

District of Columbia Disparity Study Overview

April 2023

Disparity Study 101

What is a Disparity Study?

- Disparity studies examine whether people of color (POC)–owned and woman-owned businesses are receiving an equitable share of the jurisdiction's contracting dollars, based on the availability of such firms.
- These studies, which typically take 1-2 years, can help jurisdictions identify barriers for POCs and woman owned businesses in the contracting process and examine whether programs are needed to assist these firms in government contracting and purchasing.

Recent Disparity Studies

Recent examples of disparity studies:

- City of Boston 2021
- Commonwealth of Virginia 2020
- State of Maryland 2018
- Baltimore County 2019
- Charles County, MD 2020
- City of Frederick, MD 2020
- WSSC Water 2020

Disparity Study: Key Components

1. Review of Relevant Laws and Policies
2. Determine Geographic and Product Market Area
3. Qualitative Data Collection and Community Engagement
4. **Utilization Analysis**
 1. *The percentage of contract and procurement dollars each organization **awarded** to POC- and woman-owned businesses during the study period.*
5. **Availability Analysis**
 1. *The percentage of contract and procurement dollars **one might expect each organization to award** to POC- and woman-owned businesses based on their availability to perform specific types and sizes of its contracts during the study period.*
6. Disparity Calculation - $(Utilization/Availability) \times 100$
7. Final Report and Recommendations

Legal Framework: Strict Scrutiny and the Disparity Study

- Per *City of Richmond v J.A. Croson Company (1989)*, contracting programs that include race- and gender-conscious measures must meet the strict scrutiny standard of constitutional review.

Components of Strict Scrutiny

- **1) Compelling Government Interest:** One of the primary objectives of the disparity study is to determine if there is sufficient evidence of discrimination in the relevant geographic marketplace, which would potentially indicate a compelling government interest for them to implement race- and gender-conscious measures.
- **2) Narrow Tailoring:** In addition to demonstrating a compelling governmental interest, organizations must also demonstrate that their use of race- and gender-conscious measures is narrowly tailored to meet their objectives.

The District's Disparity Study

FY16-20

The District Disparity Study Team

- The Office of the Deputy Mayor for Planning and Economic Development (DMPED) and the Department of Small and Local Business Development (DSLBD) oversaw the disparity study and coordinated District agencies to ensure the contracted disparity study team had access to comprehensive datasets as well as understanding of key contracting and procurement policies and programs.
- Many District agencies played a critical role in supporting the disparity study process, including the Office of Contracts and Procurement, the Office of the Chief Technology Officer, the Office of Racial Equity, and the Mayor's Office of the General Counsel.
- The contracted expert team was a certified Joint Venture comprised of:



- BBC is an economic and diversity research firm based in Denver, Colorado. The firm has completed more than 130 disparity studies for cities, states, transportation agencies, and other government entities across the country.



- Pantera Management Group is a Black American-owned CBE that is a local leader in the regulatory compliance field, specializing in contract compliance, prevailing wage compliance, business inclusion certification, and procurement outreach.



- Tiber Hudson is a CBE-certified, full-service law firm which provides professional services in the areas of government contracts, business certification, litigation, public private partnerships, corporate governance, public finance, corporate finance, bonds, real estate, and planning to both public and private sector clients.

DC Disparity Study: Goals and Deliverables

- **Goal:** Determine whether a disparity exists between availability and utilization of POC and woman owned businesses as part of the District's contracting processes.
- **Study Period:** October 1, 2016 – September 30, 2020 (FY16-20)
- **Core Analysis:** The study examines whether there are differences between:
 - **Utilization:** *The percentage of contract and procurement dollars each organization **awarded** to POC- and woman-owned businesses during the study period.*
 - **Availability:** *The percentage of contract and procurement dollars **one might expect each organization to award** to POC- and woman-owned businesses based on their availability to perform specific types and sizes of its contracts during the study period.*
- **Deliverables**
 - A final study, complete with availability and utilization calculations, disparity study results, and recommended next steps to increase contracting equity for POC and woman owned businesses.

Disparity Study: Key Takeaways

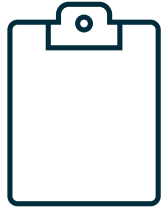
- Availability and utilization of POC- and woman-owned businesses in the District is remarkably high compared to other cities and states.
- While a high volume of contract dollars was awarded to POC and woman-owned businesses during the study period, a majority of dollars awarded was concentrated within a relatively small number of POC- and woman-owned businesses.
- The disparity study team utilized statistical best practices to adjust for outliers in the data in order to accurately represent outcomes for POC- and woman-owned businesses.
- Study findings show substantial disparities between utilization and availability amongst all relevant racial/ethnic and gender groups.
- **These findings show there are opportunities to enhance race- and gender-neutral programs and processes to encourage more POC- and woman-owned business participation, as well as create legally defensible race- and gender-conscious contracting and procurement programs.**

Disparity Study Scope

- The Disparity Study examined prime and subcontracts awarded between Oct 1, 2016 and Sept. 30, 2020.
- 88 agencies represented, including independently operated Events DC and UDC.
- Approximately \$8B in contracts analyzed across DC Government agencies, Events DC, and UDC.
- Note: UDC and Events DC were included because they have a significant volume of relevant, locally funded contracts and would be subject to any new policy changes recommended by this study.

Organization and contract type	Number	Dollars (in thousands)
DC Government		
Construction	3,381	\$4,106,726
Professional services	7,176	\$2,442,583
Non-professional services, goods, and supplies	5,442	\$1,218,161
Total	15,999	\$7,767,470
Events DC		
Construction	103	\$129,485
Professional services	113	\$28,886
Non-professional services, goods, and supplies	70	\$29,419
Total	286	\$187,790
UDC		
Construction	156	\$36,033
Professional services	597	\$39,608
Non-professional services, goods, and supplies	365	\$9,333
Total	1,118	\$84,973

Disparity Study Stakeholder Engagement



Availability Surveys - Conducted availability surveys with **1,134 businesses** between September 2021 and April 2022. As a part of the surveys, the study team asked business owners and managers whether their companies had experienced barriers or difficulties starting or expanding businesses in their industries; obtaining work in the marketplace; working with government organizations in the region; or in any other areas related to business success.



In-depth interviews – 40 conducted with owners and other reps from DC businesses between Jan 2022 and July 2022. The interviews included discussions about interviewees' perceptions of the local contracting industry; working or attempting to work with government organizations in the marketplace; the Certified Business Enterprise (CBE) Program, and various other topics.



Public forums – Six total: Kickoff meetings and feedback from the community (June 7,8,9 2021), Phase I Update and feedback from community (November 15th and 17, 2021), and stakeholder session for additional comments on August 23, 2021.

Relevant Geographic Market Area (RGMA)

- The disparity study team used the contract data from DC Government, Events DC, and UDC to help determine the area in which agencies spend the substantial majority of their contract and procurement dollars.
- In total, the three organizations awarded approximately 92% of relevant contract and procurement dollars to businesses located in the District or one of seven surrounding counties or equivalents.
- The team then conducted extensive surveys with more than 1,000 businesses within the RGMA to develop a representative database of potentially available businesses for DC Government contract and procurement opportunities.

Contract and procurement dollars DC Government, Events DC, and UDC awarded to businesses located in the region

County or County Equivalent	Percent of in scope dollars
Washington, D.C.	63.3%
Fairfax County, VA	11.3%
Prince George's County, MD	9.3%
Montgomery County, MD	5.2%
Arlington County, VA	1.7%
Alexandria City, VA	0.9%
Falls Church City, VA	0.1%
Fairfax City, VA	0.0%
Total	91.7%
Other regions	8.3%
Total	100.0%

See Disparity Study Report: Figure 5-2 - Chapter 5, Page 4

Availability Analysis

- Using data from over 1,000 business interviews, the team **analyzed the availability** of POC- and woman-owned businesses *ready, willing, able* to perform work on the contracts and procurements awarded in construction; professional services, and non-professional services.
- DC Government has an incredibly large pool of POC and woman owned businesses available to do the work we need. 41% of firms available for District contracts in construction, professional services, and non-professional services were POC/woman-owned firms. Typically, jurisdictions show between 17-33% (Boston showed 16.9% availability, the State of Virginia 32.8%)

DC Gov Availability

Business group	Availability
All POC- and woman-owned	41.4 %
White woman-owned	4.6 %
POC-owned	36.9 %
Asian American-owned	11.5 %
Black American-owned	18.9 %
Hispanic American-owned	5.3 %
Native American-owned	1.3 %

Availability Comparison Chart

Organization	Study year	Availability percentage
UDC	2022	59.9 %
DC Government	2022	41.4 %
Events DC	2022	41.8 %
Commonwealth of Virginia	2020	32.8 %
City of San Diego	2021	31.0 %
Hamilton County, Ohio	2022	28.4 %
City of Virginia Beach	2018	25.2 %
City of Denver	2018	23.7 %
Commonwealth of Pennsylvania	2018	22.1 %
City of Charlotte	2017	20.9 %
City of Indianapolis	2019	19.3 %
State of Indiana	2020	18.2 %
City of Boston	2020	16.9 %

Note: Data presented based on recently completed BBC Disparity Studies

Utilization Analysis

- The team then examined the **utilization** of POC- and woman-owned businesses for construction, professional services, and non-professional services (prime and subcontracts) during the study period.
- DC Government awarded 37% (\$2.9B)** of relevant contract and procurement dollars to POC- and woman-owned businesses during the study period. The District’s 37% spend rate (utilization) with POC/woman owned businesses is nearly triple the rate of Boston (11%) and far greater than Denver and Charlotte (both 14.8%) and the State of Virginia (13.4%).

DC Gov Utilization

Business group	Utilization
All POC- and woman-owned	37.0 %
White woman-owned	4.5 %
POC-owned	32.5 %
Asian American-owned	4.8 %
Black American-owned	16.1 %
Hispanic American-owned	11.5 %
Native American-owned	0.1 %

Utilization Comparison Chart

Organization	Study year	Availability percentage
UDC	2022	68.7 %
DC Government	2022	37.0 %
Events DC	2022	19.5 %
City of San Diego	2021	19.1 %
City of Virginia Beach	2018	18.9 %
City of Denver	2018	14.8 %
City of Charlotte	2017	14.8 %
Hamilton County, Ohio	2022	14.6 %
City of Indianapolis	2019	14.6 %
Commonwealth of Virginia	2020	13.4 %
State of Indiana	2020	12.9 %
City of Boston	2020	11.0 %
Commonwealth of Pennsylvania	2018	4.5 %

Note: Data presented based on recently completed BBC Disparity Studies

Disparity Index = (Utilization/Availability) X 100

- **Disparity Index of 100 = parity between actual participation and availability**
 - *Participation of a business group is largely in line with its availability*
- **Disparity Index of <100 = Disparity between participation and availability**
 - Business group is considered to have been underutilized relative to its availability.
- **Disparity Index of <80 = substantial disparity between participation and availability**
 - Business group is considered to have been substantially underutilized relative to its availability.
 - Substantial disparities are often considered inferences of discrimination against particular business groups relative to their availability for that work and often serve as justification for organizations to use relatively aggressive measures to address corresponding barriers, such as using race- and gender-conscious measures to award individual contracts.

DC Government Unadjusted Results

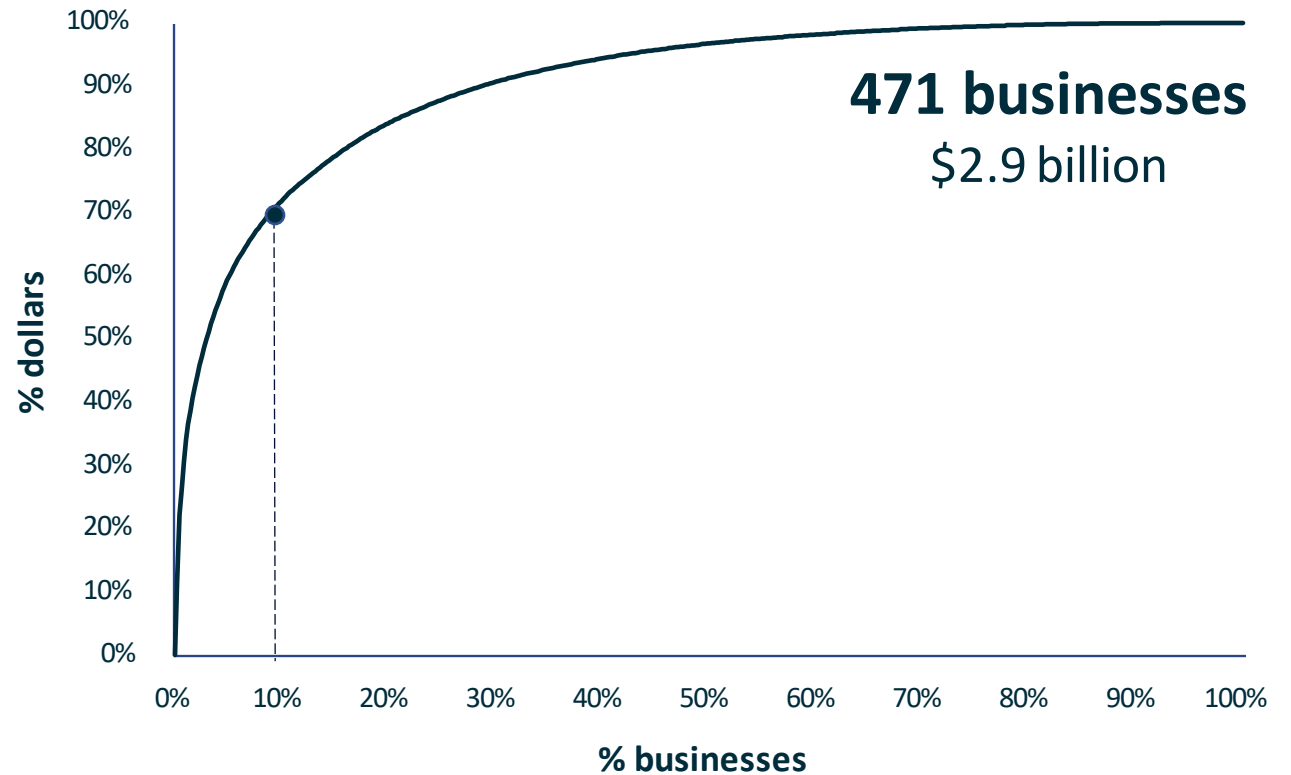
DC Gov Prelim Disparity Indices (Unadjusted) by Population and Contract Type						
	Overall	All Prime Contracts	All Subcontracts	Construction	Prof Services	Non professional service, good, and supplies
All POC-and woman owned	89	92	60	109	78	66
White-woman owned	98	104	39	90	90	114
POC-Owned	88	91	62	109	76	53
Asian American-owned	42	39	121	26	91	3
Black American-owned	86	91	47	92	89	69
Hispanic American-owned	200+	200+	94	200+	13	57
Native American-owned	10	8	20	9	13	0

Note: These results are unadjusted as they have not been adjusted for statistical outliers

Parity
 Underutilization
 Substantial Disparity (Score of 80 or below)

Concentration of Dollars

- The disparity study team then analyzed the degree to which relevant contract and procurement dollars DC government awarded to POC- and woman-owned businesses during the study period were spread across different businesses.
- The team found that a relatively small amount of businesses accounted for a large amount of contracted dollars.
- For example, approximately 70% of relevant dollars DC Government awarded to all POC- and woman-owned businesses during the study period went to approximately 10% of all the POC- and woman-owned businesses used.



471 POC-and woman-owned businesses received nearly \$2.9B in relevant contract dollars from DC Gov during the study period (Fy16-Fy20)

Adjusting for Statistical Outliers

- Given the high concentration of dollars, the disparity study team examined the dataset to identify all statistical outliers at the extreme high and low levels of dollars awarded that may be affecting the results.
- In total, the team identified **25 statistical outliers** within the POC- and woman-owned business dataset and used statistical best practices to adjust for these outliers and establish more representative results for POC-/woman-owned businesses.

Statistical Outliers

	<u>Race/ethnicity</u>	<u>Gender</u>	<u>DC Govt. dollars</u>
1	Hispanic American	Men	\$326,802,266
2	Hispanic American	Men	\$309,758,596
3	White American	Women	\$126,184,643
4	Black American	Men	\$118,374,021
5	Hispanic American	Men	\$97,194,328
6	Black American	Men	\$72,967,159
7	White American	Women	\$60,887,593
...
454	Black American	Woman	\$16,700
455	Hispanic American	Woman	\$16,550
456	Black American	Woman	\$16,548
457	Black American	Woman	\$10,666
458	Black American	Man	\$9,396
459	Asian American	Man	\$8,814
460	Black American	Man	\$8,500
461	White American	Woman	\$7,740
462	Black American	Man	\$7,500
463	White American	Woman	\$7,000
464	Black American	Man	\$6,083
465	Black American	Woman	\$5,987
466	Black American	Man	\$5,420
467	Black American	Man	\$4,570
468	Black American	Woman	\$3,300
469	Black American	Woman	\$2,246
470	Hispanic American	Man	\$1,600
471	Hispanic American	Woman	\$70



DC Government Adjusted Results

DC GOV Prelim Disparity Indices (Adjusted) by Population and Contract Type						
	Overall	All Prime Contracts	All Subcontracts	Construction	Prof Services	Non professional service, good, and supplies
All POC-and women owned (Adjusted)	61	62	58	54	76	49
White-woman owned (Adjusted)	63	65	39	90	75	33
POC-Owned (Adjusted)	61	61	60	53	76	54
Asian American-owned (Adjusted)	42	39	121	26	91	4
Black American-owned (Adjusted)	77	81	47	68	89	69
Hispanic American-owned (Adjusted)	61	58	82	90	13	57
Native American-owned (Adjusted)	10	8	20	9	13	0

Results reflect adjustment for statistical outliers

Parity
 Underutilization
 Substantial Disparity (Score of 80 or below)

Key Takeaways

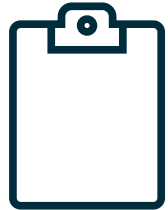
- Availability and utilization of POC- and woman-owned businesses in the District is remarkably high compared to other cities and states.
- While a high volume of contract dollars was awarded to POC and woman-owned businesses during the study period, a majority of dollars awarded was concentrated within a relatively small number of POC- and woman-owned businesses.
- The disparity study team utilized statistical best practices to adjust for outliers in the data in order to accurately represent outcomes for POC- and woman-owned businesses.
- Study findings show substantial disparities between utilization and availability amongst all relevant racial/ethnic and gender groups.
- **These findings show there are opportunities to enhance race- and gender-neutral programs and processes to encourage more POC- and woman-owned business participation, as well as create legally defensible race- and gender-conscious contracting and procurement programs.**

Next Steps: Interagency Working Group and Equitable Procurement Action Plan

- **An interagency working group** will immediately assess disparity study recommendations for expected impact and feasibility and where appropriate, begin implementing both race- and gender- conscious and neutral recommendations.
- The group will produce an **Equitable Procurement Action Plan by March 31, 2024** that summarizes implementation to date and outlines next steps for continued implementation of recommendations presented in the study.
- The group will include relevant policy, legal, and data-focused staff from the **Office of Contracting and Procurement, the Office of the Chief Technology Officer, the Office of Racial Equity, the Mayor's Office of the General Counsel, DMPED and DSLBD, coordinated by Internal Services**. As appropriate, the working group will include representatives from major contracting agencies.
- In FY 2026, the District will contract with an expert person or entity to conduct **another comprehensive disparity study examining contract data from FY21-FY25**.

Appendix

Disparity Study Stakeholder Engagement



Availability Surveys - Conducted availability surveys with **1,134 businesses** between September 2021 and April 2022. As a part of the surveys, the study team asked business owners and managers whether their companies had experienced barriers or difficulties starting or expanding businesses in their industries; obtaining work in the marketplace; working with government organizations in the region; or in any other areas related to business success.



In-depth interviews – 40 conducted with owners and other reps from DC businesses between Jan 2022 and July 2022. The interviews included discussions about interviewees' perceptions of the local contracting industry; working or attempting to work with government organizations in the marketplace; the Certified Business Enterprise (CBE) Program, and various other topics.



Public forums – Six total: Kickoff meetings and feedback from the community (June 7,8,9 2021), Phase I Update and feedback from community (November 15th and 17, 2021), and stakeholder session for additional comments on August 23, 2021.

Summary of Disparity Study Recommendations

Category	DS Team Rec	Description	Objective	Race/Gender Conscious?	Population Target
Race/Gender Neutral	Overall POC-/Woman-owned business goal	Separate from the 50% agency spend goal for SBEs, creating a goal for the specific participation of POC- and woman-owned businesses in its work.	More contract dollars for women and POC owned businesses within each agency's expendable budget.	No	POC and women owned-businesses
Race/Gender Conscious	POC-Woman-owned business contract goals	Race and/or gender conscious overall contracting goal(s) would have to be based on disparity study results and follow both elements of strict scrutiny. DC Gov would also need to build out process/mechanism to certify, track, monitor, etc, POCs/WBEs.	Explicit target to enhance the participation of POC and women-owned businesses.	Yes	Populations targeted based on DS results
Other: Procurement Policies	Unbundling contracts and procurements	Unbundle large prime and even subcontracts into multiple contracts.	Increase contracting opportunities for small businesses, including POC and women-owned, and potentially giving smaller businesses more opportunities at prime contracts versus just subs.	No	Small businesses
Other: Procurement Policies	Enforce 35% SBE requirement	Fully enforce that prime contractor submit documentation of genuine and sufficient efforts to include 35% SBE participation for contracts over \$250K.	Ensure SBE participation in compliance with the 35% targets for contracts \$250K and above.	No	SBEs
Other: Procurement Policies	SBE requirements for CBE primes/JVs	For CBE primes or joint ventures with 51% ownership, consider requiring SB subcontracting goals	Ensure greater SBE participation.	No	SBEs

Summary of Disparity Study Recommendations

Category	DS Team Rec	Description	Objective	Race/Gender Conscious?	Population Target
Other: Procurement Policies	New businesses - preferences	Create preferences for primes to partners with NEW subcontractors and suppliers.	Encourage participation of NEW subcontractors/suppliers.	No	New, smaller businesses or suppliers
Other: Procurement Policies	New businesses - set aside projects	Setting aside "certain small projects" for exclusive competition among businesses that have never worked with DC.	Encourage participation of NEW subcontractors/suppliers.	No	New businesses
Other: Procurement Policies	New businesses - outreach	Use disparity study vendor information to conduct more outreach to POC- and woman-owned businesses.	Expand the base of POC- and woman-owned businesses.	No	POC and woman-owned businesses
Other: Procurement Policies	Competitive bidding thresholds - Lower the \$100K threshold	Clarify the circumstances for basic competition requirements for contracts and procurements between \$10,000 and \$100,000.	Expand range of competitive contract to provide more opportunities for smaller businesses.	No	Small businesses
Other: Procurement Policies	30-day minimum solicitation response timelines	Extend response times to a minimum of 30 days for all contracts and procurements.	Provide small businesses with sufficient time to prep, apply.	No	Small businesses
Other: Procurement Policies	Prequalification requirements	Ease pre-qualification requirements - allowing substitutions for individual experience of business owners or demonstrably similar work businesses have completed, regardless of whether the experience came as part of DC gov projects.	Remove barriers for newer businesses to get prequalified if they have individuals with experience.	No	Newer businesses with experienced individuals
Other: Procurement Policies	Microbusinesses	Create certification classification for microbusinesses with smaller revenue requirements + additional preferences and benefits exclusive to microbusinesses.	Carve out additional space for microbusinesses.	No	Microbusinesses

Summary of Disparity Study Recommendations

Category	DS Team Rec	Description	Objective	Race/Gender Conscious?	Population Target
Other: Contract Administration	Subcontractor data collection	Collect comprehensive subcontract data on all projects. Data to collect includes – associate prime contract numbers, subcontract names and details, award amounts, etc.	Enhanced subcontractor data. DC Gov currently collects and maintains data on subcontracts related to relatively large projects it awards but not all projects.	No	Subcontractors
Other: Contract Administration	Prompt Payment	Only applies to prime contractor payments, nothing about subcontractor/supplier payments. Enforce Quick Payment Act + consider mechanisms for subcontractor/supplier quick pay.	Ensure quick payment for subcontractors/suppliers.	No	Subcontractors/suppliers
Other: Supportive services and capacity building	Growth monitoring	Evaluate the impact of business dev efforts have on the growth of businesses over multiple years.	Assess whether programs are helping businesses grow and be successful outside of its own contract and procurement process.	No	All businesses
Other: Supportive services and capacity building	Networking and Outreach	Broaden networking/outreach to include more partnerships with local trade and government organizations and participate in events more frequently - potentially with more of a focus on virtual activities.	Deeper connections with across industries/business groups.	No	All businesses
Other: Supportive services and capacity building	Bonding Assistance	Conduct a risk assessment of raising the dollar thresholds for its bid deposit and bonding requirements.	Understand whether raising thresholds (\$100K for construction projects) may result in an acceptable trade-off between increased small business competition on such work/org risk.	No	Small businesses
Other: Supportive services and capacity building	Disparity Studies	Conduct studies on a regular basis, particularly if DC Gov decides to implement a race and gender-conscious goals program.	Understand changes in marketplaces, refine program measures, ensure up-to-date information on avail/utilization.	No	All businesses

Legal Framework: Croson and Adarand

- *City of Richmond v. J.A. Croson Company (1989)*:
 - The Supreme Court struck down the City of Richmond’s race-based subcontracting program as unconstitutional, and in doing so, established various requirements organizations must meet when considering the use of race-conscious measures as part of their contracting:
 - Agencies’ use of race-conscious measures must meet “**strict scrutiny**” standard of constitutional review
 - In assessing availability, agencies must account for various characteristics of the prime contracts and subcontracts they award and the degree to which local businesses are **ready, willing, and able** to perform that work.
 - If agencies show statistical disparities between the percentage of dollars they awarded to POC-owned businesses and the percentage of dollars those businesses might be available to perform, then inferences of discrimination could exist, justifying the use of narrowly-tailored race-conscious measures.
- *Adarand Constructors, Inc. vs Pena (1995)*
 - The Supreme Court’s decision in Adarand expanded its decision in Croson to include federal government programs—such as the Federal Disadvantaged Business Enterprise Program—that include race-conscious measures, most importantly requiring that those programs must also meet the strict scrutiny standard.

Legal Framework: O'Donnell v. District of Columbia

- ***O'Donnell v. District of Columbia (1992)***
 - The court's decision in O'Donnell led to the dismantling of the District's Minority Contracting Act, because it determined the act was in violation of the right to equal protection of the law under the Fourteenth Amendment of the United States Constitution.
 - Specifically, the court held that the constitutional standards set forth in Croson apply to contracting programs in Washington, D.C. and thus:
 - The act cannot simply rely on general allegations of historical or societal racism, but instead, it must rest on evidence of racial discrimination in relevant industries.
 - DC Government's response to the problems of the past—to the extent they have been satisfactorily demonstrated—must be narrowly tailored to achieve its end.
 - The inclusion of racial/ethnic groups for which there is no evidence of past discrimination in the construction industry raises doubts about the remedial nature of the act's program.
 - The scope of remedial efforts must depend on the scope of the demonstrated discrimination.