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2017 MINNESOTA JOINT DISPARITY STUDY Minnesota State Colleges and Universities 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 entity procurement. Keen Independent Research LLC (Keen Independent) performed the study for the Minnesota State Colleges and Universities (Minnesota State) and eight other state and local government entities. Minnesota State can use study results when making decisions about programs to assist minority- and women-owned companies and other small businesses.

Minnesota State makes purchases for 37 colleges and universities and the central system office. It follows the Targeted Group, Economically Disadvantaged and the Veteran (TG/ED/VO) Small Business Procurement Program to encourage opportunities for certified businesses in its procurement. This program provides preferences to certified minority- and women-owned firms, companies owned by people with a substantial physical disability, businesses located in an economically disadvantaged area, and veteran-owned businesses.

The study analyzes whether Minnesota State's current programs are effective in eliminating any disparities in the utilization of minority- and women-owned businesses (MBEs and WBEs) in its contracts. The disparity study also examines marketplace conditions for MBEs, WBEs, 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. This 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

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 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 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 and technical services, and goods and other services contracts. This program provides preferences to targeted group businesses (TGBs) and other certified bidders. Minnesota State has not implemented a contract goals program.

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.

Minnesota State contracts and subcontracts. Keen Independent examined payments for Minnesota State procurements from July 1, 2011 through June 30, 2016 maintained in the StateWide Integrated Financial Tools online system (SWIFT). Because Minnesota State does not have comprehensive information about subcontracts for its construction contracts, Keen Independent compiled information from Contractor Affidavits (IC134 Forms) that prime contractors and subcontractors submit to the Minnesota Department of Revenue.

In the Minnesota State utilization analysis, Keen Independent included more than 10,126 procurements totaling \$984 million over the study period. This does not encompass all Minnesota State spending. For example, the study team excluded the types of purchases typically made from national markets (including software, computers and books) 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 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 89 percent of the combined Minnesota State contract dollars go 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.

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 Minnesota State 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 10,126 Minnesota State 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 availability analysis, one might expect MBE/WBEs to have received 19.85 percent of Minnesota State 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.

Minnesota State applies the TG Program to its contracts, so any lack of disparity in Minnesota State 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 Minnesota State 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, 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, 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 Minnesota State 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

Minnesota State procurement. Minority- and women-owned businesses received 7.46 percent of the Minnesota State procurement dollars examined in this study, including payments to non-certified MBE/WBEs. Utilization of minority- and women-owned firms in Minnesota State procurement was below the 19.85 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 Minnesota State procurement is 38 (7.46% divided by 19.85%, multiplied by 100). Because the index is below 80, the disparity is “substantial,” according to guidance from the courts. The disparity occurred even though Minnesota State followed the TG Program.

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

Note:
 10,126 procurements examined.

Source:
 Keen Independent disparity analysis for Minnesota State
 procurements.

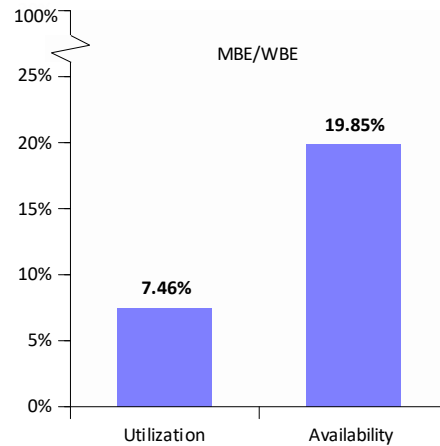


Figure ES-2 shows utilization, availability and disparity results for individual MBE groups as well as white women-owned firms. There were substantial disparities for each MBE group and WBEs.

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

	Utilization	Availability	Disparity index
African American-owned	0.05 %	2.92 %	2
Asian American-owned	1.11	1.46	76
Hispanic American-owned	0.11	1.21	9
Native American-owned	0.11	1.19	9
Unknown MBE	0.01		
Total MBE	1.39 %	6.77 %	21
WBE (white women-owned)	6.07	13.08	46
Total MBE/WBE	7.46 %	19.85 %	38

Note: Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for Minnesota State procurements.

Finally, Figure ES-3 presents results for Minnesota State construction, professional services, goods and other services procurements. There were substantial disparities for each group except for Asian American-owned construction firms and Native American-owned other services firms. (Note that there are a few MBEs for which the race of the business owner could not be identified.)

Figure ES-3.

Disparity analysis for Minnesota State procurements, July 2011–June 2016

	Utilization	Availability	Disparity index
Construction			
African American-owned	0.02 %	2.50 %	1
Asian American-owned	2.52	1.18	214
Hispanic American-owned	0.10	1.35	7
Native American-owned	0.11	2.80	4
Unknown MBE	0.04		
Total MBE	2.79 %	7.83 %	36
WBE (white women-owned)	6.75	13.15	51
Total MBE/WBE	9.53 %	20.98 %	45
Professional services			
African American-owned	0.17 %	4.30 %	4
Asian American-owned	1.00	2.63	38
Hispanic American-owned	0.35	0.91	38
Native American-owned	0.00	1.03	0
Unknown MBE	0.00		
Total MBE	1.52 %	8.87 %	17
WBE (white women-owned)	12.63	17.86	71
Total MBE/WBE	14.15 %	26.73 %	53
Goods			
African American-owned	0.03 %	2.03 %	1
Asian American-owned	0.18	1.39	13
Hispanic American-owned	0.01	2.07	0
Native American-owned	0.00	0.14	0
Total MBE	0.21 %	5.62 %	4
WBE (white women-owned)	3.65	14.97	24
Total MBE/WBE	3.86 %	20.60 %	19
Other services			
African American-owned	0.02 %	3.21 %	1
Asian American-owned	0.22	0.98	22
Hispanic American-owned	0.01	0.45	2
Native American-owned	0.29	0.19	153
Unknown MBE	0.01		
Total MBE	0.54 %	4.83 %	11
WBE (white women-owned)	2.31	7.53	31
Total MBE/WBE	2.86 %	12.35 %	23

Note: Disparity index = 100 x Utilization/Availability.

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

The TG Program has not eliminated disparities for minority- and women-owned firms in Minnesota State procurement. Even with these efforts in place, there were substantial disparities in each industry for white women-owned firms and each MBE group in each industry except for Asian American-owned construction firms and Native American-owned other services firms.

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.

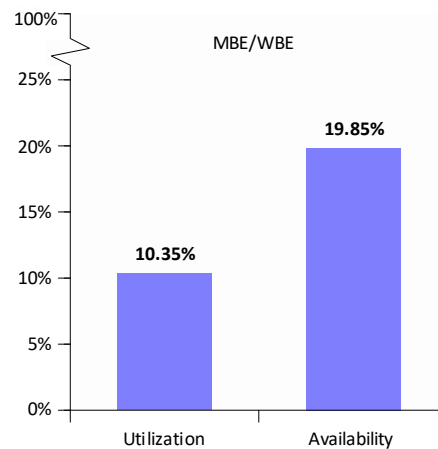
Figure ES-4.
MBE/WBE utilization and availability for
combined entity procurements,
July 2011–June 2016

Note:

125,474 procurements analyzed.

Source:

Keen Independent utilization and availability analyses for
combined entity procurements.



E. Recommendations

The TG Program has not eliminated disparities for minority- and women-owned firms in Minnesota State 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 for construction contracts and one group for other services contracts.

Keen Independent recommends that Minnesota State 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 whether it is appropriate to retain certain existing programs and more fully implement 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. Minnesota State 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 whether it is appropriate to retain certain existing programs and more fully implement them. Minnesota State follows the TG/ED/VO Program, which includes provisions for price and evaluation preferences, and contract goals (which, to date, it has not implemented). In addition, Minnesota State instructs individuals making small purchases to reach out to TG/ED/VO businesses when soliciting bids and proposals.

Minnesota State 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:

- a. Minnesota State might set contract goals on construction and professional services contracts with substantial subcontracting opportunities.
- b. When it is difficult to set a contract goal for a professional services contract, Minnesota State might consider applying evaluation preference points for TGB participation as subconsultants.
- c. Develop a list of TGB-certified companies able to provide the types of construction, professional services, goods and other services to specific campuses across the state.

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

- a. Increase the maximum amount of preference (currently up to 6%) for TGB-certified businesses.
- b. Implement an Equity Select program that mirrors the Minnesota Department of Administration program that allows for direct selection of a TG/ED/VO business for purchases over \$5,000 and not greater than \$25,000; and
- c. Evaluate whether it can enact a sheltered market program for certain types of procurements above the reach of the suggested Equity Select program. The sheltered market program might be limited to bids from eligible firms where there are least three TGBs that can submit bids or proposals for those procurements. Minnesota State might consider defining this program to include SBE bidders.

4. Track and report results on MBE/WBE participation. Minnesota State has begun reporting participation of TGB businesses by race, ethnicity and gender. It should review whether it fully captures subcontract participation in its reports.

Minnesota State might also explore systems to record ownership information for its contractors and vendors and report combined utilization of certified and non-certified MBE/WBEs.

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

Minnesota State 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.

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