%, multiplied by 100). Because the index is below 80, the disparity is “substantial,” according to guidance from the courts. The disparity occurred even though Admin operated the TG Program.

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

Note:
 76,010 procurements analyzed.

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

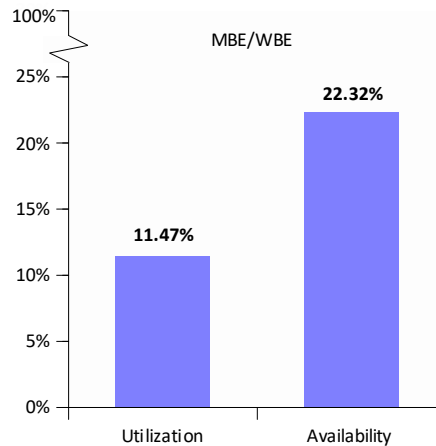


Figure ES-2 shows utilization, availability and disparity results for individual MBE groups as well as white women-owned firms. There were disparities for MBEs and WBEs overall.

Figure ES-2.
Disparity analysis for Admin procurements, July 2011–June 2016

	Utilization	Availability	Disparity index
African American-owned	0.81 %	3.28 %	25
Asian American-owned	1.65	2.02	82
Hispanic American-owned	0.09	1.04	9
Native American-owned	0.09	1.41	6
Unknown MBE	0.01		
Total MBE	2.65 %	7.76 %	34
WBE (white women-owned)	8.82	14.56	61
Total MBE/WBE	11.47 %	22.32 %	51

Note: Disparity index = 100 x Utilization/Availability.

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

Finally, Figure ES-3 presents results for Admin construction, professional services, goods and other services procurements. There were substantial disparities for each group except for Asian American-owned professional services firms.

Figure ES-3.

Disparity analysis for Admin procurements, July 2011–June 2016

	Utilization	Availability	Disparity index
Construction			
African American-owned	0.00 %	1.91 %	0
Asian American-owned	0.35	0.97	36
Hispanic American-owned	0.19	1.04	18
Native American-owned	0.21	3.33	6
Unknown MBE	0.00		
Total MBE	0.75 %	7.26 %	10
WBE (white women-owned)	6.80	12.79	53
Total MBE/WBE	7.56 %	20.05 %	38
Professional services			
African American-owned	0.80 %	3.83 %	21
Asian American-owned	2.75	2.47	111
Hispanic American-owned	0.11	0.66	17
Native American-owned	0.06	1.50	4
Unknown MBE	0.01		
Total MBE	3.72 %	8.46 %	44
WBE (white women-owned)	9.41	15.11	62
Total MBE/WBE	13.13 %	23.57 %	56
Goods			
African American-owned	0.51 %	2.18 %	23
Asian American-owned	0.53	1.82	29
Hispanic American-owned	0.02	2.03	1
Native American-owned	0.02	0.25	8
Unknown MBE	0.01		
Total MBE	1.09 %	6.29 %	17
WBE (white women-owned)	10.73	14.99	72
Total MBE/WBE	11.82 %	21.28 %	56
Other services			
African American-owned	2.81 %	5.15 %	55
Asian American-owned	0.68	1.88	36
Hispanic American-owned	0.03	0.75	4
Native American-owned	0.20	0.50	40
Unknown MBE	0.01		
Total MBE	3.72 %	8.27 %	45
WBE (white women-owned)	4.80	13.71	35
Total MBE/WBE	8.52 %	21.98 %	39

Note: Disparity index = 100 x Utilization/Availability.

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

As shown in Figure ES-3, the TG Program has not eliminated disparities for minority- and women-owned firms in Admin procurement. Even with these efforts in place, there were substantial disparities for white women-owned firms and each MBE group (except for Asian American-owned professional services firms). Admin made substantial efforts to open procurement opportunities for MBE/WBE IT companies during the study period, including its SITE program, and it was largely IT consulting that accounted for the high participation of Asian American-owned professional services firms. In the previous disparity study, Asian American-owned firms obtained 0 percent of Admin professional services procurement dollars.

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-4 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.

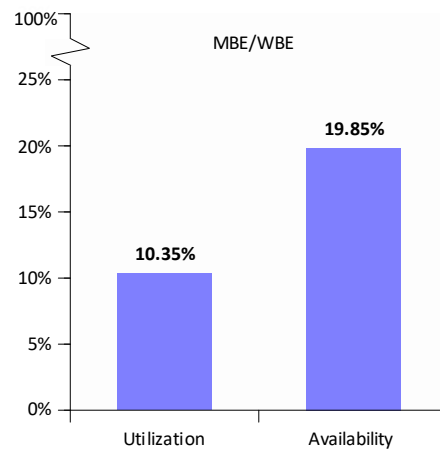
The combined utilization of minority- and women-owned firms in participating entity procurement during the study period — 10.35 percent of total procurement dollars — was below the 19.85 percent that might be expected from the availability analysis.

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-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
 combined entity procurements.



E. Recommendations

The TG Program has not eliminated disparities for minority- and women-owned firms in Admin procurement. Even with these efforts in place, there were substantial disparities for white women-owned firms and each MBE group across each industry except for one group in professional services contracts.

Keen Independent recommends that Admin 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. Better 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. Admin 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. Admin’s program includes provisions for:

- Price and evaluation preferences;
- Contract goals;
- Encouraging purchases from an TG/ED/VO vendor for procurements under \$5,000;
- An Equity Select program that allows for direct selection of a TG/ED/VO business for purchases over \$5,000 and not greater than \$25,000; and
- The ability to set aside procurements for bidding from certified businesses.

Admin should consider retaining certain of these programs and more broadly implementing them, after reviewing the information it has from this report and other sources and conducting further legal review. For example:

- a. Setting contract goals for professional and technical services contracts and/or awarding preference points for certified TG/ED/VO participation as subcontractors.
- b. Increasing MBE participation in subcontracts by subdividing overall contract goals for contracts into an MBE portion and an “other TG/ED/VO” portion.
- c. Evaluating whether it can expand its sheltered market program for certain types of procurements above the reach of the Equity Select program.

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

- a. Increase the maximum amount of the price/evaluation preference (currently up to 6%), the maximum for any price preference (currently \$60,000) for TG/ED/VO businesses (or perhaps just TG businesses), and the types of procurements for which it may be applied (currently not applied to all types of procurements).
- b. Increase the current \$25,000 limit (perhaps to \$50,000) on the Equity Select program that allows for Admin’s direct selection of a TG/ED/VO business for small purchases.
- c. Expand specialized prime contractor/prime consultant capacity-building program for specific types of small construction and professional services contracts.
- d. Ensure that it chooses to employ a race- and gender-neutral approach (such as a program open to all SBEs) and not a race- and gender-based program when the neutral program might be effective in addressing the identified barriers.

4. Better track and report results on MBE/WBE participation. Admin should develop procedures to record ownership information for its vendors and subcontractors (self-reported) and improve its tracking MBE/WBE participation, by group and industry, in its procurement. This should be in addition to new efforts to track and report participation of certified businesses.

5. Carefully consider study results and other information to determine program future eligibility for each group. The disparity results suggest that the TG Program may have had a positive impact on the utilization of minority- and women-owned firms but disparities persisted.

- Each group previously ineligible for program participation in certain industries showed a substantial disparity.
- Utilization of Asian American-owned firms exceeded the availability benchmark for Admin professional services procurements. Admin might consider this a measure of the success of its race-conscious efforts in professional services, including its SITE program for IT procurements, as the 2009 Disparity Study reported 0 percent utilization of Asian American-owned professional services firms.

Admin should review this evidence along with other information in the Joint Disparity Study and other sources when considering whether to apply race- and gender-conscious programs and the eligibility for those 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. These activities 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 and after the draft report release to obtain input from stakeholders and other interested groups.
- 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 sought public input regarding the study and draft Disparity Study report. The public was able to give feedback and provide written comments:

1. In person at public forums (including comment cards collected at those meetings);
2. Through the study website;
3. By calling the study telephone hotline;
4. Via email; and
5. Through regular mail to Keen Independent Research.

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