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2017 MINNESOTA JOINT DISPARITY STUDY City of Minneapolis 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 City of Minneapolis and eight other state and local government entities. The City can use study results when making decisions about programs to assist minority- and women-owned companies and other small businesses. It last conducted a disparity study in 2010.¹

The City operates the Small and Underutilized Business Program (SUBP) and other programs to encourage participation of minority- and women-owned firms and other small businesses in its contracts. The study analyzes whether the City's programs are effective in eliminating any disparities in the utilization of minority- and women-owned businesses (MBEs and WBEs) in its contracts.

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 Twin Cities marketplace;
- D. Disparity analysis;
- E. Recommendations; and
- F. Public participation in the Disparity Study.

A. Background on the Study

The City 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 MBE 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 to provide the information that state and local governments require 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 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

¹ NERA. *The State of Minority- and Women-owned Business Enterprise: Evidence from Minneapolis*, Prepared for the City of Minneapolis, October 10, 2010.

Study added analysis of marketplace conditions for businesses owned by veterans and persons with disabilities.

Programs. At the time of this report, the City of Minneapolis had overall annual goals of 12 percent MBE and 13 percent WBE participation for its construction, professional and technical services, and commodities and supplies procurements. The City operates the SUBP to meet those goals.

The City sets contract-specific MBE/WBE goals on certain contracts. To count towards a SUBP goal, a firm must be certified as a DBE under the Minnesota Unified Certification Program and be located within one of 11 Minnesota counties within the Minneapolis-St. Paul Metropolitan Statistical Area.² It must also be certified in the scopes of work it will be performing for that specific project.

In early 2017, the City launched the Target Market Program (TMP), which allows the City to restrict bidding to small businesses for purchases under \$100,000.

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.

City contracts and subcontracts. Keen Independent obtained data for 6,750 City procurements from July 1, 2011 through June 30, 2016, including subcontracts. The study team supplemented City data on subcontracts with information from Contractor Affidavits (IC134 Forms) that construction contractors file with the Minnesota Department of Revenue. Keen Independent examined \$1.3 billion over the study period. This does not encompass all City spending.³

Relevant geographic market area. About 84 percent of City 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 City 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.

² Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright counties.

³ The study team did not include contracts for which the Federal Disadvantaged Business Enterprise Program applied. 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).

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 and the dedicated email address and 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 the City 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, 27.6 percent were MBE/WBEs.
- Keen Independent then determined the availability of MBEs, WBEs and majority-owned firms for each of the 6,750 City procurements examined in the study. For some procurements, MBE/WBEs were a relatively large percentage of available firms. 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 receive 17.60 percent of City contract dollars.

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

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 people of color 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 the City 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. There is 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.

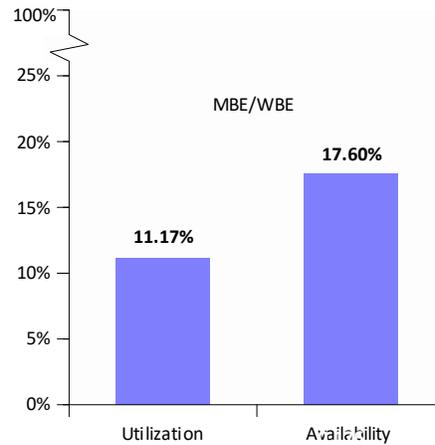
D. Disparity Analysis

City procurement. Minority- and women-owned businesses received 11.17 percent of the City procurement dollars examined in this study, including payments to non-certified MBE/WBEs. The second bar in Figure ES-1 shows the 17.60 percent availability benchmark for City contracts during the study period. Utilization of minority- and women-owned firms in City procurement (11.17%) was below the 17.60 percent that might be expected from the availability analysis.

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

Note:
6,750 procurements examined.

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



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 City procurement is 63 (11.17% divided by 17.60%, multiplied by 100). Because the index is below 80, the disparity is “substantial,” according to guidance from the courts. The disparity occurred even though the City operated the SUBP.

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. The disparities for African American-, Hispanic American- and white women-owned firms were substantial. The overall disparity for Asian American-owned businesses was small (disparity index of 93). Utilization of Native American-owned companies exceeded what one might expect from the availability analysis.

Figure ES-2.

Disparity analysis for City procurements, July 2011–June 2016

	Utilization	Availability	Disparity index
African American-owned	0.47 %	2.40 %	20
Asian American-owned	0.89	0.95	93
Hispanic American-owned	0.26	0.73	36
Native American-owned	3.56	2.09	170
Unknown MBE	0.02		
Total MBE	5.19 %	6.17 %	84
WBE (white women-owned)	5.99	11.42	52
Total MBE/WBE	11.17 %	17.60 %	63

Note: Disparity index = 100 x Utilization/Availability.

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

Finally, Figure ES-3 presents results for City construction, professional services, goods and other services procurements. There were substantial disparities for each group except for Asian American- and Native American-owned construction firms and Asian American-, Hispanic American- and white woman-owned other services companies. Keen Independent further reviewed the groups for which substantial disparities were not found:

- But for the utilization of certified firms under the SUBP, there would have been substantial disparities in the utilization of Native American-owned construction firms and Hispanic American-owned other services firms.
- City utilization of Asian American- and white women-owned other services firms from July 2011 through June 2016 was markedly higher than found in the City’s 2010 Disparity Study, which showed substantial disparities for both groups.

Chapters 8 and 10 of the report provide additional analysis of each group in the four industries.

Figure ES-3.

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

	Utilization	Availability	Disparity index
Construction			
African American-owned	0.69 %	1.77 %	39
Asian American-owned	0.67	0.48	140
Hispanic American-owned	0.20	0.85	24
Native American-owned	13.48	6.73	200
Unknown MBE	0.08		
Total MBE	15.12 %	9.83 %	154
WBE (white women-owned)	5.07	13.33	38
Total MBE/WBE	20.19 %	23.16 %	87
Professional services			
African American-owned	0.47 %	3.55 %	13
Asian American-owned	1.15	1.79	64
Hispanic American-owned	0.33	0.68	49
Native American-owned	0.02	0.69	3
Total MBE	1.97 %	6.70 %	29
WBE (white women-owned)	5.44	12.71	43
Total MBE/WBE	7.41 %	19.41 %	38
Goods			
African American-owned	0.44 %	2.17 %	20
Asian American-owned	0.53	0.68	78
Hispanic American-owned	0.00	0.91	0
Native American-owned	0.04	0.24	17
Total MBE	1.01 %	4.00 %	25
WBE (white women-owned)	5.95	13.39	44
Total MBE/WBE	6.95 %	17.39 %	40
Other services			
African American-owned	0.25 %	1.80 %	14
Asian American-owned	1.07	0.65	165
Hispanic American-owned	0.52	0.47	111
Native American-owned	0.13	0.34	38
Total MBE	1.96 %	3.25 %	60
WBE (white women-owned)	7.86	5.40	146
Total MBE/WBE	9.82 %	8.65 %	114

Note: Disparity index = 100 x Utilization/Availability.

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

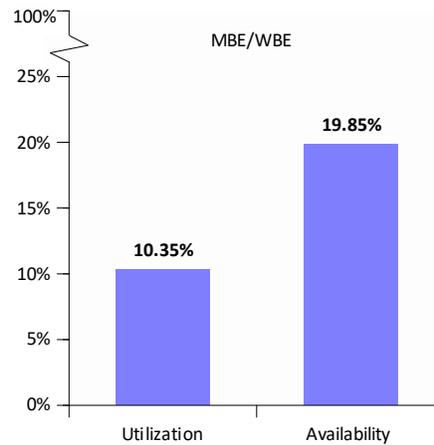
Combined participating entity procurement. The study team also analyzed whether there were disparities between MBE/WBE utilization and availability for combined participating entity procurement. Figure ES-4 reports aggregate results for participating entities.

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
combined entity procurements.



E. Recommendations

The SUBP has not eliminated disparities for minority- and women-owned firms in City procurement. Keen Independent recommends that the City 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 refining existing programs;
3. Pursue opportunities for new and better tools to address barriers;
4. Expand the 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. The City 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, create a one-stop intake portal 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 refining existing programs. The City of Minneapolis operates the Small and Underutilized Business Program (SUBP) and the Target Market Program (TMP) that encourage participation of MBEs, WBEs and other small businesses in City procurement. The City has implemented a number of other neutral measures, such as technical assistance and matchmaking activities for small businesses as well as notification of bid opportunities.

The City might consider more broadly implementing these programs, and refining certain measures, after reviewing the information it has from this report and other sources, and conducting further legal review. For example, the City might:

- a. Ensure that the City is not only in compliance with the HUD Section 3 program on approved projects, but also HUD requirements for MBE outreach.⁴
- b. Consistently obtain goal requests for all professional services contracts above \$100,000.
- c. Periodically update the City's overall annual goals for MBE and WBE participation, if it chooses to retain MBE and WBE overall annual goals. There are several analyses of the relative number of minority-owned firms and white women-owned firms in the study that support overall goals at the City's current levels (12% MBE, 13% WBE) or higher.

⁴ MBE outreach requirements in Section 281 of the National Affordable Housing Act, other federal laws and regulations, and HUD guidance.

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

- a. Enacting a price and evaluation preference program for prime contractors and vendors similar to the State of Minnesota Targeted Group program. The State's program allows up to 6 percent price and evaluation preferences for certified businesses. The City might restrict this program to certified MBE/WBE firms, or consider implementing it as an SBE program.
- b. Requiring certification as SBEs for any participation in the Target Market Program, even if it remains substantially less rigorous than DBE certification.
- c. Refining the TMP size limits to better reflect subindustry differences of what constitutes a "small" firm.
- d. Aligning the geographic area from which firms are eligible for participation in the SUBP and the TMP. At the current time, there might be a DBE that would qualify for the TMP but not the SUBP.
- e. 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. Those companies would compete with one another for different groups of contracts based on their size (competitors would be of similar size and length of time in business).
- f. Reviewing industry-targeted programs implemented by other participating entities that have proven effective in increasing MBE/WBE participation.
- g. Implement an SBE contract goals program for construction, development, professional and technical services, and goods, commodities and supplies contracts over \$100,000. The SBE program would apply when the City does not set MBE/WBE contract goals on a contract for which the SUBP would normally apply.

4. Expand the tracking and reporting of results on MBE/WBE/SBE participation. The City prepares comprehensive quarterly and annual reports on its MBE/WBE participation on contracts where it has set MBE/WBE goals. It might expand the information in those reports by including information about the race and ethnicity of MBEs receiving work. The City might also provide information across all types and sizes of construction, professional services, goods and other services procurements.

In addition, the City might incorporate reporting of the race, ethnicity and gender of business owners participating in the TMP into the Contract Compliance Division quarterly and annual reports.

5. Carefully consider study results and other information to determine future program eligibility by group. The City 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 (construction, professional services, goods and other services).

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 the City and other participating entities in making decisions concerning continuation or enhancement of existing programs and implementation of new programs.