



**MURIEL BOWSER**  
**MAYOR**

April 7, 2023

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Suite 504  
Washington, DC 20004

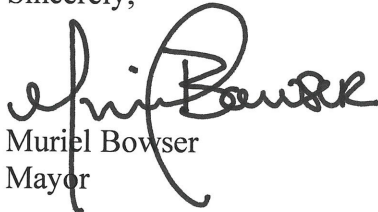
Dear Chairman Mendelson:

I am pleased to submit to the Council of the District of Columbia the enclosed "Government of the District of Columbia Disparity Study: Final Report," produced by the joint venture team of BBC Research and Consulting, Pantera Management Group, and Tiber Hudson. In May 2021, the Office of the Deputy Mayor for Planning and Economic Development (DMPED) awarded the Disparity Study contract to the joint venture team to conduct a disparity study to evaluate whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars each organization awarded to person of color (POC) and woman-owned businesses during the study period, which was October 1, 2016 through September 30, 2020 (i.e., utilization, or participation); and
- 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 prime contracts and subcontracts (i.e., availability).

I am available to discuss any questions you may have regarding this report and its contents. In order to facilitate a response to your questions, please have your staff contact Erika Satterlee, Legislative Director, DMPED, at (202) 727-1983.

Sincerely,

  
Muriel Bowser  
Mayor



**MURIEL BOWSER**  
**MAYOR**

Dear Washingtonians:

As we continue the comeback of Washington, DC, we have a unique opportunity to build a more equitable city. Included in our vision for a more equitable future is a commitment to increase the diversity of businesses the District contracts with and ensure that persons of color (POC)- and woman-owned businesses have a fair shot at competing for District contract opportunities. That is why in May of 2021, I commissioned a formal disparity study to evaluate whether there are any disparities in how POC- and woman-owned businesses contract with the District.

Since the start of my Administration, I have made it a priority to leverage the District's contracting and procurement process to better support our small and local businesses. In Fiscal Year (FY) 2016, District agencies spent \$600 million with small business enterprises (SBEs). In FY 2021, we increased that amount to over \$1 billion, setting a new and historic spending record in the District. The question is, how can we use contracting to make an even greater impact on redressing harms and discrimination, and opening doors to opportunity?

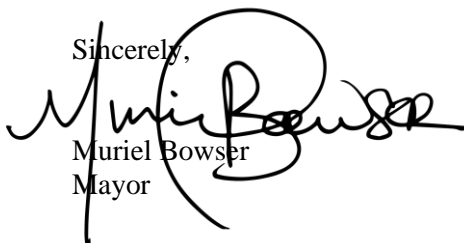
Our disparity study team analyzed nearly \$8 billion of relevant contracts from 88 District agencies over the four-year study period; surveyed over 1,000 businesses and engaged with stakeholders through interviews, focus groups, and virtual public forums; and reviewed written comments throughout the process. The team also worked with a host of District agencies to collect and verify contract data and review key policies and procedures.

The accompanying *Government of the District of Columbia Disparity Study* shows that while the District is fortunate to have many firms, and in fact does have higher than average contracting with POC- and women-owned firms, substantial disparities in contracting persist. In short: we can and will do even better. The disparity study offers several recommendations to further encourage the participation of POC- and woman-owned businesses and to address observed disparities in a legally defensible manner.

Moving forward, an interagency working group coordinated by the Internal Services Division of the Office of the City Administrator will assess, and where appropriate, implement improvements to our contracting processes to make it a force for equal opportunity. Over the next year, the interagency group will work alongside key agencies, including the Office of the Deputy Mayor for Planning and Economic Development, the Department of Small and Local Business Development, the Office of Contracting and Procurement, and the Office of Racial Equity, to eliminate barriers to opportunities for POC- and woman-owned firms.

The results from this disparity study provide us with the data to continue being leaders, both regionally and nationally, in creating better opportunities for women and people of color who do business in the District. The next phase of our work will harness that data and keep moving the District forward toward a more equitable and resilient future.

Sincerely,



Muriel Bowser  
Mayor

# Government of the District of Columbia Disparity Study (Fiscal Years 2016-2020)

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FINAL REPORT



**FINAL REPORT**

April 2023

# **Government of the District of Columbia Disparity Study (Fiscal Years 2016-2020)**

**Prepared for**

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# SECTION ES.

## Executive Summary

BBC-Pantera-Tiber (BBC) conducted a *disparity study* to evaluate whether person of color (POC)- and woman-owned businesses face any barriers in the Government of the District of Columbia’s (DC Government’s), Events DC’s, and the University of the District of Columbia’s (UDC’s) construction; professional services; and non-professional services, goods, and supplies contracts and procurements.<sup>1</sup> As part of the disparity study, we examined whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars each organization awarded to POC- and woman-owned businesses during the *study period*, which was October 1, 2016 through September 30, 2020 (i.e., *utilization*, or *participation*); and
- 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 prime contracts and subcontracts (i.e., *availability*).

Information from the disparity study will help DC Government, Events DC, and UDC better understand outcomes for POC- and woman-owned businesses in their contracting and procurement processes and help them address any *substantial disparities* between the participation and availability of POC- and woman-owned businesses in their work. In particular, if DC Government, Events DC, or UDC determine that it is appropriate to use *race- and gender-conscious measures* to address substantial disparities (e.g., awarding contracts and procurements with the use of POC- and woman-owned business participation goals), then they can rely on information from the disparity study to help ensure their use of such measures adheres to the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

### A. Disparity Study Results

BBC-Pantera-Tiber analyzed \$7.8 billion of DC Government, \$188 million of Events DC, and \$85 million of UDC contract and procurement dollars awarded during the study period to measure the participation and availability of POC- and woman-owned businesses in each organization’s work and assess whether any disparities exist between those measures. We summarize key results from those analyses below and identify sections of the report that provide more details about the methodology and results of each analysis.

**1. Availability analysis (Chapter 6 and Appendix E of the report).** BBC-Pantera-Tiber conducted a *custom census* availability analysis to estimate the availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work while accounting for the specific characteristics of relevant businesses that exist in the local marketplace and the specific

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<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

characteristics of the relevant prime contracts and subcontracts each organization awards. Results from the availability analysis indicated relatively high availability of POC- and woman-owned businesses for work that DC Government, Events DC, and UDC award. Figure ES-1 presents the availability of each relevant group of POC- and woman-owned businesses for DC Government, Events DC, and UDC contract and procurements overall. The availability of those businesses is 41.4 percent for DC Government work, 41.8 percent for Events DC work, and 59.9 percent for UDC work. For all three organizations, Black American-owned businesses exhibit the greatest availability among relevant racial/ethnic and gender groups.

**Figure ES-1.**  
**Availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work**

Sources:  
BBC-Pantera-Tiber availability analysis.

Business group	Organization		
	DC Government	Events DC	UDC
All POC- and woman-owned	41.4 %	41.8 %	59.9 %
White woman-owned	4.6 %	5.7 %	8.3 %
POC-owned	36.9 %	36.1 %	51.6 %
Asian American-owned	11.5 %	11.5 %	13.1 %
Black American-owned	18.9 %	18.6 %	30.1 %
Hispanic American-owned	5.3 %	4.6 %	7.1 %
Native American-owned	1.3 %	1.4 %	1.3 %

**2. Utilization analysis (Chapter 7 of the report).** BBC-Pantera-Tiber also calculated the participation of POC- and woman-owned businesses in the relevant work DC Government, Events DC, and UDC awarded during the study period. Similar to the availability analysis, the utilization analysis also indicated remarkably high participation of POC- and woman-owned businesses in the relevant work each organization awarded during the study period. As shown in Figure ES-2, during the study period, DC Government awarded 37.0 percent of its relevant contract and procurement dollars to POC- and woman-owned businesses; Events DC awarded 19.5 percent of its relevant dollars to those businesses; and UDC awarded 68.7 percent of its dollars to those businesses. The POC- and woman-owned business group to which each organization awarded the most dollars was Black American-owned businesses, which exhibited participation ranging from 13.9 percent in Events DC work up to 36.9 percent in UDC work.

**Figure ES-2.**  
**Participation of POC- and woman-owned businesses in DC Government, Events DC, and UDC work**

Sources:  
BBC-Pantera-Tiber utilization analysis.

Business group	Organization		
	DC Government	Events DC	UDC
All POC- and woman-owned	37.0 %	19.5 %	68.7 %
White woman-owned	4.5 %	3.1 %	0.9 %
POC-owned	32.5 %	16.4 %	67.8 %
Asian American-owned	4.8 %	1.2 %	27.9 %
Black American-owned	16.1 %	13.9 %	36.9 %
Hispanic American-owned	11.5 %	1.3 %	2.9 %
Native American-owned	0.1 %	0.0 %	0.0 %

**3. Disparity analysis (Chapter 8 and Appendix F).** The crux of the disparity study was to assess whether any disparities exist between the participation of POC- and woman-owned businesses in DC Government, Events DC, and UDC work and the availability of those businesses for that work. A *substantial disparity* between participation and availability—that is, a disparity where participation is 80 percent or less of availability—for a particular racial/ethnic or gender



group is interpreted by courts as an *inference of discrimination* against that group in the marketplace and often serves as evidence that the organization that awarded the work could consider using race- or gender-conscious measures to address barriers for that group (for details, see Chapter 2 and Appendix B).

Figure ES-3 presents a visualization of the various DC Government, Events DC, and UDC contract and procurement sets for which relevant business groups exhibited substantial disparities, as indicated by black circles. There are numerous contract sets for which specific groups showed substantial disparities, representing inferences of discrimination against those groups in the local marketplace that make it more difficult for them to compete for and participate in DC Government, Events DC, and UDC work. In the case of DC Government, those disparities exist despite the relatively robust race- and gender-neutral programs the organization has in place, including the Certified Business Enterprise (CBE) Program, which is designed to encourage the participation of local businesses—and in many cases small businesses—in DC Government work. By law, the CBE Program is wholly race- and gender-neutral.

**Figure ES-3.**  
**Substantial disparities observed for DC Government, Events DC, and UDC work**

Organization	Contract set	Business group						
		All POC and white woman	All POC	White woman	Asian American	Black American	Hispanic American	Native American
DC Government	All work				●			●
DC Government	Construction				●			●
DC Government	Professional services	●	●				●	●
DC Government	Non-prof. svcs., goods, supplies	●	●		●	●	●	●
DC Government	Prime contracts				●			●
DC Government	Subcontracts	●	●	●		●		●
Events DC	All work	●	●	●	●	●	●	●
UDC	All work		●				●	●

Notes: ● indicates substantial disparity  
 Source: BBC-Pantera-Tiber disparity analysis.

Further examination of utilization analysis results indicated that there were a small number of POC- and woman-owned businesses to which DC Government awarded exceptionally large amounts of contract and procurement dollars during the study period. BBC examined whether the dollars those businesses, or any other POC- or woman-owned business to which the organization awarded dollars during the study period, met the definition of being *statistical outliers*—that is, data points that differ in extreme ways from all other data points in a data set (for details, see Chapters 8 and 10). Using a “two standard deviation test,” we found that the seven POC- and woman-owned businesses to which DC Government awarded the most dollars, and the 18 POC- and woman-owned businesses to which the organization awarded the least dollars, met the definition of being statistical outliers.

After accounting for all 25 statistical outliers by adjusting their awarded dollars in a manner consistent with best practices in statistics and social science, we observed even more substantial disparities for relevant business groups across key sets of DC Government contracts and procurements. Figure ES-4 presents the substantial disparities we observed for each relevant

group on various sets of DC Government contracts and procurements after accounting for statistical outliers. Once we accounted for statistical outliers, with few exceptions, all relevant business groups exhibited substantial disparities across all key contract and procurement sets DC Government awarded during the study period. Those results even more clearly indicate that inferences of discrimination exist for all groups of POC- and woman-owned businesses operating in the marketplace.

**Figure ES-4.**  
**Substantial disparities observed for DC Government work after accounting for statistical outliers**

Contract set	Business group						
	All POC and white woman	All POC	White woman	Asian American	Black American	Hispanic American	Native American
All work	●	●	●	●	●	●	●
Construction	●	●		●	●		●
Professional services	●	●	●			●	●
Non-prof. svcs., goods, supplies	●	●	●	●	●	●	●
Prime contracts	●	●	●	●		●	●
Subcontracts	●	●	●		●		●

Notes: ● indicates substantial disparity (i.e., disparity index of 80 or less)

Source: BBC-Pantera-Tiber disparity analysis.

## B. Recommendations

BBC-Pantera-Tiber observed substantial disparities between the participation and availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work. We present various recommendations for DC Government, in particular, to consider to further encourage the participation of POC- and woman-owned businesses in its work and address observed disparities effectively and in a legally defensible manner, including potentially using race- and gender-conscious contract goals. In considering our recommendations, DC Government should be mindful of the legal requirements surrounding the use of race- and gender-conscious measures, including state and federal regulations as well as relevant case law. The organization should consult closely with internal legal counsel in developing any new policies or programs related to POC- and woman-owned businesses to ensure they are consistent with the requirements of the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively. We present key recommendations below and present additional recommendations and more detail in Chapter 10 of the report.

**1. Overall POC-/woman-owned business goal.** BBC-Pantera-Tiber recommends that DC Government should consider establishing an overall aspirational goal for the participation of POC- and woman-owned businesses in eligible contracts and procurements. An overall POC-/woman-owned business goal could help create a shared commitment to, and understanding of, DC Government’s equity objectives among internal and external stakeholders and help guide efforts the organization could use to try to achieve the goal each year through various measures. If DC Government established an overall POC-/woman-owned business goal, it would monitor the participation of POC- and woman-owned businesses in its work each year. If it failed to achieve its goal in a particular year, it would assess reasons why it might have failed to do so and

develop plans to achieve its goals the following year, including potential refinements to existing program measures and the introduction of new program measures, as necessary.

**2. POC-/Woman-owned business contract goals.** DC Government only uses race- and gender-neutral measures as part of its contract and procurement processes, which are designed to encourage the participation of local businesses, and in many cases small businesses, in the organization’s work, regardless of the race/ethnicity or gender of business owners. However, despite the relative strength and success of those efforts—including the CBE Program—the disparity study shows substantial disparities for all relevant racial/ethnic and gender groups across key sets of contracts and procurements the organization awards. Based on that and other evidence in the disparity study, BBC-Pantera-Tiber recommends that DC Government should consider whether the use of race- and gender-conscious contract goals would help address the disparities POC- and woman-owned businesses face as part of the organization’s contract and procurement processes.

As part of a race- and gender-conscious contract goals program, DC Government would set percentage goals for the participation of POC- and woman-owned businesses on individual contracts and procurements it awards. Those goals would be based on the availability of eligible POC- and woman-owned businesses for the types of work involved in the project and other relevant factors. Based on that information, goals would vary from project to project, and sometimes they might be 0 percent. As a condition of contract or procurement award, prime contractors would have to meet contract goals as part of their bids, quotes, or proposals by making participation commitments with eligible, certified POC- and woman-owned businesses or, if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts (GFEs) to do so. Prime contractors that fail to meet contract goals—either through commitments of the actual participation of eligible POC- and woman-owned businesses on the project or by demonstrating GFEs—would be considered non-responsive and their bids, quotes, or proposals would be considered ineligible for contract award.

There are various considerations DC Government would have to make as part of using race- and gender-conscious contract goals, particularly around using *race-conscious* goals:

- DC Government would have to determine which business groups are eligible to participate in a race- and gender-conscious contract goals program based on evidence of substantial disparities between the participation and availability of each group for organization work.
- The organization would have to develop a process to certify POC- and woman-owned businesses or partner with an organization that has a certification process that would meet the requirements of DC Government’s program.
- DC Government would have to ensure that it is *maximizing* its use of race-neutral measures before considering the use of race-conscious measures.

**3. Prompt payment.** DC Government has the Quick Payment Act in place to ensure businesses are paid in a timely manner on work they perform for the organization. However, the Quick Payment Act focuses on DC Government’s payment to prime contractors and does not address the amount of time subcontractors and suppliers might have to wait to be paid by prime contractors. Delays in payments from prime contractors to subcontractors likely has a

disproportionate effect on small businesses—many of which are POC- and woman-owned businesses—because they experience more difficulties accessing capital than larger businesses. DC Government should assess the degree to which it is enforcing the Quick Payment Act as it relates to timely payment to prime contractors and should consider establishing prompt payment processes to ensure timely payment from prime contractors to subcontractors and suppliers, ideally within a specified maximum number of days after approving invoices.

**4. Microbusinesses.** Disparity analysis results indicate that relatively small POC- and woman-owned businesses, in particular, face substantial barriers in competing for and participating in DC Government work. The CBE Program has a Small Business Enterprise (SBE) certification category, but for certain industries the size thresholds for defining small businesses include gross receipts of up to \$23 million. DC Government should consider adding an additional certification classification for microbusinesses with smaller revenue requirements. The organization could then add preferences and benefits exclusive to microbusinesses, including proposal points, bid reductions, or setting aside certain opportunities exclusively for microbusiness competition.

**5. New businesses.** Utilization analysis results indicate that the vast majority of the contract and procurement dollars DC Government awarded to POC- and woman-owned businesses during the study period went to a relatively small number of large businesses, to each of which the organization awarded multiple large contracts and procurements. To expand the number of POC- and woman-owned businesses—particularly small businesses—that participate in DC Government work, the organization could consider using bid, quote, and Request for Proposal requirements to encourage prime contractors to partner with subcontractors and suppliers with which they have never worked in the past. For example, as part of the bid process, DC Government could ask prime contractors to submit information about the efforts they made to identify and team with businesses with which they have not worked in the past. The organization could award evaluation points or price preferences based on the degree to which prime contractors partner or attempt to partner with new subcontractors with which they have not previously worked.

**6. Solicitation response timelines.** Small businesses, including many POC- and woman-owned businesses, often report that government organizations and prime contractors do not provide sufficient time to respond to project solicitations, particularly given their smaller staffs and fewer resources. DC Government should consider extending response times for solicitations to a minimum of 30 days for all contracts and procurements to give businesses sufficient time to prepare competitive bids, quotes, or proposals. For example, federal agencies are required to include response times of at least 30 days in all competitive bid and proposal processes.

**7. Small business subcontracting goals.** Subcontracts often represent accessible opportunities for small businesses, including many POC- and woman-owned businesses, to become involved in government work. DC Government sets goals of 35 percent for the participation of SBEs in contracts and procurements worth \$250,000 or more. If prime contractors cannot find any SBEs with which to subcontract, they are permitted to subcontract with other, non-SBE CBEs on those projects if they demonstrate genuine and sufficient GFEs to do so. (DC Government waives SBE subcontracting requirements if the prime contractors are

CBEs themselves.) Despite the use of those goals, we observed substantial disparities for all relevant groups of POC- and woman-owned businesses, particularly for small POC- and woman-owned businesses. We recommend that DC Government should assess its internal practices to ensure it is fully enforcing GFE requirements in cases where prime contractors indicate they could not find any SBEs with which to work. In addition, if prime contractors are CBEs themselves, or if they are joint ventures with 51 percent ownership and control by CBEs, DC Government should consider still requiring them to meet SBE subcontracting goals.

# CHAPTER 1.

## Introduction

The Government of the District of Columbia (DC Government) spends billions of contract and procurement dollars each year to procure various construction services; professional services; and non-professional services, goods, and supplies to serve the more than 700,000 residents of Washington, D.C. The Department of Small & Local Business Development (DSLBD) operates the Certified Business Enterprise (CBE) Program to encourage the participation of local businesses in that work, including many small businesses, person of color (POC)-owned businesses, and woman-owned businesses. DSLBD retained BBC-Pantera-Tiber to conduct a *disparity study* to evaluate whether POC- and woman-owned businesses, specifically, face any barriers in DC Government’s contracting and procurement.<sup>1</sup> As part of the disparity study, we examined whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars DC Government awarded to POC- and woman-owned businesses during the study period, which was October 1, 2016 through September 30, 2020 (i.e., *utilization*); and
- The percentage of contract and procurement dollars POC- and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of DC Government prime contracts and subcontracts (i.e., *availability*).

The disparity study also provides other quantitative and qualitative information related to:

- The legal framework surrounding the CBE Program;
- Local marketplace conditions for persons of color (POCs), women, and POC- and woman-owned businesses; and
- Contracting practices and business assistance programs DC Government has in place or could consider implementing in the future.

There are several reasons information from the disparity study is useful to DC Government:

- The study provides information about how well POC- and woman-owned businesses fare in DC Government contracting and procurement relative to their availability for that work.
- The study provides an evaluation of how effective various efforts are in encouraging POC- and woman-owned business participation in DC Government contracts and procurements.
- The study identifies barriers POCs, women, and POC- and woman-owned businesses face in the local marketplace that might affect their ability to compete for DC Government work.

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<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

- The study provides insights into how DC Government could refine contracting processes and program measures to better encourage the participation of POC- and woman-owned businesses in its work and help address any barriers.
- An independent review of the participation of POC- and woman-owned businesses is valuable to internal and external groups that may be monitoring DC Government’s contracting and procurement practices.
- Government organizations that have successfully defended programs like the CBE Program in court have typically relied on information from disparity studies.

BBC introduces the Government of the District of Columbia Disparity Study in three parts:

- A. Background;
- B. Study Scope; and
- C. Study Team Members.

## A. Background

The CBE Program evolved from the Sheltered Market Program of the 1970s and 1980s, which the Minority Business Opportunity Commission managed. The focus of the Sheltered Market Program was to improve contracting and procurement outcomes for economically disadvantaged businesses with eligibility criteria based on the economic status of business owners. Similar economic criteria were a defining aspect of the Office of Local Business Development’s (OSLBD’s) Local, Small, and Disadvantaged Business Enterprise (LSDBE) Program of the 1990s and early-mid 2000s, which succeeded the Sheltered Market Program.

The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 made various changes to the LSDBE program and mandated the conversion of OSLBD into the Department of Small and Local Business Development (DSLBD), including adding additional certification categories and renaming LSDBEs to CBEs.<sup>2</sup> In 2010, DSLBD added even more certification categories to the CBE Program so the program now includes certifications for locally-owned businesses, small businesses, disadvantaged businesses, resident-owned businesses, veteran-owned businesses, and, in 2020, equity impact businesses. The program has evolved into one of the most progressive local business inclusion programs in the United States, serving as a best practice model for other local and state jurisdictions throughout the country.

The CBE Program comprises various *race- and gender-neutral* measures to meet its objective of encouraging the participation of local businesses—including many small businesses and POC- and woman-owned businesses—in DC Government contracting and procurement. Race- and gender-neutral measures are designed to encourage the participation of all businesses in an organization’s contracting, regardless of the race/ethnicity or gender of business owners. The types of race- and gender-neutral measures that make up the CBE Program include:

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<sup>2</sup> D.C. Law 16-33, The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act .

- Networking and outreach events;
- Business advocacy;
- Business counseling;
- Technical assistance;
- Small business grants;
- Joint venture initiatives; and
- CBE spend goals.

In contrast to race- and gender-neutral measures, *race- and gender-conscious* measures are particularly designed to encourage the specific participation of POC- and woman-owned businesses in government contracting (e.g., goals for POC- and woman-owned business participation on individual contracts or procurements). DC Government does not currently use any race- or gender-conscious measures as part of its contracting and procurement practices. DC Government has used such measures in the past, but the United States Court of Appeals for the Washington, D.C. Circuit ruled that the agency’s previous use of race- and gender-based programs was unconstitutional.<sup>3</sup> The disparity study represents the first time since that ruling DC Government has engaged in an empirical assessment of whether the use of race- and gender-conscious programs is appropriate as part of its contracting and procurement processes.

## B. Study Scope

BBC-Pantera-Tiber conducted the disparity study based on contracts and procurements DC Government agencies awarded between October 1, 2016 and September 30, 2020 (i.e., the *study period*). Figure 1-1 presents a list of all 86 district agencies whose contract and procurement data we analyzed in the study. In addition to the 86 agencies listed in Figure 1-1, the disparity study includes data from two Washington, D.C. agencies that, from a procurement perspective, operate independently of DC Government: Events DC and the University of the District of Columbia (UDC). The disparity study includes analyses for both agencies, because they award relatively substantial amounts of locally-funded contracts and procurements and their contracting data are relatively comprehensive and accessible.

**1. Definitions of POC- and woman-owned businesses.** To interpret the core analyses presented in the disparity study, it is useful to understand how BBC-Pantera-Tiber defined POC- and woman-owned businesses as well as CBEs.

**a. POC-owned businesses.** BBC-Pantera-Tiber defined a POC-owned business as a business with at least 51 percent ownership and control by individuals who identify with one of the following racial/ethnic groups: Asian Americans, Black Americans, Hispanic Americans, or Native Americans. Our definition of POC-owned businesses included businesses owned by men of color and women of color. For example, we grouped results for businesses owned by Black American men with results for businesses owned by Black American women to present results for Black American-owned businesses in general. We gathered business ownership information from a

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<sup>3</sup> *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).



variety of sources, including surveys, business listings, and Internet research. We considered businesses to be POC-owned based on the known races/ethnicities of business owners, regardless of whether they were CBE-certified or held any other types of certification.

**Figure 1-1.**  
**Agencies included in the disparity study**

Agency	
Alcoholic Beverage Regulation Administration	Homeland Security and Emergency Management Agency
Board of Ethics and Government Accountability	Mayor's Office of Religious Affairs
Child and Family Services Agency	Mayor's Office on African Affairs
Commission on Judicial Disabilities and Tenure	Mayor's Office on Asian and Pacific Island Affairs
Contract Appeals Board	Mayor's Office on Latino Affairs
Council of the District of Columbia	Mayor's Office on Returning Citizen Affairs
Criminal Code Reform Commission	Mayor's Office on Women's Policy and Initiatives
Criminal Justice Coordinating Council	Metropolitan Police Department
DC Board of Elections	Office of Administrative Hearings
DC Children and Youth Investment Trust Corporation	Office of Campaign Finance
DC Commission on the Arts and Humanities	Office of Contracting and Procurement
DC Corrections Information Council	Office of Disability Rights
DC Health	Office of Employee Appeals
DC National Guard	Office of Federal and Regional Affairs
DC Office of Cable Television, Film, Music and Entertainment	Office of Human Rights
DC Office of Zoning	Office of Planning
DC Public Library System	Office of Police Complaints
DC Public Schools	Office of Policy and Legislative Affairs
DC Sentencing Commission	Office of Risk Management
Department of Aging and Community Living	Office of the Attorney General
Department of Behavioral Health	Office of the Chief Financial Officer
Department of Consumer and Regulatory Affairs	Office of the Chief Medical Examiner
Department of Corrections	Office of the Chief Technology Officer
Department of Employment Services	Office of the City Administrator
Department of Energy & Environment	Office of the DC Auditor
Department of Forensic Sciences	Office of the Deputy Mayor for Education
Department of For-Hire Vehicles	Office of the Deputy Mayor for Greater Economic Opportunity
Department of General Services	Office of the Deputy Mayor for Health and Human Services
Department of Health Care Finance	Office of the Deputy Mayor for Planning and Economic Development
Department of Housing and Community Development	Office of the Inspector General
Department of Human Resources	Office of the People's Counsel
Department of Human Services	Office of the Secretary
Department of Insurance, Securities & Banking	Office of the Senior Advisor
Department of Motor Vehicles	Office of the State Superintendent of Education
Department of Parks and Recreation	Office of the Tenant Advocate
Department of Public Works	Office of Unified Communications
Department of Small and Local Business Development	Public Employee Relations Board
Department of Transportation	Public Service Commission of the District of Columbia
Department of Youth Rehabilitation Services	Real Property Tax Appeals Commission
Department on Disability Services	Rental Housing Commission
Executive Office of the Mayor	State Athletic Commission
Fire and Emergency Medical Services Department	State Board of Education
Health Benefit Exchange Authority	Youth Advisory Council

**b. Woman-owned businesses.** Because the study team classified businesses owned by women of color according to their corresponding racial/ethnic groups, analyses and results pertaining to woman-owned businesses pertain specifically to results for *non-Hispanic white woman-owned businesses*. As with POC-owned businesses, the study team considered businesses to be woman-owned based on the known genders of business owners, regardless of whether they are CBE-certified or hold any other types of certification.

c. **CBEs.** In the context of the disparity study, *CBEs* refers specifically to local businesses certified as CBEs by DSLBD.<sup>4</sup> Businesses seeking CBE certification are required to submit an application to DSLBD demonstrating that they are headquartered in Washington, D.C. The application is available online and requires businesses to submit various information, including business names, contact information, tax information, and work specializations.

**2. Analyses in the disparity study.** The crux of the disparity study was to examine whether there are any disparities between the participation and availability of POC- and woman-owned businesses in DC Government, Events DC, and UDC contracts and procurements. The study focused on construction; professional services; and nonprofessional services, goods, and supplies contracts and procurements awarded by participating agencies during the study period. The study also includes various analyses related to outcomes for POCs, women, and POC- and woman-owned businesses throughout the local marketplace.

Disparity study analyses are presented in the report in the following manner:

**a. Legal framework and analysis.** The study team conducted a detailed analysis of relevant laws, legal decisions, and other information to guide the methodology for the disparity study and inform program refinements. The legal framework and analysis for the study is summarized in **Chapter 2** and **Appendix B**.

**b. Marketplace conditions.** The study team conducted extensive quantitative analyses of conditions and potential barriers in the local marketplace for POCs, women, and POC- and woman-owned businesses. In addition, we collected anecdotal evidence about potential barriers small businesses and POC- and woman-owned businesses face in Washington, D.C. through in-depth interviews, focus groups, public meetings, and organizational meetings. Quantitative information about marketplace conditions is presented in **Chapter 3** and **Appendix C**. A description of the study team's collection of anecdotal evidence is presented in **Chapter 4** along with a presentation of key themes we observed., All anecdotal evidence we collected as part of the study is presented in **Appendix D**, categorized by topic.

**c. Data collection.** The study team examined contract and vendor data from multiple DC Government sources to complete the utilization and availability analyses. The scope of the study team's contract and vendor data collection from district agencies, Events DC, and UDC is presented in **Chapter 5**.

**d. Availability analysis.** The study team analyzed the percentage of contract and procurement dollars one might expect DC Government, Events DC, and UDC to award to POC- and woman-owned businesses based on their availability to perform specific types and sizes of organization work. That analysis was based on agency data and surveys the study team conducted with more than 1,000 local businesses that work in industries related to the types of contracts and procurements DC Government, Events DC, and UDC award. Results from the availability analysis are presented in **Chapter 6** and **Appendix E**.

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<sup>4</sup> § 2-218 .01d, Subpart 1

**e. Utilization analysis.** The study team analyzed contract and procurement dollars DC Government, Events DC, and UDC awarded to POC- and woman-owned businesses during the study period, including information about associated subcontracts. Results from the utilization analysis are presented in **Chapter 7**.

**f. Disparity analysis.** The study team examined whether there were any disparities between the participation and availability of POC- and woman-owned businesses on contracts and procurements DC Government, Events DC, and UDC awarded during the study period. The study team also assessed whether any observed disparities were statistically significant and explored potential explanations for those disparities. Results from the disparity analysis are presented in **Chapter 8** and **Appendix F**.

**g. Program measures.** The study team reviewed the measures DC Government uses to encourage the participation of small businesses as well as POC- and woman-owned businesses in its contracting and procurement. That information is presented in **Chapter 9**.

**h. Recommendations.** The study team provided guidance related to additional program options and changes to current contracting practices DC Government could consider, including setting overall aspirational goals for the participation of POC- and woman-owned businesses in DC Government contracts and procurements. The study team's recommendations are presented in **Chapter 10**.

## **C. Study Team Members**

The disparity study was conducted by a joint venture comprising three firms that, collectively, possess decades of experience related to conducting disparity studies and implementing small business and POC- and woman-owned business programs: BBC Research & Consulting (BBC), Pantera Management Group (Pantera), and Tiber Hudson (Tiber). The study team also included Davis Research, a survey fieldwork firm with extensive experience executing telephone and online surveys as part of numerous disparity studies.

**1. BBC.** BBC is a disparity study and economic research firm based in Denver, Colorado. To date, the firm has conducted more than 135 disparity studies for different organizations across the country, including recent studies for the Commonwealth of Virginia, the City of Virginia Beach, and the City of Boston. BBC conducted all quantitative and qualitative analyses as part of the disparity study.

**2. Pantera.** Pantera is a Black American-owned CBE and a local leader in the regulatory compliance field, specializing in contract compliance, prevailing wage compliance, business inclusion certification, and procurement outreach. The firm collected extensive anecdotal evidence as part of the disparity study and led the review of DC Government policies and program measures.

**3. Tiber.** Tiber is a full-service CBE law firm with offices in Washington, D.C.; Baltimore, Maryland; New York, New York; and Charleston, South Carolina. Tiber attorneys have more than 25 years of experience advising the District and quasi-government agencies on a broad range of issues, including drafting and enforcing regulations governing CBE contracting and equity

participation in development projects in the region. The firm developed the legal framework and analysis for the disparity study.

**4. Davis Research.** Davis Research is a survey fieldwork firm based in Calabasas, California that has conducted tens of thousands of surveys as part of disparity studies across the country. The firm conducted surveys with more than 1,000 local businesses in connection with the availability and utilization analyses.

# CHAPTER 2.

## Legal Analysis

In 2020, Washington, D.C. passed legislation authorizing a *disparity study* to determine if there are statistically significant disparities between the availability and participation of person of color (POC)- and woman-owned businesses in Government of the District of Columbia (DC Government) and district agencies' contracts and procurements.<sup>1</sup> One objective of the disparity study is to assess whether there is a need for DC Government, Events DC, and the University of the District of Columbia (UDC) to consider implementing *race- and gender-conscious* procurement practices, and, if so, to provide recommendations on how to do so in a legally defensible manner.<sup>2</sup> Race- and gender-conscious measures are specifically designed to encourage the participation of POC- and woman-owned businesses in government contracting (e.g., goals for POC- and woman-owned business participation on individual contracts or procurements).

Currently, DC Government, Events DC, and UDC do not operate POC- and woman-owned business programs nor do they use any race- or gender-conscious measures to award locally funded contracts or procurements.<sup>3</sup> DC Government does operate the Certified Business Enterprise (CBE) program, which is designed to help local and small businesses participate in District-funded work. The CBE Program offers networking, training, and technical assistance programs in a *race- and gender-neutral* manner. That is, those measures are not limited to POC- and woman-owned businesses.

Because one objective of the disparity study is to assess whether DC Government, Events DC, and UDC should consider using race- and gender-conscious measures as part of their contracting and procurement processes, this chapter reviews the legal standards that govern the use of such measures in three parts:

- A. Legal Standards for Different Types of Measures;
- B. Seminal Court Decisions; and
- C. Addressing Legal Requirements.

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<sup>1</sup> D.C. Code § 2-214.01 Establishment of the Minority and Women-Owned Business Assessment Program.

<sup>2</sup> Events DC and UDC are government agencies operating in Washington, D.C. but whose procurement authority is independent of DC Government.

<sup>3</sup> The District Department of Transportation, which is a district agency, administers the Federal Disadvantaged Business Enterprise Program, which is designed to encourage the participation of POC- and woman-owned businesses in United States Department of Transportation-funded contracts and procurements.

## A. Legal Standards for Different Types of Measures

There are different legal standards for determining the constitutionality of POC- and woman-owned business programs, depending on whether they rely solely on race- and gender-neutral measures or if they also include race- and gender-conscious measures.

**1. Programs that rely solely on race- and gender-neutral measures.** Organizations that implement POC- and woman-owned business programs that rely solely on race- and gender-neutral measures must show a *rational basis* for their programs. Showing a rational basis requires organizations to demonstrate that their contracting programs are rationally related to a legitimate government interest. It is the lowest threshold for evaluating the legality of contracting programs that could impinge on the rights of others.

**2. Programs that include race- and gender-conscious measures.** Contracting programs that include race- and gender-conscious measures must meet the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

**a. Strict scrutiny.** The strict scrutiny standard presents the highest threshold for evaluating the legality of race-conscious contracting programs that could impinge on the rights of others, short of prohibiting them altogether. Under the strict scrutiny standard, organizations must show a *compelling governmental interest* in using race-conscious measures and ensure that their use is *narrowly tailored*.

**i. Compelling governmental interest.** Organizations using race-conscious measures have the initial burden of showing evidence of discrimination—including statistical and anecdotal evidence—that supports the use of such measures. They cannot rely on national statistics of discrimination to draw conclusions about the prevailing market conditions in their own regions. Rather, they must assess discrimination within their own relevant market areas.<sup>4</sup> Furthermore, it is not necessary for organizations themselves to have discriminated against POC-owned businesses for them to take remedial action. They could take action if evidence indicates they are *passive participants* in race-based discrimination that exists in their relevant geographic market areas (RGMAs).<sup>5</sup> One of the primary objectives of the disparity study is to determine if there is evidence of race-based discrimination in DC Government, Events DC, and UDC’s RGMA, which would potentially indicate a compelling government interest for them to implement race-conscious measures.

**ii. Narrow tailoring.** In addition to demonstrating a compelling governmental interest, organizations must demonstrate that their use of race-conscious measures is narrowly tailored to meet program objectives. There are a number of factors courts consider when determining whether the use of such measures is narrowly tailored:

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<sup>4</sup> See e.g., *Concrete Works, Inc. v. City and County of Denver* (“Concrete Works I”), 36 F.3d 1513, 1520 (10th Cir. 1994).

<sup>5</sup> See e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041 (Federal Cir. 2008).

- The necessity of such measures and the efficacy of alternative race-neutral measures;
- The degree to which the use of such measures is limited to those groups that actually suffer discrimination in the local marketplace;
- The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;
- The relationship of any numerical goals to the relevant business marketplace; and
- The impact of such measures on the rights of third parties.

**b. Intermediate scrutiny.** Gender-conscious programs must adhere to the requirements of the intermediate scrutiny standard, which is less rigorous than the strict scrutiny standard but more rigorous than the rational basis standard. In order for a gender-conscious program to pass intermediate scrutiny, it must:

- Serve an important government objective, and
- Be substantially related to achieving the objective.

The United States Supreme Court first accepted intermediate scrutiny for programs that discriminate based on gender or sex in 1976, and other courts have also applied it to assessing the constitutionality of programs based on sexual orientation. Although certain courts apply the intermediate scrutiny standard to gender-conscious programs, many courts apply the strict scrutiny standard to both race- and gender-conscious programs.

## B. Seminal Court Decisions

Two Supreme Court cases established that the strict scrutiny standard is the appropriate standard for evaluating the constitutionality of contracting programs that use race-conscious measures:

- *City of Richmond v. J.A. Croson Company (Croson)*<sup>6</sup>; and
- *Adarand Constructors, Inc. v. Peña (Adarand)*.<sup>7</sup>

Many subsequent decisions in state and federal courts have further defined the requirements for the use of race-conscious measures as part of contracting programs, including *O'Donnell Constr. Co. v. District of Columbia (O'Donnell)*, which would apply to any such programs in Washington, D.C.<sup>8</sup>

**1. Croson and Adarand.** The United States Supreme Court's landmark decisions in *Croson* and *Adarand* are the most important court decisions to date in connection with the use of race-conscious measures and disparity study methodology. In *Croson*, the Supreme Court struck down the City of Richmond's race-based subcontracting program as unconstitutional and, in doing so,

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<sup>6</sup> *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

<sup>7</sup> *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

<sup>8</sup> *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).

established various requirements organizations must meet when considering the use of such measures as part of their contracting and procurement:

- Agencies' use of race-conscious measures must meet the strict scrutiny standard of constitutional review—that is, in remedying any race-based discrimination, they must establish a compelling governmental interest to do so and must ensure the use of such measures is narrowly tailored.
- 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.

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 adhere to the requirements of strict scrutiny.

**2. O'Donnell.** In *O'Donnell*, the United States Court of Appeals for the Washington, D.C. Circuit considered the constitutionality of Washington, D.C.'s Minority Contracting Act, which governed the award of DC Government construction contracts from 1977 to 1992. The act required District agencies to “allocate its construction contracts in order to reach a goal [that] 35% .... be let to local minority business enterprises.” The court's decision in *O'Donnell* led to the dismantling of the 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. The court held that the constitutional standards set forth in *Croson* apply to contracting programs in Washington, D.C. Specifically:

- Race-based programs cannot simply rely on general allegations of historical or societal racism but, instead, must rest on evidence of racial discrimination in relevant industries.
- Remedial measures—to the extent they have been satisfactorily demonstrated—must be narrowly tailored to achieve program objectives.
- The inclusion of race/ethnic groups for which there is no evidence of past discrimination in relevant industries raises doubts about the remedial nature of race-based programs.
- The scope of remedial efforts must depend on the scope of demonstrated discrimination.

## C. Meeting Legal Requirements

Many organizations have used information from disparity studies as part of determining whether their contracting practices are affected by race- or gender-based discrimination; designing efforts to encourage the participation of POC- and woman-owned businesses in their work; and ensuring their use of any race- or gender-conscious measures meets the strict scrutiny and intermediate scrutiny standards, respectively. Various aspects of the 2022



Government of the District of Columbia Disparity Study specifically address requirements the United States Supreme Court and other federal courts have established around POC- and woman-owned business programs and race- and gender-conscious measures:

- The disparity study includes extensive econometric analyses and analyses of anecdotal evidence to assess whether any discrimination exists for POCs, women, and POC- and woman-owned businesses in the RGMA and whether DC Government, Events DC, and UDC are actively or passively participating in that discrimination.
- The study accounts for various characteristics of the prime contracts and subcontracts that district agencies, Events DC, and UDC award, as well as the specific characteristics of businesses working in the RGMA, resulting in precise estimates of the degree to which POC- and woman-owned businesses are *ready, willing, and able* to perform that work.
- The study includes assessments of whether POC- and woman-owned businesses exhibit substantial statistical disparities between their participation in and availability for district agencies,' Events DC's, and UDC's contracts and procurements, indicating whether any inferences of discrimination exist for individual race/ethnic or gender groups.
- The study includes various recommendations to help DC Government, Events DC, and UDC consider whether using race- and gender-conscious programs is appropriate as part of their contracting and procurement and how to do so effectively and in a legally-defensible manner.

# CHAPTER 3.

## Marketplace Conditions

Historically, there have been myriad legal, economic, and social obstacles that have impeded persons of color (POCs) and women from starting and operating successful businesses. Barriers including slavery, racial oppression, segregation, race-based displacement, labor market discrimination, and discriminatory government policies have produced substantial disparities for POCs and women, the effects of which still impact them today. Those barriers have limited opportunities for POCs in terms of both education and workplace experience.<sup>1, 2, 3, 4</sup> Similarly, many women were restricted to either being homemakers or taking gender-specific jobs with low pay and little chance for advancement.<sup>5</sup>

POC groups and women in Washington, D.C. have faced similar barriers. For example, Black Americans were forced to live in racially segregated neighborhoods and send their children to segregated schools.<sup>6, 7</sup> Racially restrictive covenants barred the sale or rental of housing to Black Americans and were used to legally enforce housing segregation.<sup>8</sup> Black Americans were also forced to use separate facilities at area restaurants.<sup>9</sup> Disparate treatment also extended into the labor market. Black Americans were concentrated in low-wage work with few opportunities for advancement.<sup>10, 11</sup> Following the segregation of federal government offices in 1913 by the Woodrow Wilson administration, Black American supervisors were demoted to ensure they did not oversee any white office workers or manual laborers.<sup>12</sup>

In the middle of the 20<sup>th</sup> century, many reforms opened up new opportunities for POCs and women nationwide. For example, *Brown v. Board of Education*, *The Equal Pay Act*, *The Civil Rights Act*, and *The Women's Educational Equity Act* outlawed many forms of discrimination. Workplaces adopted personnel policies and implemented programs to diversify their staffs.<sup>13</sup> Those reforms increased diversity in workplaces and reduced educational and employment disparities for POCs and women<sup>14, 15, 16, 17</sup> However, despite those improvements, POCs and women continue to face barriers—such as incarceration, residential segregation, and disproportionate family responsibilities—that have made it more difficult for them start and operate businesses successfully.<sup>18, 19, 20, 21</sup>

Federal Courts and the United States Congress have considered barriers POCs, women, and POC- and woman-owned businesses face in a local marketplace as evidence for race- and gender-based discrimination in that marketplace.<sup>22, 23, 24</sup> The United States Supreme Court and other federal courts have held that analyses of conditions in a local marketplace for POCs, women, and POC- and woman-owned businesses are instructive in determining whether agencies' implementations of POC- and woman-owned business programs are appropriate and justified. Those analyses help agencies determine whether they are *passively participating* in any race- or gender-based discrimination that makes it more difficult for POC- or woman-owned businesses to successfully compete for government contracts and procurements. Passive participation in discrimination refers to agencies unintentionally perpetuating race- or gender-based discrimination simply by operating within discriminatory marketplaces. Many courts have held

that passive participation in any race- or gender-based discrimination establishes a *compelling governmental interest* for agencies to take remedial action to address such discrimination.<sup>25, 26, 27</sup>

BBC-Pantera-Tiber conducted quantitative and qualitative analyses to assess whether POCs, women, and POC- and woman-owned businesses face any barriers in the Washington, D.C. construction; professional services; and non-professional services, goods, and supplies industries. The study team also examined the potential effects any such barriers have on the formation and success of businesses as well as their participation in and availability for contracts awarded by the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC). We examined local marketplace conditions in four primary areas:

- **Human capital**, to assess whether POCs and women face barriers related to education, employment, and gaining experience;
- **Financial capital**, to assess whether POCs and women face barriers related to wages, homeownership, personal wealth, and financing;
- **Business ownership** to assess whether POCs and women own businesses at rates comparable to that of white men; and
- **Business success** to assess whether POC- and woman-owned businesses have outcomes similar to those of businesses owned by white men.

For most analyses, the study team defined the Washington D.C. area as the geographical area including Washington, D.C.; Montgomery and Prince George’s Counties in Maryland; Fairfax and Arlington Counties in Virginia; and the cities of Fairfax, Alexandria, and Falls Church in Virginia. The study team made that determination based on the fact that DC Government, Events DC, and UDC award the vast majority of contract and procurement dollars (92%) to businesses located within that geographical area.

The information in Chapter 3 comes from existing research related to marketplace conditions for POCs, women, and POC- and woman-owned businesses as well as primary research BBC-Pantera-Tiber conducted on current marketplace conditions. Additional quantitative information about marketplace conditions is presented in Appendix C.

## A. Human Capital

Human capital is the collection of personal knowledge, behavior, experience, and characteristics that make up an individual’s ability to perform and succeed in particular labor markets. Human capital factors such as education, business experience, and managerial experience have been shown to be related to business success.<sup>28, 29, 30, 31</sup> Any barriers in those areas may make it more difficult for POCs and women to work in relevant industries and prevent some of them from starting and operating businesses successfully.

**1. Education.** Barriers associated with educational attainment may preclude entry or advancement in certain industries because many occupations require at least a high school diploma, and some occupations—such as in professional services—require at least a four-year college degree. In addition, educational attainment is a strong predictor of both income and

personal wealth, which are both shown to be related to business formation and success.<sup>32, 33</sup> Nationally, POCs lag behind white Americans in terms of both educational attainment and the quality of education they receive.<sup>34, 35</sup> POCs are far more likely than white Americans to attend schools that do not provide access to core classes in science and math.<sup>36</sup> In addition, Black American students are more than three times as likely as white Americans to be expelled or suspended from high school.<sup>37</sup> For those and other reasons, POCs are far less likely than white Americans to attend college, enroll at highly or moderately selective four-year institutions, or earn college degrees.<sup>38</sup>

Educational outcomes for POCs in Washington, D.C. are similar to those for POCs nationwide. The study team’s analyses of the Washington, D.C. labor force indicate that certain POC groups are far less likely than white Americans to earn college degrees. Figure 3-1 presents the percentage of Washington, D.C. workers that have earned four-year college degrees by race/ethnicity and gender. As shown in Figure 3-1, Asian Pacific American (67%), Black American (41%), Hispanic American (28%), Native American (59%), and other race workers (54%) are substantially less likely than white workers (80%) to have four-year college degrees.

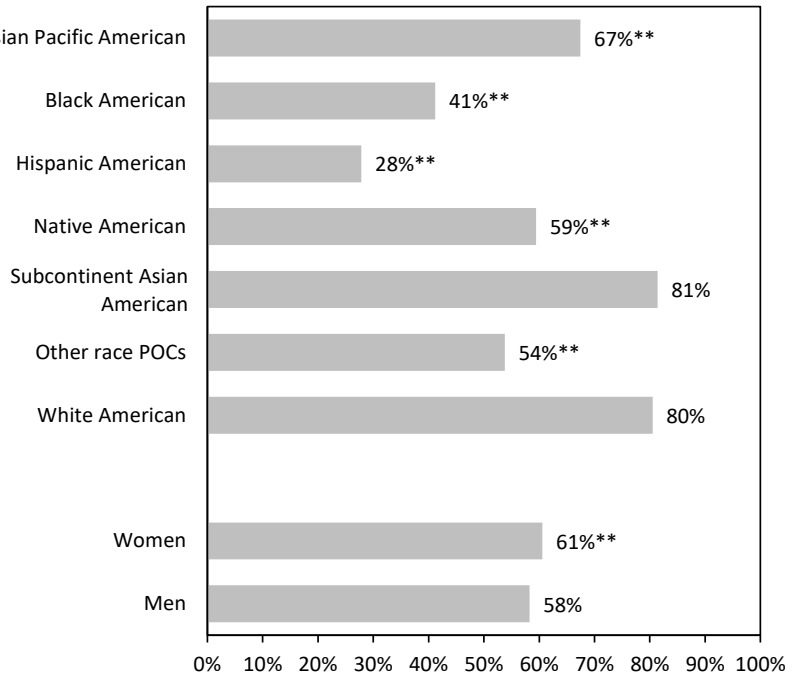
**Figure 3-1.**  
**Percent of Washington, D.C. workers 25 and older with at least a four-year college degree**

Note:

\*\* Denotes that the difference in proportions between the POC group and white Americans or between women and men is statistically significant at the 95% confidence level.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.



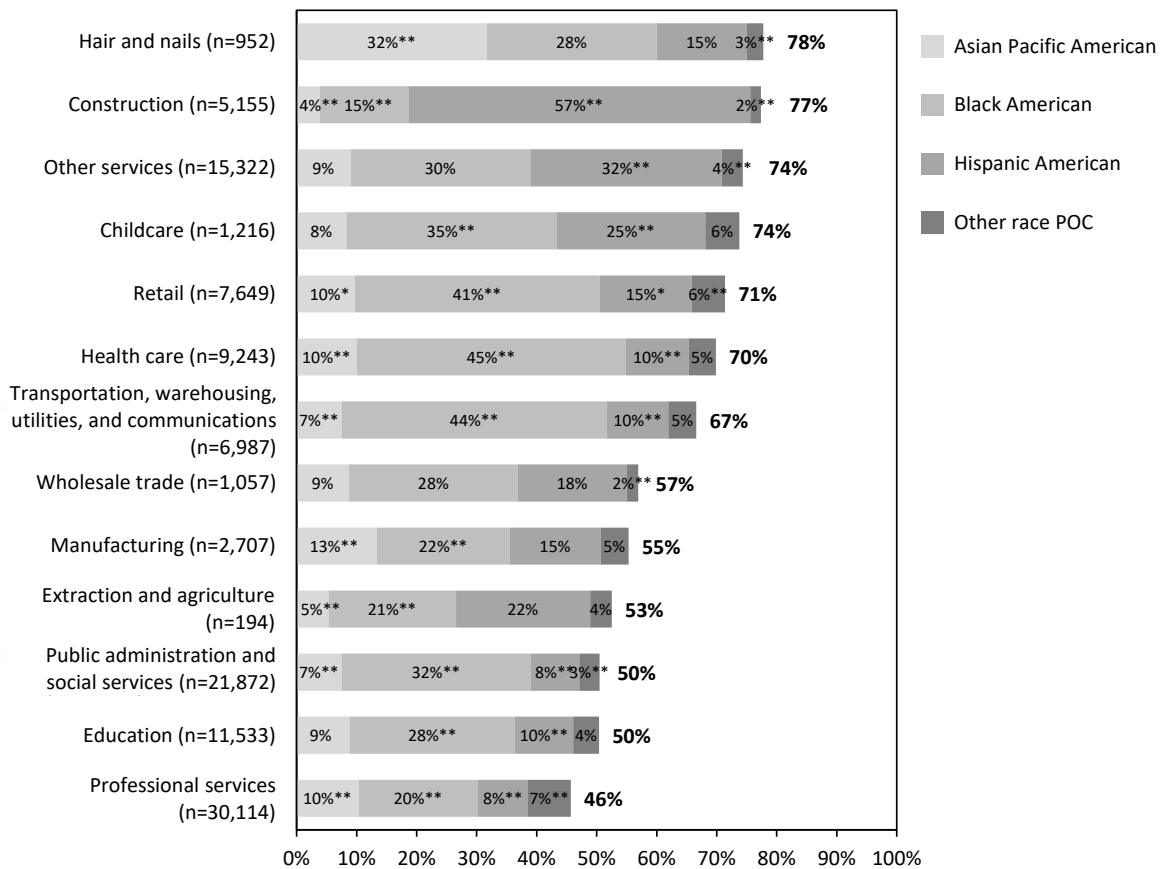
**2. Employment and management experience.** An important precursor to business ownership and success is acquiring direct experience in relevant industries. Any barriers that limit POCs and women from acquiring that experience could prevent them from starting and operating related businesses in the future.

**a. Employment.** On a national level, prior industry experience has been shown to be an important indicator for business ownership and success. However, POCs and women are often unable to acquire that experience. They are sometimes discriminated against in hiring decisions, which impedes their entry into the labor market.<sup>39, 40, 41</sup> When employed, they are often relegated to peripheral positions in the labor market and to industries that exhibit already high

concentrations of POCs and women.<sup>42, 43, 44, 45, 46</sup> In addition, Black Americans are incarcerated at a higher rate than white Americans in Washington, D.C. and nationwide, which contributes to many labor difficulties, including difficulties finding jobs and slow wage growth.<sup>47, 48, 49, 50, 51</sup>

The study team’s analyses of the labor force in Washington, D.C. are largely consistent with nationwide findings. Figure 3-2 presents the representation of POC workers in various Washington, D.C. industries. As shown in Figure 3-2, the industries with the highest representations of POC workers are hair and nails (78%), construction (77%), and other services (74%). The industries with the lowest representations of POC workers are public administration and social services (50%), education (50%), and professional services (46%).

**Figure 3-2.**  
**Percent representation of POCs in various Washington, D.C. industries**



Note: \*\* Denotes that the difference in proportions between POC workers in the specified industry and all industries is statistically significant at 95% confidence level.

The representation of POCs among all Washington, D.C. workers is 9% for Asian Pacific Americans, 30% for Black Americans, 16% for Hispanic Americans, 5% for other race POCs, and 60% for all POCs considered together.

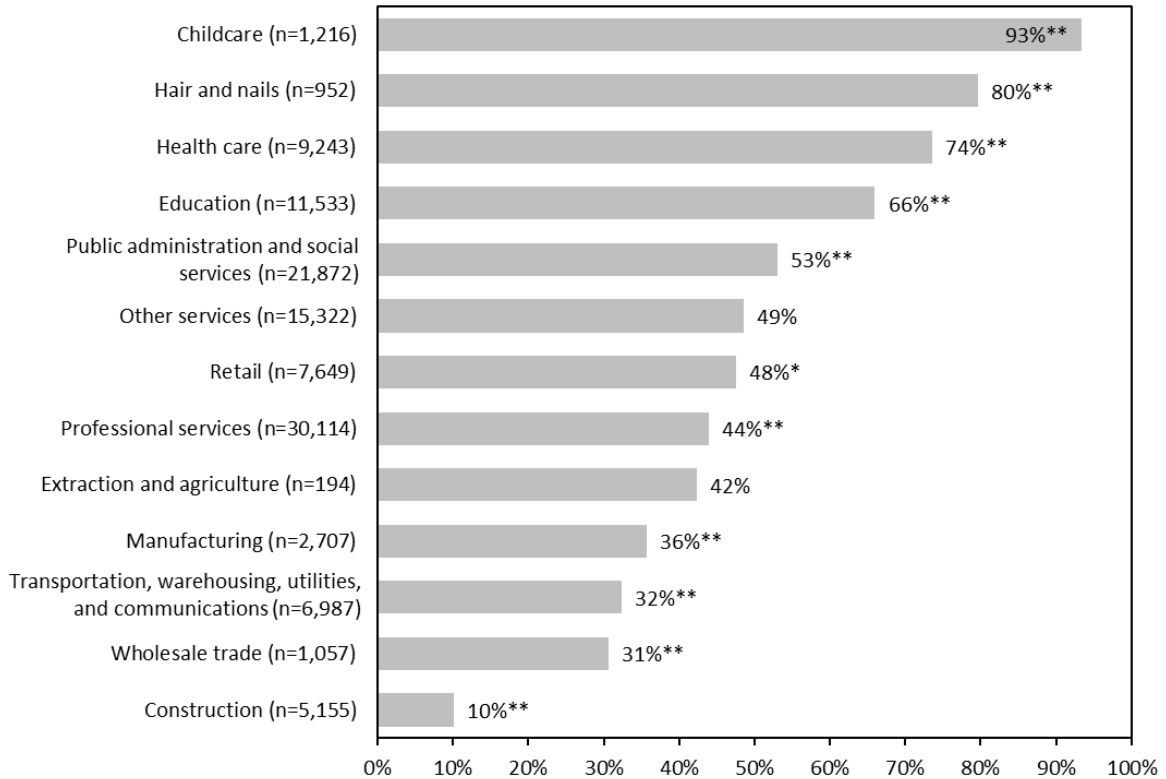
"Other race POC" includes Subcontinent Asian Americans, Native Americans, and other races.

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services. Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure 3-3 indicates that the Washington, D.C. industries with the highest representations of women are childcare (93%), hair and nails (80%), and health care (74%). The industries with the lowest representations of women are transportation, warehousing, utilities, and communications (32%); wholesale trade (31%); and construction (10%).

**Figure 3-3.**  
**Percent representation of women in various Washington, D.C. industries**



Note: \*, \*\* Denotes that the difference in proportions between women workers in the specified industry and all industries is statistically significant at the 90% and 95% confidence level, respectively.

The representation of women among all Washington, D.C. workers is 49%

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services. Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

**b. Management experience.** Managerial experience is an essential predictor of business success, but discrimination remains a persistent obstacle to greater diversity in management positions.<sup>52, 53, 54</sup> Nationally, POCs and women are far less likely than white men to work in management positions.<sup>55, 56</sup> Similar outcomes appear to exist for POCs and women in Washington, D.C. The study team examined the concentration of POCs and women in management positions in the Washington, D.C. construction; professional services; and non-professional services, goods, and supplies industries. As shown in Figure 3-4:

- Smaller percentages of Asian Pacific Americans (9.9%), Black Americans (5.9%), and Hispanic Americans (2.2%) work as managers in the construction industry than white Americans (19.8%).
- Smaller percentages of Asian Pacific Americans (3.9%), Black Americans (2.6%), and Hispanic Americans (3.2%) work as managers in the professional services industry than white Americans (5.7%). In addition, a smaller percentage of women (3.6%) than men (5.6%) work as managers in the professional services industry.
- A smaller percentage of Black Americans (1.2%) and Hispanic Americans (0.4%) work as managers in the non-professional services, goods, and supplies industry than white Americans (3.6%). In addition, a smaller percentage of women (0.4%) than men (1.9%) work as managers in the non-professional services, goods, and supplies industry.

**Figure 3-4.**  
**Percent of non-owner workers who worked as a manager in study-related industries in Washington, D.C.**

Note:

\*\* Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 95% confidence level.

† Denotes significant differences in proportions not reported due to small sample size.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.

Washington, D.C.	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian Pacific American	9.9 % **	3.9 % *	1.9 %
Black American	5.9 % **	2.6 % **	1.2 % **
Hispanic American	2.2 % **	3.2 % **	0.4 % **
Native American	0.0 % †	3.9 % †	0.0 % †
Subcontinent Asian American	25.2 %	5.5 %	0.0 %
Other race POCs	11.2 % †	0.0 % †	3.4 % †
White American	19.8 %	5.7 %	3.6 %
<b>Gender</b>			
Women	8.1 %	3.6 % **	0.4 % **
Men	6.6 %	5.6 %	1.9 %
<b>All individuals</b>	<b>6.8 %</b>	<b>4.8 %</b>	<b>1.2 %</b>

**3. Intergenerational business experience.** Having family members who own businesses is an important predictor of business ownership and business success. Such experiences help entrepreneurs gain access to important opportunity networks, obtain knowledge of best practices and business etiquette, and receive hands-on experience in helping to run businesses. However, nationally, POCs have substantially fewer family members who own businesses and both POCs and women have fewer opportunities to be involved with those businesses.<sup>57, 58</sup> That lack of experience makes it difficult for POCs and women to subsequently start their own businesses and operate them successfully.

## B. Financial Capital

In addition to human capital, financial capital has been shown to be an important indicator of business formation and success.<sup>59, 60, 61</sup> Individuals can acquire financial capital through many sources, including employment wages, personal wealth, homeownership, and financing. If race-

or gender-based barriers exist in financial capital markets, POCs and women may have difficulty acquiring the capital necessary to start, operate, or expand businesses.

**1. Wages and income.** Wage and income gaps between POCs and white Americans and between women and men are well-documented throughout the country, even when researchers have statistically controlled for various personal factors ostensibly unrelated to race and gender.<sup>62, 63, 64</sup> For example, national income data indicate that, on average, Black Americans and Hispanic Americans have household incomes less than two-thirds those of white Americans.<sup>65, 66</sup> Women have also faced consistent wage and income gaps relative to men. Nationally, the median hourly wage of women is still only 82 percent that of men.<sup>67</sup> Such disparities make it difficult for POCs and women to use wages as a source of business capital.

BBC-Pantera-Tiber observed wage gaps in Washington, D.C. consistent with those that researchers have observed nationally. Figure 3-5 presents mean annual wages for Washington, D.C. workers by race/ethnicity and gender. As shown in Figure 3-5, all relevant groups of POCs in Washington, D.C. earn substantially less than white Americans (\$113,507). In addition, women (\$74,656) earn substantially less than men (\$95,940).

**Figure 3-5.**  
**Mean annual wages**  
**in Washington, D.C.**

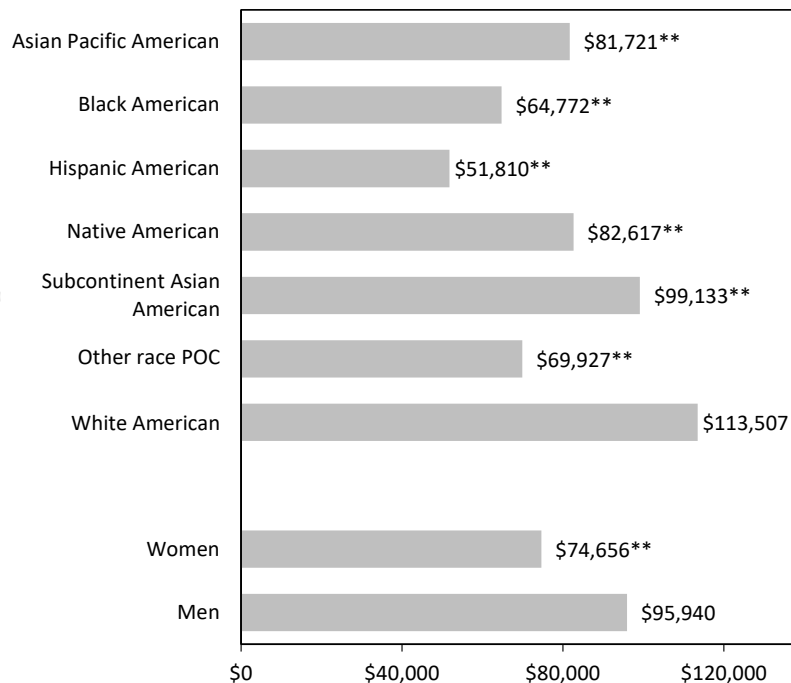
Note:

The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

\*\* Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 95% confidence level.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



BBC-Pantera-Tiber also conducted regression analyses to assess whether wage disparities exist even after accounting for various personal factors such as age, education, and family status. Those analyses indicated that, even after accounting for various personal factors, being Asian Pacific American, Black American, Hispanic American, Native American, Subcontinent Asian American, or other race POC was associated with substantially lower earnings than being white American. In addition, being a woman was associated with substantially lower earnings than being a man (for details, see Figure C-7 in Appendix C).



**2. Personal wealth.** Another important source of business capital is personal wealth. As with wages and income, there are substantial disparities between POCs and white Americans and between women and men in terms of personal wealth.<sup>68, 69</sup> For example, in 2019, Black Americans and Hispanic Americans across the country exhibited average household net worth that was 14 percent and 17 percent that of white Americans, respectively.<sup>70</sup> In addition, approximately one-out-of-five Black Americans and Hispanic Americans in the United States are living in poverty, about double the comparable rate for white Americans.<sup>71</sup> In Washington, D.C., approximately one-out-of-five Black Americans are living in poverty, about quadruple the comparable rate for white Americans. Wealth inequalities also exist for women relative to men. For example, the median wealth of non-married women nationally is approximately one-third that of non-married men.<sup>72</sup>

**3. Homeownership.** Homeownership and home equity have also been shown to be key sources of business capital.<sup>73, 74</sup> However, POCs appear to face substantial barriers nationwide in owning homes. For example, nationally, Black Americans and Hispanic Americans own homes at less than two-thirds the rate of white Americans.<sup>75</sup> Discrimination appears to be at least partly to blame for those disparities. Research indicates that POCs continue to be given less information on prospective homes and have their purchase offers rejected because of their race.<sup>76, 77</sup> POCs who own homes tend to own homes worth substantially less than those of white Americans and also tend to accrue substantially less equity.<sup>78, 79</sup> Differences in home values and equity between POCs and white Americans can be attributed—at least, in part—to the depressed property values that tend to exist in racially-segregated neighborhoods.<sup>80, 81</sup>

POCs appear to face homeownership barriers in Washington, D.C. similar to those observed nationally. BBC-Pantera-Tiber examined homeownership rates in Washington, D.C. for relevant racial/ethnic groups. As shown in Figure 3-6, all relevant groups of POCs exhibit homeownership rates that are lower than that of white Americans (68%).

**Figure 3-6.**  
**Home ownership rates**  
**in Washington, D.C.**

Note:

The sample universe is all households.

\*\* Denotes statistically significant differences from white Americans at the 95% confidence level.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

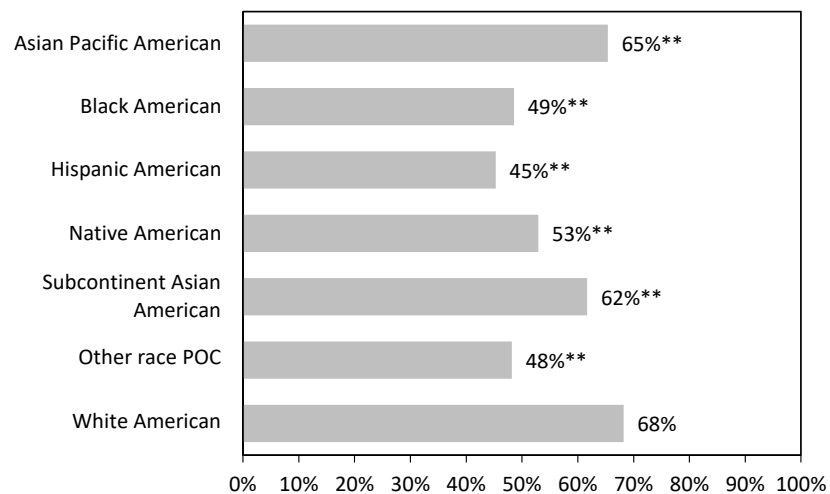


Figure 3-7 presents median home values among homeowners of different racial/ethnic groups in Washington, D.C. Consistent with national trends, homeowners of all relevant racial/ethnic groups own homes that, on average, are worth less than those of white Americans (\$550,000).

**4. Access to financing.** POCs and women face many barriers in trying to access credit and financing, both for home purchases and business capital. Researchers have often attributed those barriers to various forms of race- and gender-based discrimination that exist in credit markets.<sup>82, 83, 84, 85, 86, 87</sup> BBC-Pantera-Tiber assessed difficulties POCs and women face in home credit and business credit markets in Washington, D.C.

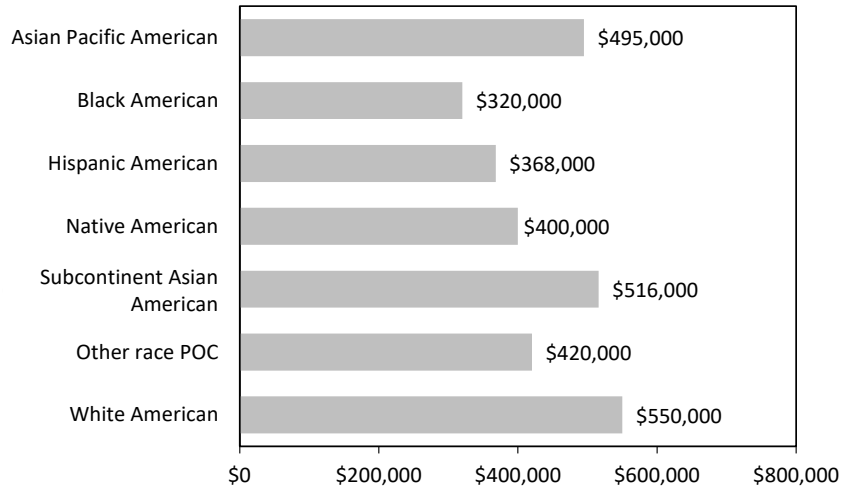
**Figure 3-7.**  
**Median home values in Washington, D.C.**

Note:

The sample universe is all owner-occupied housing units.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



**a. Home credit.** POCs and women continue to face barriers when trying to access credit to purchase homes. Examples of such barriers include discriminatory treatment of POCs and women during pre-application and disproportionate targeting of POC and women borrowers for subprime home loans.<sup>88, 89, 90, 91, 92</sup> Race- and gender-based barriers in home credit markets, as well as the foreclosure crisis, have led to decreases in homeownership among POCs and women and have eroded their levels of personal wealth.<sup>93, 94, 95, 96</sup> To examine how POCs fare in the home credit market relative to white Americans, we analyzed home loan denial rates for high-income households by race/ethnicity in Washington, D.C. As shown in Figure 3-8, Asian Americans (7%), Black Americans (11%), and Hispanic Americans (5%) in Washington, D.C. are denied home loans at higher rates than white Americans (3%). In addition, the study team’s analyses indicate that certain POC groups in Washington, D.C. are more likely than white Americans to receive subprime mortgages (for details, see Figure C-11 in Appendix C).

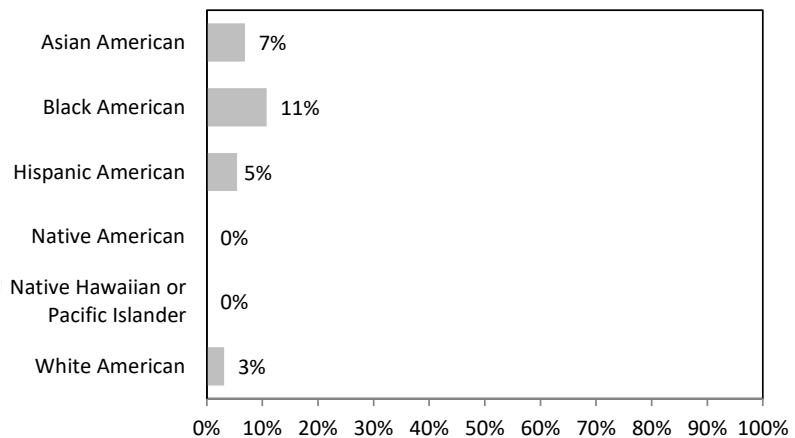
**Figure 3-8.**  
**Denial rates of conventional purchase loans for high-income households in Washington, D.C.**

Note:

High-income households are those with 120% or more of the HUD area median family income.

Source:

FFIEC HMDA data 2019. The raw data were obtained from Consumer Financial Protection Bureau HMDA data tool: <http://www.consumerfinance.gov/hmda/explore>.



**b. Business credit.** POC- and woman-owned businesses face substantial difficulties accessing business credit. For example, during loan pre-application meetings, POC-owned businesses are given less information about loans, are subjected to more credit information requests, and are offered less support than businesses owned by white Americans.<sup>97</sup> In addition, researchers have shown that Black American-owned businesses and Hispanic American-owned businesses are more likely to forego submitting business loan applications because of fears of denial and are more likely to be denied business credit when they do seek loans, even after accounting for various race- and gender-neutral factors.<sup>98, 99, 100</sup> In addition, women are less likely to apply for credit and receive loans of lower value when they do.<sup>101, 102</sup> Without equal access to business capital, POC- and woman-owned businesses must operate with less capital than businesses owned by white American men and must rely more on personal finances.<sup>103, 104, 105, 106</sup>

### **C. Business Ownership**

Nationally, there has been substantial growth in the number of POC- and woman-owned businesses in recent years. For example, from 2012 to 2018, the number of woman-owned businesses increased by 10 percent, Black American-owned businesses increased by 14 percent, and Hispanic American-owned businesses increased by 15 percent.<sup>107, 108</sup> However, Black Americans, Hispanic Americans, and women are still less likely to start businesses than white American men.<sup>109, 110, 111, 112</sup> In addition, POCs and women have been unable to penetrate all industries equally. They disproportionately own businesses in industries that require less human and financial capital to be successful and that already include large concentrations of POCs and women.<sup>113, 114, 115</sup> BBC-Pantera-Tiber examined rates of business ownership in relevant Washington, D.C. industries by race/ethnicity and gender. As shown in Figure 3-9:

- Black Americans (14.5%) and Hispanic Americans (12.5%) own construction businesses at lower rates than white Americans (25.1%), and women (10.5%) own construction businesses at a lower rate than men (17.3%);
- Asian Pacific Americans (9.4%), Black Americans (11.6%), Hispanic Americans (12.4%), and Subcontinent Asian Americans (9.9%) own professional services businesses at lower rates than white Americans (17.4%), and women (13.9%) own professional services businesses at a lower rate than men (15.6%); and
- Black Americans (4.1%) and Subcontinent Asian Americans (3.7%) own non-professional services, goods, and supplies businesses at lower rates than white Americans (13.6%).

BBC-Pantera-Tiber also conducted regression analyses to determine whether differences in business ownership rates exist based on race/ethnicity and gender even after statistically controlling for various personal factors such as income, education, and familial status. The study team conducted those analyses separately for each relevant industry. Figure 3-10 presents the racial/ethnic and gender-related factors significantly and independently associated with business ownership for each relevant industry. As shown in Figure 3-10, even after accounting for various personal factors:

- Being Black American, Hispanic American, or other race POC is associated with a lower likelihood of owning a construction business relative to being white American, and being a

woman is associated with a lower likelihood of owning a construction business relative to being a man.

- Being Asian Pacific American or Subcontinent Asian American is associated with a lower likelihood of owning a professional services business relative to being white American.
- Being Black American, Subcontinent Asian American, or other race POC is associated with a lower likelihood of owning a non-professional services, goods, and supplies business relative to being white American.

**Figure 3-9.**  
**Business ownership rates in study-related industries in Washington, D.C.**

Note:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans, or between women and men is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Washington, D.C.	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian Pacific American	32.3 % *	9.4 % **	14.9 %
Black American	14.5 % **	11.6 % **	4.1 % **
Hispanic American	12.5 % **	12.4 % **	11.7 %
Native American	22.0 % †	20.2 % †	12.4 % †
Subcontinent Asian American	28.2 %	9.9 % **	3.7 % **
Other race POC	10.1 % †	7.4 % †	1.2 % †
White American	25.1 %	17.4 %	13.6 %
<b>Gender</b>			
Women	10.5 % **	13.9 % *	11.2 % **
Men	17.3 %	15.6 %	5.9 %
<b>All individuals</b>	<b>16.6 %</b>	<b>14.9 %</b>	<b>8.4 %</b>

## D. Business Success

A great deal of research indicates that, nationally, POC- and woman-owned businesses fare worse than businesses owned by white American men. For example, Black Americans, Native Americans, Hispanic Americans, and women exhibit higher rates of business closures than white Americans and men. In addition, POC- and woman-owned businesses have been shown to be less successful than businesses owned by white Americans and men, respectively, based on a number of different indicators such as profits and business size (but also see Robb and Watson 2012).<sup>116, 117, 118</sup> The study team examined data on business closures, business receipts, and business owner earnings to further explore business success in Washington, D.C.

**Figure 3-10.**  
**Statistically significant predictors of business ownership in relevant industries in Washington, D.C. (probit regression)**

Note:

The referent is white American for the race variables, and men for the gender variable.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa>.

Industry and group	Coefficient
<b>Construction</b>	
Asian Pacific American	0.33
Black American	-0.26
Hispanic American	-0.19
Other race POC	-1.19
Women	-0.42
<b>Professional services</b>	
Asian Pacific American	-0.29
Subcontinent Asian American	-0.23
<b>Non-prof. services, goods, and supplies</b>	
Black American	-0.65
Subcontinent Asian American	-1.05
Other race POC	-1.13
Women	0.38

**1. Business closure.** BBC-Pantera-Tiber examined the rates of closure among Washington, D.C. businesses by the race/ethnicity and gender of the owners. Figure 3-11 presents those results. As shown in Figure 3-11, Asian American- and Hispanic American-owned businesses in Washington, D.C. appear to close at higher rates (35% and 33%, respectively) than white American-owned businesses (30%). In addition, woman-owned businesses (33%) appear to close at higher rates than businesses owned by men (29%).

**Figure 3-11.**  
**Rates of business closure in Washington, D.C.**

Note:

Data include only non-publicly held businesses.

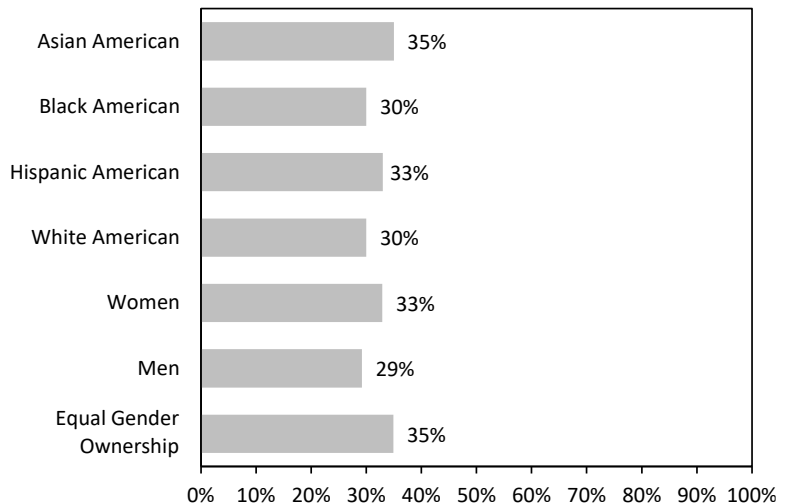
Equal Gender Ownership refers to those businesses for which ownership is split evenly between women and men.

Statistical significance of the results could not be determined, because sample sizes were not reported.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

Lowrey, Ying. 2014. "Gender and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



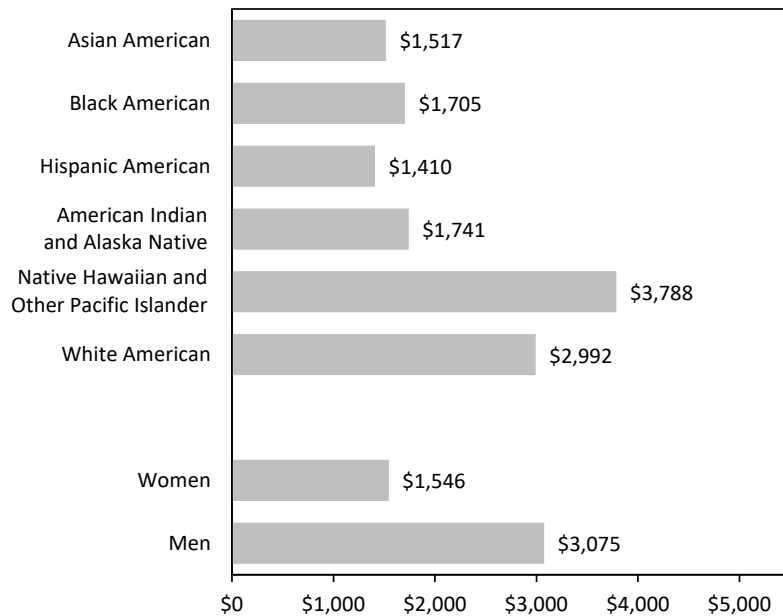
**2. Business receipts.** BBC-Pantera-Tiber also examined data on business receipts to assess whether POC- and woman-owned businesses in Washington, D.C. earn as much as businesses owned by white Americans and men, respectively. Figure 3-12 shows mean annual receipts for businesses by the race/ethnicity and gender of owners. Those results indicate that, in 2018, Asian American-, Black American-, Hispanic American-, and American Indian and Alaska Native American-owned businesses in Washington, D.C. showed lower mean annual business receipts than businesses owned by white Americans (\$3.0 million). In addition, woman-owned

businesses (\$1.5 million) showed lower mean annual business receipts than businesses owned by men (\$3.1 million).

**Figure 3-12.**  
**Mean annual business receipts (in thousands) in Washington, D.C.**

Note:  
 Includes employer firms. Does not include publicly traded companies or other firms not classifiable by race/ethnicity and gender.

Source:  
 2018 Annual Business Survey.



**3. Business owner earnings.** BBC-Pantera-Tiber also analyzed business owner earnings to assess whether business owners who are POCs and women in Washington, D.C. earn as much as business owners who are white Americans and men, respectively. As shown in Figure 3-13:

- Asian Pacific American (\$43,366), Black American (\$37,371), Hispanic American (\$33,673), and Native American (\$31,358) business owners earned less on average than white American business owners (\$68,959); and
- Women business owners (\$40,853) earned less on average than men business owners (\$64,561).

We also conducted regression analyses to determine whether race- and gender-based differences in business owner earnings in Washington, D.C. exist even after statistically controlling for various personal factors such as age, education, and family status. The results of those analyses indicated that, compared to being white Americans, being Black American was associated with substantially lower business owner earnings. Similarly, being a woman was associated with substantially lower business owner earnings than being a man (for details, see Figure C-25 in Appendix C).

**Figure 3-13.**  
**Mean annual business owner earnings in Washington, D.C.**

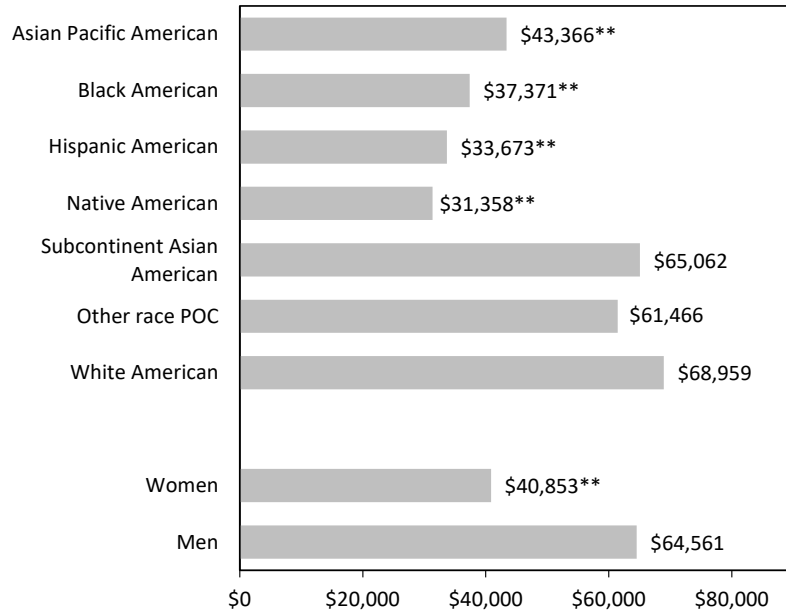
Note:

The sample universe is business owners aged 16 and over who reported positive earnings. All amounts in 2019 dollars.

\*\* Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 95% confidence level.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.



## E. Summary

BBC-Pantera-Tiber’s analyses of marketplace conditions in Washington, D.C. indicate that POCs and women face various barriers in the region. Existing research and primary research we conducted indicate that disparities exist in terms of acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence those disparities exist even after accounting for various race- and gender-neutral factors such as age, income, education, and familial status. There is also evidence many disparities are due—at least, in part—to race- and gender-based discrimination.

Barriers in the marketplace likely have important effects on the ability of POCs and women to start businesses in relevant industries—construction; professional services; and non-professional services, goods, and supplies—and to operate those businesses successfully. Any difficulties those individuals face in starting and operating businesses may reduce their availability for government work and may also reduce the degree to which they are able to successfully compete for government contracts. In addition, the existence of barriers in the marketplace indicates that government agencies in the region may be passively participating in discrimination that makes it more difficult for POC- and woman-owned businesses to successfully compete for their contracts and procurements. Many courts have held that passive participation in any race- or gender-based discrimination establishes a compelling governmental interest for agencies to take remedial action to address such discrimination.

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- <sup>23</sup>*Adarand VII*, 228 F.3d. at 1168-70; *Western States Paving*, 407 F.3d at 992; see *DynaLantic*, 885 F.Supp.2d 237; *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 2015 WL 1396376, appeal pending; *Geyer Signal*, 2014 WL 130909297 at \*14.
- <sup>24</sup>*Adarand VII* at 1170-72; see *DynaLantic*, 885 F.Supp.2d 237; *Geyer Signal*, 2014 WL 1309092 at \*14.
- <sup>25</sup>*City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).
- <sup>26</sup>*Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).
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# CHAPTER 4.

## Anecdotal Evidence Themes

As part of the disparity study, business owners, trade association representatives, and other stakeholders had the opportunity to discuss their experiences working with the Government of the District of Columbia (DC Government), Events DC, the University of the District of Columbia (UDC), and other organizations in the region. BBC-Pantera-Tiber documented those insights and identified key themes about conditions in the local marketplace for person of color- (POC-) and woman-owned businesses. We used that information to augment many of the quantitative analyses we conducted as part of the disparity study to provide broader context for study results and provide explanations for various barriers POC- and woman-owned businesses face as part of DC Government, Events DC, and UDC contracting and procurement. Chapter 4 describes the anecdotal evidence collection process and key themes we identified from that information. We present all the anecdotal evidence we collected as part of the disparity study in Appendix D.

### A. Data Collection

BBC-Pantera-Tiber collected anecdotal information about marketplace conditions; experiences working with DC Government, Events DC, and UDC; and recommendations for program implementation through various means between June 2021 and July 2022.

**1. Public forums.** DC Government and the study team solicited written and verbal comments at six public forums that we held virtually on June 7, June 8, June 9, November 15, and November 17, 2021. In addition, we met with external stakeholders to discuss the disparity study and solicit written and verbal comments on August 23, 2021. Those insights were compiled and analyzed as part of the anecdotal evidence process.

**2. In-depth interviews.** BBC-Pantera-Tiber conducted 40 in-depth interviews with owners and other representatives of Washington, D.C. businesses between January 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. Interviewees included individuals representing construction; professional services; and non-professional services, goods, and supplies businesses. We identified interview participants primarily from a random sample of businesses we contacted during the availability survey process, stratified by business type, location, and the race/ethnicity and gender of business owners.

**3. Availability surveys.** BBC-Pantera-Tiber 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. Five hundred forty-eight (548) business owners and representatives shared their insights on those topics.

**4. Focus groups.** The study team conducted three focus groups with trade association and chamber of commerce representatives on August 20, 2021; March 8, 2022; and March 15, 2022. During each session, participants engaged in discussions and shared their insights about working in the Washington, D.C. marketplace and with public sector and private sector organizations.

**5. Written comments.** Throughout the study, stakeholders had the opportunity to submit written comments regarding their experiences working in the marketplace directly to the study team. Contact information for the study team was available on the disparity study webpage.<sup>1</sup>

## B. Key Themes

Various themes emerged across all the anecdotal evidence BBC-Pantera-Tiber collected as part of the disparity study. We summarize those themes by relevant topic area, along with illustrative quotations. In order to protect the anonymity of individuals and businesses, we coded the source of each quotation by random numbers and prefixes that represent the individual who submitted the comments and the data collection method.<sup>2</sup> We also preface each quotation with a brief description of the race and gender of the business owner and the business type. In addition, we indicate whether each participant represents a CBE, disadvantaged business enterprise (DBE), veteran-owned business enterprise (VBE), POC-, or woman-owned business.

The comments BBC-Pantera-Tiber present in Chapter 4 reflect the views, perceptions, and opinions of the business owners, trade association representatives, and other stakeholders who participated in the anecdotal evidence process. We did not edit them for accuracy or content, aside from making small edits for clarity. We summarized the various themes that emerged from the raw comments we collected to present the viewpoints and beliefs that exist throughout the marketplace, regardless of inaccuracies or falsehoods related to DC Government's, Events DC's, or UDC's actual contracting policies or programs. None of the comments presented in Chapter 4 or Appendix D should be taken to necessarily reflect the study team's own views, perceptions, or opinions or those of DC Government, Events DC, or UDC. In addition, they should not be taken to necessarily accurately represent the actual policies or practice each organization uses.

**1. Growth of business.** Businesses reported that being well-known in the marketplace is a predictor of strong business growth. Those businesses whose growth has not been as steady said that access to capital limited their opportunities. They also commented that national or non-local companies being allowed to become CBE certified has been detrimental to businesses that are *truly* local. Multiple POC- and woman-owned businesses said that their growth has been stymied by their race/ethnicity or gender.

*The Black American woman owner of a construction company stated that the growth of her company is slightly better than industry standards. She said, "I only say slightly better because, again, I'm a native Washingtonian, so I know a lot of people. As a consequence, ... work tends to find me. ... I think [this] is not typical for a company my size, particularly of a woman of color, it*

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<sup>1</sup> <https://dmped.dc.gov/page/district-columbia-disparity-study>

<sup>2</sup> We denote availability survey comments by the prefix "AV," focus group comments by the prefix "FG," public forum comments by the prefix "PT," and written comments by the prefix "WT." In-depth interview comments do not have a prefix.

*just doesn't happen." When asked if the company has ever been denied the opportunity to bid or submit a price quote she stated, "Every day, every day. That's why these [non-local] companies created their own CBEs. That is a way not to be bothered. It's a very effective technique and unfortunately, it's legal." [#1]*

*When asked about the growth of her company compared to others in the industry, the Black American woman owner of a CBE- and DBE-certified construction company stated, "I would say that our growth is definitely a lot slower than the average, considering that this is a male-dominated industry, specifically a white male-dominated industry. I would attribute that pace and growth to the availability of funding to be able to fund projects. ... I think that it is a little bit harder to be able to access that capital as a Black woman." [#8]*

*The Black American woman owner of a VBE-certified professional services company explained, "All I know is that it's very challenging to get into this space, people don't take you seriously as a Black woman in this space. So, the growth of construction is billions, and we command about 0.01% of that." [#10]*

**2. Working with DC Government.** Some businesses consider government organizations to be more political than fair when awarding contracts and procurements, whereas others see the public procurement process as more objective than private sector procurement. Many businesses said that navigating public sector requirements is difficult, and they believe more information on the process and its requirements would be useful. However, some businesses note that there is more information about upcoming opportunities in the public sector than the private sector.

*The owner of a professional services company that specializes in real estate services stated, "In the limited experiences that I have with DC, I find that in order to be successful in winning public contracts in DC, one of two situations needs to occur. ... If you don't either know the people involved and have a good relationship, or you don't have that particular niche with the 'minority' that you need to have for that particular RFP, the odds of getting that job are slim to none." [#24]*

*The owner of a professional services company stated, "Well, generally speaking, private sector work...the person you're working for has a very immediate interest in working with you. They have a specific problem that needs to be solved or something that needs to be done...None of that occurs in public sector ... the selection is supposed to be a non-personal relationship based on objective criteria. Sometimes, in the best of cases, it is like that. If it gets too personal, then it tends to become corrupt, unlike the private sector where it's inherently personal." [#22]*

*The principal of a professional services firm stated, "Pursuing public sector work, there's generally more information readily available. And so, kind of the research or investigation of opportunities and deciding what to target is one kind of thing, generally publicly available information. And we could supplement that by direct outreach. And the private sector more often than not, the only way to get information is through outreach." [#11]*

Businesses expressed mixed feelings about DC Government's contracting and procurement processes. One business found the billing process to be cumbersome, leading to longer payment timelines. In addition, multiple businesses expressed frustration when trying to get licenses and permits through DC Government, as they generally find the organization to be unresponsive and

especially so during the pandemic. Some businesses said learning about DC Government work is also a barrier. However, other businesses found DC Government's turnaround time to award work to be faster than other agencies.

*The owner of a professional services company that specializes in real estate services stated, "So in DC you need a BBL [basic business license]. So right now, I'm having difficulty, because I have a client who purchased a property and he's having me manage it, and DC has not issued the BBL...Nobody's responsive and we can't get anybody on the phone and no one will actually even talk to me because they say I'm not the owner of the property, even though I've provided the management agreement." [#24]*

*The Black American woman representative of a CBE- and DBE-certified professional services firm noted that learning about work can be a challenge. She stated, "[Department of General Services] used to give announcements when they put out new RFPs. A lot of places no longer do that. You just kind of have to monitor the sites, basically have somebody watching the sites every other day for new opportunities, versus getting pinged or getting some announcement or any information like that." [#4]*

*The Asian American owner of a construction company noted a downside when working with DGS. He explained, "Right now it's sometimes their staff does not understand the construction industry or do not understand the process. I'm experiencing that on a current project right now. I think they have a very fair system. It's evolved over many years and it changes based on administration. That's [the] only downside." [#38]*

**3. CBE Program.** Some businesses expressed concern over CBE contract goals and subcontracting minimums, noting that market capacity may not exist to meet high goals. However, others found the goals and mandatory subcontracting minimums are treated as the "ceiling" of participation, when instead they should be treated as the "floor," as sufficient capacity does in fact exist in the market. Others said that the tension between the goals and low bid requirements hinders their ability to meet goals and give meaningful portions of work to CBEs. Some businesses also said they would like information on how goals are set relative to market capacity and encourage DC Government to conduct regular assessments to ensure goals match the types of work CBEs perform.

*The principal of a professional services firm believes DC Government should incorporate some of Maryland's programs because, "they seem to be the most helpful in ensuring that MBE and WBE firms get work, because at least for the work that we pursue, it seems to me that there's maybe, I don't know if it's more of a direct emphasis, but a greater focus on MBE, WBE, et cetera, versus lumping them in with small business." [#11]*

*A focus group participant stated, "Sometimes when you are looking at cost efficiencies and cost savings, you don't realize them by utilizing CBEs with the preference points. At times, their procurements may end up being higher, but because of the legislation, you're choosing them because you want to comply with the local requirements that may not be the most cost-effective thing for the district to do." [PFG2#5]*

*The representative of an Asian American owned goods and services firm stated, "Well, I think that the one recommendation I would have, and it would take some work, but is that there needs to an understanding of the existing marketplace of... I was just going to say certified*



*small businesses of all those different categories we've mentioned. What their skills are and to marry it up with the work that's being done. What ends up happening is that there are these kind of threshold goals that are set for projects. We're going to hit 50% CBE or 60% CBE. And there's no correlation between how much of that work on that project can actually be done by CBE firms and what's in the marketplace." [#19]*

*The Hispanic owner of a construction company expressed that local requirements are barriers. He noted, "Stipulating on the whole CBE requirement, especially when you are needing of a special skillset, you need to be more realistic. Or the District ... need to be more realistic in the sense of like, 'Hey, you want these companies to reach X percent.' Again, that's fine. But how about we start paying them more? How about you start telling the contractor, 'Hey, we don't care if the project is going to cost us an additional \$200,000, \$300,000, as long as you're paying these individuals what they deserve in order for them to be X, Y, Z.' That's the problem." [#15]*

Most businesses found the CBE certification process to be straight forward and easy to complete. However, some perceive oversight of the legitimacy of businesses during the process to be relatively lax, leading to fronts and fraud. In addition, other businesses commented that the CBE certification lumps businesses of different sizes together, burying microbusinesses in the pool.

*The Black American owner of a CBE goods and services firm noted, "It was relatively easy. It's the same basic questions that any certification format takes. They've even improved the recertification process where it's not as laborious as it was before. They've kind of streamlined a lot of it." [#39]*

*The Black American woman owner of construction company feels, "[DC Government] needs to find a way of making sure that the companies that are getting certified are legit, that they're more than a shell company, that they're a true legitimate company." [#1]*

*The Black American owner of a construction company believes additional categories would help subcontracting minimum requirements, stating, "And they need to have a new category because they need to talk about microbusinesses and disadvantaged businesses because them lumping us in these categories is not doing us any justice when you start breaking down the data." [#5]*

Many businesses noted benefits to CBE certification. Prime contractors noted that CBE-certified subcontractors generally have strong back-of-the-house practices and generally "have their stuff together." Some CBE-certified companies said that they are offered more opportunities to bid on projects because of their certification, and it levels the playing field between small, local companies and their larger, national competitors. They said that just being listed in the DSLBD database is beneficial, as it advertises a company to other businesses looking for potential partners. Some businesses remarked that the DSLBD office performs outreach that some find to be extremely successful. However, others said that certain wards receive less attention than others.

*The Asian American owner of a construction company noted his company has directly benefited from CBE certification. He stated, "I would say all of my work has been because I'm a CBE." [#38]*

*The Black American woman representative of a CBE- and DBE-certified professional services firm noted, "The benefit is that as a local firm, we are in a sense guaranteed some opportunities on all of the DC Government contracts, whether it be as a prime or a sub-consultant. So even if the project is too large for us to prime, we still know that there's an opportunity to win a place on a team of a national firm that may be going after the opportunity." [#4]*

*The Black American owner of a CBE-certified construction company noted he will not work with subcontractors that "are not good." He also noted that certified firms "seem to have their stuff in order." [#2]*

*A focus group participant stated, "We found out that there's a need for greater outreach through CBEs that are in wards 7 and 8. And also, a need for greater outreach to Hispanic-owned CBEs. I think that Black-owned CBEs are doing quite well in terms of accessing opportunities and resources. But for CBEs in those wards, those underserved areas of wards 7 and 8, and also the Hispanic-owned CBEs, there should be more targeted outreach." [FG1#4]*

Some businesses suggested that DC Government should focus on truly local businesses and build up their capacities and expertise rather than focusing on national companies. They said that outreach to build awareness of existing programs would benefit the contracting community. They suggested that DC Government could support CBEs with more notifications of potential programs or by reminding them when their certification is about to expire.

*The Black American woman representative of a CBE- and DBE-certified professional services firm stated that DC could be more involved in promoting truly local CBEs. She stated, "Well, I think the District of Columbia could be more earnest in their desire to build homegrown DC-based firms, whether they are minority or not. If they originated in the District and have shown a strong history in the area, there should be some sort of an investment in those firms that want to do good and maintain their business here. I think that even though the agencies put forth what they consider an earnest effort to encourage minority firms to team together or, excuse me, CBE firms to team together and go after projects, we are still seeing significant evidence that there's a preference for a national firm..." [#4]*

*The Black American woman representative of a CBE- and DBE-certified professional services firm feels, "Well, the District has an enormous budget. So, I would say more focus needs to be placed on how to utilize the resources to support all of the certifications or classifications underneath the CBE certification, making sure that there's funding allocated or resource for each of those areas, since they're there. ... And then making firms aware of the opportunities. I know that in previous years they had the green book, but it would behoove them to have at least two workshops a year, and maybe at the start of the fiscal year and then midway through, to help local firms figure out where they can find opportunities." [#4]*

*The Black American owner of a CBE goods and services firm noted, "The biggest thing that I have found helpful that DC is starting to do, and occasionally it is a little overkill, but the communication of them letting us know, 'Hey, your license is about to expire, you've got six months.' ... Because your CBE is what, two years, something like that. So, when it's time to renew, that's not even on your mind ... if you're not keeping up with it. So, you get that little email that says, 'Hey, it's time for you to get your paperwork together,' or 'Hey, you need to make sure this gets done.' ... They've gotten really good with that, and I think somebody was listening to one of these type of surveys. So that would be my recommendation, just to keep up*

*the communication with the small businesses, especially the CBEs, so that we can stay in the loop.” [#39]*

**4. Doing business as a prime contractor or subcontractor.** Multiple businesses expressed challenges building a team, either because they do not know other businesses with which to team or teams are already built by the time they hear about a project. Some noted that DSLBD’s database of CBEs is a useful tool to find potential partners, whereas others have prior relationships on which they rely to build project teams. Some businesses also expressed a need for more focused relationship building and networking, especially when there are CBE contract goals in place. Some businesses thought a “clearinghouse” where prime and subcontractors can connect and advertise specific opportunities would be useful. Pre-bid meetings are also seen as a useful tool to connect with potential partners.

*The Asian American owner of an MBE/WBE professional services firm explained, “I think what helps will be having more networking and matchmaking events so that we, the DBE, MBE, WBEs, and VBEs can see what the prime firms or what government agencies are looking for and fill in the niche. Also, it helps to have all the DBEs, WBEs, and MBEs, and VBEs to build relationships and connections between each other. If there are SBE contracts set aside, then we can team and collaborate and grow together.” [#12]*

*The Black American woman representative of a CBE- and DBE-certified professional services firm noted that pre-bid meetings were beneficial, because they allow for the company to market themselves to prime contractors. She reasoned, “We are a subconsultant in more cases than not. So, we need to know who’s interested in proposing on these projects. So, pre-proposal meetings help us to see who is looking to prime so we could reach out to them to be considered as a subconsultant. [#4].*

*The Black American owner of a professional services firm believes, “I think it kind of goes to what I was suggesting about having some sort of a resource, will be able to provide information on the potential, other vendors that one could partner with on jobs and kind of a little network of their subcontractors where they could get like a message board or where they could exchange information.” [#7]*

**5. Potential barriers to business success.** Many businesses noted that access to capital is central to many barriers that exist to business success. They indicated that the cost to start a business is high, and once started, the cost to attract and retain quality employees is a major expense. They remarked that without solid financial backing, access to inventory is limited, bonding capacities are lower, and businesses cannot hire the support required to apply for more loans or certification. Other businesses mentioned delayed payments as well as equipment and software costs can also be barriers to success. In addition, they said that without proper financial backing, transitioning from working as a subcontractor to working as a prime contractor can be very difficult. Multiple businesses stressed the importance of financing assistance to enhance the availability and participation of small businesses for government work. Suggestions to overcome the financial barrier included working closely with banks to lessen requirements; developing relationships between DC Government, banks, and contractors to facilitate loans and lines of credit; and providing technical support related to completing loan documentation.

*The Black American woman owner of a CBE/DBE certified construction company stated, "Honestly, I would say access to capital. I think that that's the biggest [barrier]. You need money in order to start a business. You need money, especially in the District, to be able to register and pay all of the fees that are necessary to even get a business incorporated or established. And then whatever startup funds that would be necessary to even perform projects. And then there is basically being able to have funding to sustain you during the time period that you are performing a job to getting paid on a job. It's very important that you're able to cover your overhead and pay your expenses without having to worry about how you're going to do that until the next time you're going to see an influx of money." [#8]*

*The Black American owner of a construction company said that the cost of labor can be a barrier. He noted, "... Labor is very, very expensive. Labor is pretty much one of the most expensive business expenses for a business owner. So yeah, if you don't have access to capital to scale up your operations for you to be able to employ and maintain good talent, you can't compete." [#5]*

*The Black American woman owner of a certified VBE and DVBE professional services company believes DC Government could provide more technical assistance regarding loan preparation especially in regard to reviewing loan applications before they are submitted. She stated, "No one literally reviews the application before and says, 'Oh, that looks good. ... Or you might want to change this, or this is some good language that you should use.'" [#10]*

Some businesses indicated that, due to the pandemic, estimation has become less reliable and more difficult. Price points change regularly, and prices that were given one day may change dramatically the following week. In addition, some businesses said that estimating is a technical skill not all business owners have, and there is a cost associated with hiring estimators that small businesses may not be able to absorb. Multiple businesses suggested that mentorship, workshops, and other trainings are useful methods to overcome barriers associated with estimating.

*The woman representative of an MBE-owned goods and services business explained, "... all industry, and especially this industry, is ever changing, especially now with all this shortage and prices being driven up. In fact, we have an estimate coming in on Monday, so we have no clue as to how it affects what the prices should be. [Supplies and materials costs] seemed to be moving 30 and 40 percent and some ... 50 percent higher." [#29]*

*The Black American owner of a professional services firm noted that the best way to overcome barriers related to estimating would be through mentoring and technical assistance. He stated, "I mean, with the mentoring and coaching and then technical assistance, I think that that would form a sort of support structure that could help prospective businesses." [#7]*

*The owner of a goods and services company explained, "[Estimating] is a big barrier for me. ... If you do it on a [time and materials] basis, having material, that's the best thing to do. But if you're trying to do work, you better have a pretty good idea estimating on that. That's my downfall, anybody's downfall, because you can't estimate. I can still win a million dollars for a contract that's probably going to take two million dollars to deliver. And that's a killer. That's a big killer." [#28]*

Many businesses said that learning about work and having insufficient time to respond to solicitations is a common barrier. They said that increasing the amount of time a solicitation is open would benefit small businesses, with one business suggesting that all competitive solicitations should remain open for more than 30 days. Some businesses said that forecasting upcoming solicitations and providing information on which businesses won past contracts could allow small companies to better position themselves to respond to solicitations and build competitive teams. Some businesses remarked that a centralized system where solicitations would be posted would also benefit companies. Some businesses indicated that DC Government does a poor job of advertising opportunities and sending notices to relevant businesses.

*When asked if DC Government could improve its bidding process, the representative of a professional services firm stated, "At least my experience has been that the way they're notifying [businesses of opportunities] is by sending emails to certain CBE Companies versus publishing them up on a publicly acceptable website. So as an example, the state of Virginia has eVA, and that is a web-based environment. And anybody that wants to can use the search engine, you can find what the requirements are for specific locations or specific types of technology, or work, or whatever. And also, all the criteria that they're going to use is published out there on the portal. For us, we don't know what the criteria is or what the requirements are, unless somebody shares an email with us. And so that limits our ability to be able to offer our services or our products to the District." [#16]*

*The principal of a professional services firm stated, "So just in terms of notification, the other public entities in the area, talking about Virginia and Maryland, each have a state system of notification for public procurement that I would say we found to be much more reliable than what anybody in DC does." [#11]*

*The Black American woman owner of a MBE, SBE, SDVOSB professional services company believes more lead time should be given in order for small companies to respond to solicitations effectively. She stated that, "Maybe more time. We see a lot of short [timed] opportunities come out. And so, the smaller businesses just doesn't have the manpower or the ... we just can't scramble." She further elaborated that lead times ranging between, "a minimum of 30 and 90 [days]" would be beneficial. [#6]*

Multiple businesses view prequalification requirements as a method for agencies to exclude certain companies and tailor opportunities for others. Some indicated that a focus on size, financial ability, and past performance—although considered valuable by some businesses—may not translate to better performance on a particular project. They said that past performance is often a major challenge, as the requirements may be limited in timeframe and focus heavily on similarities among agencies rather than similarities in work. Some businesses suggested that company experience should be balanced with individual experience—especially for new companies—as a business owner may have many years of experience, but the company has yet to perform on a contract.

*The Black American owner of a professional services firm feels restrictive contract specifications are a barrier. He noted that, "I believe a lot of those restrictions and limitations are made just to [whittle] the number down to a few companies as possible." [#7]*

*The Black American owner of a construction company believes prequalification requirements are a barrier when they do not take the owner's experience into consideration: "So even for me,*

*as a plumber contractor, some of these contracts come out and they're very attainable, but then when you get to the qualification aspect of it, it can almost eliminate you because it's just like, 'Well, the business hasn't been an operational [one] for five years,' but the plumber, the owner has been a plumber for 20 years. ... So yeah, prequalification, sometimes it turns me away from bidding on certain projects that I probably could win." [#5]*

*The representative of a professional services SDVOB company explained, "Let me give you an example, there are times when as a [prequalified business], you have to meet a certain financial size standard. And so, what that does is that precludes smaller or newer businesses ... from even being able to bid on the contract. So, there have been several times where we could have delivered to the customer ... but they put in their [solicitation] that we had to be at least \$10,000,000 a year in annual revenue. And we have not hit that number yet. And so, we were not able to respond." [#16]*

Multiple businesses said that the "paid-when-paid" model puts many subcontractors at the whim of prime contractors in terms of receiving payment for completed work. They said suppliers and subcontractors who must provide their own supplies must pay for them upfront and wait for reimbursement from prime contractors who in turn have to wait for payment from agencies. They said that such delays can put stress on small businesses' ability to maintain healthy cashflow. Some businesses indicated that subcontractors could be better supported by various efforts, including notifications of payment from the organization to the prime contractor, organization follow up with subcontractors on payment status (perhaps on an electronic platform), mandatory payment timelines, and contract-based lending to cover operating costs.

*The Asian American owner of an MBE/WBE professional services firm explained, "I think what Maryland DOT is doing can be helpful. What they're doing is to have all the subconsultants submit ... payment reports so that they can track if there's any aged invoice that is still outstanding. There are people who are there at MDOT, their responsibility or their job is to protect the subs to ensure they get paid timely." [#12]*

*The owner of a professional services company stated, "One of the reasons that I ceased even considering ... DC government is that they either pay late or don't pay at all. DC government has a rotten reputation for not paying properly." [#22]*

*A representative from a professional services firm stated, "On the payment method: It should be 100 percent electronic transfer and they should use that. And also, they should shorten the time [between invoice and payment]. So, since they already have dollars available before they award the contract, they should not delay in paying on the invoices that they validate." [#16]*

Many businesses noted that there are many large contracts and procurements that are far beyond their ability to bid on that could be broken up into smaller units and awarded on a multiple-award basis. They indicated that multiple-award projects could benefit smaller businesses that typically perform as subcontractors, giving them more opportunities to perform as a prime contractor.

*The Black American woman owner of a MBE, SBE, SDVOSB professional services company feels multi-award projects could be beneficial to small businesses. She stated, "I think multi-award would do it, because then we could take a piece of the pie. Or mandating that the larger ones*

*have to work, collaborate. But I think, again, multi-award would be the best option, because then we'd get an opportunity ... ." [#6]*

*The Asian American owner of an MBE/DBE professional services firm explained, "Allowing firms to bid on particular portion of a contract, what they feel comfortable. Let's say they have a large job. They can only bid on the survey part. We don't have to bid on the design part. Government, if they split out in six sections... 'We need survey, we need design data...' then we can bid independently on the survey part instead of trying to get on someone's team." [#36]*

*The Black American owner of an MBE goods and services firm noted, "Our small size is an obstacle for government work. There's a lot of paperwork that needs to be completed to make a good presentation and just haven't had the manpower to go after that, and then some of the contracts are too big for us to [compete]." [#32]*

Multiple businesses expressed frustration over the challenges they face building up the experience and expertise of their companies. Some businesses said that startup assistance focused on building business acumen would be beneficial. Multiple businesses mentioned the need for more technical assistance in proposal and bid writing as well.

*The Asian American owner of a construction company stated it would be helpful if there were "more programs which kind of define what is expected in response to an RFP by different agencies." [#38]*

*The Black American owner of a professional services firm believes a single resource would be helpful in overcoming barriers associated with building up experience and business acumen. He stated, "If there is ... a business coach or a mentor that aligns with the types of projects or the types of bidding systems that you want to get into ... even if that person or that organization cannot resolve all your problems, at least they can point you in various directions that you need to go." [#7]*

*A focus group participant stated, "I was just going to say that a lot of the CBEs that we've interacted with, they may have the technical capacity, but they do not have the knowledge or staff to respond to the procurements in the manner in which describes their skill sets [effectively]. So, a lot of times what ends up happening is they fully are capable, but they're incapable of responding to the procurement in the way that would allow them to compete.." [FG2#9]*

*A focus group participant stated, "One of the things that we struggle with is solicitations come out but from a capacity standpoint, we don't have the resources to respond to some of those solicitations. You get a solicitation [that is] 150 pages, and you know your competition is going to submit 200 pages in response. It automatically takes you out. It automatically puts you at a disadvantage. And so how does one play in that scenario so that you can introduce yourself to those players, because it seems like the way these solicitations are written, it's written to exclude smaller firms who are capable, but they don't have the bandwidth of the resources to respond." [FG2 #8]*

**6. Discrimination related to race or gender.** Businesses shared experiences where race or gender adversely affected their ability to obtain work or how prime contractors or organizations treated them. Some businesses also noted that stereotypical beliefs about POC- and woman-owned businesses have hindered their success and that difficulties exist related to breaking into

industries typically dominated by businesses owned by white men. Many business also commented that discrimination seldom occurs openly but rather in subtle ways.

*The Black American owner of an MBE-certified goods and services firm noted, "One thing that happened to us is I know we put in the lowest bid on this government project, and they have a rule and they called me up and they said, 'We have a rule that we can just kill the bid, and put it back out for bid.' And I knew I'm the small, hungry guy, so I put in the small, hungry guy bid. And they said, 'We're not going to take your bid. We're just going to put it back out for bid. You have to go back and do it all over again.'" [#32]*

*The owner of a WBE-certified construction company noted a double standard based on gender when submitting change orders, "Arguing on change orders. If we have any, they'll nitpick it to death, and if [a male] submitted it, it would probably be fine, but we submit it and it would be an argument." [#20]*

*The Black American woman representative of a CBE- and DBE-certified professional services firm believes there is, "...a conscious and unconscious bias against minority and women-owned firms, that they're not adequate enough to perform the work required for the contract. [#4]*

*The Black American woman owner of a professional services company explained that discrimination is, "My every day, basically. Being an immigrant, you lose your entire network of support that you could have, and then being a woman is an additional burden here. ... I'm in IT industry, which means there's not a lot of women in that industry..." [#31]*

*A participant from a focus group stated, "I have to go back to the system of which we live in, that whole issue around systemic racism. You know it's there, but you can't put your finger on it. You know it exists all around us, but you don't necessarily see it in your face. We go back to access to capital, if an opportunity is presented to you, and it makes sense on paper for anyone, any practical logical person can see it makes sense. But for some reason, you can't access it. You know what that is. And if it happens on a consistent basis, you know what it is, but you can't put your finger on. And I think everyone here understands that. No one calls me the N-word in my face. No one tells me that I can't have something because of my color. No one does that. But it happens in the C-suite. It happens when we're not at the table." [FG1#1]*

*The woman representative of an MBE-certified owned goods and services explained, "It's hard in a way in this industry to distinguish outright racism. ... that's a difficult question to say you can outright in this industry identify outright racism, but it does exist." [#29]*

**7. Business assistance programs.** Joint venture agreements are seen by many businesses as useful to leveraging the experience of other companies, creating more prime contracting opportunities for CBEs, fostering mentorship and growth opportunities for newer and smaller companies, and helping smaller companies build the capacity to bid on large contracts or those with restrictive requirements.

*The owner of a DVBE company stated his firm stated, "So right now the joint venture with my partner, we can go up to a hundred million." [#27]*

*The Asian American owner of a construction company stated, "Teaming agreements [can be beneficial], understanding of companies, knowing that they have the capacity to do it. And then also teaming agreements to team up with a larger company." [#38]*



Businesses suggested that all solicitations for D.C.-based public work should be centralized on a single platform. In addition to centralizing procurement, businesses suggested that the platform could also host prequalification information, certification information, and act as a “clearinghouse” to find potential partners for projects.

*The Black American woman owner of a CBE/DBE-certified construction company noted, “I think the system in which the bidding is done, I do think that it should be electronic. I do think that all of the prequalifications and all of that can also be embedded into an electronic system that would even stop you from bidding if you don't have what's required in the prequalifications. And basically, just that all of the questions, anything like that should all be done on a platform that's made available to all bidders ...” [#8]*

*The Black American woman owner of a MBE, SBE, SDVOSB professional services company believes a measure to overcome barriers related to learning about work would be to have, “One place to go for the information to be sent out.” [#6]*

Mentor protégé relationships were mentioned by multiple businesses as an effective method to build up small businesses. However, some businesses indicated that there are challenges with matchmaking and building up mentor pools.

*The Black American woman owner of a construction company noted, “We desperately need a mentor protege program in Washington, DC. And quite frankly, it needs to be a requirement of those companies that have come from other jurisdictions and have grown and utilized our regulations to their benefit without even consideration of anyone in this town. ...” [#1]*

*A focus group participant stated, “And then the other thing that maybe they could do is maybe enforce or suggest a mentor/mentee relationship to then give the smaller firms the opportunity to participate in some of these projects ... . They can then learn from these [mentors], help to put those things in place so then they can play on their own. So that's probably something that I think would be very useful.” [FG2#8]*

*A focus group participant stated, “Mentor, mentee, protege. I agree with [that]. I know in Montgomery County, we had a lot of mentor, mentee, protege programs in place. It was very helpful. I think it's important that the DC government also put some pressure on some of the bigger GCs, a lot more pressure to sub out or work with smaller companies, maybe in procurement, they could maybe unbundle some of the procurement opportunities.” [FG2#4]*

# CHAPTER 5.

## Collection and Analysis of Contract Data

Chapter 5 provides an overview of the contracts and procurements BBC-Pantera-Tiber analyzed as part of the Government of the District of Columbia Disparity Study and the process we used to collect relevant prime contract, subcontract, and vendor data. Chapter 5 is organized in five parts:

- A. Contract and Procurement Data;
- B. Vendor Data;
- C. Relevant Geographic Market Area (RGMA);
- D. Subindustry Classifications; and
- E. Review Process.

### A. Contract and Procurement Data

BBC-Pantera-Tiber collected data related to the contracts and procurements the Government of the District of Columbia (DC Government) awarded during the study period from the Procurement Automated Support System (PASS). Those data served as the basis for key disparity study analyses, including the utilization, availability, and disparity analyses. In addition, we also collected data from two agencies with procurement authority independent of DC Government: Events DC, which provided necessary data from internal spreadsheets it maintains; and the University of the District of Columbia (UDC), which provided data from its Banner and Jagger systems. We collected the most comprehensive data available on prime contracts and subcontracts each organization awarded between October 1, 2016 and September 30, 2020 (the *study period*). We sought data on prime contracts and subcontracts regardless of the race/ethnicity and gender of the owners of the businesses that performed the work or their statuses as certified business enterprises (CBEs). We collected data on construction; professional services; and non-professional services, goods, and supplies prime contracts and subcontracts.

**1. Prime contract data.** DC Government, Events DC, and UDC provided BBC-Pantera-Tiber with electronic data on relevant prime contracts they awarded during the study period. We requested the following information about each relevant prime contract:

- Contract or purchase order number;
- Prime contractor name;
- Prime contractor identification number;
- Description of work;
- Award date;
- Award amount (including change orders and amendments);

- Amount paid-to-date; and
- Funding source (federal or local funding).

Each organization advised us on how to interpret the data they provided, including how to identify unique bid opportunities and how to aggregate related payment amounts. When appropriate and possible, we aggregated associated payments or purchase order line items into larger contract elements (e.g., on work order-type contracts). In instances where payments or line items should not or could not be aggregated, we treated individual payments and line items as stand-alone contract elements.

**2. Subcontract data.** DC Government’s Department of Employment Services (DOES) provided BBC-Pantera-Tiber with data on subcontracts related to some of the prime contracts DC Government and Events DC awarded during the study period. DOES maintains that information for purposes of monitoring compliance with First Source requirements.<sup>1</sup> DOES provided subcontract data for 26 DC Government prime contracts, which accounted for approximately \$1 billion of the contract and procurement dollars district agencies awarded during the study period, as well as for two Events DC prime contracts, which accounted for \$153 million of the contract and procurement dollars Events DC awarded during the study period.

To gather additional subcontract data for DC Government, Events DC, and UDC, we conducted surveys with prime contractors to collect data on the subcontracts associated with the prime contracts each organization awarded to them during the study period that we deemed to likely have included subcontracts based on the sizes and types of work involved. We requested the following information from prime contractors about each subcontract:

- Associated prime contract number;
- Subcontract commitment amount;
- Amount paid on the subcontract as of September 30, 2020;
- Description of work;
- Subcontractor name; and
- Subcontractor contact information.

We requested subcontract data associated with 1,768 DC Government prime contracts, 76 Events DC prime contracts, and 280 UDC prime contracts, accounting for approximately \$6 billion of DC Government contracting dollars, \$161 million of Events DC contracting dollars, and \$76 million of UDC contracting dollars. After the first round of surveys, BBC-Pantera-Tiber sent reminder letters and e-mails to prime contractors that did not respond and worked with DC Government, Events DC, and UDC to continue to contact them directly. Through the survey effort, we collected subcontract data associated with more than \$1 billion of DC Government contracts

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<sup>1</sup>The First Source law is designed to increase the number of Washington, D.C. residents hired on projects funded by taxpayer dollars. D.C. Law 5-93. First Source Employment Agreement Act of 1984.

and procurements, \$12 million of Events DC contracts and procurements, and \$3 million of UDC contracts and procurements.

**3. Prime contract and subcontract amounts.** For each contract element included in our analyses, BBC-Pantera-Tiber examined the dollars DC Government, Events DC, and UDC awarded to each prime contractor and the dollars prime contractors committed to any subcontractors. If a contract did not include any subcontracts, we attributed the contract’s or procurement’s entire award amount to the prime contractor. If a contract or procurement included subcontracts, we calculated the prime contract amount as the total award amount less the sum of dollars committed to all subcontractors.

**4. Contracts and procurements included in study analyses.** Figure 5-1 presents the number of contract elements and associated dollars BBC-Pantera-Tiber included in our analyses.

**Figure 5-1.**  
**DC Government, Events DC, and UDC contracts and procurements included in the disparity study**

Source:  
BBC-Pantera-Tiber from DC Government, Events DC, and UDC data.

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

## B. Vendor Data

BBC-Pantera-Tiber also compiled information on the businesses that participated in relevant prime contracts and subcontracts during the study period, including:

- Business name;
- Physical addresses and phone numbers;
- Ownership status (i.e., whether each business was person of color- (POC-) or woman-owned);
- Ethnicity of ownership (if POC-owned);
- CBE certification status;
- Primary lines of work;

- Business size; and
- Year of establishment.

We relied on a variety of sources for that information, including:

- DC Government, Events DC, and UDC contract and vendor data;
- DC Government’s CBE directory;
- Dun & Bradstreet (D&B) business listings and other business information sources;
- Surveys the study team conducted with business owners and managers; and
- Business websites and other secondary research.

### C. Relevant Geographic Market Area (RGMA)

BBC-Pantera-Tiber used DC Government, Events DC, and UDC data to help determine the RGMA—the geographical area in which agencies spend the substantial majority of their contract and procurement dollars—for the disparity study. As shown in Figure 5-2, the three organizations considered together awarded approximately 92 percent of relevant contract and procurement dollars to businesses located in Washington, D.C. or one of the seven surrounding counties or equivalents: Montgomery and Prince George’s Counties in Maryland; Fairfax and Arlington Counties in Virginia; and the cities of Fairfax, Alexandria, and Falls Church in Virginia. That result indicated that the RGMA for the study should comprise Washington, D.C. and the seven surrounding counties or equivalents. Our analyses—including the availability analysis and quantitative analyses of marketplace conditions—focused on that region.

**Figure 5-2.**  
**Contract and procurement dollars DC Government, Events DC, and UDC awarded to businesses located in the region**

Note:

Although DC Government, Events DC, and UDC awarded relatively small volumes of dollars to businesses located in Alexandria City, Falls Church City, and Fairfax City in Virginia, all three cities are located within Fairfax County in Virginia, so the study team included them as part of the RGMA to maintain its geographical contiguity.

Source:

BBC-Pantera-Tiber from DC Government, Events DC, and UDC data.

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%
<b>Total</b>	<b>91.7%</b>
Other regions	8.3%
<b>Total</b>	<b>100.0%</b>

### D. Subindustry Classifications

For each prime contract and subcontract included in our analyses, BBC-Pantera-Tiber determined the *subindustry* that best characterized the vendor’s primary line of work (e.g., building construction). We determined subindustries based on DC Government, Events DC, and UDC contract and vendor data; surveys the study team conducted with prime contractors and subcontractors; business certification lists; D&B business listings; and other sources. Figure

5-3 presents subindustry classifications for the construction; professional services; and non-professional services, goods, and supplies contracts and procurements BBC-Pantera-Tiber included in our analyses as well as the dollars DC Government, Events DC, and UDC awarded related to each subindustry during the study period.

BBC-Pantera-Tiber combined related subindustries that accounted for relatively small percentages of total contract and procurement dollars into five “other” subindustries: “other construction services,” “other construction materials,” “other professional services,” “other goods,” and “other services.” For example, the dollars that district agencies awarded to contractors for “welding repair” represented less than 1 percent of total dollars we examined as part of the study. So, we combined “welding repair” with construction services that also accounted for relatively small percentages of total dollars into the “other construction services” subindustry.

There were also various contracts and procurements we classified into subindustries that we did not ultimately include in our analyses:

- Purchases and grants DC Government, Events DC, and UDC made with or awarded to government agencies, utility providers, hospitals, or nonprofit organizations (\$11.2 billion for DC Government, \$1.2 million for Events DC, and \$1.8 million for UDC);
- Contracts and procurements that reflected *national markets*—that is, subindustries dominated by large national or international businesses—or subindustries for which DC Government, Events DC, and UDC awarded the majority of dollars to businesses located outside the RGMA (\$859 million for DC Government, \$3 million for Events DC, and \$18 million for UDC);<sup>2</sup>
- Purchases that often include property purchases, leases, or other pass-through dollars (\$5.3 billion for DC Government, \$700K for Events DC, and \$1.5 million for UDC);<sup>3</sup> or
- Types of work not typically included in disparity studies and that account for relatively small proportions of the organizations’ contract and procurement dollars (\$5 billion for DC Government, \$2.2 million for Events DC, and \$8 million for UDC).<sup>4</sup>

## E. Review Process

DC Government, Events DC, and UDC reviewed contract and vendor data throughout the study process. BBC-Pantera-Tiber consulted with each organization to discuss the data collection process, review information the study team gathered, and present summary results. We incorporated feedback from DC Government, Events DC, and UDC in the final contract and vendor data used for our analyses.

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<sup>2</sup> Examples of such work include computer manufacturing and proprietary software.

<sup>3</sup> Examples of such work include real estate consultants and apartment building operators.

<sup>4</sup> Examples of industries not typically included in disparity studies include pharmaceuticals and lodging.

**Figure 5-3.  
DC Government,  
Events DC, and UDC  
contract and  
procurement  
dollars by  
subindustry**

Note:

Numbers rounded to nearest dollar and thus may not sum exactly to totals.

Source:

BBC-Pantera-Tiber from DC Government, Events DC, and UDC data.

Contract type and subindustry	Organization total (in thousands)		
	DC Government	Events DC	UDC
<b>Construction</b>			
Building construction	\$1,918,973	\$75,125	\$27,706
Highway, street, and bridge construction	\$1,181,162	\$0	\$0
Residential building construction	\$189,968	\$100	\$1,880
Electrical work	\$180,711	\$650	\$1,511
Plumbing and HVAC	\$142,395	\$11,073	\$1,570
Landscape services	\$84,316	\$1,936	\$1,560
Other construction services	\$83,671	\$14,296	\$1,343
Developers and operative builders	\$64,572	\$0	\$0
Other construction materials	\$59,556	\$10,916	\$76
Insulation, drywall, masonry, and weatherproofing	\$39,520	\$4,563	\$0
Excavation, drilling, wrecking, and demolition	\$38,009	\$5,654	\$0
Water, sewer, and utility lines	\$35,417	\$0	\$0
Remediation and cleaning	\$31,620	\$0	\$0
Painting, striping, and marking	\$21,184	\$100	\$0
Roofing	\$15,104	\$0	\$0
Trucking, hauling and storage	\$7,699	\$399	\$0
Windows and doors	\$6,690	\$1,635	\$0
Electrical equipment and supplies	\$6,159	\$3,039	\$387
<b>Total construction</b>	<b>\$4,106,726</b>	<b>\$129,485</b>	<b>\$36,033</b>
<b>Professional services</b>			
IT and data services	\$1,082,822	\$6,023	\$5,139
Engineering	\$292,227	\$1,315	\$3,902
Human resources and job training services	\$221,576	\$950	\$12,320
Construction management	\$147,691	\$75	\$7,716
Finance and accounting	\$130,316	\$0	\$560
Business services and consulting	\$120,173	\$1,565	\$3,599
Medical consulting	\$92,143	\$0	\$0
Other professional services	\$82,758	\$7,306	\$579
Advertising, marketing and public relations	\$72,856	\$10,989	\$2,271
Transportation planning services	\$66,532	\$0	\$0
Medical testing	\$53,356	\$0	\$46
Environmental services	\$49,779	\$353	\$274
Architectural and design services	\$27,694	\$211	\$2,851
Real estate management	\$2,659	\$100	\$351
<b>Total professional services</b>	<b>\$2,442,583</b>	<b>\$28,886</b>	<b>\$39,608</b>
<b>Non-professional services, goods, and supplies</b>			
Transit services	\$271,709	\$100	\$1,758
Security guard services	\$258,887	\$9,147	\$1,050
Facilities management	\$195,831	\$500	\$0
Cleaning and janitorial services	\$87,313	\$2,134	\$1,025
Other services	\$76,492	\$430	\$305
Waste and recycling services	\$74,258	\$1,115	\$1,040
Uniforms and apparel	\$46,106	\$685	\$201
Office supplies	\$43,602	\$420	\$582
Furniture	\$38,523	\$3,153	\$606
Office equipment	\$34,196	\$590	\$4
Other goods	\$28,278	\$2,595	\$1,073
Vehicle repair services	\$23,737	\$0	\$0
Printing, copying, and mailing	\$13,427	\$1,010	\$334
Industrial equipment and machinery	\$11,918	\$200	\$400
Security systems	\$6,768	\$6,750	\$552
Communications equipment	\$5,395	\$340	\$218
Pest control	\$1,721	\$250	\$185
<b>Total non-prof. svcs, goods, and supplies</b>	<b>\$1,218,161</b>	<b>\$29,419</b>	<b>\$9,333</b>
<b>GRAND TOTAL</b>	<b>\$7,767,470</b>	<b>\$187,790</b>	<b>\$84,973</b>

# CHAPTER 6.

## Availability Analysis

BBC-Pantera-Tiber analyzed the availability of person of color (POC)- and woman-owned businesses *ready, willing, and able* to perform work on the contracts and procurements the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) award in construction; professional services; and non-professional services, goods, and supplies.<sup>1</sup> Chapter 6 describes the availability analysis in five parts:

- A. Purpose of the Availability Analysis;
- B. Available Businesses;
- C. Availability Database;
- D. Availability Calculations; and
- E. Availability Results.

Appendix E provides additional supporting information related to the availability analysis.

### A. Purpose of the Availability Analysis

BBC-Pantera-Tiber examined the availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC prime contracts and subcontracts to use as benchmarks against which to compare the actual participation of those businesses in organization work (i.e., assessing *disparities*). Assessing disparities between participation and availability allowed the study team to determine whether certain business groups were *substantially underutilized* during the study period relative to their availability for each organization’s work, which is crucial in determining whether the use of *race- and gender-conscious* measures is appropriate and, if so, ensuring their use meets the *strict scrutiny* standard of constitutional review (for details, see Chapters 2 and 8). In addition, estimating availability is useful to DC Government, Events DC, and UDC in setting overall aspirational goals for the participation of POC- and woman-owned businesses in the work they award as well as setting *contract-specific goals* for the participation of those businesses in their work, if the organizations determine the use of such measures is appropriate.

### B. Available Businesses

BBC-Pantera-Tiber’s availability analysis focused on specific areas of work, or *subindustries*, associated with the contracts and procurements DC Government, Events DC, and UDC awarded between October 1, 2016 and September 30, 2020 (the *study period*), which served as a proxy for the work they might award in the future. We began the analysis by identifying the specific subindustries in which DC Government, Events DC, and UDC spend the majority of their

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<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.



contracting dollars as well as the geographic area in which the majority of the businesses with which the organizations spend those contract and procurement dollars are located (i.e., the *relevant geographic market area*, or *RGMA*).<sup>2</sup> We then conducted extensive surveys with more than 1,000 businesses in the marketplace to develop a representative and unbiased database of potentially available businesses located in the RGMA that perform relevant types of work. The objective of the surveys was not to collect information from every relevant business operating in the local marketplace, but rather to collect information from an unbiased subset of the relevant business population that appropriately represents the entire relevant business population. This approach allowed us to estimate the availability of POC- and woman-owned businesses for organization work in an accurate and statistically valid manner.

**1. Overview of availability surveys.** BBC-Pantera-Tiber worked with Davis Research to conduct telephone and online surveys with business owners and managers to identify local businesses potentially available for DC Government, Events DC, and UDC prime contracts and subcontracts. We began the process by compiling a *phone book* of all types of businesses—regardless of ownership characteristics—that perform relevant work and are located within the RGMA, based primarily on information from Dun & Bradstreet (D&B) Marketplace. We compiled information about all business establishments D&B lists under 8-digit work specialization codes that were most related to the contracts and procurements DC Government, Events DC, and UDC awarded during the study period. We obtained listings on 9,135 local businesses that perform work related to those work specializations. We did not have working phone numbers for 1,847 of those businesses, but we attempted availability surveys with the remaining 7,288 businesses.

**2. Survey information.** The study team conducted availability surveys with businesses listed in our phone book to collect various pieces of information about each business, including:

- Status as a private sector business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Interest in performing work for government organizations;
- Interest in performing work as a prime contractor or subcontractor;
- Largest prime contract or subcontract the business is able to perform;
- Whether the business is able to work or serve customers in Washington, D.C.;
- Business size in terms of revenue and number of employees; and
- Race/ethnicity and gender of the owner(s).

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<sup>2</sup> BBC-Pantera-Tiber identified the RGMA for the study as the geographical area including Washington, D.C., Montgomery and Prince George's Counties in Maryland; Fairfax and Arlington Counties in Virginia; and the cities of Fairfax, Alexandria, and Falls Church in Virginia. We made that determination based on the fact that DC Government awards the vast majority of its contract and procurement dollars to businesses located within that geographical area (92 percent).

## C. Availability Database

After conducting availability surveys, BBC-Pantera-Tiber compiled an *availability database* that included information about businesses potentially available for relevant DC Government, Events DC, and UDC contracts and procurements. We included businesses in the availability database if they reported possessing *all* the following characteristics:

- Being a private sector business;
- Having a location in the RGMA;
- Having bid on or performed construction; professional services; and non-professional services, goods, and supplies prime contracts or subcontracts in the RGMA in the past five years;
- Primary lines of work being in industries and subindustries directly relevant to DC Government, Events DC, or UDC contracts and procurements;
- Being able to perform work in Washington, D.C.; and
- Being interested in working for government organizations.

Figure 6-1 presents the percentage of businesses in the *availability database* that were POC- or woman-owned. The database included information on 909 businesses potentially available for specific construction; professional services; and non-professional services, goods, and supplies contracts and procurements DC Government, Events DC, and UDC award. As shown in Figure 6-1, of those businesses, 62.6 percent were POC- or woman-owned, which reflects a simple count of businesses with no analysis of their availability for specific DC Government, Events DC, or UDC contracts or procurements. It represents only a first step toward analyzing the availability of POC- and woman-owned businesses for that work.

**Figure 6-1.**  
**Percent of businesses in the availability database that were POC- or woman-owned**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

Source:

BBC-Pantera-Tiber availability analysis.

Business group	Representation
All POC- and woman-owned	62.6 %
White woman-owned	8.5 %
POC-owned	54.1 %
Asian American-owned	9.8 %
Black American-owned	32.9 %
Hispanic American-owned	10.7 %
Native American-owned	0.8 %

## D. Availability Calculations

BBC-Pantera-Tiber used a *custom census* approach—which accounts for specific business, contract, and procurement characteristics such as work type, role, size, capacity, and interest—to estimate the availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work. We analyzed information from the availability database to develop dollar-weighted estimates of the degree to which POC- and woman-owned businesses are ready, willing, and able to perform organization work. Those estimates represent the percentage of contracting and procurement dollars one would expect the organizations to award to POC- and

woman-owned businesses based on their availability for the specific types and sizes of corresponding contracts and procurements.

BBC-Pantera-Tiber only considered a portion of the businesses in the availability database as potentially available for any given DC Government, Events DC, or UDC prime contract or subcontract. We first identified the characteristics of each prime contract or subcontract (referred to generally as a *contract element*), including type of work, contract size, and contract role and then took the following steps to estimate availability of POC- and woman-owned businesses for each one:

1. We identified businesses in the availability database that reported they:
  - Are interested in performing construction; professional services; or non-professional services, goods, and supplies work in that particular role for that type of work for government organizations;
  - Can perform work or serve customers in Washington, D.C.; and
  - Have the ability to perform work of that size or larger.
2. We then counted the number of POC-owned businesses, woman-owned businesses, and businesses owned by white men in the availability database that met the criteria in step 1.
3. We translated the counts of businesses in step 2 into percentages.

We repeated the above steps for each contract element included in the disparity study, and then multiplied the percentages of businesses for each contract element by the dollars associated with it. Then for each organization, we added results across all contract elements and divided by the total dollars for all contract elements. The result was dollar-weighted estimates of the percent of relevant contract and procurement dollars one would expect DC Government, Events DC, and UDC to award to POC- and woman-owned businesses based on their availability for specific types and sizes of that work. Figure 6-2 provides an example of how we calculated availability for a specific subcontract associated with a construction prime contract that DC Government awarded during the study period.

An availability estimate does not represent the *maximum* amount of contract and procurement dollars one could expect an organization to award to a particular business group. Instead, it represents the amount of dollars one could expect the organization to award to a particular business group if it awarded those dollars in a manner proportional to the representation of businesses from that group in the marketplace after accounting for various business characteristics and the characteristics of the contracts and procurements the agency awards.

BBC-Pantera-Tiber based availability calculations on the prime contracts and subcontracts DC Government, Events DC, and UDC awarded between October 1, 2016 and September 30, 2020. A key assumption of the availability analysis is that the work the organizations awarded during the study period is representative of the work they will award in the future. If the types and sizes of the work DC Government, Events DC, and UDC award in the future differs substantially from the work awarded during the study period, then they should adjust availability estimates accordingly.

## E. Availability Results

BBC-Pantera-Tiber estimated the overall availability of POC- and woman-owned businesses for the construction; professional services; and non-professional services, goods, and supplies work DC Government, Events DC, and UDC award. We also estimated the availability of those businesses for various subsets of contracts and procurements DC Government awards. For each set of contracts and procurements, we present availability estimates for all POC- and woman-owned businesses considered together and separately for each relevant business group: white woman-owned businesses, Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned business, and Native American-owned businesses.

### Figure 6-2. Example of calculating availability for a DC Government subcontract

On a contract DC Government awarded during the study period, the prime contractor awarded a subcontract worth \$432,450 for engineering services. To determine the overall availability of POC- and woman-owned businesses for the subcontract, BBC-Pantera-Tiber identified businesses in the availability database that:

- Indicated they performed engineering work;
- Reported being able to perform work of equal size or larger;
- Can perform work or serve customers in Washington DC; and
- Reported interest in working as a subcontractor on government contracts or procurements.

We found 52 businesses in the availability database that met those criteria, 31 of which were POC- or woman-owned. Thus, the availability of POC- and woman-owned businesses for the subcontract was 59.6 percent (i.e.,  $31/52 \times 100 = 59.6$ ).

**1. Overall.** Figure 6-3 presents dollar-weighted estimates of the overall availability of POC- and woman-owned businesses for DC Government work. Overall, the availability of POC- and woman-owned businesses for that work is 41.4 percent, indicating that one might expect the organization to award approximately 41 percent of its contract and procurement dollars to POC- and woman-owned businesses based on their availability for that work. The business groups that exhibit the greatest availability for DC Government work are Black American-owned businesses (18.9%), Asian American-owned businesses (11.5%), and Hispanic American-owned businesses (5.3%).

### Figure 6-3. Availability estimates for DC Government work

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail and results by group, see Figure F-1 in Appendix F.

Source:

BBC-Pantera-Tiber availability analysis.

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 %

Figure 6-4 presents the overall availability of POC- and woman-owned businesses for Events DC and UDC work. As shown in Figure 6-4, the availability of those businesses for Events DC work is 41.8 percent, and their availability for UDC work is 59.9 percent. The same business groups show the greatest availability for Events DC and UDC work: Black American-owned businesses (Events DC = 18.6%; UDC = 30.1%), Asian American-owned businesses (Events DC = 11.5%; UDC = 13.1%), and white woman-owned businesses (Events DC = 5.7%; UDC = 8.3%).

**Figure 6-4.**  
**Availability estimates for**  
**Events DC and UDC work**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-11 and F-12 in Appendix F.

Source:

BBC-Pantera-Tiber availability analysis.

Business group	Organization	
	Events DC	UDC
All POC- and woman-owned	41.8 %	59.9 %
White woman-owned	5.7 %	8.3 %
POC-owned	36.1 %	51.6 %
Asian American-owned	11.5 %	13.1 %
Black American-owned	18.6 %	30.1 %
Hispanic American-owned	4.6 %	7.1 %
Native American-owned	1.4 %	1.3 %

**2. Industry.** BBC-Pantera-Tiber also examined availability analysis results for DC Government construction; professional services; and non-professional services, goods, and supplies work to assess whether the availability of POC- and woman-owned businesses differed by industry. As shown in Figure 6-5, POC- and woman-owned businesses exhibit less availability for DC Government’s construction work (34.4%) than for the organization’s professional services work (49.7%) and non-professional services, goods, and supplies work (48.6%). That result may be due to the fact that the construction contracts and procurements DC Government awards are larger, on average, than the professional services and non-professional services, goods, and supplies contracts and procurements the organization awards. Typically, there is an inverse relationship between work size and the availability of POC- and woman-owned businesses.

**Figure 6-5.**  
**Availability estimates for**  
**DC Government**  
**construction; professional**  
**services; and non-**  
**professional services,**  
**goods, and supplies work**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail and results by group, see Figures F-4, F-5, F-6, in Appendix F.

Source:

BBC-Pantera-Tiber availability analysis.

Business group	Industry		
	Construction	Professional services	Non-prof. svcs., goods, and supplies
All POC- and woman-owned	34.4 %	49.7 %	48.6 %
White woman-owned	0.8 %	8.3 %	9.7 %
POC-owned	33.6 %	41.4 %	38.9 %
Asian American-owned	13.0 %	10.4 %	8.6 %
Black American-owned	13.4 %	23.5 %	27.9 %
Hispanic American-owned	5.8 %	5.9 %	2.4 %
Native American-owned	1.4 %	1.7 %	0.0 %

**3. Contract role.** Many POC- and woman-owned businesses are small businesses and often work as subcontractors, so it is instructive to examine availability estimates separately for DC Government prime contracts and subcontracts. As shown in Figure 6-6, the availability of POC- and woman-owned businesses is in fact less for DC Government prime contracts (40.5%) than for subcontracts (53.7%).

**Figure 6-6.**  
**Availability estimates for DC**  
**Government prime contracts**  
**and subcontracts**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-7 and F-8 in Appendix F.

Source:

BBC-Pantera-Tiber availability analysis.

Business group	Role	
	Prime contracts	Subcontracts
All POC- and woman-owned	40.5 %	53.7 %
White woman-owned	4.5 %	5.5 %
POC-owned	36.0 %	48.2 %
Asian American-owned	11.9 %	6.0 %
Black American-owned	17.9 %	30.9 %
Hispanic American-owned	5.0 %	8.3 %
Native American-owned	1.1 %	2.9 %

# CHAPTER 7.

## Utilization Analysis

BBC-Pantera-Tiber measured the participation of person of color- (POC-) and woman-owned businesses in the construction; professional services; and non-professional services, goods, and supplies prime contracts and subcontracts that the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) awarded between October 1, 2016 and September 30, 2021 (i.e., the *study period*).<sup>1</sup> We measured participation in terms of *utilization*—the percentage of prime contract and subcontract dollars the organizations awarded during the study period. We calculated the overall participation of POC- and woman-owned businesses in all relevant contracts and procurements DC Government, Events DC, and UDC awarded during the study period as well as in various subsets of DC Government contracts and procurements. Those calculations included dollars each agency awarded to *all* POC- and woman-owned businesses, regardless of where they were located and regardless of whether they were Certified Business Enterprises.

### A. Overall

BBC-Pantera-Tiber examined the participation of POC- and woman-owned businesses in all relevant construction; professional services; and non-professional services, goods, and supplies prime contracts and subcontracts DC Government awarded during the study period. As shown in Figure 7-1, the organization awarded 37 percent of relevant contract and procurement dollars to POC- and woman-owned businesses considered together. The groups that exhibited the greatest levels of participation in that work were Black American-owned businesses (16.1%), Hispanic American-owned businesses (11.5%), and Asian American-owned businesses (4.8%).

**Figure 7-1.**  
**Utilization analysis results**  
**for DC Government work**

Note:  
 Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.  
 For more detail, see Figure F-1 in Appendix F.  
 Source:  
 BBC-Pantera-Tiber utilization analysis.

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 %

Figure 7-2 presents the participation of POC- and woman-owned businesses in relevant contracts and procurements Events DC and UDC awarded during the study period. As shown in Figure 7-2, Events DC awarded 19.5 percent of relevant work to POC- and woman-owned

<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

businesses considered together and UDC awarded 68.7 percent of relevant work to those businesses. The participation of individual business groups differed across the two agencies:

- The groups that exhibited the greatest levels of participation in Events DC work were Black American-owned businesses (13.9%), white woman-owned businesses (3.1%), and Hispanic American-owned businesses (1.3%).
- The groups that exhibited the greatest levels of participation in UDC work were Black American-owned businesses (36.9%), Asian American-owned businesses (27.9%), and Hispanic American-owned businesses (2.9%).

**Figure 7-2.**  
**Utilization analysis results for Events DC and UDC work**

Note:  
Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-11 and F-12 in Appendix F.

Source:  
BBC-Pantera-Tiber utilization analysis.

Business group	Organization	
	Events DC	UDC
All POC- and woman-owned	19.5 %	68.7 %
White woman-owned	3.1 %	0.9 %
POC-owned	16.4 %	67.8 %
Asian American-owned	1.2 %	27.9 %
Black American-owned	13.9 %	36.9 %
Hispanic American-owned	1.3 %	2.9 %
Native American-owned	0.0 %	0.0 %

## B. Industry

BBC-Pantera-Tiber also examined utilization analysis results separately for the construction; professional services; and non-professional services, goods, and supplies contracts and procurements DC Government awarded during the study period to determine whether the participation of POC- and woman-owned businesses differed by industry. As shown in Figure 7-3, the participation of POC- and woman-owned businesses considered together was greatest in the organization’s professional services work (38.9%), followed by construction work (37.4%), and then non-professional services, goods, and supplies work (31.9%). Participation for individual business groups differed across industries:

- The groups that exhibited the greatest levels of participation in construction work were Hispanic American-owned businesses (20.8%), Black American-owned businesses (12.4%), and Asian American-owned businesses (3.3%).
- The groups that exhibited the greatest levels of participation in professional services work were Black American-owned businesses (21.0%), Asian American-owned businesses (9.5%), and white woman-owned businesses (7.5%).
- The groups that exhibited the greatest levels of participation in non-professional services, goods, and supplies work were Black American-owned businesses (19.2%), white woman-owned businesses (11.1%), and Hispanic American-owned businesses (1.3%).



**Figure 3-3.**  
**Percent representation of women in various Washington, D.C. industries**

Business group	Industry		
	Construction	Professional services	Non-prof. svcs., goods, and supplies
All POC- and woman-owned	37.4 %	38.9 %	31.9 %
White woman-owned	0.7 %	7.5 %	11.1 %
POC-owned	36.7 %	31.4 %	20.8 %
Asian American-owned	3.3 %	9.5 %	0.3 %
Black American-owned	12.4 %	21.0 %	19.2 %
Hispanic American-owned	20.8 %	0.8 %	1.3 %
Native American-owned	0.1 %	0.2 %	0.0 %

Note: Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail and results by group, see Figures F-4, F-5, and F-6 in Appendix F.

Source: BBC-Pantera-Tiber utilization analysis.

### C. Contract Role

Many POC- and woman-owned businesses are small businesses and thus often work as subcontractors, so it is useful to examine utilization analysis results separately for the prime contracts and subcontracts DC Government awarded during the study period. As shown in Figure 7-4, the participation of POC- and woman-owned businesses considered together was actually greater in DC Government’s prime contracts (37.4%) than in the organization’s subcontracts (32.2%). Participation for individual business groups differed between prime contracts and subcontracts:

- The groups that exhibited the greatest levels of participation in prime contracts were Black American-owned businesses (16.3%), Hispanic American-owned businesses (11.8%), and white woman-owned businesses (4.7%).
- The groups that exhibited the greatest levels of participation in subcontracts were Black American-owned businesses (14.4%), Hispanic American-owned businesses (7.8%), and Asian American-owned businesses (7.3%).

**Figure 7-4.**  
**Utilization analysis results for DC Government prime contracts and subcontracts**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-7 and F-8 in Appendix F.

Source:

BBC-Pantera-Tiber utilization analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
All POC- and woman-owned	37.4 %	32.2 %
White woman-owned	4.7 %	2.1 %
POC-owned	32.7 %	30.1 %
Asian American-owned	4.6 %	7.3 %
Black American-owned	16.3 %	14.4 %
Hispanic American-owned	11.8 %	7.8 %
Native American-owned	0.1 %	0.6 %

## D. Concentration of Dollars

BBC-Pantera-Tiber 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. We used that analysis as an indication of whether many businesses share in the aggregate success of their respective groups or, alternatively, whether only a few businesses account for each group's aggregate participation in DC Government work. The study team assessed that question by calculating:

- The number of different businesses within each racial/ethnic and gender group to which DC Government awarded contract and procurement dollars during the study period; and
- The number of different businesses within each group it took to account for at least 50 percent of the group's total dollars during the study period after we ordered businesses within each group from most awarded dollars to fewest awarded dollars.

Figure 7-5 presents those results for each relevant business group. In total, DC Government awarded contracts and procurements to 471 different POC- and woman-owned businesses during the study period. However, 3 percent of those businesses accounted for 50 percent of the corresponding contract and procurement dollars. Those results were similar for most relevant business groups:

- Three percent of utilized white woman-owned businesses accounted for 54 percent of the dollars DC Government awarded to the group.
- Seven percent of utilized Asian American-owned businesses accounted for 51 percent of the dollars DC Government awarded to the group.
- Six percent of utilized Black American-owned businesses accounted for 50 percent of the dollars DC Government awarded to the group.
- Four percent of utilized Hispanic American-owned businesses accounted for 71 percent of the dollars DC Government awarded to the group.
- Forty percent of utilized Native American-owned businesses accounted for 67 percent of the dollars DC Government awarded to the group.<sup>2</sup>

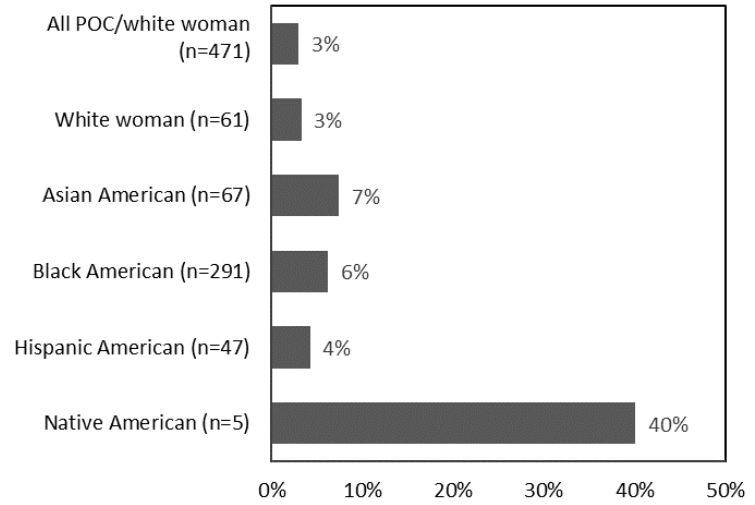
In general, those results indicate that a small number of businesses actually accounted for the majority of the total contract and procurement dollars DC Government awarded to POC- and woman-owned businesses during the study period. Thus, although the organization awarded a relatively large amount of dollars to POC- and woman-owned businesses during the study period (37 percent, or \$2.9 billion), it appears that most POC- and woman-owned businesses did not share in those dollars equally.

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<sup>2</sup> Only five Native American-owned businesses participated in DC Government work during the study period.

**Figure 7-5.**  
**Percent of businesses in each**  
**group required to account**  
**for at least 50 percent of the**  
**group's awarded dollars**

Source:  
BBC-Pantera-Tiber utilization analysis.



# CHAPTER 8.

## Disparity Analysis

BBC-Pantera-Tiber compared the percent of contract and procurement dollars the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) award to person of color- (POC-) and woman-owned businesses (i.e., *utilization* or *participation*; for utilization results, see Chapter 7) with the percent of contract and procurement dollars one might expect the organizations to award to those businesses based on their *availability* for that work (for availability results, see Chapter 6).<sup>1</sup> The analysis focused on construction; professional services; and non-professional services, goods, and supplies contracts and procurements that DC Government, Events DC, and UDC awarded between October 1, 2016 and September 30, 2020 (the *study period*). Chapter 8 presents the disparity analysis in three parts:

- A. Overview;
- B. Disparity Analysis Results;
- C. Accounting for Statistical Outliers; and
- D. Statistical Significance.

### A. Overview

BBC-Pantera-Tiber expressed both the utilization and availability of POC- and woman-owned businesses as percentages of the total dollars associated with particular sets of contracts or procurements and then used the following formula to calculate a *disparity index* to help compare those metrics for each relevant business group and different sets of contracts and procurements:

$$\frac{\% \text{ utilization}}{\% \text{ availability}} \times 100$$

A disparity index of 100 indicates *parity* between actual participation and availability. That is, the participation of a particular business group is in line with its availability. A disparity index of less than 100 indicates a *disparity* between participation and availability. That is, the group is considered to have been *underutilized* relative to its availability. Finally, a disparity index of less than 80 indicates a *substantial disparity* between participation and availability. That is, the group is considered to have been *substantially underutilized* relative to its availability. Many courts have considered substantial disparities as *inferences of discrimination* against particular business groups, and they often serve as justification for organizations to use relatively aggressive measures—such as *race- and gender-conscious* measures—to address corresponding barriers.

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<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

## B. Disparity Analysis Results

BBC-Pantera-Tiber measured overall disparities between the participation and availability of POC- and woman-owned businesses for all relevant contracts and procurements DC Government, Events DC, and UDC awarded during the study period as well as for various subsets of DC Government contracts and procurements. The results presented in Section B include all the data we analyzed as part of the disparity analysis. However, specifically for DC Government, there are additional considerations we made related to *statistical outliers* we identified as part of the data set. Section C presents disparity analysis results adjusted for statistical outliers, which we consider more instructive to understanding outcomes for POC- and woman-owned businesses in DC Government contracts and procurements.

**1. Overall.** Figure 8-1 presents disparity indices for all relevant prime contracts and subcontracts DC Government awarded during the study period. There is a line at the disparity index level of 100, indicating parity, and a line at the disparity index level of 80, indicating a substantial disparity. Disparity indices of less than 100 indicate disparities, and disparity indices of less than 80 indicate substantial disparities. As shown in Figure 8-1, POC- and woman-owned businesses considered together exhibited a disparity index of 89 for all relevant contracts and procurements DC Government awarded during the study period. That index indicates a disparity where DC Government awarded POC- and woman-owned businesses \$0.89 for every dollar one might expect the organization to award to those businesses based on their availability for that work. Two business groups exhibited a substantial disparity for DC Government work: Asian American-owned businesses (disparity index of 42) and Native American-owned businesses (disparity index of 10). In addition, Black American-owned businesses (disparity index of 86) exhibited a disparity that was close to the threshold for being considered substantial.

**Figure 8-1.**  
Disparity analysis results  
for DC Government work

Note:

For more detail, see Figure F-1 in  
Appendix F.

Source:

BBC-Pantera-Tiber disparity analysis.

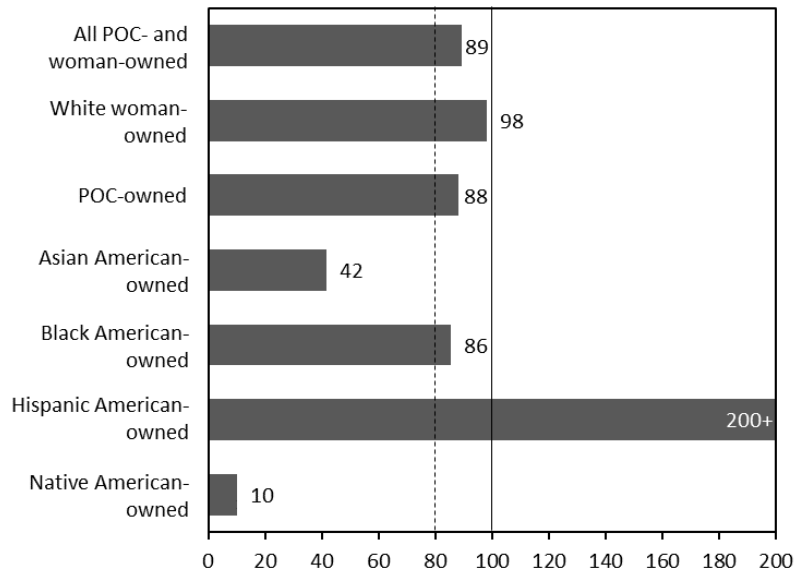


Figure 8-2 presents disparity indices for the relevant work Events DC and UDC awarded during the study period. As shown in Figure 8-2, all POC- and woman-owned businesses considered together exhibited a disparity index of 47 for Events DC work, indicating a substantial disparity, and a disparity index of 115 for UDC work, indicating parity. Disparity indices for individual business groups differed between Events DC and UDC work:

- All groups exhibited substantial disparities for Events DC work, with disparity indices ranging from 0 (Native Americans) to 75 (Black Americans).
- Three groups exhibited substantial disparities for UDC work: white woman-owned businesses (disparity index of 11), Hispanic American-owned businesses (disparity index of 41), and Native American-owned businesses (disparity index of 0).

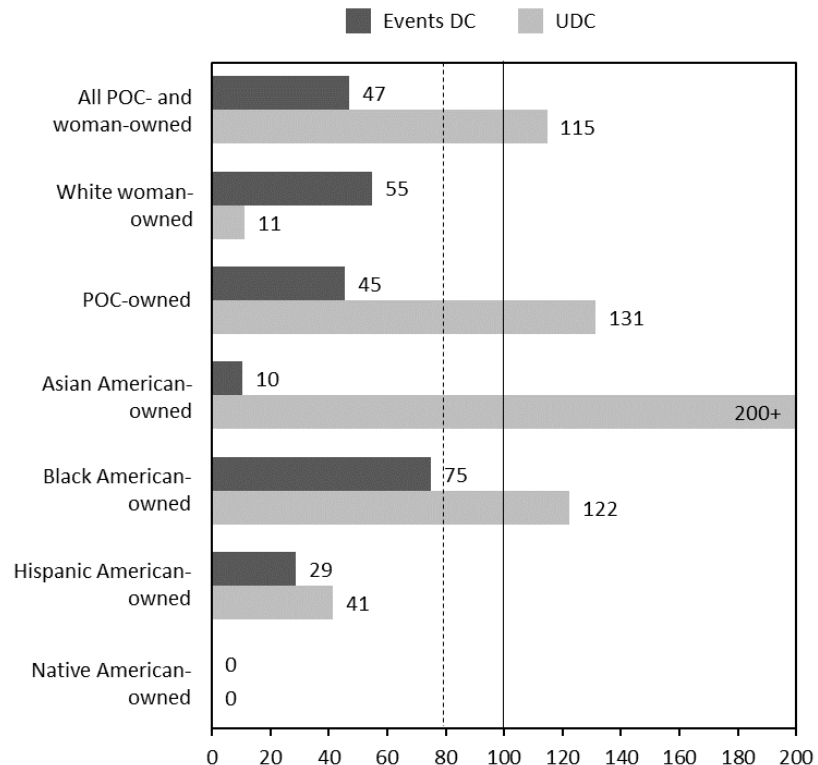
**Figure 8-2.**  
**Disparity analysis**  
**results for Events DC**  
**and UDC work**

Note:

For more detail, see Figures F-11 and F-12 in Appendix F.

Source:

BBC-Pantera-Tiber disparity analysis.



**2. Industry.** BBC-Pantera-Tiber also examined disparity analysis results separately for DC Government’s construction; professional services; and non-professional services, goods, and supplies contracts and procurements to determine whether disparities between participation and availability differ by industry. As shown in Figure 8-3, all POC- and woman-owned businesses considered together showed a substantial disparity for DC Government’s professional services work (disparity index of 78) and non-professional services, goods, and supplies work (disparity index of 66) but not for the organization’s construction work (disparity index of 109). Disparity indices for individual business groups differed across industries:

- Two groups exhibited substantial disparities for construction work: Asian American-owned businesses (disparity index of 26) and Native American-owned businesses (disparity index of 9). In addition, white woman-owned businesses (disparity index of 90) and Black American-owned businesses (disparity index of 92) exhibited disparities for construction work but did not reach the threshold for being considered substantial.
- Two groups exhibited substantial disparities for professional services work: Hispanic American-owned businesses (disparity index of 13) and Native American-owned businesses (disparity index of 13). White woman-owned businesses (disparity index of 90), Asian American-owned businesses (disparity index of 91), and Black American-owned

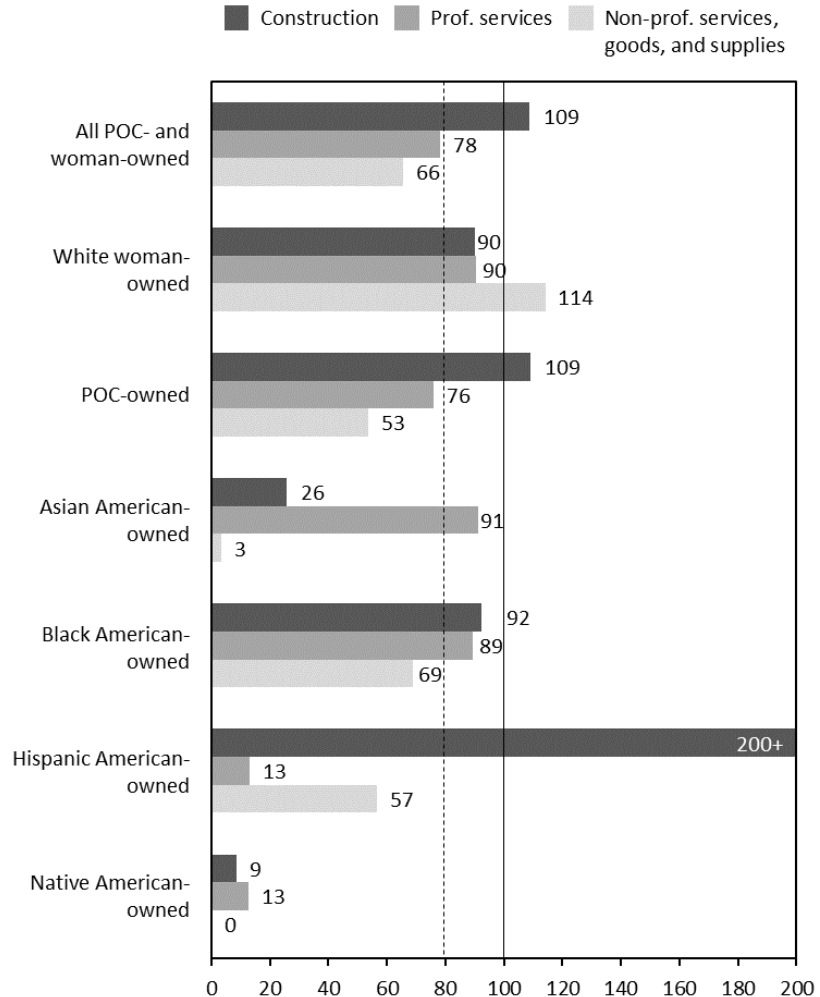
businesses (disparity index of 89) exhibited disparities for professional services work but did not reach the threshold for being considered substantial.

- All groups exhibited substantial disparities for non-professional services, goods, and supplies work except for white woman-owned businesses (disparity index of 114).

**Figure 8-3.**  
**Disparity analysis results**  
**for DC Government**  
**construction; professional**  
**services; and non-**  
**professional services,**  
**goods, and supplies work**

Note:  
 For more detail and results by group, see  
 Figures F-4, F-5, and F-6 in Appendix F.

Source:  
 BBC-Pantera-Tiber disparity analysis.



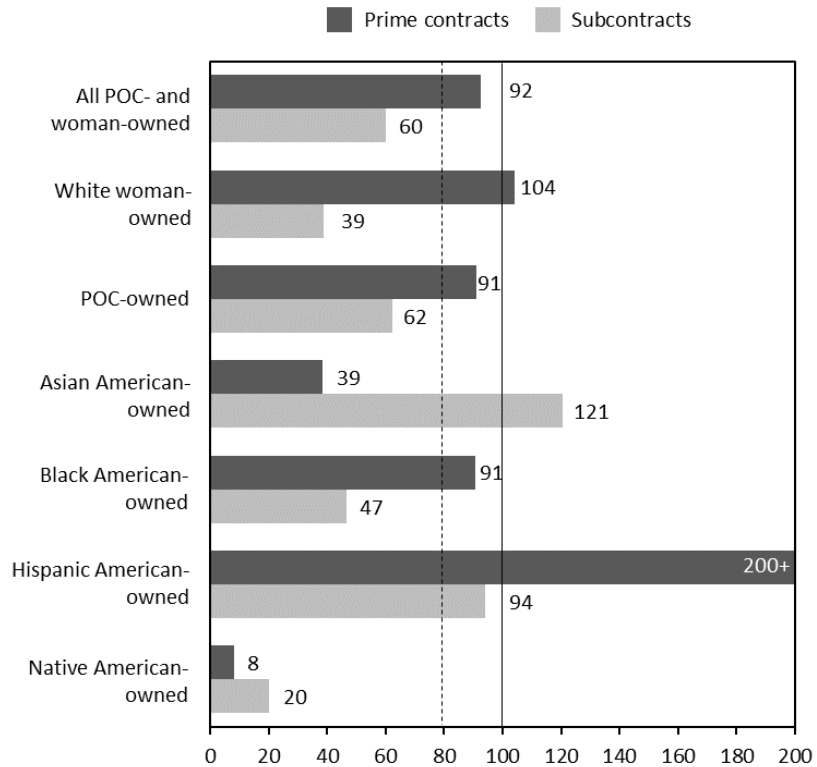
**3. Contract role.** Many POC- and woman-owned businesses are small businesses and often work as subcontractors, so it is useful to examine disparity analysis results separately for the prime contracts and subcontracts DC Government awarded during the study period. As shown in Figure 8-4, all POC- and woman-owned businesses considered together showed a substantial disparity for DC Government subcontracts (disparity index of 60). POC- and woman-owned businesses also showed a disparity for the organization’s prime contracts (disparity index of 92), but it did not reach the threshold for being considered substantial. Disparity indices for individual business groups differed between prime contracts and subcontracts:

- Two groups exhibited substantial disparities for prime contracts: Asian American-owned businesses (disparity index of 39) and Native American-owned businesses (disparity index of 8). Black American-owned businesses exhibited a disparity for prime contracts (disparity index of 91), but it did not reach the threshold for being considered substantial.

- Three groups exhibited substantial disparities for subcontracts: white woman-owned businesses (disparity index of 39), Black American-owned businesses (disparity index of 47), and Native American-owned businesses (disparity index of 20). Hispanic American-owned businesses exhibited a disparity for subcontracts (disparity index of 94), but it did not reach the threshold for being considered substantial.

**Figure 8-4.**  
**Disparity analysis**  
**results for DC**  
**Government prime**  
**contracts and**  
**subcontracts**

Note:  
 For more detail, see Figures F-7 and F-8 in Appendix F.  
 Source:  
 BBC-Pantera-Tiber disparity analysis.



### C. Accounting for Statistical Outliers

Results from the utilization analysis indicated that although DC Government awarded a substantial portion of its relevant contract and procurement dollars to POC- and woman-owned businesses during the study period, a large proportion of those dollars were concentrated with a relatively small number of businesses. An often observed characteristic of income and wealth data—which are very similar in nature to data on contract and procurement dollars—is that the underlying distributions are heavily skewed in the positive direction, and that skew is usually caused by a small number of extremely large values, or *statistical outliers*.<sup>2,3</sup> The presence of skewed distributions and statistical outliers can have substantial effects on measures of inequity, poverty, and disparities, sometimes masking evidence of disparities or inequities that truly exist

<sup>2</sup> <https://thedocs.worldbank.org/en/doc/248311593193853901-0050022020/render/lecture12final.pdf>

<sup>3</sup> Alvarez, E. and Garcia-Fernandez, R.M., et al. 2014. “The effect of outliers on the economic and social survey on income and living conditions.” *International Scholarly and Scientific Research & Innovation*, 8(10): 3276–3280.



for the entire population.<sup>4,5</sup> For that reason, as standard practice, economists and social scientists identify extreme values when working with income and wealth data and use well-accepted procedures to account for them, including removing them from the analysis, “Winsorizing” the data (i.e., removing or adjusting all data points that exist in the lowest and highest ends of the dataset), or simulating data to replace them.<sup>6,7,8,9</sup> In accordance with best practices in social science, BBC-Pantera-Tiber assessed whether any POC- or woman-owned businesses to which DC Government awarded work during the study period were statistical outliers and what impact any outliers have on the disparity indices we observed.

**1. Methodology.** BBC-Pantera-Tiber used a “two standard deviation” test to determine whether any POC- or woman-owned businesses were statistical outliers based on the dollars DC Government awarded to them during the study period.<sup>10</sup> First, to address the highly skewed distribution of the data, we took the base 10 logarithm (*log*) of the dollars received by each of the 471 POC- and woman-owned businesses DC Government used during the study period.<sup>11</sup> Log transformation is a common practice social scientists use to normalize positively skewed datasets without changing the properties of the corresponding data points relative to one another.<sup>12</sup> That is, although the values of the data points change, the relationships among them stay the same relative to each other. Furthermore, the data points are only transformed for statistical analysis and then are transformed back to their original values for reporting purposes. Figure 8-5 presents the distribution of the dollars that each POC- and woman-owned business received during the study period before (panel a) and after (panel b) log transformation. As shown in panel (b) of Figure 8-5, applying a log transformation to the dollars each POC- and woman-owned business received during the study period resulted in a distribution resembling normality, making it more appropriate for standard statistical analysis.

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<sup>4</sup> Cowell, F.A., and Flachaire, E. (2007) “Income distribution and inequality measurement: The problem of extreme values.” *Journal of Econometrics*, 141(2): 1044-1072.

<sup>5</sup> Hlasny, V. and Verme, P. (2018). “Top incomes and inequality measurement: A comparative analysis of correction methods using the EU SILC data.” *Econometrics*, 6(30).

<sup>6</sup> Cowell, F.A. and Victoria Feser, M.P. 2002. “Welfare ranking in the presence of contaminated data,” *Econometrica*, 70: 1221-1233.

<sup>7</sup> Gravelle, H. and Sutton, M. 2006. “Income, relative income, and self-reported health in Britain 1979-2000,” *Center for Health Economics Research Paper*, 10.

<sup>8</sup> Grubbs, F.E. (1969). “Procedures for detecting outlying observations in samples,” *Technometrics*, 11(1): 1-21.

<sup>9</sup> Blaine, Bruce E. (2018). “Winsorizing.” *The SAGE Encyclopedia of Educational Research, Measurement, and Evaluation*, 1817-1818.

<sup>10</sup> The standard deviation of a dataset is a measure that indicates how dispersed data points are from the average of the data set. Low standard deviations indicate that data points are relatively clustered around the average whereas high standard deviations indicate that data points are relatively spread out relative to the average.

<sup>11</sup> The base 10 logarithm of a number is the power to which the value of 10 must be raised in order to result in the same number. For example, the base 10 logarithm of 100 is 2, because 10 raised to the power of 2 equals 100. Thus, the value of the log of a number greater than 1 is far less than the value of the number itself.

<sup>12</sup> West, R.M. 2021. “Best practice in statistics: The use of log transformation,” *Annals of Clinical Biochemistry: International Journal of Laboratory Medicine*, 59(3): 162-165

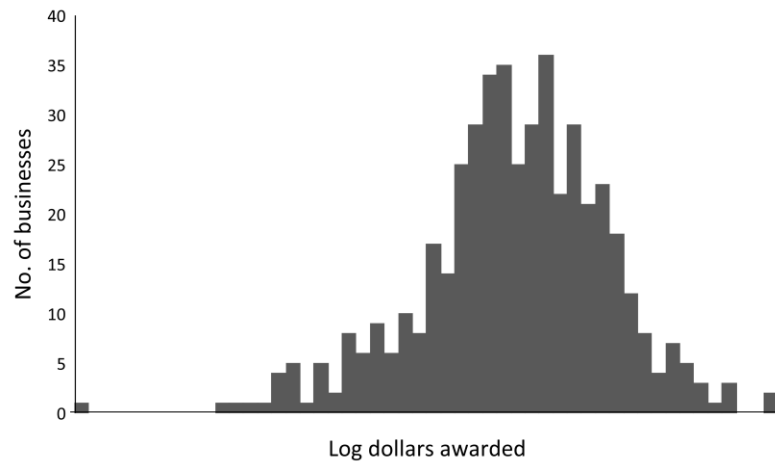
**Figure 8-5.**  
**Distribution of the**  
**dollars DC Government**  
**awarded to POC- and**  
**woman-owned**  
**businesses before and**  
**after log**  
**transformation**

Source:  
 BBC-Pantera-Tiber utilization  
 analysis.

**a) Before log transformation**



**b) After log transformation**



Second, after transforming the data, we computed the average and standard deviation of the log-transformed dollars DC Government awarded to all 471 POC- and woman-owned businesses during the study period (average = \$6.00; standard deviation = \$0.89). Then, we determined whether the dollars any single business received during the study period differed by more than two standard deviations from the average, which was the case for the seven POC- and woman-owned businesses that received the most dollars and the 18 POC- and woman-owned businesses that received the fewest dollars from DC Government during the study period.<sup>13</sup> We considered those businesses statistical outliers. Figure 8-6 presents the raw dollars each of those businesses received from DC Government during the study period as well as how many standard deviations they differed from the average of all POC- and woman-owned businesses considered together.

<sup>13</sup> Using  $\alpha = .05$ , more than 95 percent of observed data that are normally distributed are included within two standard deviations of the average of the dataset.

**Figure 8-6.**  
**Information on the**  
**businesses that were**  
**statistical outliers**

Source:  
 BBC-Pantera-Tiber utilization  
 analysis.

Business ownership			DC Government dollars	Standard deviations from the average
	Race/ethnicity	Gender		
1	Hispanic American	Men	\$326,802,266	2.82
2	Hispanic American	Men	\$309,758,596	2.79
3	White American	Women	\$126,184,643	2.36
4	Black American	Men	\$118,374,021	2.33
5	Hispanic American	Men	\$97,194,328	2.23
6	Black American	Men	\$72,967,159	2.09
7	White American	Women	\$60,887,593	2.00
...	...	...	...	...
454	Black American	Woman	\$16,700	-2.00
455	Hispanic American	Woman	\$16,550	-2.01
456	Black American	Woman	\$16,548	-2.01
457	Black American	Woman	\$10,666	-2.22
458	Black American	Man	\$9,396	-2.28
459	Asian American	Man	\$8,814	-2.31
460	Black American	Man	\$8,500	-2.33
461	White American	Woman	\$7,740	-2.38
462	Black American	Man	\$7,500	-2.39
463	White American	Woman	\$7,000	-2.42
464	Black American	Man	\$6,083	-2.49
465	Black American	Woman	\$5,987	-2.50
466	Black American	Man	\$5,420	-2.55
467	Black American	Man	\$4,570	-2.63
468	Black American	Woman	\$3,300	-2.79
469	Black American	Woman	\$2,246	-2.98
470	Hispanic American	Man	\$1,600	-3.14
471	Hispanic American	Woman	\$70	-4.67

As described above, many researchers remove statistical outliers from their analyses or trim their datasets of the largest and smallest values. Although there may be sound reasons to do so, BBC-Pantera-Tiber adjusted the values of statistical outliers so they would still be included in the disparity analysis. We adjusted the values of statistical outliers by calculating the average and standard deviation of the log-transformed dollars POC- and woman-owned businesses received from DC Government during the study period *after* removing statistical outliers (average = \$6.04; standard deviation = \$0.73). We then identified the dollar value that was two standard deviations greater than the average (log dollars = \$7.48; raw dollars = \$30.3 million) and the dollar value that was two standard deviations less than the average (log dollars = \$4.63; raw dollars = \$42,375) and replaced the dollar values for the seven businesses that were statistical outliers on the high end of the distribution with \$30.3 million and the dollar values for the 18 businesses that were statistical outliers on the low end of the distribution with \$42,375.<sup>14</sup>

<sup>14</sup> As an alternative to accounting for extreme values using a statistical outlier method, BBC-Pantera-Tiber also used a “Winsorizing” method in which we replaced dollar values for POC- and woman-owned businesses greater than the 97.5<sup>th</sup> percentile and less than the 2.5<sup>th</sup> percentile of log-transformed dollars with the value that was just less than the 97.5<sup>th</sup> percentile (in the case of businesses that were in the top 2.5<sup>th</sup> percentile) and the value that was just greater than the 2.5<sup>th</sup> percentile (in the case of businesses that were in the bottom 2.5<sup>th</sup> percentile). “Winsorizing” is a common practice among social scientists, but doing so presumes the data points at the high end and low end of datasets should be removed or adjusted,

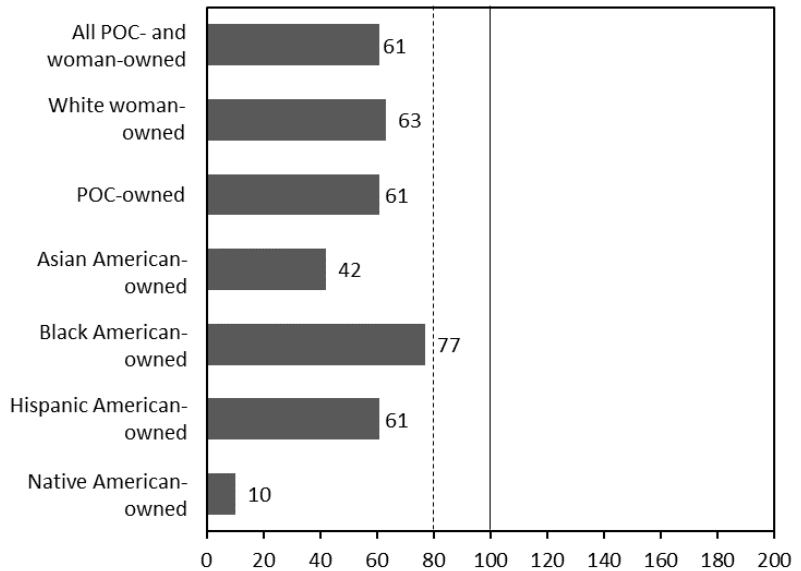
**2. Adjusted disparity analysis results.** After accounting for statistical outliers among the POC- and woman-owned businesses DC Government used during the study period, BBC-Pantera-Tiber assessed adjusted disparities between the participation and availability of those businesses for key sets of contracts and procurements.

**a. Overall.** Figure 8-7 presents disparity indices for all relevant prime contracts and subcontracts DC Government awarded during the study period after accounting for statistical outliers. As shown in Figure 8-7, POC- and woman-owned businesses considered together exhibited a disparity index of 61 for all relevant contracts and procurements the organization awarded during the study period. Furthermore, each relevant business group exhibited a substantial disparity for that work.

**Figure 8-7.**  
**Disparity analysis results for DC Government work, adjusted for statistical outliers**

Note:  
 For more detail, see Figure F-13 in Appendix F.

Source:  
 BBC-Pantera-Tiber disparity analysis.



**b. Industry.** BBC-Pantera-Tiber also examined disparity analysis results separately for DC Government’s construction; professional services; and non-professional services, goods, and supplies contracts and procurements after accounting for statistical outliers. As shown in Figure 8-8, POC- and woman-owned businesses considered together showed a substantial disparity for construction work (disparity index of 54), professional services work (disparity index of 76), and non-professional services, goods, and supplies work (disparity index of 49). Disparity indices for individual business groups differed across industries:

- Three groups exhibited substantial disparities for construction work: Asian American-owned businesses (disparity index of 26), Black American-owned businesses (disparity index of 68), and Native American-owned businesses (disparity index of 9).

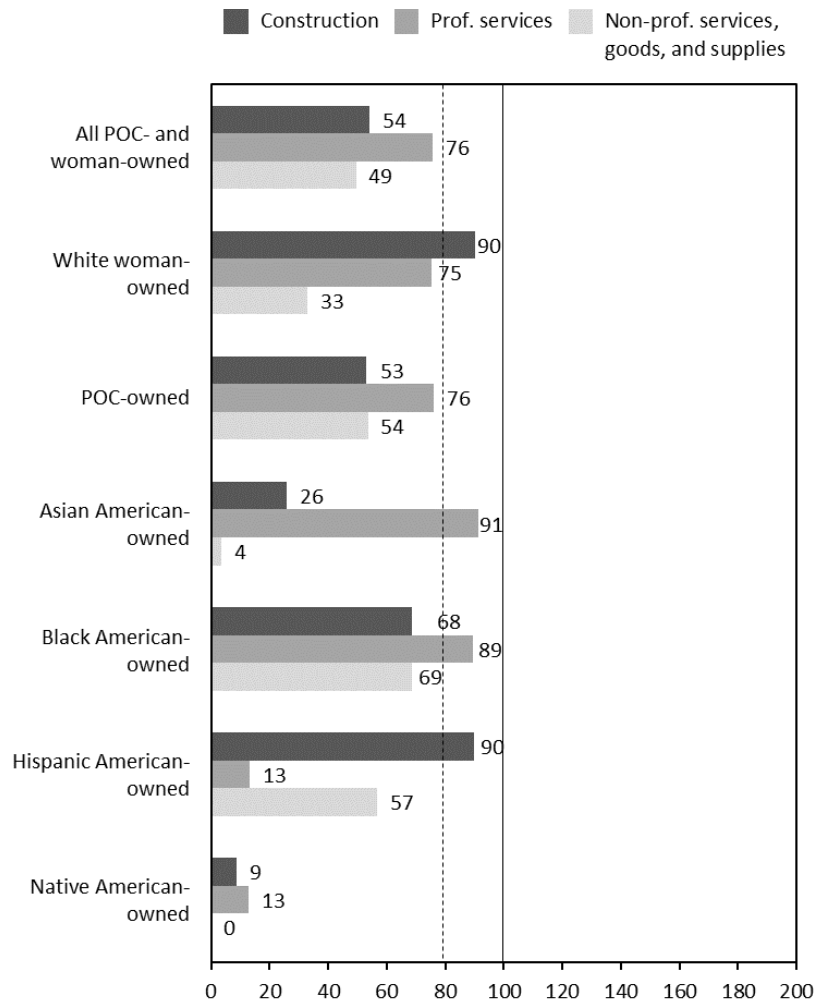
regardless of whether any individual data points are identified as statistical outliers. We ultimately decided to use a statistical outlier method rather than a “Winsorizing,” method to account for extreme values to ensure statistical outliers actually existed in the data set before making any adjustments. However, results from both methods were very similar.

- Three groups exhibited substantial disparities for professional services work: white woman-owned businesses (disparity index of 75), Hispanic American-owned businesses (disparity index of 13), and Native American-owned businesses (disparity index of 13).
- All groups exhibited substantial disparities for non-professional services, goods, and supplies work.

**Figure 8-8.**  
**Disparity analysis results**  
**for DC Government**  
**construction; professional**  
**services; and non-**  
**professional services,**  
**goods, and supplies work,**  
**adjusted for statistical**  
**outliers**

For more detail, see Figures F-14, F-15, and F-16 in Appendix F.

Source:  
 BBC-Pantera-Tiber disparity analysis.



**3. Contract role.** Many POC- and woman-owned businesses are small businesses and often work as subcontractors, so it is useful to examine disparity analysis results separately for the prime contracts and subcontracts DC Government awarded during the study period after adjusting for statistical outliers. As shown in Figure 8-9, POC- and woman-owned businesses considered together showed a substantial disparity for DC Government prime contracts (disparity index of 62) and subcontracts (disparity index of 58).

Disparity indices for individual business groups differed between prime contracts and subcontracts:

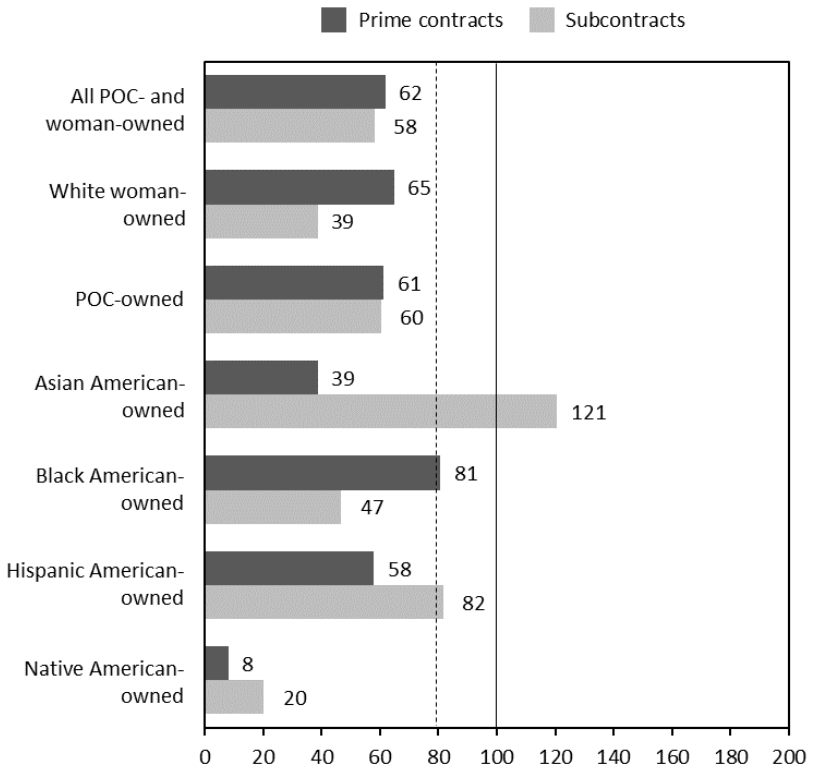
- All groups exhibited substantial disparities for prime contracts except for Black American-owned businesses, which exhibited a disparity for prime contracts that was slightly greater than the threshold for being considered substantial (disparity index of 81).

- Three groups exhibited substantial disparities for subcontracts: white woman-owned businesses (disparity index of 39), Black American-owned businesses (disparity index of 47), and Native American-owned businesses (disparity index of 20). Hispanic American-owned businesses exhibited a disparity for subcontracts that was slightly greater than the threshold for being considered substantial (disparity index of 82).

**Figure 8-9.**  
**Disparity analysis results for DC Government prime contracts and subcontracts, adjusted for statistical outliers**

For more detail, see Figures F-17 and F-18 in Appendix F.

Source:  
 BBC-Pantera-Tiber disparity analysis.



## D. Statistical Significance

Statistical significance tests allow researchers to assess the probability that any observed quantitative differences were due to *real* differences rather than chance. In other words, a statistically significant difference is one that can be considered as statistically reliable or real. BBC-Pantera-Tiber used Monte Carlo analysis, which relies on repeated, random simulations of results, to examine the statistical significance of key disparity analysis results.

**1. Overview of Monte Carlo.** BBC-Pantera-Tiber used Monte Carlo simulations to randomly select businesses to win each individual contract element included in the disparity study. For each contract element, the availability analysis provided information on individual businesses potentially available to perform that contract element based on type of work, contractor role, contract size, and other factors. Then, using Monte Carlo, we randomly chose a business from the pool of available businesses to win the contract element. The chance of a business from a particular business group winning the contract element was equal to the number of businesses from that group available for it divided by the number of all businesses available for it.

BBC-Pantera-Tiber conducted a Monte Carlo analysis for all contract elements in a particular contract set. The output of a single simulation for all the contract elements in the set represented the simulated participation of POC- and woman-owned businesses for the contract set. The

entire Monte Carlo simulation was then repeated 1 million times. The combined output from all 1 million simulations represented a probability distribution of the overall participation of POC- and woman-owned businesses if contracts and procurements were awarded randomly based only on the estimated availability of relevant businesses working in the local marketplace.

The output of Monte Carlo simulations represents the number of simulations out of 1 million that produced participation equal to or less than the actual, observed participation for each relevant business group for each applicable contract set. If that number was less than or equal to 25,000 (i.e., 2.5% of the total number of simulations, or  $p = .025$ ), then we considered the disparity index to be statistically significant at  $\alpha = .05$ , using two-tailed tests.

**2. Results.** BBC-Pantera-Tiber ran Monte Carlo simulations on all relevant DC Government contracts and procurements, DC Government prime contracts, and DC Government subcontracts. In addition, we ran Monte Carlo simulations on all Events DC contracts and procurements and all UDC contracts and procurements. For DC Government, we compared Monte Carlo results to the actual participation of POC- and woman-owned businesses in the organization's work after accounting for statistical outliers. Because we did not identify any statistical outliers for Events DC or UDC, we compared Monte Carlo results to the originally observed participation of POC- and woman-owned businesses in each organization's work.

**a. DC Government.** Figure 8-10 presents the statistical significance of observed disparities for all DC Government work and separately for construction; professional services; and non-professional services, goods, and supplies work and for prime contracts and subcontracts.

**i. All contracts and procurements.** As shown in panel (a) of Figure 8-10, the disparities we observed for all DC Government work was statistically significant for all groups at  $p < .01$ .

**ii. Construction.** As shown in panel (b) of Figure 8-10, the disparities we observed construction work were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- White woman-owned businesses;
- POC-owned businesses considered together;
- Asian American-owned businesses; and
- Black American-owned businesses.

**iii. Professional services.** As shown in panel (c) of Figure 8-10, the disparities we observed for professional services work were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- POC-owned businesses considered together; and
- Hispanic American-owned businesses.

In addition, the disparities we observed for white woman-owned businesses and Native American-owned businesses for DC Government professional services work was statistically significant at  $p < .05$ .

**iv. Non-professional services, goods, and supplies.** As shown in panel (d) of Figure 8-10, the disparities we observed for DC Government non-professional services, goods, and supplies work were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- White woman-owned businesses;
- POC-owned businesses considered together;
- Asian American-owned businesses;
- Hispanic American-owned businesses; and
- Native American-owned businesses.

In addition, the disparity we observed for Black American-owned businesses for DC Government non-professional services, goods, and supplies work was marginally significant at  $p < .10$ .



**Figure 8-10.**  
**Statistical significance of**  
**observed disparities for**  
**DC Government work**

Note:

\*\* indicates statistical significance at  $p < .01$ , two-tailed tests

\* indicates statistical significance at  $p < .05$ , two-tailed tests

+ indicates marginal statistical significance at  $p < .10$ , two-tailed tests

Source:

BBC-Pantera-Tiber disparity analysis.

Contract set and business group	Disparity index	Probability that disparity is due to chance ( $p$ value)	Contract set and business group	Disparity index	Probability that disparity is due to chance ( $p$ value)
<b>a) All contracts and procurements</b>			<b>d) Non-prof. svcs., goods, supplies</b>		
POC-owned and woman-owned	61	0.00 **	POC-owned and woman-owned	49	0.00 **
White woman-owned	63	0.00 **	White woman-owned	33	0.00 **
POC-owned	61	0.00 **	POC-owned	54	0.00 **
Asian American-owned	42	0.00 **	Asian American-owned	4	0.00 **
Black American-owned	77	0.00 **	Black American-owned	69	0.10 +
Hispanic American-owned	61	0.00 **	Hispanic American-owned	57	0.00 **
Native American-owned	10	0.00 **	Native American-owned	0	0.00 **
<b>b) Construction</b>			<b>e) Prime contracts</b>		
POC-owned and woman-owned	54	0.00 **	POC-owned and woman-owned	62	0.00 **
White woman-owned	90	0.00 **	White woman-owned	65	0.00 **
POC-owned	53	0.00 **	POC-owned	61	0.00 **
Asian American-owned	26	0.00 **	Asian American-owned	39	0.00 **
Black American-owned	68	0.00 **	Black American-owned	81	0.04 *
Hispanic American-owned	90	0.45	Hispanic American-owned	58	0.00 **
Native American-owned	9	0.17	Native American-owned	8	0.00 **
<b>c) Professional services</b>			<b>f) Subcontracts</b>		
POC-owned and woman-owned	76	0.00 **	POC-owned and woman-owned	58	0.00 **
White woman-owned	75	0.03 *	White woman-owned	39	0.02 *
POC-owned	76	0.00 **	POC-owned	60	0.00 **
Asian American-owned	91	0.48	Asian American-owned	121	N/A
Black American-owned	89	0.29	Black American-owned	47	0.00 **
Hispanic American-owned	13	0.00 **	Hispanic American-owned	82	0.25
Native American-owned	13	0.01 *	Native American-owned	20	0.03 *

**v. Prime contracts.** As shown in panel (e) of Figure 8-10, the disparities we observed for DC Government prime contracts were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- White woman-owned businesses;
- POC-owned businesses considered together;
- Asian American-owned businesses;
- Hispanic American-owned businesses; and
- Native American-owned businesses.

In addition, the disparity we observed for Black American-owned businesses for DC Government prime contracts was statistically significant at  $p < .05$ .

**vi. Subcontracts.** As shown in panel (f) of Figure 8-10, the disparities we observed for DC Government subcontracts were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- POC-owned businesses considered together; and
- Black American-owned businesses.

In addition, the disparities we observed for white woman-owned businesses and Native American-owned businesses for DC Government subcontracts were statistically significant at  $p < .05$ .

**b. Events DC and UDC.** Figure 8-11 presents the statistical significance of observed disparities for Events DC contracts and procurements and UDC contracts and procurements.

**i. Events DC.** As shown in panel (a) of Figure 8-11, the disparities we observed for Events DC work were statistically significant for the following groups at  $p < .01$ :

- POC- and woman-owned businesses considered together;
- POC-owned businesses considered together; and
- Asian American-owned businesses.

In addition, the disparities we observed for Hispanic American-owned businesses and Native American-owned businesses for Events DC work were marginally significant at  $p < .10$ .

**ii. UDC.** As shown in panel (b) of Figure 8-11, the disparities we observed for UDC work were statistically significant for the following groups at  $p < .01$ :

- White woman-owned businesses; and
- Native American-owned businesses.

In addition, the disparity we observed for Hispanic American-owned businesses for UDC work was marginally significant at  $p < .10$ .

**Figure 8-11.**  
**Statistical significance of observed disparities for Events DC and UDC work**

Notes:

\*\* indicates statistical significance at  $p < .01$ , two-tailed tests

+ indicates marginal statistical significance at  $p < .10$ , two-tailed tests

Source:

BBC-Pantera-Tiber disparity analysis.

Organization and business group	Disparity index	Probability that disparity is due to chance ( $p$ value)
<b>a) Events DC</b>		
POC-owned and woman-owned	47	0.00 **
White woman-owned	55	0.18
POC-owned	45	0.00 **
Asian American-owned	10	0.00 **
Black American-owned	75	0.27
Hispanic American-owned	29	0.06 +
Native American-owned	0	0.05 +
<b>b) UDC</b>		
POC-owned and woman-owned	115	N/A
White woman-owned	11	0.00 **
POC-owned	131	N/A
Asian American-owned	200+	N/A
Black American-owned	122	N/A
Hispanic American-owned	41	0.09 +
Native American-owned	0	0.01 **

# CHAPTER 9.

## Program Measures

The Government of the District of Columbia (DC Government) operates the Certified Business Enterprise (CBE) Program to encourage the participation of local businesses—including many small businesses as well as person of color (POC)- and woman-owned businesses—in the organization’s contracts and procurements. The CBE Program, by law, is made up exclusively of various race- and gender-neutral measures, which are measures designed to encourage the participation of all businesses in an organization’s contracting, regardless of the race/ethnicity or gender of business owners. In contrast, race- and gender-conscious measures are measures designed to specifically encourage the participation of POC- and woman-owned businesses in an organization’s work. DC Government does not use any race- or gender-conscious measures.

BBC-Pantera-Tiber reviewed the measures DC Government uses to encourage the participation of local businesses in its contracting and procurement. That information is useful to the agency in assessing the efficacy of race- and gender-neutral measures in encouraging the participation of POC- and woman-owned businesses in its work as well as determining whether the organization has maximized the use of race- and gender-neutral measures as part of its contracting and procurement policies. As part of meeting the strict scrutiny standard of constitutional review, organizations that implement race-conscious business programs must maximize their use of race-neutral measures (for details, see Chapter 2 and Appendix B). If the use of race-neutral measures alone is not sufficient to address existing barriers for POC-owned businesses, then organizations can also consider using race-conscious measures.

### A. Program Overview

The CBE Program mandates that CBEs are afforded opportunities and various preferences on contracts and procurements DC Government procures through the Office of Contracting and Procurement. The program is designed to help district agencies achieve an overall aspirational goal of 50 percent CBE participation in its work. To be eligible for CBE certification, businesses must meet the following requirements:

- The principal office of the business must be physically located in Washington, D.C.
- The Chief Executive Officer and highest-level managerial employees of the business must perform their managerial functions in the principal office.
- The business must meet one of the following standards:<sup>1</sup>
  - It is independently owned, operated, and controlled;
  - More than 50 percent of the business is owned, operated, and controlled by a District-based enterprise or nonprofit; or

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<sup>1</sup> The requirement that CBEs must be either independently, owned, operated, and controlled; more than 50% owned, operated, and controlled by a District-based enterprise or nonprofit; or be owned by a non-District-based business enterprise or nonprofit that is more than 50 percent owned by District residents is an amendment by emergency legislation that is set to expire on July 24, 2022.

- It is owned by a non District-based enterprise or nonprofit that is more than 50 percent owned by District residents.
- The business must also meet one of the following standards:
  - More than 50 percent of the employees of the business are residents of the District;
  - The owners of more than 50 percent of the business are residents of the District;
  - More than 50 percent of assets, excluding bank accounts, are in the District; or
  - More than 50 percent of the business’ gross receipts are generated in the District.

There are nine classifications of CBE certification, with certification as a Local Business Enterprise (LBE) being a prerequisite for the remaining classifications. Once a business meets all LBE requirements, it can request to be certified for additional classifications by providing information to the Department of Small and Local Business Development (DSLBD) to substantiate its qualifications for any additional classifications. Each classification is associated with a certain number of proposal points or bid reduction percentages from which CBEs can benefit when bidding on DC Government work, with maximum proposal points or bid reductions capped at 12 points or 12 percent, respectively. Figure 9-1 presents the nine classifications that are part of the CBE Program, along with their associated proposal points and bid reduction percentages.

**Figure 9-1.**  
**CBE classifications**

Source:  
BBC-Pantera-Tiber from DSLBD.

CBE classification	Proposal points	Bid reduction
Local Business Enterprise	2	2%
Small Business Enterprise	3	3%
Disadvantaged Business Enterprise	2	2%
Development Enterprise Zone	2	2%
Resident-owned Business	5	5%
Longtime Resident Business	5	10%
Veteran-owned Business Enterprise	2	2%
Local Manufacturing Business Enterprise	2	2%
Equity Impact Enterprise	5	10%

CBE-certified businesses may also form joint ventures (JVs) with firms ineligible for CBE certification. Under the condition that the CBE-certified business(es) maintain 51 percent ownership and control of the JV, the JV can subsequently apply for certification with DSLBD and can benefit from applicable CBE preferences.

## B. Program Measures

DC Government uses myriad race- and gender-neutral measures to encourage the participation of local businesses—including many small businesses as well as POC- and woman-owned businesses—in its work. Those measures can be classified into the following types:

- CBE participation goals;
- Access to capital;
- Business development workshops; and
- Networking and outreach.

**1. CBE participation goals.** DSLBD has established an overall aspirational goal of 50 percent for the participation of CBEs certified as Small Business Enterprises (SBEs) in eligible DC Government contracts and procurements. In addition to the overall aspirational goal, DSLBD sets goals for the participation of SBEs in DC Government contracts and procurements valued at \$250,000 or more. Goal requirements for those contracts are as follows:

- At least 35 percent of the dollar volume of the contracts must be subcontracted to SBEs.
- If there are an insufficient number of qualified SBEs to fulfill the contract goal, then the subcontracting requirement may be satisfied by subcontracting 35 percent of the contracts to any qualified CBEs, provided they make all reasonable efforts to ensure qualified SBEs participate substantially in subcontract opportunities.
- If prime contractors are CBEs themselves or joint ventures with 51 percent ownership and control by CBEs, and they do not subcontract any of the project work, then DC Government waives SBE subcontracting requirements.

**2. Access to capital.** DSLBD operates myriad programs designed to improve access to capital for Washington, D.C. businesses.

**a. District Capitalized.** District Capitalized is a program that supports the creation, operation, and growth of Washington, D.C. businesses, resident entrepreneurs, and partners by offering financing products, guidance, and ecosystem support and coordination, including:

- DC Kiva Hub, which offers businesses and resident entrepreneurs crowdfunding loans to help them open, operate, pivot, and grow their businesses;
- DC Business Lines of Credit, which City First Enterprises operates and DSLBD funds;
- DSLBD Loan Loss Reserve, which helps lenders offer microloans to businesses that traditional lenders may deem “at risk;”
- Money Mondays, which is a weekly workshop and networking series;
- EatsPlace, which is a food incubator and restaurant/bar accelerator lab; and
- DSLBD grants to businesses.

**b. DC Capital Connector.** DC Capital Connector is an online referral tool DC Government developed to analyze all the government resources and partners available to help businesses find the capital and resources they need to grow.

**3. Business development programs.** DSLBD offers a variety of business development programs for CBEs and non-certified local businesses.

**a. DC Business Tool Kit.** The DC Business Tool Kit is a resource network to help businesses open, operate, and grow. Businesses can use the tool kit to find resources to get assistance specific to their needs, find networking events to attend, and learn how to promote themselves.

**b. Small Business Resource Center (SBRC).** The SBRC is a partnership between DSLBD, the Department of Consumer and Regulatory Affairs (DCRA), and nonprofit and federal organizations designed to serve Washington, D.C. businesses. Through the SBRC, businesses can

access trainings, workshops, seminars, one-on-one technical and educational assistance, and other services DSLBD, DCRA, and other SBRC service partners offer.

**c. DC Procurement Technical Assistance Center (DC PTAC).** DC PTAC offers tailored business counseling and competitive insights for navigating government contracting processes successfully.

**4. Networking and outreach.** DSLBD disseminates information about both DC Government and non-DC Government contracting opportunities via e-mail blasts to the CBE community. DSLBD's Business Development Division also hosts District Connect: DC's Small Business Contracting Expo in partnership with the District Department of Transportation, the Office of Contracting and Procurement, and TD Bank. District Connect is an annual event to help CBEs and other businesses learn about working with DC Government and the federal government.

# CHAPTER 10.

## Implications and Recommendations

The disparity study provides information related to outcomes for person of color- (POC-) and woman-owned businesses in the Government of the District of Columbia's (DC Government's), Events DC's, and the University of the District of Columbia's (UDC's) contracts and procurements.<sup>1</sup> BBC-Pantera-Tiber summarizes key results from the disparity study as well as their potential implications. We also present recommendations DC Government should consider to further encourage the participation of POC- and woman-owned businesses in its work.

### A. Key Results and Implications

BBC-Pantera-Tiber analyzed relevant contract and procurement dollars DC Government, Events DC, and UDC awarded between October 1, 2016 and September 30, 2020 (the *study period*) to calculate the participation (or, *utilization*) of POC- and woman-owned businesses in organization work; estimate the *availability* of those businesses for that work; and assess whether any disparities exist between participation and availability.<sup>2</sup> We also conducted extensive quantitative and qualitative research on outcomes for POCs, women, and POC- and woman-owned businesses in the local marketplace to assess whether any barriers exist in the larger marketplace that make it more difficult for POC- and woman-owned businesses to compete for and perform organization work. That information can help DC Government, Events DC, and UDC assess whether POC- and woman-owned businesses experience any disadvantages as part of their contracting and procurement processes and what types of measures the organizations could use to help address those disadvantages effectively and in a legally defensible manner.

**1. Availability of POC- and woman-owned businesses.** BBC-Pantera-Tiber's *custom census* availability analysis indicates relatively high availability of POC- and woman-owned businesses for the construction; professional services; and non-professional services, goods, and supplies work that DC Government, Events DC, and UDC award. Figure 10-1 presents estimates of the availability of each relevant group of POC- and woman-owned businesses for DC Government, Events DC, and UDC contract and procurements overall. As shown in Figure 10-1, the availability of those businesses is 41.4 percent for DC Government work, 41.8 percent for Events DC work, and 59.9 percent for UDC work.<sup>3</sup> For all three organizations and for different sets of DC Government work, Black American-owned businesses exhibit the greatest availability

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<sup>1</sup> As is standard in disparity studies, "woman-owned businesses" refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

<sup>2</sup> BBC-Pantera-Tiber analyzed \$7.8 billion of contracts and procurements DC Government awarded during the study period, \$188 million Events DC awarded, and \$85 million UDC awarded.

<sup>3</sup> An availability estimate does not represent the *maximum* amount of contract and procurement dollars one could expect an organization to award to a particular business group. Instead, it represents the amount of dollars one could expect the organization to award to a particular business group if it awarded those dollars in a manner proportional to the representation of businesses from that group in the marketplace after accounting for various business characteristics and the characteristics of the contracts and procurements the agency awards.



among relevant racial/ethnic and gender groups, which is consistent with the population and business demographics of the Washington, D.C. marketplace.

**Figure 10-1.**  
**Availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work**

Sources:  
BBC-Pantera-Tiber availability analysis.

Business group	Organization		
	DC Government	Events DC	UDC
All POC- and woman-owned	41.4 %	41.8 %	59.9 %
White woman-owned	4.6 %	5.7 %	8.3 %
POC-owned	36.9 %	36.1 %	51.6 %
Asian American-owned	11.5 %	11.5 %	13.1 %
Black American-owned	18.9 %	18.6 %	30.1 %
Hispanic American-owned	5.3 %	4.6 %	7.1 %
Native American-owned	1.3 %	1.4 %	1.3 %

The availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work appears to be higher than the availability of POC- and woman-owned businesses for other government organizations' work. For example, Figure 10-2 presents the overall availability of POC- and woman-owned businesses for work various states and cities award, according to availability analyses BBC Research & Consulting (BBC) recently conducted. As shown in Figure 10-2, the availability of POC- and woman-owned businesses for those organizations' work ranges from 16.9 percent to 32.8 percent, substantially less than the availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work.

**Figure 10-2.**  
**Availability of POC- and woman-owned businesses for work various organizations award**

Sources:  
BBC-Pantera-Tiber availability analysis.  
2022 Hamilton County Disparity Study.  
2011 City of San Diego Disparity Study.  
2020 Commonwealth of Virginia Disparity Study.  
2020 State of Indiana Disparity Study.  
2020 City of Boston Disparity Study.  
2019 City of Indianapolis Disparity Study.  
2018 City of Denver Disparity Study.  
2018 City of Virginia Beach Disparity Study.  
2018 Commonwealth of Pennsylvania Disparity Study.  
2017 City of Charlotte Disparity Study.

Organization	Study year	Availability percentage
<b>UDC</b>	<b>2022</b>	<b>59.9 %</b>
<b>DC Government</b>	<b>2022</b>	<b>41.4 %</b>
<b>Events DC</b>	<b>2022</b>	<b>41.8 %</b>
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 %

One reason for higher POC- and woman-owned business availability for DC Government, Events DC, and UDC work is the substantial number of POC- and woman-owned businesses that exist in the marketplace. For example, according to data from the American Community Survey, POC- and woman-owned businesses make up approximately 72 percent of the businesses in the relevant geographic market area (RGMA) that perform work relevant to DC Government, Events

DC, and UDC work.<sup>4</sup> In addition, as indicated by some of the POC- and woman-owned businesses that participated in organization work during the study period, some POC- and woman-owned businesses in Washington, D.C. exhibit higher annual revenues, have a greater number of employees, and possess higher bid capacities than even the largest POC- and woman-owned businesses BBC has analyzed in other parts of the country. This increases the overall availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work.

**2. Participation of POC- and woman-owned businesses.** Similar to the availability analysis, the utilization analysis also indicated remarkably high participation of POC- and woman-owned businesses in the contracts and procurements DC Government, Events DC, and UDC awarded during the study period. As shown in Figure 10-3, overall, DC Government awarded 37.0 percent (\$2.9 billion) of its relevant contract and procurement dollars to POC- and woman-owned businesses during the study period, Events DC awarded 19.5 percent (\$36.7 million) of its work to those businesses, and UDC awarded 68.7 percent (\$58.4 million) of its work to those businesses. The POC- and woman-owned business group to which each organization awarded the most dollars was Black American-owned businesses, which exhibited participation ranging from 13.9 percent in Events DC work up to 36.9 percent in UDC work.

**Figure 10-3.**  
**Participation of POC- and woman-owned businesses in DC Government, Events DC, and UDC work**

Sources:  
 BBC-Pantera-Tiber utilization analysis.

Business group	Organization		
	DC Government	Events DC	UDC
All POC- and woman-owned	37.0 %	19.5 %	68.7 %
White woman-owned	4.5 %	3.1 %	0.9 %
POC-owned	32.5 %	16.4 %	67.8 %
Asian American-owned	4.8 %	1.2 %	27.9 %
Black American-owned	16.1 %	13.9 %	36.9 %
Hispanic American-owned	11.5 %	1.3 %	2.9 %
Native American-owned	0.1 %	0.0 %	0.0 %

For comparison, Figure 10-4 presents the participation of POC- and woman-owned businesses in work awarded by the organizations presented in Figure 10-2, according to utilization analyses BBC recently conducted. As shown in Figure 10-4, the participation of POC- and woman-owned businesses in other organizations' work ranges from 4.5 percent to 19.1 percent, less than the participation of those businesses in DC Government, Events DC, and UDC work.<sup>5</sup>

Although results from the utilization analysis indicated that DC Government, Events DC, and UDC awarded substantial portions of their contract and procurement dollars to POC- and woman-owned businesses during the study period, additional analyses indicated that the organizations awarded the vast majority of those dollars to a relatively small number of businesses. For example, with respect to DC Government work, Figure 10-5 presents a cumulative distribution of

<sup>4</sup> The 72 percent figure reflects a simple count of businesses with no analysis of their availability for specific DC Government, Events DC, or UDC contracts or procurements. For details, see Chapter 6.

<sup>5</sup> The participation of POC- and woman-owned businesses in an organization's work is strongly correlated with their availability for that work, so the participation results presented in Figure 10-4 are likely due in large part to the existing availability of POC- and woman-owned businesses for each organization's work.

the percent of contract and procurement dollars the organization awarded to individual POC- and woman-owned businesses during the study period:

- The horizontal axis presents the cumulative percent of POC- and woman-owned businesses to which the organization awarded dollars during the study period, after ordering them from the one that received the most dollars to the one that received the least dollars.
- The vertical axis presents the cumulative percent of dollars DC Government awarded to POC- and woman-owned businesses in total as one moves from the business that received the most dollars to the business that received the least dollars (i.e., moving from left to right on the horizontal axis).
- The dashed lines indicate the percent of POC- and woman-owned businesses that accounted for various percents of total dollars DC Government awarded to them.

**Figure 10-4.**  
**Participation of POC- and woman-owned businesses in work various organizations award**

Sources:

BBC-Pantera-Tiber utilization analysis.  
 2022 Hamilton County Disparity Study.  
 2011 City of San Diego Disparity Study.  
 2020 Commonwealth of Virginia Disparity Study.  
 2020 State of Indiana Disparity Study.  
 2020 City of Boston Disparity Study.  
 2019 City of Indianapolis Disparity Study.  
 2018 City of Denver Disparity Study.  
 2018 City of Virginia Beach Disparity Study.  
 2018 Commonwealth of Pennsylvania Disparity Study.  
 2017 City of Charlotte Disparity Study.

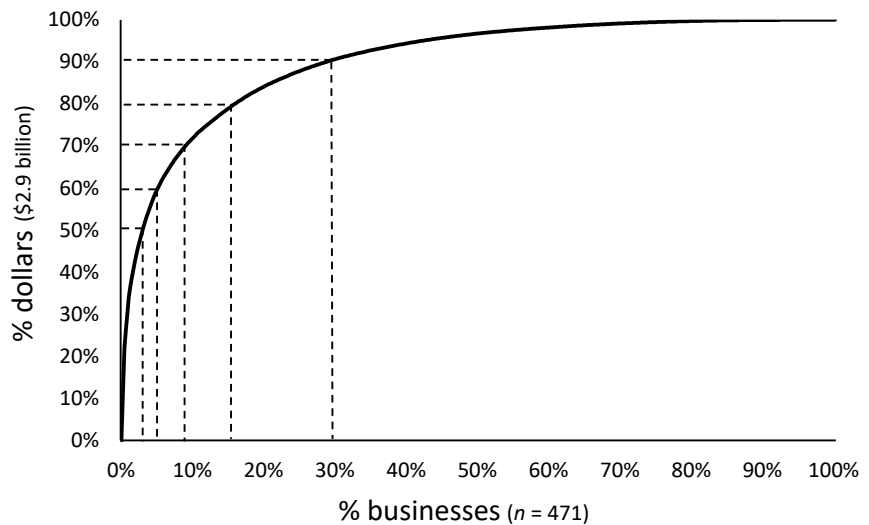
Organization	Study year	Participation
<b>UDC</b>	<b>2022</b>	<b>68.7 %</b>
<b>DC Government</b>	<b>2022</b>	<b>37.0 %</b>
<b>Events DC</b>	<b>2022</b>	<b>19.5 %</b>
City of San Diego	2021	19.1 %
City of Virginia Beach	2018	18.9 %
City of Denver	2018	14.8 %
City of Charlotte	2017	14.8 %
Hamilton County, 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 %

As shown in Figure 10-5, 90 percent of the dollars DC Government awarded to POC- and woman-owned businesses during the study period (\$2.6 billion of \$2.9 billion) went to less than 30 percent of the POC- and woman-owned businesses the organization used (i.e., 136 of 471 POC- and woman-owned businesses). Similarly, approximately 70 percent of the dollars the organization awarded to POC- and woman-owned businesses during the study period (\$2.0 billion of \$2.9 billion) went to 9 percent of the POC- and woman-owned businesses DC Government used (i.e., 44 of 471 POC- and woman-owned businesses). We observed somewhat similar results regarding the concentration of the dollars Events DC and UDC awarded to POC- and woman-owned businesses during the study period. Events DC awarded work to 79 POC- and woman-owned businesses during the study period, and the eight POC- and woman-owned businesses that received the most work (10% of all POC- and woman-owned businesses Events DC used) accounted for one-half of those dollars (\$18.4 million of \$36.7 million). UDC awarded work to 82 POC- and woman-owned businesses during the study period, and the two POC- and woman-owned businesses that received the most UDC work (2% of all POC- and woman-owned businesses UDC used) accounted for more than one-half of those dollars (\$32.4 million of \$58.4 million). Those results indicate that, similar to DC Government, although the overall participation of POC- and woman-owned businesses in Events DC and UDC work was relatively

high during the study period, the organizations awarded the majority of that work to relatively few POC- and woman-owned businesses.

**Figure 10-5.**  
**Cumulative distribution**  
**of dollars DC**  
**Government awarded to**  
**individual POC- and**  
**woman-owned**  
**businesses during the**  
**study period**

Sources:  
 BBC-Pantera-Tiber  
 utilization analysis.



**3. Disparities between participation and availability.** The crux of the disparity study was to assess whether any disparities exist between the participation of POC- and woman-owned businesses in DC Government, Events DC, and UDC work and the availability of those businesses for that work. A *substantial disparity* between participation and availability—that is, a disparity where participation is 80 percent or less of availability—for a particular racial/ethnic or gender group is interpreted by courts as an *inference of discrimination* against that group in the marketplace and often serves as evidence that the organization could consider using race- or gender-conscious measures to address corresponding barriers for that group.

BBC-Pantera-Tiber observed substantial disparities between the participation and availability of all relevant racial/ethnic and gender groups—woman-owned businesses, Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses—across different sets of DC Government contracts and procurements, indicating that all relevant groups of POC- and woman-owned businesses might be considered eligible to participate in race- and gender-conscious measures the organization decides to implement, if any. We also observed substantial disparities between participation and availability for different race/ethnic and gender groups for Events DC and UDC work.

Figure 10-6 presents a visualization of various DC Government, Events DC, and UDC contract and procurement sets for which relevant business groups exhibited substantial disparities, as indicated by black circles. As shown in Figure 10-6, there are numerous contract sets for which specific groups showed substantial disparities, representing *inferences of discrimination* against those groups in the local marketplace that likely make it more difficult for them to compete for and participate in DC Government, Events DC, and UDC work. In the case of DC Government, those disparities exist despite the relatively robust race- and gender-neutral programs the organization has in place, including the Certified Business Enterprise (CBE) Program, which is designed to encourage the participation of local businesses, and in many cases small businesses, in the organization’s work. By law, the CBE Program is wholly race- and gender-neutral.

**Figure 10-6.**  
**Substantial disparities observed for DC Government, Events DC, and UDC work**

Organization	Contract set	Business group						
		All POC and white woman	All POC	White woman	Asian American	Black American	Hispanic American	Native American
DC Government	All work				●			●
DC Government	Construction				●			●
DC Government	Professional services	●	●				●	●
DC Government	Non-prof. svcs., goods, supplies	●	●		●	●	●	●
DC Government	Prime contracts				●			●
DC Government	Subcontracts	●	●	●		●		●
Events DC	All work	●	●	●	●	●	●	●
UDC	All work		●				●	●

Notes: ● indicates substantial disparity (i.e., disparity index of 80 or less)

Source: BBC-Pantera-Tiber disparity analysis.

**a. Statistical outliers.** An important consideration regarding the disparities BBC-Pantera-Tiber observed for DC Government relates to the impact on the results from POC- and woman-owned businesses to which the organization awarded exceptionally large amounts of work. We examined whether the dollars any single POC- or woman-owned business received from DC Government during the study period met the definition of being a *statistical outlier*—that is, a data point that differs in an extreme way from all other data points in a data set. Using a “two standard deviation test,” we found that the seven POC- and woman-owned businesses to which DC Government awarded the most dollars, and the 18 POC- and woman-owned businesses to which the organization awarded the least dollars, met the definition of being statistical outliers.

After accounting for all 25 statistical outliers by adjusting their awarded dollars in a manner consistent with best practices in statistics and social science, we observed even more substantial disparities for relevant business groups across key sets of contracts and procurements (for details, see Chapter 8). Figure 10-7 presents the substantial disparities we observed for each relevant group on various key sets of DC Government contracts and procurements after accounting for statistical outliers. As shown in Figure 10-7, once we accounted for statistical outliers, with few exceptions, all relevant business groups exhibited substantial disparities across all key contract and procurement sets DC Government awarded during the study period. Those results even more clearly indicate that inferences of discrimination exist for all groups of POC- and woman-owned businesses operating in the marketplace.

**i. Statistical outliers in disparity studies.** Accounting for statistical outliers is a routine practice in social science, and we provide extensive details in Chapter 8 on the methodology we used to do so in this study, as well as how our methodology adheres to best practices in statistics and social science. Although there is a dearth of literature or case law that addresses how to treat statistical outliers in disparity study research specifically, there is at least one recent case—*Kossman Contracting Co. v. City of Houston (Kossman)*—that speaks to how a district court in Texas considered relatively large data points when interpreting disparity analysis results.<sup>6</sup> The City of

<sup>6</sup> *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

Houston implemented a race- and gender-conscious goals program based on results from a disparity study that showed a substantial disparity between the participation and availability of Native American-owned businesses for City of Houston work, but only after the consultant accounted for the two businesses that received the majority of total dollars the city awarded to all Native American-owned businesses during the study period. Kossman Contracting Co. challenged the city’s implementation of the program, including its inclusion of Native American-owned businesses in its goals program. The United States District Court of the Southern District of Texas ruled that it found “no equal-protection significance” in the fact that the majority of work Native American-owned businesses received during the study period went to only two firms and further found that the substantial disparity the consultant observed after accounting for the dollars those two firms received “is not evidence of the need for remedial action.” Thus, the district court ruled in favor of Kossman Contracting Co.

**Figure 10-7.**  
**Substantial disparities observed for DC Government work after accounting for statistical outliers**

Contract set	Business group						
	All POC and white woman	All POC	White woman	Asian American	Black American	Hispanic American	Native American
All work	●	●	●	●	●	●	●
Construction	●	●		●	●		●
Professional services	●	●	●			●	●
Non-prof. svcs., goods, supplies	●	●	●	●	●	●	●
Prime contracts	●	●	●	●		●	●
Subcontracts	●	●	●		●		●

Notes: ● indicates substantial disparity (i.e., disparity index of 80 or less)

Source: BBC-Pantera-Tiber disparity analysis.

There are two crucial aspects of *Kossman* to consider when assessing the degree to which the court’s ruling is instructive to how DC Government should account for statistical outliers or decisions the organization might make regarding its contracting policies and programs based on those results. First, the ruling came from a magistrate judge in a district court in Texas. Although the ruling could be considered persuasive, it has little, if any, precedential value on DC Government or other government organizations operating in the District of Columbia Circuit. Second, and perhaps more importantly, the approach the City of Houston and its disparity study consultant used to account for large data points—that is, identifying the businesses from a single business group that received most of the group’s dollars and removing those businesses from the analysis—is not comparable to the approach BBC-Pantera-Tiber used to systematically identify statistical outliers and adjust their values in a scientifically acceptable way. There is no indication whether the City of Houston or its consultant identified the two Native American-owned businesses that accounted for the majority of the group’s total dollars as actual, statistical outliers or what methodology they used to do so (identifying the two largest data points for a particular group is not equivalent to identifying statistical outliers.) Furthermore, there is also no indication of whether they explored alternative ways to account for those data points rather than simply removing them from the analysis. Failing to use best practices in identifying and

accounting for statistical outliers is problematic from both a research and legal perspective and represents a very different approach from the one we used as part of this study.

**ii. Treatment of adjusted dollars.** For each of the seven POC- and woman-owned outliers BBC-Pantera-Tiber identified at the high end of the dataset, we reduced the total amount DC Government awarded to each business during the study period to the amount equivalent to two standard deviations above the average amount of dollars DC Government awarded to POC- and woman-owned businesses that were not statistical outliers. That approach led to a total reduction of approximately \$900 million DC Government awarded to those businesses during the study period (from \$1.1 billion to \$212 million). By default, we redistributed those \$900 million dollars exclusively to business owned by white men. That is, after reducing the amounts of dollars DC Government awarded to the seven statistical outliers, we did not redistribute those dollars among the other POC- and woman-owned businesses the organization used during the study period. Instead, we allowed those dollars to go to all “other businesses,” which in the case of the disparity study, meant businesses owned by white men.<sup>7</sup>

Although redistributing the dollars DC Government awarded to the seven outliers at the high end of the dataset to business owned by white men may seem excessive, there is evidence that businesses owned by white men would be the most likely beneficiaries of those dollars if the organization had not awarded them to one of the seven outliers. The contracts and procurements DC Government awarded to those businesses were relatively large in size, so the organization would almost certainly have had to award that work to comparably large businesses. And, an examination of the businesses to which the organization awarded the most dollars during the study period revealed that the vast majority of comparably large businesses were owned by white men. For example, not including the seven POC- and woman-owned statistical outliers at the high end of the dataset, 18 of the 20 businesses (90%) to which DC Government awarded the most contract and procurement dollars during the study period were owned by white men, including the top 17 businesses. Similarly, not including the seven statistical outliers, 20 of the 25 businesses (80%) to which DC Government awarded the most contract and procurement dollars were owned by white men.

For comparison to our original approach to adjusting for statistical outliers, rather than redistributing contract and procurement dollars DC Government awarded to the seven POC- and woman-owned statistical outliers at the high end of the dataset exclusively to business owned by white men, we redistributed those dollars proportionally to different race and gender groups based on the percentage of contract and procurement dollars DC Government awarded to other, comparably large businesses, as indicated by the dollars the organization awarded to individual businesses during the study period. Not including the seven POC- and woman-owned outliers at the high end of the dataset, the average amount of dollars DC Government awarded to the top 20 businesses (\$149 million) was actually less than the average amount of dollars the organization

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<sup>7</sup> BBC-Pantera-Tiber used the opposite approach for the 18 POC- and woman-owned business we identified as statistical outliers at the low end of the dataset. For analytical purposes, we increased the amount of contract and procurement dollars DC Government awarded to those businesses, and by default, those dollars came from businesses owned by white men. However, those dollars amounted to a relatively small amount that did not have a meaningful impact on the results (a total increase of \$624,060 for all 18 businesses). Thus, we did not consider them further in the subsequent discussion.

awarded to the seven POC- and woman-owned statistical outliers (\$159 million), and the average amount of dollars the organization awarded to the top 25 businesses (\$128 million) was less than even that value. Nonetheless, to be more inclusive of other POC- and woman-owned businesses, we redistributed \$900 million of the work DC Government awarded to the seven POC- and woman-owned outliers at the high end of the dataset to each relevant race and gender group based on the corresponding proportions of dollars the agency awarded to the top 25 businesses, not including the seven outliers. Among those businesses, DC Government awarded:

- 92.3 percent of the dollars to 20 businesses owned by white men;
- 0 percent of the dollars to 0 white woman-owned businesses;
- 4.5 percent of the dollars to three Asian American-owned businesses;
- 3.1 percent of the dollars to two Black American-owned businesses;
- 0 percent of the dollars to 0 Hispanic American-owned businesses; and
- 0 percent of the dollars to 0 Native American-owned businesses.

Figure 10-8 presents disparity indices for each relevant POC- and woman-owned business group after redistributing the \$900 million DC Government awarded to the seven POC- and woman-owned statistical outliers at the high end of the dataset to each relevant group based on the above proportions. As shown in Figure 10-8, after redistributing dollars DC Government awarded to the seven POC- and woman-owned statistical outliers all relevant POC- and woman-owned business groups still exhibited substantial disparities.

There are several factors the above analysis does not take into account, including the work involved in each project DC Government awarded to the seven POC- and woman-owned statistical outliers at the high end of the dataset, the specific sizes of the contracts and procurements the organization awarded to those businesses, and the additional dollars we attributed to the 18 POC- and woman-owned statistical outliers at the low end of the dataset. Accounting for those factors would likely result in fewer dollars being reallocated to POC- and woman-owned businesses, given that businesses owned by white men made up the vast majority of the businesses to which DC Government could have conceivably awarded the projects it instead awarded to the seven statistical outliers during the study period. However, DC Government could consider further exploring those factors as it begins to develop program measures to help address disparities for specific business groups. Doing so could help the organization further understand which relevant POC- and woman-owned business groups exhibit substantial disparities in its work.

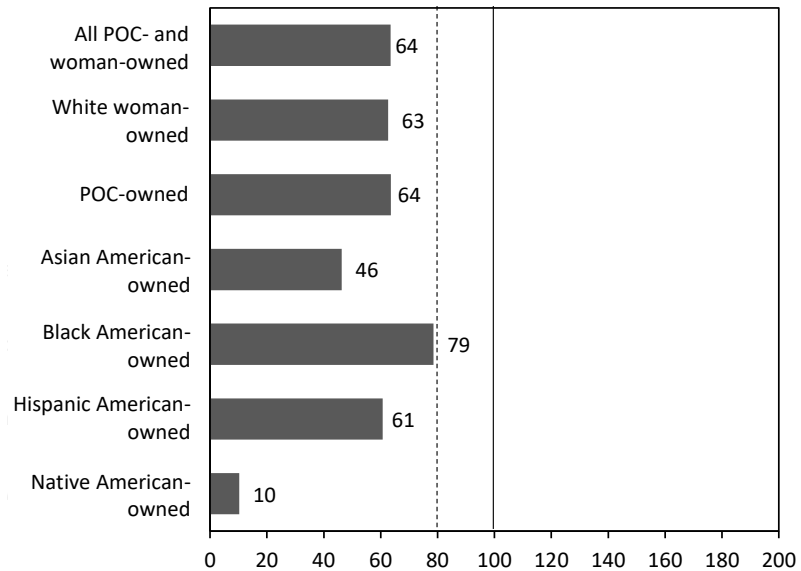
**b. Corroborating evidence of disparities.** A key result from the disparity study is that there is relatively high availability of POC- and woman-owned businesses for DC Government, Events DC, and UDC work, but the participation of those businesses in that work falls substantially short of their availability for it. In other words, it does not appear that DC Government, Events DC, or UDC are maximizing their use of POC- and woman-owned businesses relative to their availability in the marketplace. As an illustration of that issue, we calculated the percent of the businesses that participated in DC Government work during the study period that were POC- or woman-owned (according to utilization analysis results) and compared it to the percent of businesses in



the RGMA that perform relevant work that are POC- and woman-owned (according to American Community Survey data). As shown in Figure 10-9, whereas approximately 72 percent of the relevant businesses in the RGMA are POC- or woman-owned, only approximately 40 percent of the businesses that performed work for DC Government during the study period were POC- or woman-owned. Conversely, whereas only 28 percent of the relevant businesses in the RGMA are owned by white men, approximately 60 percent of the businesses that performed work for DC Government during the study period were owned by white men. Both differences were statistically significant at  $p < .01$ .

**Figure 10-8.**  
**Disparity indices for DC Government work after redistributing dollars POC- and woman-owned statistical outliers received to comparably large businesses**

Source:  
 BBC-Pantera-Tiber disparity analysis.



As more evidence that DC Government is not maximizing their use of POC- and woman-owned businesses relative to their availability, we examined the likelihood of POC- and woman-owned businesses we considered potentially available for DC Government work (i.e., they were included in the *availability database* based on their characteristics) to have actually performed work for DC Government during the study period relative to that of businesses owned by white men we considered potentially available for DC Government work. Importantly, being considered potentially available for DC Government *was not* dependent on businesses having performed or even competed for that work in the past. Instead, being included in the availability database is an indication of the degree to which businesses are *ready, willing, and able* to perform DC Government work based solely on their business characteristics and the characteristics of the contracts and procurements the organization awards.

We compared the percent of potentially available POC- and woman-owned businesses that actually performed work for DC Government during the study period to the percent of potentially available businesses owned by white men that performed work for the organization during the study period. The result of that analysis indicated that the likelihood of having performed work for DC Government during the study period was substantially higher for potentially available businesses owned by white men (15.3%) than for potentially available POC- and woman-owned businesses (9.5%), and that difference was statistically significant at  $p < .01$  ( $n = 909$ ).

**Figure 10-9.**  
**Representation of POC- and woman-owned businesses in the RGMA and among businesses that performed work for DC Government during the study period**

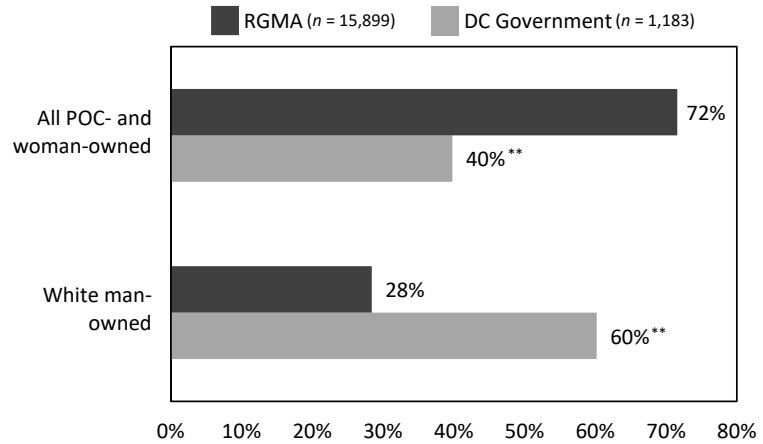
Note:

\*\* indicates a statistically significant difference at  $p < .01$ .

Sources:

BBC-Pantera-Tiber utilization analysis.

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Thus, information about the representation of businesses in the RGMA from the American Community Survey, as well as information about potentially available businesses from BBC-Pantera-Tiber’s availability database, corroborate the disparity analysis results. Specifically, POC- and woman-owned businesses are underutilized on DC Government contracts and procurements relative to their availability for that work.

**4. Barriers in the marketplace.** The United States Supreme Court and other courts have held that analyses of conditions in a local marketplace for POC- and woman-owned businesses are instructive in determining whether organizations’ use of race- and gender-conscious programs as part of their contracting processes are appropriate and justified are appropriate and justified. Many courts have held that evidence of marketplace barriers for POCs, women, and POC- and woman-owned businesses helps to establish a *compelling government interest* for organizations to take remedial action to address those barriers. BBC-Pantera-Tiber’s analyses of marketplace conditions in the Washington, D.C. region indicate that POCs, women, and POC- and woman-owned businesses face various barriers in the region in terms of acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses (for details, see Chapters 3 and 4 and Appendices C and D). In many cases, there is evidence those disparities exist even after accounting for various race- and gender-neutral factors such as age, income, education, and familial status.

Barriers in the marketplace likely have important effects on the ability of POCs and women to start businesses in relevant industries and operate those businesses successfully. Any difficulties they face in starting and operating businesses in the region may reduce their availability for DC Government, Events DC, and UDC work and their ability to successfully compete for and perform that work. In the next section, BBC-Pantera-Tiber presents many recommendations that might help DC Government address some of those difficulties as well as the disparities we observed between the participation and availability of POC- and woman-owned businesses in the organization’s work.

## B. Recommendations

BBC-Pantera-Tiber observed substantial disparities between the participation of POC- and woman-owned businesses in DC Government, Events DC, and UDC contracts and procurements

and their availability for that work. We present various recommendations for DC Government to consider as part of addressing those disparities and further encouraging the participation of POC- and woman-owned businesses in its work effectively and in a legally defensible manner. In considering our recommendations, the organization should be particularly mindful of the legal requirements surrounding the use of race- and gender-conscious measures, including state and federal regulations as well as relevant case law. The organization should consult closely with internal legal counsel in developing any new policies or programs related to POC- and woman-owned businesses to ensure they are consistent with the requirements of the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

**1. Overall POC-/woman-owned business goal.** BBC-Pantera-Tiber recommends that DC Government should consider establishing an overall aspirational goal for the participation of POC- and woman-owned businesses in eligible contracts and procurements, separate from the organization’s CBE goal.<sup>8</sup> An overall POC-/woman-owned business goal could help create a shared commitment to, and understanding of, DC Government’s equity objectives among internal and external stakeholders and help guide efforts the organization could use to try to achieve the goal each year. If DC Government established an overall POC-/woman-owned business goal, it would monitor the participation of POC- and woman-owned businesses in its work each year. If it fails to achieve its goal in a particular year, it would assess reasons why it might have failed to do so and develop plans to achieve its goals the following year, including potential refinements to existing program measures and the introduction of new program measures, as necessary.

Setting an overall POC-/woman-owned business goal is not a race- and gender-conscious measure, because it is not technically a program measure at all. Instead, it represents an overall, aspirational *objective* that guides various, individual measures DC Government might use to encourage POC- and woman-owned business participation in its work, each of which would either be race- and gender-neutral, or if appropriate, race- and gender-conscious in nature. Figure 10-10 presents a framework illustrating the relationship between an overall POC-/woman-owned business goal, measures an organization might use to meet the goal, monitoring the participation of POC- and woman-owned businesses in organization work, and assessing whether any program refinements are necessary.

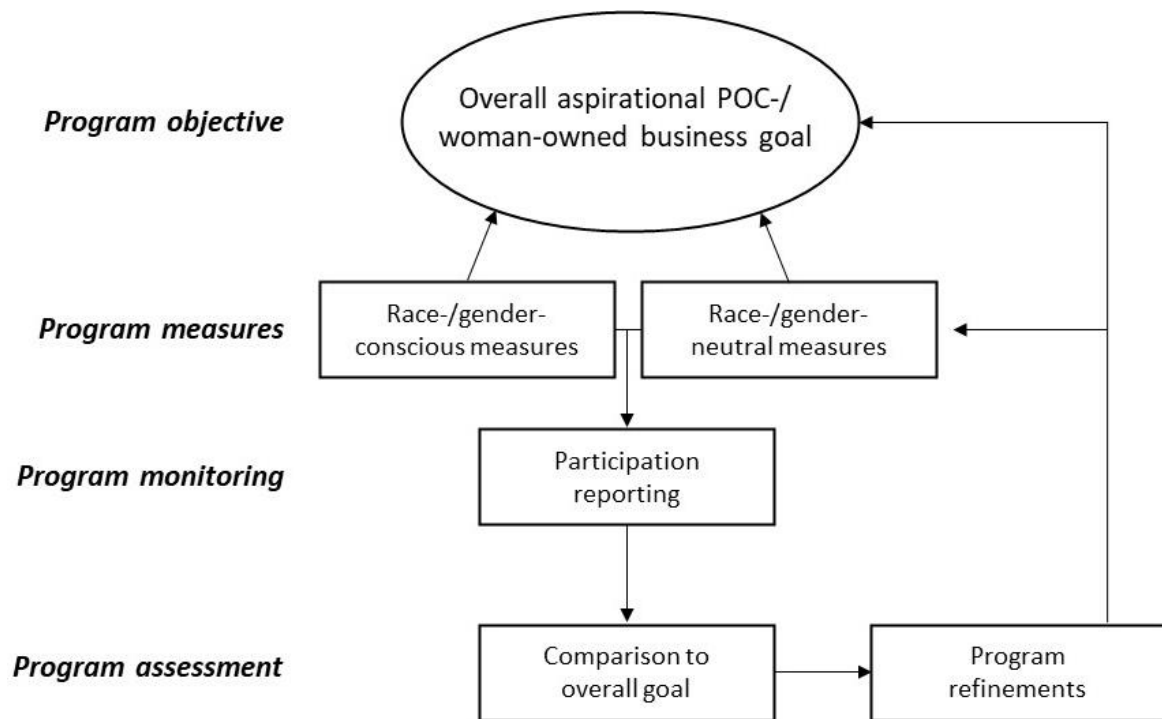
- **Program objective:** The overall POC-/woman-owned business goal is an overall, aspirational objective of the amount of contract and procurement dollars the organization will try to award to POC- and woman-owned businesses across its operations. It helps organize the organization’s program and helps create a shared commitment to, and understanding of, its equity objectives related to POC- and woman-owned business participation in organization work.
- **Program measures:** The organization uses various measures—potentially including both race- and gender-neutral measures, and if appropriate, race- and gender-conscious

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<sup>8</sup> Although the overall POC-/woman-owned business goal would be separate from the overall CBE goal of 50 percent of eligible contracts and procurements, there would likely be a great deal of overlap in the businesses DC Government would use to achieve both goals, because many POC- and woman-owned businesses that participate in DC Government work are also CBEs.

measures—in an effort to encourage the participation of POC- and woman-owned businesses in its work and meet its overall POC-/ woman-owned businesses each year. Race- and gender-neutral measures might include setting aside individual contract or procurement opportunities for exclusive competition among small businesses or relaxing bonding requirements on individual opportunities to make them more accessible to small businesses. Race- and gender-conscious measures might include setting condition-of-award goals for the participation of POC-/woman-owned business participation in individual contracts or procurements or awarding preference points based on the level of proposed participation of POC-/woman-owned business participation on project teams.

**Figure 10-10.**  
**Framework for the relationships among an overall aspirational POC-/woman-owned business goal, individual program measures, program monitoring, and program assessment**



- **Program monitoring:** The organization compiles information on the participation of POC- and woman-owned businesses in its work on a regular basis, perhaps quarterly, semi-annually, or annually.
- **Program assessment.** On an annual basis, the organization compares the actual participation of POC- and woman-owned businesses in its work to its overall aspirational POC-/woman-owned business goal. If actual participation falls short of the overall goal, the organization considers whether any refinements are necessary to the program measures it uses or to the overall goal itself that will allow it to better meet the overall POC-/woman-owned business goal the following year).

BBC-Pantera-Tiber presents an example of a two-step process DC Government could consider using to set an overall POC-/woman-owned business goal, which is based on the process organizations use to set overall goals as part of the Federal Disadvantaged Business Enterprise (DBE) Program. The process includes *establishing a base figure* and *considering an adjustment* to the base figure based on various information related to the ability of POC- and woman-owned businesses to compete successfully for organizations' work.

**a. Establishing a base figure.** The first step DC Government could take in setting an overall POC-/woman-owned business goal is to develop a base figure for its goal based on demonstrable evidence of the availability of POC- and woman-owned businesses for its work, ideally from the availability analysis BBC-Pantera-Tiber conducted as part of this study. The availability analysis indicated that POC- and woman-owned businesses are potentially available to participate in 41.4 percent of DC Government contract and procurement dollars, which the organization could consider as the base figure for an overall POC-/woman-owned business goal.

**b. Considering an adjustment.** In setting an overall POC-/woman-owned business goal, DC Government could also examine various factors to determine whether an adjustment to its base figure is warranted, to account for any characteristics of the local marketplace that might affect the ability of POC- and woman-owned businesses to participate in the organization's work. For example, the Federal DBE Program sets forth several factors DC Government could consider when assessing whether to adjust its base figure:

- Past participation of POC- and woman-owned businesses in its work;
- Information related to employment, business ownership, education, training, and unions;
- Information related to financing, bonding, and insurance; and
- Other relevant information.

If DC Government decides to make an adjustment to its base figure, it would have to decide which factors it would consider in making an adjustment, the direction of the adjustment, and the magnitude of the adjustment based on its quantification of relevant factors.

**i. Past participation of POC- and woman-owned businesses in its work.** DC Government could consider making an adjustment to its base figure based on the degree to which POC- and woman-owned businesses have participated in its work in recent years, which is sometimes interpreted as the functional capacity of those businesses to participate in organizations' contracts and procurements. Results from the utilization analysis indicate that the organization awarded 37.0 percent of its work to POC- and woman-owned businesses during the study period. Thus, information about the past participation of POC- and woman-owned businesses in DC Government work indicates that a *downward adjustment* to the organization's base figure might be warranted.

**ii. Information related to employment, business ownership, education, training, and unions.** Chapters 3 and 4 summarize information about conditions in the local marketplace for POCs, women, and POC- and woman-owned businesses. We present additional quantitative and anecdotal information about local marketplace conditions in Appendices C and D. Those

analyses indicate that POCs and women in the region face various barriers related to education, employment, and business ownership in the local marketplace. For example:

- Black Americans, Hispanic Americans, Asian Pacific Americans, and Native Americans are less likely than white Americans to earn college degrees in the region.
- Black Americans, Asian Pacific Americans, and Hispanic Americans are less likely than white Americans—and women are less likely than men—to work as managers in relevant industries in the region.
- Various groups of POCs are less likely than white Americans—and women are less likely than men—to own businesses in relevant industries in the region, even after accounting for various personal characteristics.

Such barriers could also impact the availability of POC- and woman-owned businesses for DC Government work, supporting an *upward adjustment* to the organization’s base figure to help account for those barriers.

**iii. Information related to financing, bonding, and insurance.** BBC-Pantera-Tiber’s analyses of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in the Washington, D.C. area do not have the same access to those business inputs as white men and businesses owned by white men. For example:

- All relevant groups of POCs earn less in wages than white Americans in the region, and women earn less in wages than men.
- All relevant groups of POCs are less likely than white Americans to own homes in the region, which can make it more difficult for them to obtain financing and build wealth to establish their own businesses.
- Anecdotal evidence we collected through public meetings, surveys, and in-depth interviews with local businesses indicated that POC- and woman-owned businesses often have difficulties securing business loans, bonds, and insurance.

Any barriers to obtaining financing, bonding, or insurance might limit opportunities for POCs and women to successfully form and operate businesses in the local marketplace, impacting the availability of POC- and woman-owned businesses for DC Government work. Taken together, that information also supports an *upward adjustment* to the organization’s base figure to account for those barriers.

**iv. Other relevant information.** DC Government could also examine “other relevant information” when determining whether to adjust its base figure. For example, there is quantitative evidence that businesses owned by POCs and women earn less in revenue than businesses owned by white men and face greater barriers in the local marketplace, even after accounting for other business characteristics. Chapter 3 summarizes that evidence, and Appendix C presents additional, corresponding results. There is also anecdotal evidence of barriers to the success of POC- and woman-owned businesses, which we present in Chapter 4 and Appendix D. For example, as part of the anecdotal evidence process, many stakeholders reported experiencing

stereotyping, double standards, and business networks closed off to POC- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race and gender adversely affects POC- and woman-owned businesses in the local marketplace, again supporting an *upward adjustment* to DC Government’s base figure to account for such barriers.

**c. Goal updates.** If DC Government decides to establish an overall POC-/woman-owned business goal for the participation of those businesses in its work, then the organization should also determine how frequently it will update the goal. Organizations that have established overall POC-/woman-owned business goals often update them every time they commission new availability or disparity studies, perhaps every three to five years. DC Government should also review its goal-setting processes regularly to ensure it provides adequate flexibility to respond to any changes in local marketplace conditions, anticipated contract and procurement opportunities, and other information.

**2. POC-/Woman-owned business contract goals.** DC Government only uses race- and gender-neutral measures as part of its contract and procurement processes, which are designed to encourage the participation of local businesses, and in many cases small businesses, in the organization’s work, regardless of the race/ethnicity or gender of business owners. However, despite the relative strength and success of those efforts—including the CBE Program—the disparity study shows substantial disparities for all relevant racial/ethnic and gender groups across key sets of contracts and procurements the organization awards, particularly for small- to medium-sized POC- and woman-owned businesses (for details, see Chapter 8, Appendix F, and Figures 10-6 and 10-7 above). Based on that evidence and the barriers we observed for POCs, women, and POC- and woman-owned businesses throughout the local marketplace, BBC-Pantera-Tiber recommends that DC Government should consider whether a race- and gender-conscious contract goals program would help address the disparities POC- and woman-owned businesses face as part of the organization’s contract and procurement processes.

There are many considerations an organization must make in developing a race- and gender-conscious goals program to ensure it is effective and meets the requirements of the strict scrutiny and intermediate standards of constitutional review, respectively. We present many of those considerations below, but they should not be considered exhaustive of all the considerations DC Government would have to make in developing and implementing such a program. Furthermore, the following discussion should not be construed as BBC-Pantera-Tiber providing DC Government with a legal opinion regarding a race- and gender-conscious program. The organization should consult closely with internal legal counsel in developing a race- or gender-conscious goals program if it determines that such a program is appropriate.

**a. Setting and meeting contract goals.** As part of a POC-/woman-owned business contract goals program, DC Government would set percentage goals for the participation of POC- and woman-owned businesses on individual contracts and procurements it awards. Those goals would be based on the availability of *eligible* POC- and woman-owned businesses for the types of work involved in the project as well as on other relevant factors (e.g., other contracting demands in the marketplace, recent business closures or changes, and the size of the contract or procurement opportunity). Based on that information, goals would vary from project to project, and sometimes they might be 0 percent. Moreover, DC Government would not have to set goals

on every contract and procurement it awards. For example, it could decide only to do so on relatively large projects or on projects in a particular industry (e.g., construction; professional services; or non-professional services, goods, and supplies).

As a condition of contract or procurement award, prime contractors would have to meet contract goals as part of their bids, quotes, or proposals by making participation commitments with eligible, certified POC- and woman-owned subcontractors or, if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts (GFEs) to do so.<sup>9</sup> In addition, for the participation of POC- and woman-owned businesses to count toward meeting a contract goal, they would have to demonstrate that they will perform *commercially useful functions* on the project, which refers to businesses performing real and distinct work for which they have demonstrable skills, experience, and responsibilities. Prime contractors that fail to meet POC-/woman-owned business contract goals—either through commitments of the actual participation of eligible POC- or woman-owned businesses on the project or by demonstrating GFEs—would be considered non-responsive and their bids, quotes, or proposals would be considered ineligible for contract award.

**b. Eligibility of specific groups to participate in the program.** Because the use of POC-/woman-owned business contract goals is a race- and gender-conscious measure, DC Government would have to ensure its use of such goals meets the requirements of the strict scrutiny and intermediate standards of constitutional review, respectively. For strict scrutiny in particular, that includes showing a *compelling government interest* for their use and ensuring their use is *narrowly tailored* (for details, see Chapter 2 and Appendix B). Among several factors, one key factor of narrow tailoring is that eligibility for participation in race-conscious measures must be limited to those business groups for which inferences of discrimination exist in an organization’s contracting and procurement processes. Only the participation of businesses that are part of eligible groups would count toward meeting contract goals DC Government has established on individual contract and procurement opportunities.

One of the primary reasons for conducting a disparity study is to assess whether any relevant POC- or woman-owned business groups exhibit substantial disparities (i.e., disparity indices of 80 or less) between participation and availability for organization work, which many courts have considered inferences of discrimination against particular business groups in the marketplace.<sup>10</sup> As part of the disparity analysis, BBC-Pantera-Tiber observed that all relevant business groups—woman-owned businesses, Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses—exhibited substantial disparities across different sets of DC Government contracts and procurements, particularly after we accounted for statistical outliers. If the

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<sup>9</sup> DC Government could also allow prime contractors certified as eligible POC- or woman-owned businesses to count their own work toward meeting contract goals or allow joint ventures where the majority partners are certified as eligible POC- or woman-owned businesses to count their portions of the work toward meeting contract goals.

<sup>10</sup> For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); and *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).



organization decides to develop a POC-/woman-owned business contract goals program, it should review those results carefully to ensure its program accounts for them properly.

**i. Overall program.** A common way for organizations to design a POC-/woman-owned business contract goals programs and make decisions about group eligibility is by basing their programs on outcomes for POC- and woman-owned businesses on all their relevant contracts and procurements considered together, because that work represents the total contract and procurement dollars they might spend with POC- and woman-owned businesses across all their operations. Disparity analysis results showed substantial disparities between the participation and availability of woman-owned businesses, Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses for all DC Government contracts and procurements considered together, particularly after we accounted for statistical outliers (for details, see Figure 8-8 in Chapter 8). Those results indicate that all of those business groups might be considered eligible to participate in a contract goals program. Many organizations design race- and gender-conscious programs based on all their relevant contracts and procurements considered together, including the California Department of Transportation (Caltrans), Sound Transit, the City of Indianapolis, and the City of Denver.

**ii. Industry-specific program.** Another example of how DC Government could potentially design a POC-/woman-owned business contract goals program and make decisions about group eligibility is by basing the program on the industries of corresponding projects. Disparity analysis results showed substantial disparities for different relevant business groups for the construction; professional services; and non-professional services, goods, and supplies work the organization awards. If DC Government designed a contract goals program based on the industry of each project, the following groups might be considered eligible to participate in the goals program for each industry, based on disparity analysis results after the study team accounted for statistical outliers:

- Asian American-owned businesses, Black American-owned businesses, and Native American-owned businesses might be considered eligible for contract goals DC Government uses to award construction projects.
- Woman-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses might be considered eligible for contract goals DC Government uses to award professional services projects.
- Woman-owned businesses, Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses might be considered eligible for contract goals DC Government uses to award non-professional services, goods, and supplies projects.

Many organizations design race- and gender-conscious programs based on the industries of corresponding projects, including the City of Charlotte, the City of Boston, and the City of Virginia Beach.

**c. POC- and woman-owned business certification.** The underlying reason the use of race-conscious measures must be limited to business groups for which inferences of discrimination

exist in an organization's contracting and procurement processes is that the use of such measures cannot be overly broad. Thus, it is important that organizations that use race- and gender-conscious measures also have certification processes in place that allow them to verify that businesses participating in those measures meet program requirements, including suffering from social and economic disadvantage. If DC Government decides to implement a race- and gender-conscious goals program—or any other race- or gender-conscious program—it should also establish its own POC- and woman-owned business certification process or partner with an organization that has a certification process that would meet the needs of its program. In either case, the DC Government might consider certification requirements for POC- and woman-owned businesses similar to those of the Federal DBE Program, including the following:

- The business must be 51 percent owned and controlled by individuals who identify as POC or women.
- The business's owners must be United States citizens or lawfully admitted permanent residents.
- For a POC-owned business, the business's owners must identify with one of the groups presumed to be disadvantaged as part of most POC-owned business programs: Asian Americans, Black Americans, Hispanic Americans, and Native Americans.
- The business must be a small business according to accepted small business revenue and business owner personal net worth standards, such as those set forth by the United States Small Business Administration (SBA).

DC Government would need to develop application, evaluation, monitoring, and recertification processes as part of a POC- and woman-owned business certification program. In addition, it might consider developing a searchable database of certified POC- and woman-owned businesses that includes information on certification type, race/ethnicity of the owners, gender of the owners, primary lines of work, and contact information so prime contractors, DC Government staff, and other interested parties can identify them for potential opportunities.

**d. Race- and gender-neutral measures.** Another factor courts consider when assessing whether organizations' use of race-conscious measures is narrowly tailored is whether the use of such measures is necessary and whether race-neutral measures could sufficiently address existing barriers for POC-owned businesses. Organizations are not required to *exhaust* all race-neutral measures, but they are required to *maximize* the use of those measures before considering the use of race-conscious measures. There are no hard and fast rules around what it means to "maximize" race-neutral measures, but as presented in Chapter 9, DC Government uses many, robust race-neutral efforts to encourage the participation of local businesses and small businesses in its work and has done so for many years. Those measures include:

- CBE and SBE contract goals for the participation of local businesses and small businesses in DC Government work;
- Setting aside certain contracts and procurements exclusively for CBE competition;
- Finance programs to help businesses access loans and grants;

- Business development and technical assistance programs to help businesses compete successfully for government work; and
- Networking and outreach efforts to help connect businesses with one another and to share information about contract and procurement opportunities.

In aggregate, DC Government’s race- and gender-neutral efforts have been relatively successful in indirectly encouraging the participation of POC- and woman-owned businesses in the organization’s work. However, substantial disparities still exist for all relevant racial/ethnic groups, particularly for small- to medium-sized POC- and woman-owned businesses. That evidence suggests it might be warranted for DC Government to also consider the use of race- and gender-conscious measures.

**3. Other recommendations.** Disparity study results indicate that there are refinements DC Government could make to further encourage the participation of POC- and woman-owned businesses in its contracts and procurements. None of the measures discussed below are race- or gender-conscious but may nonetheless be effective in indirectly encouraging POC- and woman-owned business participation in DC Government work and may be instructive to the organization when considering whether it is maximizing its use of race- and gender-neutral measures. We offer recommendations related to three categories:

- Procurement policies;
- Contract and procurement administration; and
- Supportive services and capacity building.

**a. Procurement policies.** Based on our review of the organization’s policies and insights we collected from stakeholders as part of the anecdotal evidence process, BBC-Pantera-Tiber identified several ways DC Government could consider refining or augmenting its procurement policies to help encourage the participation of small businesses, including many POC- and woman-owned businesses, in its work.

**i. Unbundling contracts and procurements.** In general, POC- and woman-owned businesses exhibited reduced availability for relatively large contracts and procurements DC Government awarded during the study period. In addition, as part of in-depth interviews, several business owners reported that size of work is sometimes a barrier to their success. For example:

*The Black American woman owner of a professional services firm said, “I think multi-award [projects] would [help address contract size issues], because then we could take a piece of the pie. ... then we’d get an opportunity, and it wouldn’t be predicated on the ... small business saying, ‘We’ll work with whomever,’ because we’d be in the pool.”*

To further encourage the participation of POC- and woman-owned businesses in DC Government work, the organization should consider making efforts to unbundle relatively large prime contracts, and even subcontracts, into many, smaller pieces. Such initiatives might increase opportunities for all small businesses, including many POC- and woman-owned businesses. Alternatively, breaking up large prime contracts into multiple projects could benefit small- to medium-sized businesses that typically perform work as subcontractors, giving them more

opportunities to perform as a prime contractor while easing some of the burdens associated with prime contract work, such as financing, bonding, insurance, and workforce development.

**ii. Small business subcontracting goals.** Subcontracts often represent accessible opportunities for small businesses—including many POC- and woman-owned businesses—to become involved in government work. DC Government sets goals of 35 percent for the participation of SBEs in contracts and procurements worth \$250,000 or more. If prime contractors cannot find any SBEs with which to subcontract, they are permitted to subcontract with other, non-SBE CBEs on those projects if they demonstrate genuine and sufficient GFEs to do so. (DC Government waives SBE subcontracting requirements if the prime contractors are CBEs themselves and do not subcontract any of the project work.) BBC-Pantera-Tiber recommends that DC Government should assess its internal practices to ensure it is fully enforcing GFE requirements in cases where prime contractors indicate they could not find any SBEs with which to work. Subcontractors often remark that prime contractors make only perfunctory efforts to include SBEs as part of such programs, so any efforts to ensure GFEs are genuine and meaningful may help increase engagement between non-SBE prime contractors and SBE subcontractors. In addition, if prime contractors are CBEs themselves or if they are joint ventures with 51 percent ownership and control by CBEs, DC Government should consider still requiring them to meet SBE subcontracting goals.

**iii. New businesses.** Disparity study results indicate that a substantial portion of the contract and procurement dollars DC Government awarded to POC- and woman-owned businesses during the study period went to a small number of large businesses, each of which were awarded multiple, large contracts and procurements during the study period. Moreover, additional analyses indicated that DC Government is not maximizing the availability of POC- and woman-owned businesses that exists for its work in its marketplace. To expand the number of POC- and woman-owned businesses—particularly small- to medium-sized businesses—that participate in DC Government work, the organization could consider using bid, quote, and Request for Proposal requirements to encourage prime contractors to partner with subcontractors and suppliers with which they have never worked in the past. For example, as part of the bid process, DC Government could ask prime contractors to submit information about the efforts they made to identify and team with businesses with which they have not worked in the past. The organization could award evaluation points or price preferences based on the degree to which prime contractors partner or attempt to partner with new subcontractors with which they have not previously worked. The organization could also consider setting aside certain small projects for exclusive competition among businesses that have never worked with DC Government before, which would introduce new businesses to the organization’s work. Finally, DC Government could consider efforts to expand its base of POC- and woman-owned businesses through additional outreach, including by using vendor information BBC-Pantera-Tiber collected as part of the utilization and availability analyses.

**iv. Competitive bidding thresholds.** DC Government uses competitive bidding processes to award contracts and procurements worth more than \$100,000. For work worth less than \$10,000, no formal processes are required. For work worth more than \$10,000 but less than \$100,000, the Chief Procurement Officer can establish requirements for basic competition, including the solicitation of quotes from multiple vendors. However, it is not clear under what circumstances

DC Government applies basic competition requirements for opportunities of that size. DC Government should consider lowering and clearly defining the dollar thresholds at which it uses formal, competitive bidding procedures. Contracts and procurements worth less than \$100,000 are particularly accessible to small businesses, including many POC- and woman-owned businesses, and increasing requirements around the number of quotes DC Government must solicit for that work or lowering the dollar thresholds for which it requires competitive processes could increase opportunities for those businesses to compete for organization work. For example, Hamilton County, Ohio and the City of Boston, Massachusetts require competitive processes for work worth more than \$50,000 and the City of Lexington, Kentucky requires competitive process for work worth more than \$30,000.

**v. Solicitation response timelines.** Anecdotal evidence indicates that having insufficient time to respond to solicitations is a common barrier to small business success. For example:

*The Black American woman owner of a professional services company stated, "Maybe more time [to bid would be helpful]. We see a lot of short [timeline] opportunities come out. And so the smaller business just doesn't have the manpower or the ... we just can't scramble." She further said that, "a minimum of 30 and 90 [days] would be nice."*

DC Government should consider extending response times for solicitations to a minimum of 30 days for all contracts and procurements to give small businesses, including many POC- and woman-owned businesses, sufficient time to prepare competitive bids, quotes, or proposals. For example, federal agencies are required to include response times of at least 30 days in all competitive bid and proposal processes.

**vi. Prequalification requirements.** Comments from in-depth interviews indicate that DC Government's prequalification requirements can be difficult for small and new businesses to meet, many of which are POC- and woman-owned businesses. For example:

*The Black American male owner of a construction company noted, "As a plumber ... some of these contracts come out and they're very attainable, but then when you get to the qualification aspect of it, it can almost eliminate you because it's just like, well, the business hasn't been operational for five years, but the plumber, the owner has been a plumber for 20 years. ... Well, that's a disqualification right there. ... Are they realistically trying to get us involved, or they only pretty much language in this for people who have already been contracting?"*

*The Black American male owner of a professional services firm stated, "For instance, if you want to get on the bid for school design, and if you haven't done X number of schools, you may not even be considered. So yeah, that is a challenge."*

DC Government could consider easing prequalification requirements around company experience for new businesses and allowing substitutions with the individual experience of business owners or demonstrably similar work businesses have completed, regardless of whether that experience came as part of DC Government projects.

**vii. SBEs and microbusinesses.** Although the CBE Program includes an SBE certification category, businesses can become CBE certified and benefit from the program in various way without being small businesses. To better focus the programs' benefits to small businesses, DC Government could consider limiting eligibility for CBE certification to only those businesses that meet SBA requirements for small business certification. In addition, for certain industries, the SBA size thresholds for small businesses include gross receipts of up to \$26 million. DC Government should consider adding an additional certification classification for microbusinesses with smaller revenue requirements. The organization could then add preferences and benefits exclusive to microbusinesses, including proposal points, bid reductions, or setting aside certain opportunities exclusively for microbusiness competition.

**b. Contract and procurement administration.** BBC-Pantera-Tiber also recommends that DC Government should consider additional measures designed to support small businesses, including many POC- and woman-owned businesses, as part of its contract and procurement administration practices.

**i. Subcontractor data collection.** Although DC Government collects and maintains data on subcontracts related to large projects subject to First Source requirements, it does not do so for all its projects. The organization should consider collecting comprehensive subcontract data on *all* projects. Collecting the following data on subcontracts might be appropriate:

- Associated prime contract numbers (e.g., purchase order or contract numbers);
- Subcontractor names, addresses, phone numbers, and email addresses;
- Types of associated work;
- Award amounts; and
- Paid-to-date amounts.

DC Government should consider collecting those data at the time of award and requiring prime contractors to submit data on the payments they make to subcontractors as part of monthly invoicing. Doing so will improve the organization's monitoring of the participation of POC- and woman-owned businesses in its work and could also help the organization identify future subcontracting opportunities for small businesses, including many POC- and woman-owned businesses, in the marketplace. Collecting comprehensive subcontract data might require upgrading to a different data management system that allows the organization to collect and maintain that information more effectively.

**ii. Prompt payment.** DC Government has the Quick Payment Act in place to ensure businesses are paid in a timely manner on work they perform for the organization.<sup>11</sup> However, the Quick Payment Act focuses on DC Government's payment to prime contractors and does not address the amount of time subcontractors and suppliers might have to wait to be paid by prime contractors. As part of in-depth interviews and surveys, several businesses reported difficulties

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<sup>11</sup> D.C. Law 5-164. District of Columbia Government Quick Payment Act of 1984.

receiving payment in a timely manner on government work, particularly when they work as subcontractors or suppliers. For example:

*The Black American woman owner of a construction company noted, “I’m hearing that some agencies are starting to validate that the subcontractors have been paid, right? When they release a [payment] to the prime, they give it about five days or so and then they go out to the subs that are in that plan and say, ‘Hey, you get your money?’ And that’s what they need to do because the games are ridiculous.”*

*The Black American male owner of a professional services firm stated, “A lot of the public work, they pay on about 30 days or some, 45 days at different milestones. ... You would have to have some alternative revenue streams or take loans in order to wait for the milestone check coming in from the project. So sometimes if a company is not properly capitalized, that could be an issue, surviving until they hit the next milestones.”*

DC Government should consider assessing the degree to which it is enforcing the Quick Payment Act as it relates to timely payment to prime contractors but should also consider establishing prompt payment processes to ensure timely payment from prime contractors to subcontractors and suppliers, ideally within a specified maximum number of days after approving invoices. The organization should consider making efforts to enforce those requirements by creating electronic systems to track and confirm subcontractor payments as part of invoice processes. Many organizations have implemented requirements around prime contractor payments to subcontractors, including Caltrans, the Los Angeles County Metropolitan Transportation Authority, the Metropolitan Sewer District of Greater Cincinnati, and Sound Transit.

**c. Supportive services and capacity building.** Disparity study results indicate that most POC- and woman-owned businesses in the Washington D.C. area have relatively low capacities for DC Government work. In addition to contract and procurement measures, DC Government should consider efforts to help build capacity among small businesses, including many POC- and woman-owned businesses, and further encourage their participation in organization work.

**i. Growth monitoring.** DC Government has various services and programs in place specifically designed to build business capacity, such as educational workshops and training related to bonding, financing, business planning, business technology, business partnerships, and other topics. To assess the effectiveness of those measures and any new measures in building business capacity among small businesses as well as POC- and woman-owned businesses, DC Government might consider collecting data on the impact its business development efforts have on the growth of businesses over time. Doing so would require the organization to collect baseline information on POC- and woman-owned businesses—such as revenue, number of locations, number of employees, and business ownership information—and then continue to collect that information from each business on a semi-annual or annual basis. Such metrics would allow the organization to assess whether its programs are helping businesses grow and be successful even outside of its own contract and procurement processes.

**ii. Networking and outreach.** DC Government hosts and participates in several outreach and networking events that provide information about doing business with the organization and about available contracting opportunities. The organization should consider continuing its

current networking and outreach efforts and consider broadening those efforts to include more partnerships with local trade and government organizations, including the Black Business Task Force, the DC Hispanic Contractors Association, the National Association of Women Business Owners – Greater DC, and the National Association of Black Women in Construction. DC Government might consider tailoring some events to specific industries or business groups to maximize their value and provide opportunities to foster deeper connections among participants across industries. In addition, the organization should consider ways to leverage technology as part of its networking and outreach efforts, including making better use of online procurement fairs, webinars, conference calls, and other tools to provide outreach and technical assistance.

**iii. Bonding assistance.** DC Government purchasing policies require bid deposits and bonding for construction projects worth more than \$100,000. Projects of that size are relatively accessible to small businesses, including many POC- and woman-owned businesses, but bid deposit and bonding requirements can present a substantial barrier for such businesses. DC Government should consider conducting an assessment of the risk associated with raising the dollar thresholds for its bid deposit and bonding requirements to determine whether raising those thresholds might result in an acceptable tradeoff between increased small business competition on such work and organizational risk. DC Government has a variety of programs in place aimed at providing bonding assistance and should continue looking for ways to expand them so more businesses can benefit from them (for details, see Chapter 9).

**iv. Disparity studies.** DC Government should consider conducting disparity studies on a regular basis, particularly if it decides to implement a race- and gender-conscious goals program. Many organizations conduct studies every three to five years to understand changes in their marketplaces, refine program measures, and ensure up-to-date information on the participation and availability of POC- and woman- owned businesses for their work, including identifying which groups are substantially underutilized on their contracts and procurements. Codifying the intervals at which it commissions disparity studies will help ensure DC Government has up-to-date information about outcomes for POC- and woman-owned businesses in its work, regardless of changes in the political climate or the individuals in leadership positions.



# APPENDIX A.

## Definitions of Terms

Appendix A defines terms useful to understanding the Government of the District of Columbia Disparity Study report.

### **Anecdotal Information**

Anecdotal information includes personal, qualitative accounts of experiences—including any incidents of discrimination—and perceptions related to the local marketplace shared by individual interviewees, public meeting participants, focus group participants, and other stakeholders.

### **Business**

A business is a for-profit enterprise, including sole proprietorships, corporations, professional corporations, limited liability companies, limited partnerships, limited liability partnerships, and any other partnerships. The definition includes the headquarters of the entity as well as all its other locations, if applicable.

### **Certified Business Enterprise (CBE)**

A CBE is a business located in Washington, D.C. that has been certified by the Department of Small and Local Business Development. CBEs receive preferences on certain contract and procurement opportunities.

### **CBE Program**

The CBE Program is designed to encourage the participation of local businesses, including many small businesses and person of color- and woman-owned businesses, in Government of the District of Columbia contracts and procurements. The program is made up exclusively of race- and gender-neutral measures.

### **Commercially Useful Function**

A commercially useful function refers to a business performing real and distinct work for which it has demonstrable skills, experience, and responsibilities. Businesses that prime contractors use to meet contract goals are often required to demonstrate that they will serve commercially useful functions on applicable projects.

### **Compelling Governmental Interest**

As part of the strict scrutiny standard of constitutional review, a government organization must demonstrate a compelling governmental interest in remedying past, identified discrimination in its marketplace in order to implement race-conscious measures. That is, an organization that uses race-conscious measures as part of a contracting program has the initial burden of showing evidence of discrimination in its relevant geographic market area—including statistical and anecdotal evidence—that supports the use of such measures.

## **Consultant**

A consultant is a business that performs professional services work.

## **Contract**

A contract is a legally binding relationship between the seller of goods or services and a buyer. The study team sometimes uses the term *contract* interchangeably with *procurement*.

## **Contract Element**

A contract element is either a prime contract or subcontract.

## **Contractor**

A contractor is a business that performs construction work.

## **Control**

Control means exercising management and executive authority of a business.

## **Custom Census Availability Analysis**

A custom census availability analysis is one in which researchers attempt surveys with potentially available businesses working in the local marketplace to collect information about key business characteristics. Researchers then take survey information about potentially available businesses and match them to the characteristics of prime contracts and subcontracts an organization actually awarded during the study period to assess the percentage of dollars one might expect a specific group of businesses to receive on that work. A custom census availability approach is accepted in the industry as the preferred method for conducting availability analyses, because it takes myriad factors into account, including businesses' primary lines of work and their capacity to perform work on an organization's contracts and procurements.

## **Department of Small & Local Business Development (DSLBD)**

DSLBD supports the development, economic growth, and retention of Washington, D.C.-based businesses and promotes economic development throughout Washington, D.C.'s commercial corridors.

## **Disparity**

A disparity is a difference between an actual outcome and some benchmark such that the actual outcome is less than the benchmark. In this report, the term *disparity* refers specifically to a difference between the participation of a specific group of businesses in an organization's contracting and procurement and the estimated availability of the group for that work.

## **Disparity Analysis**

A disparity analysis examines whether there are any differences between the participation of a specific group of businesses in an organization's work and the estimated availability of the group for that work.

## **Disparity Index**

A disparity index is computed by dividing the actual participation of a specific group of businesses in an organization's work by the estimated availability of the group for that work and multiplying the result by 100. Smaller disparity indices indicate larger disparities.

## **Disparity Study Report**

The disparity study report refers to this report, which summarizes results from all the research and analyses the project team conducted as part of the disparity study.

## **District Agency**

District agency refers to the 86 different agencies, departments, and offices that make up the Government of the District of Columbia. Contract and procurement data from each district agency were included as part of the study team's analyses.

## **Dun & Bradstreet (D&B)**

D&B is the leading global provider of lists of business establishments and other business information for specific industries within specific geographical areas (for details, see [www.dnb.com](http://www.dnb.com)).

## **Events DC**

Events DC is a semi-public company in Washington, D.C. that owns and manages the Walter E. Washington Convention Center, Robert F. Kennedy Stadium, and Nationals Park, among other Washington, D.C. venues. It also promotes various cultural events and activities. The agency's procurement authority is independent of the Government of the District of Columbia.

## **Firm**

See *business*.

## **Government of the District of Columbia (DC Government)**

DC Government spends billions of contract and procurement dollars each year to procure various construction services; professional services; and non-professional services, goods, and supplies to serve the more than 700,000 residents of Washington, D.C.

## **Independent Procurement Authority**

Independent procurement authority refers to the case of a government agency operating in Washington, D.C. having procurement authority independent from DC Government. Two such agencies participated in the disparity study: Events DC and the University of the District of Columbia.

## **Industry**

An industry is a broad classification of businesses providing related goods or services (e.g., *construction* or *professional services*).

## **Inference of Discrimination**

An inference of discrimination is the conclusion that businesses whose owners identify with particular racial/ethnic or gender groups suffer from barriers or discrimination in the marketplace based on sufficient quantitative or qualitative evidence. When inferences of discrimination exist, government organizations sometimes use race- and gender-conscious measures to address barriers affecting those businesses.

## **Intermediate Scrutiny**

Intermediate scrutiny is the legal standard a government organization's use of gender-conscious measures must meet to be considered constitutional. It is more rigorous than the rational basis test, which applies to business measures unrelated to race/ethnicity or gender, but less rigorous than the strict scrutiny test, which applies to business measures related to race/ethnicity. In order for a program to pass intermediate scrutiny, it must serve an important government objective, and it must be substantially related to achieving the objective.

## **Locally-funded Contract or Procurement**

Locally-funded contracts or procurements are ones wholly funded by local sources. That is, they do not include any federal funds.

## **Local Marketplace**

*See relevant geographic market area.*

## **Majority-owned Business**

A majority-owned business is a for-profit business that is at least 51 percent owned and controlled by white men.

## **Marketplace Conditions**

Marketplace conditions are factors that potentially affect outcomes for workers and businesses operating in that marketplace. The study team assessed conditions in the local marketplace in four primary areas: human capital, financial capital, business ownership, and business success.

## **Narrow Tailoring**

As part of the strict scrutiny standard of constitutional review, a government organization must demonstrate its use of race-conscious measures is narrowly tailored. There are several factors a court considers when determining whether the use of such measures is narrowly tailored, including:

- a) The necessity of such measures and the efficacy of alternative, race-neutral measures;
- b) The degree to which the use of such measures is limited to those groups that suffer discrimination in the local marketplace;
- c) The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;

- d) The relationship of any numerical goals to the relevant business marketplace; and
- e) The impact of such measures on the rights of third parties.

## **Office of the Deputy Mayor for Planning and Economic Development (DMPED)**

DMPED assists the Mayor of Washington, D.C. in the coordination, planning, supervision, and execution of economic development efforts in Washington, D.C. with the objective of creating and preserving affordable housing, creating jobs, and increasing tax revenue.

### **Overall Aspirational Goal**

Overall aspirational goals are percentage goals some organizations establish for the participation of person of color- and woman-owned businesses in their contracts and procurements, which they work towards achieving each year through various race- and gender-neutral, and if appropriate, race- and gender-conscious program measures. Overall aspirational goals are distinct from person of color- and woman-owned business *contract goals*, which is a race- and gender-based effort some organizations use to meet their overall aspirational goals.

### **Participation**

*See utilization.*

### **Person of Color (POC)**

A POC is an individual who identifies with one of the following racial/ethnic groups: Asian American, Black American, Hispanic American, Native American, or other non-white racial or ethnic group.

### **POC-owned Business**

A POC-owned business is a business with at least 51 percent ownership and control by individuals who identify with one of the following racial/ethnic groups: Asian American, Black American, Hispanic American, Native American, or other non-white racial or ethnic group. The study team considered businesses owned by POC men and POC women as POC-owned businesses, as is standard in disparity studies. A business does not have to be certified to be considered a POC-owned business.

### **POC- and Woman-owned Business Contract Goals**

POC- and woman-owned contract goals is a race- and gender-conscious effort whereby organizations set percentage goals for the participation of those businesses on individual contracts and procurements they award. As a condition of award, prime contractors have to meet contract goals as part of their bids, quotes, or proposals by making participation commitments with eligible, certified POC- and woman-owned businesses or, if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts to do so (or prime contractors could be certified POC- and woman-owned businesses themselves). The use of POC- and woman-owned contract goals must meet the strict scrutiny and intermediate scrutiny standards of constitutional review, respectively.

## **Prime Consultant**

A prime consultant is a business that performs professional services work directly for end users, such as a district agency.

## **Prime Contract**

A prime contract is a contract between a prime contractor or prime consultant and an end user, such as a district agency.

## **Prime Contractor**

A prime contractor is a construction business or non-professional services, goods, and supplies vendor that performs work directly for end users, such as a district agency.

## **Procurement**

See *contract*.

## **Project**

A project refers to a construction, professional services, or non-professional services, goods, and supplies endeavor a district agency bids out. A project could include one or more prime contracts and corresponding subcontracts.

## **Race- and Gender-conscious Measures**

Race- and gender-conscious measures are contracting measures designed to increase the participation of POC- and woman-owned businesses specifically in government work. Businesses owned by individuals who identify with particular racial/ethnic groups might be eligible for such measures whereas others would not. Similarly, businesses owned by individuals who identify as women might be eligible for such measures whereas businesses owned by individuals who identify as men would not. An example of race- and gender-conscious measures is an organization's use of POC- or woman-owned business contract goals on individual contracts or procurements.

## **Race- and Gender-neutral Measures**

Race- and gender-neutral measures are measures designed to remove potential barriers for all businesses—or all small or emerging businesses—attempting to perform work with an organization, regardless of the race/ethnicity or gender of the owners. Race- and gender-neutral measures may include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, establishing programs to assist start-ups, and other efforts.

## **Rational Basis**

Government organizations that implement contracting programs that rely only on race- and gender-neutral measures to encourage the participation of businesses, regardless of the race/ethnicity or gender of business owners, must show a rational basis for their programs. Showing a rational basis requires organizations to demonstrate their contracting programs are rationally related to a legitimate government interest.

## Relevant Geographic Market Area (RGMA)

The RGMA is the geographic area in which the businesses to which organizations award most of their contracting dollars are located. The RGMA is also referred to as the *local marketplace*. Case law related to contracting programs and disparity studies requires analyses to focus on the RGMA. The RGMA for the disparity study is the geographical area including Washington, D.C., Montgomery and Prince George's Counties in Maryland; Fairfax and Arlington Counties in Virginia; and Fairfax, Alexandria, and Falls Church in Virginia.

## Standard Deviation

The standard deviation of a dataset is a measure that indicates how dispersed data points are from the average of the data set. Low standard deviations indicate that data points are relatively clustered around the average whereas high standard deviations indicate that data points are relatively spread out relative to the average.

## Statistical Outlier

A statistical outlier is a data point that differs in a statistically significant way from all other data points in a data set. The study team considered any data point that differed by more than two standard deviations from the average of all data points in a data set as a statistical outlier.

## Statistically Significant Difference

A statistically significant difference refers to a quantitative difference for which there is a 0.95 or 0.90 probability that chance can be correctly rejected as an explanation for the difference (meaning that there is a 0.05 or 0.10 probability, respectively, that chance in the sampling process could correctly account for the difference).

## Strict Scrutiny

Strict scrutiny is the legal standard a government organization's use of race-conscious measures must meet to be considered constitutional. Strict scrutiny is the highest threshold for evaluating the legality of measures that might impinge on the rights of others, short of prohibiting them altogether. Under the strict scrutiny standard, an organization must:

- a) Have a compelling governmental interest in remedying past identified discrimination or its present effects; and
- b) Establish the use of any such measures is narrowly tailored to achieve the goal of remedying the identified discrimination.

An organization's use of race-conscious measures must meet both the compelling governmental interest and the narrow tailoring components of the strict scrutiny standard for it to be considered constitutional.

## Study Period

The study period is the time period on which the study team focused for the utilization, availability, and disparity analyses. Participating agencies had to have awarded a contract or procurement during the study period for it to be included in the study team's analyses. The study period for the disparity study was October 1, 2016 through September 30, 2020.

## **Subcontract**

A subcontract is a contract between a prime contractor or prime consultant and another business selling goods or services to the prime contractor or prime consultant as part of a larger project.

## **Subcontractor**

A subcontractor is a business that performs services for prime contractors as part of larger projects.

## **Subindustry**

A subindustry is a specific classification for businesses providing related goods or services within a particular industry (e.g., *highway and street construction* is a subindustry of *construction*).

## **Substantial Disparity**

A substantial disparity is a disparity index of 80 or less, indicating that the actual participation of a specific business group in agency work is 80 percent or less of the group's estimated availability. Substantial disparities are considered *inferences of discrimination* in the marketplace against particular business groups. Government organizations sometimes use substantial disparities as justification for the use of race- or gender-conscious measures to address barriers affecting certain groups.

## **University of the District of Columbia (UDC)**

UDC is the only public university in Washington, D.C. and the only urban land-grant university in the United States. It comprises a community college, School of Engineering and Applied Sciences, School of Business and Public Administration, College of Arts and Sciences, College of Agriculture, Urban Sustainability and Environmental Sciences, and the David A. Clarke School of Law. UDC's procurement authority is independent of DC Government.

## **Utilization**

Utilization refers to the percentage of total dollars associated with a particular set of contracts or procurements DC Government, Events DC, or UDC awarded to a specific group of businesses. The study team uses the term *utilization* synonymously with *participation*.

## **Vendor**

A vendor is a business that sells goods either to a prime contractor or prime consultant or to an end user such as a district agency.

## **Woman-owned Business**

A woman-owned business is a business with at least 51 percent ownership and control by white women. A business does not have to be certified to be considered a woman-owned business. (The study team considered businesses owned by women of color as POC-owned businesses, as is standard in disparity studies.)



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# APPENDIX B.

## Legal Framework and Analysis

### A. Introduction

Appendix B summarizes and analyzes jurisprudence concerning remedying the effects of discrimination in local and state government contracting via minority-owned business enterprise (“MBE”), woman-owned business enterprise (“WBE”), and disadvantaged business enterprise (“DBE”) programs. The framework herein is intended to provide a roadmap of the necessary legal steps in building a program that will survive constitutional challenges based on the results of a disparity study. A government entity cannot just assume that disparities in opportunity can be dealt with quickly and easily. Such programs must meet the requirements of the landmark United States Supreme Court decision in *City of Richmond v. J.A. Croson*<sup>1</sup>, the prevailing precedent on the strict scrutiny constitutional standard.

While it may appear obvious to some that discrimination in government contracting and procurement exists, it should be equally clear that government attempts to implement policies to address that discrimination can raise several issues. There are limits to the types of policies federal and local governments can implement that impact the awards of contracts and procurements. The United States Supreme Court set the floor on how a government can create a remedial contracting program, and the relative ease in implementing such programs has changed over time. The Supreme Court outlined thresholds that must be met when attempting to remedy discrimination against women and persons of color (POCs) in federal programs. These thresholds are presented as levels of scrutiny, and they prescribe how courts evaluate a program when someone sues the government because he or she thinks the program is unfair. If a program seeks to remedy discrimination against POCs using racial classifications, it must pass “strict scrutiny.” This is a standard that courts apply to any race-conscious program. It requires a governmental entity to have a “compelling governmental interest” in fixing past discrimination and that any program adopted by a local or state government must be “narrowly tailored” so that it addresses the problem and does not create an unfair competitive advantage based on race.

Appendix B begins with a review of the landmark United States Supreme Court decision in *City of Richmond v. J.A. Croson*. *Croson* sets forth the strict scrutiny constitutional analysis applicable to race-conscious government contracting programs. This section also notes the United States Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, (“*Adarand I*”), which applied the strict scrutiny standard set forth in *Croson* to federal programs that provide federal assistance to a recipient of federal funds. Next is a review of *O'Donnell Constr. Co. v. District of Columbia*, a case decided by the United States Court of Appeals for the Washington, D.C. Circuit, which would have appellate jurisdiction over a legal challenge to a District government program that may result from the findings of the District Disparity Study. The Supreme Court’s decisions in *Adarand I* and

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<sup>1</sup> *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

*Croson*, as well as the DC Circuit’s decision in O’Donnell, and subsequent cases and authorities provide the basis for the legal analysis in connection with the District Disparity Study.

Following the review of those three cases, the legal framework section analyzes and reviews significant recent court decisions that have followed, interpreted, and applied *Croson* and *Adarand I* and that are applicable to the District Disparity Study and strict scrutiny. This section is organized by the factors courts consider when applying the strict scrutiny standard:

- That any race-conscious program serve an established *compelling governmental interest*; and
- The program must be *narrowly tailored* to achieve that compelling governmental interest.<sup>2</sup>

The section also reviews recent court decisions that considered each factor in adjudicating challenges to MBE/WBE/DBE programs in other jurisdictions. The analyses of the cases summarized below are instructive to the District Disparity Study, because they are the most recent and significant decisions by courts setting forth the legal framework applied to MBE/WBE/DBE Programs and disparity studies.

**1. *City of Richmond v. J.A. Croson Co. (“Croson”), 488 U.S. 469 (1989).*** In *Croson*, the U.S. Supreme Court struck down the City of Richmond’s “set-aside” program as unconstitutional, because it did not satisfy the strict scrutiny standard applied to “race-based” governmental programs.<sup>3</sup> J.A. Croson Co. challenged the City of Richmond’s POC contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more MBEs. In enacting the plan, the City cited past discrimination and an intent to increase POC business participation in construction projects as motivating factors.

The Supreme Court held the City of Richmond’s “set-aside” action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the “strict scrutiny” standard, generally applicable to any race-based classification, which requires a governmental entity to have a “compelling governmental interest” in remedying past identified discrimination and that any program adopted by a local or state government must be “narrowly tailored” to achieve the goal of remedying the identified discrimination.

The Court determined that Richmond’s plan neither served a “compelling governmental interest” nor offered a “narrowly tailored” remedy to past discrimination. The Court found no “compelling governmental interest.” because the City had not provided “a strong basis in evidence for its conclusion that [race-based] remedial action was necessary.”<sup>4</sup> The Court held the City presented no direct evidence of any race discrimination on its part in awarding construction

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<sup>2</sup> *Adarand I*, 515 U.S. 200, 227 (1995); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7<sup>th</sup> Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9<sup>th</sup> Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4<sup>th</sup> Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9<sup>th</sup> Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; *Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”)*, 214 F.3d 730 (6<sup>th</sup> Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5<sup>th</sup> Cir. 1999); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586 (3<sup>d</sup> Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 990 (3<sup>d</sup> Cir. 1993).

<sup>3</sup> 488 U.S. 469 (1989).

<sup>4</sup> 488 U.S. at 500, 510.

contracts or any evidence that the City’s prime contractors had discriminated against POC-owned subcontractors.<sup>5</sup> The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the City failed to demonstrate that the plan was “narrowly tailored” for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase POC business participation in city contracting, and because of the over-inclusiveness of certain POCs in the “preference” program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.<sup>6</sup>

The Court stated that reliance on the disparity between the number of prime contracts awarded to POC firms and the POC population of the City of Richmond was misplaced. There is no doubt, the Court held, that “[w]here gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination” under Title VII.<sup>7</sup> But it is equally clear that “[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value.”<sup>8</sup>

The Court concluded that where special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of POCs qualified to undertake the particular task. The Court noted that “the City does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”<sup>9</sup> Nor does the City know what percentage of total City construction dollars POC firms now receive as subcontractors on prime contracts let by the City.”<sup>10</sup>

The Supreme Court stated that it did not intend its decision to preclude a state or local government from “taking action to rectify the effects of identified discrimination within its jurisdiction.”<sup>11</sup> The Court held that “[w]here there is a significant statistical disparity between the number of qualified POC contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”<sup>12</sup>

The Court said: “If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities it could take action to end the discriminatory exclusion. Under such circumstances, the City could act to

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<sup>5</sup> 488 U.S. at 480, 505.

<sup>6</sup> 488 U.S. at 507-510.

<sup>7</sup> 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-308, 97 S.Ct. 2736, 2741.

<sup>8</sup> 488 U.S. at 501 quoting *Hazelwood*, 433 U.S. at 308, n. 13, 97 S.Ct., at 2742, n. 13.

<sup>9</sup> 488 U.S. at 502.

<sup>10</sup> *Id.*

<sup>11</sup> 488 U.S. at 509.

<sup>12</sup> *Id.*

dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.”<sup>13</sup>

The Court further found “if the City could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the City could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”<sup>14</sup>

### **2. *Adarand Constructors, Inc. v. Peña (“Adarand I”), 515 U.S. 200 (1995).***

In *Adarand I*, the U.S. Supreme Court extended the holding in *Croson* and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass strict scrutiny in order to survive constitutional muster.

**3. *O’Donnell Constr. Co. v. District of Columbia (“O’Donnell”), 963 F.2d 420, (D.C. Cir. 1992).*** *O’Donnell* is the controlling case in the District of Columbia Circuit applying *Croson’s* strict scrutiny standard. It was decided by the United States Court of Appeals for the Washington, D.C. Circuit. In *O’Donnell*, the Court considered the constitutionality of Washington, D.C.’s Minority Contracting Act, which governed the award of DC Government construction contracts from 1977 to 1992. The Court’s decision in *O’Donnell* led to the dismantling of the Minority Contracting Act, because the Court determined the act was in violation of the right to equal protection of the law under the Fourteenth Amendment of the United States Constitution. The act required District agencies to “allocate its construction contracts in order to reach a goal [that] 35% ... be let to local minority business enterprises.” In invalidating the program, the findings of the Supreme Court in both *Croson* and *Adarand* were applied directly by the Court, specifically:

- The District could not simply rely on general allegations of historical or societal racism, but instead, it must rest on evidence of racial discrimination in the relevant industry.
- The District’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.

O’Donnell Construction Company, a Virginia corporation with its principal place of business in the District of Columbia, was a road construction firm, performing most of its work for government agencies in the Washington area. Founded in 1985, the company’s stock was owned

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<sup>13</sup> *Id.*

<sup>14</sup> 488 U.S. at 492.

by Arnold J. and John A. O'Donnell, both of whom are white. O'Donnell sued the District in 1989 under 42 U.S.C. §§ 1981 and 1983, claiming that the District's use of racial classifications in awarding road construction contracts violated the equal protection component of the Fifth Amendment. The complaint challenged both the D.C. Minority Contracting Act and the District's federally-assisted Disadvantaged Business Enterprise Program. Only the Minority Contracting Act was before the Appeals Court in the appeal. For 15 years, the District of Columbia's awarding of construction contracts had been governed by the Minority Contracting Act. The then current version of the Act required each District agency to " [a]llocate its construction contracts in order to reach the goal of 35 percent ... of the dollar volume of all construction contracts to be let to local minority business enterprises."

In order to achieve the 35 percent figure, the Commission—a 7-member body the mayor of D.C. established—enacted various programs for assisting POC contractors, including "a sheltered market approach to contracts,"<sup>15</sup> which each D.C. agency was required to implement.<sup>16</sup> In a sheltered market, agencies set aside contracts and subcontracts for "limited competition" by certain types of businesses, in this case for MBEs, to the exclusion of all others. Only MBEs certified by the Commission were permitted to participate in the sheltered market program.<sup>17</sup> While non-POC firms were ineligible to compete for such contracts, MBEs were eligible to bid for both sheltered and non-sheltered contracts. The Act itself did not specify the precise portion of the District's contracts reserved for sheltered markets, but it did require each agency to allocate to the sheltered market a sufficient portion of its contracts to enable it to reach the 35 percent goal.

The DC Circuit Court followed *Croson's* holding that under the Equal Protection Clause of the Fourteenth Amendment, a local government may not use racial classifications to remedy past racial discrimination unless it can demonstrate a compelling interest for doing so. The Fifth Amendment makes the equal protection principles of the Fourteenth Amendment fully applicable to the D.C. Council's legislation.

The record in *O'Donnell*, like the record in *Croson*, was devoid of any evidence that agencies of the District of Columbia had been favoring white contractors over non-whites, or that the typical bidding process was somehow rigged to have this effect. The District's act contained the same statement that "a persistent pattern of racial discrimination in our society has prevented minority business enterprises from gaining a fair share of contracts and subcontracts for construction, supplies, and materials in both the public and private sector."<sup>18</sup> The Court held that this observation about society-wide discrimination, regardless of its truth, cannot be relied upon to enact racial preferences. Otherwise, any race-conscious program in any amount or in any place or for any length of time would be allowed.<sup>19</sup> Similarly, the Supreme Court held in *Croson*

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<sup>15</sup> D.C.CODE ANN. § 1- 1147(b).

<sup>16</sup> D.C.CODE ANN. § 1- 1146(a) (3) (A).

<sup>17</sup> D.C.CODE ANN. § 1-1147(b).

<sup>18</sup> D.C.CODE ANN. § 1-1141(1).

<sup>19</sup> *O'Donnell Constr. Co. v. District of Columbia* ("*O'Donnell*"), 963 F.2d 420, 427 (D.C. Cir. 1992).

that a "generalized assertion" of discrimination in the construction industry as a whole, therefore will not suffice.<sup>20</sup>

The District Council's Employment and Economic Development Committee (in conjunction with two other committees) held hearings on the Act and issued a report in 1976. The Committee's Report states that, according to "[i]nformal records of the Washington Council for Equal Business Opportunity, approximately 300 POC-owned construction firms were in operation in 1974 in the Washington metropolitan area." The Committee did not specify what types of construction work these firms performed; the race of the owners of the firms; the total volume of business they handled; whether they were in the private or public contracting sector; whether they were fully employed; or whether any of them had been unable to get work as a result of racial discrimination.

The Circuit Court discussed why, under *Croson*, generalized assertions about societal discrimination are an inadequate basis for the sort of race-conscious measures at issue here. Comparisons between the percentage of a city's POC population and the percentage of contracts awarded to MBEs are irrelevant under *Croson*, "where special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of POCs qualified to undertake the particular task."<sup>21</sup>

The Circuit Court found that since the District had not even tried to identify the discrimination it sought to remedy in the Act, it had demonstrated no interest compelling enough to survive strict scrutiny under the Constitution.<sup>22</sup> The District also conceded that the Council had never made any findings with respect to discrimination in the construction industry against Hispanic Americans, Asian Americans, Pacific Islander Americans, or Native Americans, all of whom were included in the Act's definition of "minority." These circumstances raise constitutional problems of their own. For one, the "random inclusion of racial 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.<sup>23</sup> For another, there was no way of saying whether the remedy the Council had chosen was narrowly tailored to provide remedial relief for the amalgam of racial groups covered by the Act. In sum, the Circuit held that *O'Donnell* had made a strong showing that it was likely to prevail in its equal protection challenge to the Minority Contracting Act.

## B. Strict Scrutiny

A race-conscious program implemented by a state or local government is subject to the strict scrutiny standard of constitutional review,<sup>24</sup> which requires that the program must serve an

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<sup>20</sup> *Id.*, citing 488 U.S. at 498, 109 S. Ct. at 723.

<sup>21</sup> *Id.*, citing 488 U.S. at 501-02, 109 S. Ct. at 725-26.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, citing *Croson*, 488 U.S. at 506, 109 S. Ct. at 727.

<sup>24</sup> *Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200, 227 (1995); see, e.g., *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7<sup>th</sup> Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9<sup>th</sup> Cir. 2013); *H.B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4<sup>th</sup> Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5<sup>th</sup> Cir. 1999); *Contractors Ass'n of E. Pa. v.*

established compelling governmental interest and the program must be narrowly tailored to achieve that compelling government interest.<sup>25</sup>

**1. Compelling government interest.** The first prong of strict scrutiny requires a governmental entity to have a “compelling governmental interest” in remedying past identified discrimination in order to implement a race- and ethnicity-based program.<sup>26</sup> The Courts have been clear that “remedying the effects of past or present racial discrimination” is a compelling interest.<sup>27</sup> This means that there has to be a legitimate discrepancy in the way either prime contractors or subcontractors receive contracts based on actual evidence of disparity in receiving contracts and not just a general sense of unfairness.

**a. Statistical evidence of discrimination.** Statistical evidence of discrimination is the primary method used to determine whether a strong basis in evidence exists to demonstrate a compelling governmental interest.<sup>28</sup> “Where gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination.”<sup>29</sup> Local governments that are trying to deal with discrimination in contracting can use a “disparity study” to assess the scope of the problems in contracting. The Supreme Court stated this explicitly in *Croson*: “An inference of discrimination may be made with empirical evidence that demonstrates ‘a significant statistical disparity between a number of qualified minority contractors ... and the number of such contractors actually engaged by the locality or the locality’s prime contractors.’”<sup>30</sup>

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*City of Philadelphia* (“CAEP II”), 91 F.3d 586 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 990 (3d. Cir. 1993).

<sup>25</sup> *Adarand I*, 515 U.S. 200, 227 (1995); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9th Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; *Associated Gen. Contractors of Ohio, Inc. v. Drabik* (“*Drabik II*”), 214 F.3d 730 (6th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 990 (3d. Cir. 1993).

<sup>26</sup> *Id.*

<sup>27</sup> *Shaw v. V. Hunt*, 517 U.S. 899, 909 (1996); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989); *see, e.g., Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>28</sup> *See, e.g., Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1195-1196; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); *see also, Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

<sup>29</sup> *Croson*, 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977); *see Midwest Fence*, 840 F.3d 932, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1196-1197; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999).

<sup>30</sup> *See e.g., H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 2015 W.L. 1396376 at \*7, quoting *Concrete Works*; 36 F.3d 1513, 1522 (quoting *Croson*, 488 U.S. at 509), affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *see also, Sherbrooke Turf*, 345 F.3d 233, 241-242 (8th Cir. 2003); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d. Cir. 1993).



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. The methods government entities can use to demonstrate statistical disparities are discussed below.

**b. Availability and utilization analysis.** First, a government entity can perform an availability analysis, which measures the degree to which MBE/WBEs and DBEs among all firms are ready, willing, and able to perform a certain type of work within a particular geographic market area.<sup>31</sup> In assessing availability, agencies must account for various characteristics—such as capacity, firm size, and contract size—of the prime contracts and subcontracts that they award as well as of the businesses located in their relevant geographic market areas (“RGMAs”). Agencies cannot rely on national statistics of discrimination to draw conclusions about the prevailing market conditions in their own regions. Rather, they must assess discrimination within their own RGMAs.<sup>32</sup>

***Concrete Works of Colorado, Inc. v. City and County of Denver (“Concrete Works I”), 36 F.3d 1513 (10th Cir. 1994).*** In *Concrete I*, the Court considered whether the City and County of Denver’s race- and gender-conscious public contract award program complied with the Fourteenth Amendment’s guarantee of equal protection of the laws. Plaintiff-Appellant Concrete Works of Colorado, Inc. (“CWC”) appealed the district court’s summary judgment order upholding the constitutionality of the program. The Court concluded that genuine issues of material fact exist with regard to the evidentiary support that Denver presented to demonstrate that its program satisfied the requirements of *Croson*.

In 1990, the Denver City Council enacted an ordinance to enable certified MBEs and WBEs to participate in public works projects “to an extent approximating the level of [their] availability and capacity.”<sup>33</sup> This Ordinance was the most recent in a series of provisions that the Denver City Council had adopted since 1983 to remedy perceived race and gender discrimination in the distribution of public and private construction contracts.<sup>34</sup>

In 1992, CWC, a non-POC male-owned construction firm, filed an Equal Protection Clause challenge to the Ordinance.<sup>35</sup> CWC alleged that the Ordinance caused it to lose three construction contracts for failure to comply with either the stated MBE/WBE participation goals or the “good faith efforts” requirements. Rather than pursuing administrative or state court review, CWC sued, seeking a permanent injunction against enforcement of the Ordinance and damages for lost contracts.<sup>36</sup>

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<sup>31</sup> See, e.g., *Croson*, 448 U.S. at 509; 49 CFR § 26.35; *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *Rothe*, 545 F.3d at 1041- 1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586,602-603 (3d Cir. 1996); see also, *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>32</sup> See e.g., *Concrete Works, Inc. v. City and County of Denver (“Concrete Works I”), 36 F.3d 1513, 1520 (10th Cir. 1994).*

<sup>33</sup> 36 F.3d 1513, at 1515.

<sup>34</sup> *Id.* at 1516.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

One issue presented in this case was the appropriate market area Denver could use in determining whether sufficient evidence of discrimination existed to meet the compelling government interest standard. The evidence of discrimination that Denver presented to demonstrate a compelling government interest in enacting the Ordinance consisted of: (1) evidence of discrimination in City contracting from the mid-1970s to 1990; (2) data about MBE and WBE utilization in the overall Denver MSA construction market between 1977 and 1992; and (3) anecdotal evidence that included personal accounts by MBEs and WBEs who had experienced both public and private discrimination as well as testimony from City officials who described institutional governmental practices that perpetuate public discrimination.<sup>37</sup>

CWC contended that *Croson* precluded the Court from considering empirical evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA). Instead, it argued *Croson* would allow Denver only to use data describing discrimination within the City and County of Denver.<sup>38</sup> The Court stated that a majority in *Croson* observed that because discrimination varies across market areas, state and local governments cannot rely on national statistics of discrimination in the construction industry to draw conclusions about prevailing market conditions in their own regions.<sup>39</sup> The relevant area in which to measure discrimination, then, is the local construction market, but that is not necessarily confined by jurisdictional boundaries.<sup>40</sup>

The Court said that *Croson* supported its consideration of data from the Denver MSA because this data was sufficiently geographically targeted to the relevant market area.<sup>41</sup> The record revealed that over 80 percent of Denver Department of Public Works (“DPW”) construction and design contracts were awarded to firms located within the Denver MSA.<sup>42</sup> To confine the permissible data to a governmental body’s strict geographical boundaries, the Court found, would ignore the economic reality that contracts are often awarded to firms situated in adjacent areas.<sup>43</sup> The Court said that it is important that the pertinent data closely relate to the jurisdictional area of the municipality whose program is scrutinized, but here Denver’s contracting activity, insofar as construction work was concerned, was closely related to the Denver MSA.<sup>44</sup>

In recognition that a municipality has a compelling interest in taking affirmative steps to remedy both public and private discrimination specifically identified in its area, the Court also considered data about conditions in the overall Denver MSA construction industry between 1977 and 1992.<sup>45</sup> The Court stated that given DPW and DGS construction contracts represented

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<sup>37</sup> *Id.* at 1523.

<sup>38</sup> *Id.* at 1520.

<sup>39</sup> *Id.* at 1520, citing *Croson* at 504.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1520.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 1520.

<sup>45</sup> *Id.* at 1529.

approximately 2 percent of all construction in the Denver MSA, Denver MSA industry data sharpened the picture of local market conditions for MBEs and WBEs.<sup>46</sup>

The Court pointed out that rather than offering any evidence in rebuttal, CWC merely stated that this empirical evidence did not prove that the Denver government itself discriminated against MBEs and WBEs.<sup>47</sup> CWC asked the Court to define the appropriate market as limited to contracts with the City and County of Denver.<sup>48</sup> But, the Court said that such a request ignored the lesson of *Croson* that a municipality may design programs to prevent tax dollars from “financ[ing] the evil of private prejudice.”<sup>49</sup> Therefore, the Court held that data from the Denver MSA was adequately particularized for strict scrutiny purposes.<sup>50</sup>

It is not necessary for government agencies themselves to have discriminated against POC- or woman-owned businesses for them to take remedial action. They could take remedial action if evidence demonstrates that they are passive participants in race- or gender-based discrimination that exists in their RGMAs. One form of statistical evidence is the comparison of a government’s utilization of MBE/WBEs compared to the relative availability of qualified, willing and able MBE/WBEs.<sup>51</sup> A utilization analysis measures the proportion of the government entity’s contract dollars going to MBE/WBEs and DBEs.<sup>52</sup> The federal courts have held that a significant statistical disparity between the utilization and availability of POC- and women-owned firms may raise an inference of discriminatory exclusion.<sup>53</sup>

**c. Disparity index and standard deviation.** An important component of statistical evidence is the “disparity index.”<sup>54</sup> A disparity index is defined as the ratio of the percent utilization to the percent availability times 100. A disparity index below 80 has been accepted as evidence of

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 1529.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, quoting *Croson*, 488 U.S. at 492.

<sup>50</sup> *Id.*

<sup>51</sup> *Croson*, 448 U.S. at 509; see *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041-1042; *Concrete Works of Colo., Inc. v. City and County of Denver (“Concrete Works II”)*, 321 F.3d 950, 959 (10th Cir. 2003); *Drabik II*, 214 F.3d 730, 734-736; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>52</sup> See *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Eng’g Contractors Ass’n*, 122 F.3d at 912; *N. Contracting*, 473 F.3d at 717-720; *Sherbrooke Turf*, 345 F.3d at 973.

<sup>53</sup> See, e.g., *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041; *Concrete Works II*, 321 F.3d at 970; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also *Western States Paving*, 407 F.3d at 1001; *Kossmann Contracting*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>54</sup> *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Eng’g Contractors Ass’n*, 122 F.3d at 914; *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 602-603 (3d Cir. 1996); *Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 at 1005 (3rd Cir. 1993).

adverse impact. This has been referred to as “The Rule of Thumb” or “The 80 percent Rule.”<sup>55</sup> “The Rule of Thumb” or “The 80 percent Rule” is not the last statistical check courts have placed on discrimination remedies. Some courts have held that a statistical disparity corresponding to a standard deviation of less than two is not considered statistically significant.<sup>56</sup> The standard deviation figure describes the probability that the measured disparity is the result of mere chance.

In terms of statistical evidence, the Fourth Circuit has held that a state “need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence,” but rather it may rely on “a significant statistical disparity” between the availability of qualified, willing, and able POC subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.<sup>57</sup>

The Fourth Circuit in *H. B. Rowe* considered the statistical evidence from a disparity study in considering the equal protection challenge to the North Carolina POC-and woman-owned participation program and looked to disparity indices, or to computations of disparity percentages, in determining whether *Croson’s* evidentiary burden was satisfied.<sup>58</sup> The Fourth Circuit found that disparity studies can be probative evidence of discrimination.<sup>59</sup>

***H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al., 615 F.3d 233 (4th Cir. 2010).*** *H.B. Rowe* involved a challenge to statutory legislation enacted by the State of North Carolina that required prime contractors to engage in good faith efforts to satisfy participation goals for POC- and woman-owned subcontractors on state-funded projects. The plaintiff, a prime contractor, sued after being denied a contract because of its failure to demonstrate good faith efforts to meet the participation goals set on a particular contract for which it was seeking an award to perform work with the North Carolina Department of Transportation (“NCDOT”). Plaintiff asserted that the participation goals violated the Equal Protection Clause and sought injunctive relief and money damages.

In 2004, the State of North Carolina retained a consultant to prepare and issue a study, including statistical and regression analysis, of subcontractors employed in North Carolina’s highway construction industry. The Court examined the State’s statistical evidence of discrimination in public-sector subcontracting, including its disparity evidence and regression analysis. The Court

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<sup>55</sup> See, e.g., *Ricci v. DeStefano*, 557 U.S. 557, 129 S.Ct. 2658, 2678 (2009); *Midwest Fence*, 840 F.3d 932, 950 (7<sup>th</sup> Cir. 2016); *H.B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4<sup>th</sup> Cir. 2010); *AGC, SDC v. Caltrans*, 713 F.3d at 1191; *Rothe*, 545 F.3d at 1041; *Eng’g Contractors Ass’n*, 122 F.3d at 914, 923; *Concrete Works I*, 36 F.3d at 1524.

<sup>56</sup> See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4<sup>th</sup> Cir. 2010); *Eng’g Contractors Ass’n*, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct; *Peightal v. Metropolitan Eng’g Contractors Ass’n*, 26 F.3d 1545, 1556 (11<sup>th</sup> Cir. 1994). The Seventh Circuit Court of Appeals in *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359 (7<sup>th</sup> Cir.

2001), raised questions as to the use of the standard deviation test alone as a controlling factor in determining the admissibility of statistical evidence to show discrimination. Rather, the Court concluded it is for the judge to say, on the basis of the statistical evidence, whether a particular significance level, in the context of a particular study in a particular case, is too low to make the study worth the consideration of judge or jury. 255 F.3d at 363.

<sup>57</sup> 615 F.3d 233 at 241, citing *Croson*, 488 U.S. at 509 (plurality opinion), and citing *Concrete Works*, 321 F.3d at 958.

<sup>58</sup> *H. B. Rowe*, 615 F.3d 233, 241-242; see, e.g., *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 602-605 (3d Cir. 1996).

<sup>59</sup> *H. B. Rowe*, 615 F.3d at 241-249; see, e.g., *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 602-605 (3d Cir.1996).

noted that the statistical analysis analyzed the difference or disparity between the amount of subcontracting dollars POC- and woman-owned businesses actually won in a market and the amount of subcontracting dollars they would be expected to win given their presence in the market.<sup>60</sup> The Court found that the study grounded its analysis in the “disparity index,” which measures the participation of a given racial, ethnic, or gender group engaged in subcontracting relative to its availability for that work.<sup>61</sup> In calculating a disparity index, the study divided the percentage of total subcontracting dollars that a particular group won by the percent that group represents in the available labor pool, and multiplied the result by 100.<sup>62</sup> The closer the resulting index is to 100, the greater that group’s participation.<sup>63</sup>

The Court held that after *Crososon*, a number of circuits recognized the utility of the disparity index in determining statistical disparities in the utilization of POC- and women- owned businesses.<sup>64</sup> The Court also found that generally “courts consider a disparity index lower than 80 as an indication of discrimination.”<sup>65</sup> Accordingly, the study considered only a disparity index lower than 80 as warranting further investigation.<sup>66</sup>

The Court pointed out that after calculating the disparity index for each relevant racial or gender group, the consultant tested for the statistical significance of the results by conducting standard deviation analysis through the use of t-tests. The Court noted that standard deviation analysis “describes the probability that the measured disparity is the result of mere chance.”<sup>67</sup> The consultant considered the finding of two standard deviations to demonstrate “with 95 percent certainty that disparity, as represented by either overutilization or underutilization, is actually present.”<sup>68</sup>

The study analyzed the participation of POC- and woman-owned subcontractors in construction contracts awarded and managed from the central NCDOT office in Raleigh, North Carolina.<sup>69</sup> To determine utilization of POC- and woman-owned subcontractors, the consultant developed a master list of contracts mainly from State-maintained electronic databases and hard copy files; then selected from that list a statistically valid sample of contracts, and calculated the percentage of subcontracting dollars awarded to POC- and women-owned businesses during the 5-year period ending in June 2003. (The study was published in 2004).<sup>70</sup>

The Court found that the use of data for centrally-awarded contracts was sufficient for its analysis. It was noted that data from construction contracts awarded and managed from the

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<sup>60</sup> 615 F.3d 233 at 243.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 243-244 (Citations to multiple federal circuit court decisions omitted.)

<sup>65</sup> *Id.* at 244.

<sup>66</sup> *Id.*

<sup>67</sup> 615 F.3d 233 at 244, quoting *Eng’g Contractors*, 122 F.3d at 914.

<sup>68</sup> *Id.*, citing *Eng’g Contractors*, 122 F.3d at 914.

<sup>69</sup> 615 F.3d 233 at 244.

<sup>70</sup> *Id.* at 244.

NCDOT divisions across the state and from preconstruction contracts, which involve work from engineering firms and architectural firms on the design of highways, was incomplete and not accurate.<sup>71</sup> These data were not relied upon in forming the opinions relating to the study.<sup>72</sup>

To estimate availability, which the Court defined as the percentage of a particular group in the relevant market area, the consultant created a vendor list comprising: (1) subcontractors approved by the department to perform subcontract work on state-funded projects, (2) subcontractors that performed such work during the study period, and (3) contractors qualified to perform prime construction work on state-funded contracts.<sup>73</sup> The Court noted that prime construction work on state-funded contracts was included based on the testimony by the consultant that prime contractors are qualified to perform subcontracting work and often do perform such work.<sup>74</sup> The Court also noted that the consultant submitted its master list to the NCDOT for verification.<sup>75</sup>

Based on the utilization and availability figures, the study prepared the disparity analysis comparing the utilization based on the percentage of subcontracting dollars over the five year period, determining the availability in numbers of firms and their percentage of the labor pool, a disparity index, and a t value.<sup>76</sup>

The Court concluded that the figures demonstrated prime contractors underutilized all of the POC subcontractor classifications on state-funded construction contracts during the study period.<sup>77</sup> The disparity index for each group was less than 80 and, thus, the Court found warranted further investigation.<sup>78</sup> The t-test results, however, demonstrated marked underutilization only of Black American and Native American subcontractors.<sup>79</sup> For Black Americans the t-value fell outside of two standard deviations from the mean and, therefore, was statistically significant at a 95 percent confidence level.<sup>80</sup> The Court found there was at least a 95 percent probability that prime contractors' underutilization of Black American subcontractors was *not* the result of mere chance.<sup>81</sup>

For Native American subcontractors, the t-value of 1.41 was significant at a confidence level of approximately 85 percent.<sup>82</sup> The t-values for Hispanic American and Asian American subcontractors, demonstrated significance at a confidence level of approximately 60 percent.

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<sup>71</sup> 615 F.3d 233 at 244, n.6.

<sup>72</sup> *Id.* at 244, n. 6.

<sup>73</sup> 615 F.3d 233 at 244.

<sup>74</sup> *Id.* at 245.

<sup>75</sup> *Id.* at 245.

<sup>76</sup> 615 F.3d 233 at 245.

<sup>77</sup> 615 F.3d 233 at 245.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 615 F.3d 233 at 245.

The disparity index for women subcontractors found that they were overutilized during the study period. The overutilization was statistically significant at a 95 percent confidence level.<sup>83</sup>

To corroborate the disparity analysis, the consultant conducted a regression analysis studying the influence of certain company and business characteristics—with a particular focus on owner race and gender—on a firm’s gross revenues.<sup>84</sup> The consultant obtained the data from a telephone survey of firms that conducted or attempted to conduct business with NCDOT. The survey pool consisted of a random sample of such firms.<sup>85</sup>

The consultant used the firms’ gross revenues as the dependent variable in the regression analysis to test the effect of other variables, including company age and number of full-time employees as well as the owners’ years of experience, level of education, race, ethnicity, and gender.<sup>86</sup> The analysis revealed that POC and woman ownership universally had a negative effect on revenue, and Black American ownership of a firm had the largest negative effect on that firm’s gross revenue of all the independent variables included in the regression model.<sup>87</sup> These findings led to the conclusion that, for Black Americans, the disparity in firm revenue was not due to capacity-related or managerial characteristics alone.<sup>88</sup>

The Court pointed out that in addition to the statistical evidence, the State also presented evidence demonstrating that from 1991 to 1993, during the Program’s suspension, prime contractors awarded substantially fewer subcontracting dollars to POC- and woman-owned subcontractors on state-funded projects. The Court rejected the plaintiff’s argument that evidence of a decline in utilization does not raise an inference of discrimination.<sup>89</sup> The Court held that the very significant decline in utilization of POC- and woman-owned subcontractors—nearly 38 percent—“surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors’ reduced utilization of these groups during the suspension.”<sup>90</sup> The Court found such an inference is particularly compelling for POC-owned businesses because, even during the study period, prime contractors continue to underutilize them on state-funded road projects.<sup>91</sup>

The Court held that the State presented a “strong basis in evidence” for its conclusion that POC participation goals were necessary to remedy discrimination against Black American and Native American subcontractors.<sup>92</sup> Therefore, the Court held that the State satisfied the strict scrutiny test. The Court found that the State’s data demonstrated that prime contractors grossly underutilized Black American and Native American subcontractors in public sector

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<sup>83</sup> *Id.*

<sup>84</sup> 615 F.3d 233 at 246.

<sup>85</sup> *Id.*

<sup>86</sup> 615 F.3d 233 at 246.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> 615 F.3d 233 at 247-248.

<sup>90</sup> *Id.* at 248, citing *Adarand v. Slater*, 228 F.3d at 1174 (finding that evidence of declining participation of POC-owned businesses after a program has been discontinued “strongly supports the government’s claim that there are significant barriers to minority competition in the public subcontracting market, raising the specter of racial discrimination.”)

<sup>91</sup> *Id.* at 248.

<sup>92</sup> 615 F.3d 233 at 250.

subcontracting during the study.<sup>93</sup> The Court noted that these findings have particular resonance because since 1983, North Carolina has encouraged POC participation in state-funded highway projects, and yet Black American and Native American subcontractors continue to be underutilized on such projects.<sup>94</sup>

In addition, the Court found the disparity index in the study demonstrated statistically significant underutilization of Black American subcontractors at a 95 percent confidence level, and of Native American subcontractors at a confidence level of approximately 85 percent.<sup>95</sup> The Court concluded the State bolstered the disparity evidence with regression analysis demonstrating that Black American ownership correlated with a significant, negative impact on firm revenue, and demonstrated there was a dramatic decline in the utilization of POC-owned subcontractors during the suspension of the program in the 1990s.<sup>96</sup>

Thus, the Court held the State's evidence showing a gross statistical disparity between the availability of qualified Black American- and Native American-owned subcontractors and the amount of subcontracting dollars they win on public sector contracts established the necessary statistical foundation for upholding the POC participation goals with respect to these groups.<sup>97</sup> The Court then found that the State's anecdotal evidence of discrimination against these two groups sufficiently supplemented the State's statistical showing.<sup>98</sup> The survey in the study exposed an informal, racially exclusive network that systemically disadvantaged POC-owned subcontractors.<sup>99</sup> The Court held that the State could conclude with good reason that such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action.<sup>100</sup> The Court found the anecdotal evidence indicated that racial discrimination is a critical factor underlying the gross statistical disparities presented in the study.<sup>101</sup>

Thus, the Court held that the State presented substantial statistical evidence of gross disparity, corroborated by "disturbing" anecdotal evidence. The Court held in circumstances like these, the Supreme Court has made it abundantly clear a state can remedy a public contracting system that withholds opportunities from POC groups because of their race.<sup>102</sup>

The Court pointed out that in response to the study, the North Carolina General Assembly substantially amended state legislation which modified the previous statutory scheme, according to the Court in five important respects.<sup>103</sup> First, the amended statute expressly conditioned implementation of any participation goals on the findings of the 2004 study. Second,

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<sup>93</sup> *Id.* at 250.

<sup>94</sup> *Id.* at 250.

<sup>95</sup> 615 F.3d 233 at 250.

<sup>96</sup> *Id.*

<sup>97</sup> 615 F.3d 233 at 250.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 251.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 251.

<sup>102</sup> 615 F.3d 233 at 251-252.

<sup>103</sup> *Id.*



the amended statute eliminated the 5 and 10 percent annual goals that were set in the predecessor statute.<sup>104</sup> Instead, as amended, the statute requires the NCDOT to “establish annual aspirational goals, not mandatory goals, ... for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses ... [that] shall not be applied rigidly on specific contracts or projects.”<sup>105</sup> The statute further mandated that the NCDOT set “contract-specific goals or project-specific goals ... for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization” based on availability, as determined by the study.<sup>106</sup> Third, the amended statute narrowed the definition of “minority” to encompass only those groups that have suffered discrimination.<sup>107</sup> The amended statute replaced a list of defined POCs to any certain groups by defining “minority” as “only those racial or ethnicity classifications identified by [the study] ... that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.”<sup>108</sup> Fourth, the amended statute required the NCDOT to reevaluate the Program over time and respond to changing conditions.<sup>109</sup> Accordingly, the NCDOT must conduct a study similar to the 2004 study at least every five years.<sup>110</sup> Finally, the amended statute contained a sunset provision which was set to expire on August 31, 2009, but the General Assembly subsequently extended the sunset provision to August 31, 2010.<sup>111</sup>

The Court also noted that the statute required only good faith efforts by the prime contractors to utilize subcontractors, and that the good faith requirement, the Court found, proved permissive in practice: prime contractors satisfied the requirement in 98.5 percent of cases, failing to do so in only 13 of 878 attempts.<sup>112</sup> The Court held that the state legislature had crafted legislation that withstood the constitutional scrutiny.<sup>113</sup> The Court concluded that in light of the statutory scheme’s flexibility and responsiveness to the realities of the marketplace, and given the State’s strong evidence of discrimination against Black American and Native American subcontractors in public-sector subcontracting, the State’s application of the statute to these groups is constitutional.<sup>114</sup> However, the Court also held that because the State failed to justify its application of the statutory scheme to woman-, Asian American-, and Hispanic American-owned subcontractors, the Court found those applications were not constitutional.

**d. Anecdotal evidence.** Anecdotal evidence, or specific examples of what seems on its face to be the result of discrimination, can be combined with statistical disparities to help meet strict

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<sup>104</sup> 615 F.3d 233 at 238-239.

<sup>105</sup> *Id.* at 239, quoting, N.C. Gen.Stat. § 136-28.4(b)(2010).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 239.

<sup>108</sup> *Id.* at 239 quoting section 136-28.4(c)(2)(2010).

<sup>109</sup> 615 F.3d 233 at 239.

<sup>110</sup> *Id.* § 136-28.4(b).

<sup>111</sup> *Id.* Section 136-28.4(e) (2010).

<sup>112</sup> 615 F.3d 233 at 239.

<sup>113</sup> 615 F.3d 233 at 257.

<sup>114</sup> *Id.* at 257.

scrutiny requirements.<sup>115</sup> Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness' perspective. This is where the "eye test" of thinking discrimination exists and the statistical reality of addressing it in a narrow way meet. As described above, *Crososn* makes clear that an organization cannot use general statements of discrimination as support for a remedy. Personal statements that reflect discrimination against individuals affected by the disparity can be used to strengthen and bolster attempts to show persistent or pervasive discrimination based on race. Courts have held that testimony of business owners regarding whether they face difficulties or barriers is admissible, such as:

- Descriptions of instances in which MBE/WBE or DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender;
- Whether firms solicit, or fail to solicit, bids or price quotes from MBE/WBEs or DBEs on non-MBE/WBE/DBE goals projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts or in obtaining financing and insurance.<sup>116</sup>

All of the above can be considered valid uses of anecdotal evidence in support of race-and gender-conscious remedies. Courts have accepted and recognize that anecdotal evidence is the witness' narrative of incidents told from his or her perspective, including the witness' thoughts, feelings, and perceptions, and thus anecdotal evidence need not be verified.<sup>117</sup>

The Fourth Circuit in *H.B. Rowe* stated that, in addition to statistical evidence, it "further require[s] that such evidence be 'corroborated by significant anecdotal evidence of racial discrimination.'"<sup>118</sup> The Court rejected the plaintiff's contention that the anecdotal data was flawed because the study did not verify it and that the consultant oversampled POC-owned subcontractors in collecting the data.<sup>119</sup>

The Fourth Circuit stated that the plaintiffs offered no rationale as to why a fact finder could not rely on the State's "unverified" anecdotal data, and pointed out that a fact finder could very well conclude that anecdotal evidence need not—and indeed, often cannot—be verified, because it "is nothing more than a witness' narrative of an incident told from the witness' perspective and

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<sup>115</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *H. B. Rowe*, 615 F.3d 233, 248-249; *Eng'g Contractors Ass'n*, 122 F.3d at 925-26; *Concrete Works*, 36 F.3d at 1520; *Contractors Ass'n*, 6F.3d at 1003; *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); see also, *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>116</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242; 249-251; *Northern Contracting*, 2005 WL 2230195, at 13-15 (N.D. Ill. 2005), *affirmed*, 473 F.3d 715 (7th Cir. 2007); e.g., *Concrete Works*, 321 F.3d at 989; *Adarand VII*, 228 F.3d at 1166-76. For additional examples of anecdotal evidence, see *Eng'g Contractors Ass'n*, 122 F.3d at 924; *Concrete Works*, 36 F.3d at 1520; *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 915 (11th Cir. 1990); *DynaLantic*, 885 F.Supp.2d 237; *Florida A.G.C. Council, Inc. v. State of Florida*, 303 F. Supp.2d 1307, 1325 (N.D. Fla. 2004).

<sup>117</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242, 248-249; *Concrete Works II*, 321 F.3d at 989; *Eng'g Contractors Ass'n*, 122 F.3d at 924-26; *Cone Corp.*, 908 F.2d at 915; *Northern Contracting, Inc. v. Illinois*, 2005 WL 2230195 at \*21, N. 32 (N.D. Ill. Sept. 8, 2005), *aff'd* 473 F.3d 715 (7th Cir. 2007).

<sup>118</sup> 615 F.3d at 241, quoting *Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993).

<sup>119</sup> *Id.* at 249.

including the witness' perceptions."<sup>120</sup> The Court in *H. B. Rowe* held that anecdotal evidence supplements statistical evidence of discrimination.<sup>121</sup>

The Court found that North Carolina's anecdotal evidence of discrimination sufficiently supplemented the State's statistical showing.<sup>122</sup> The survey evidence exposed an informal, racially exclusive network that systemically disadvantaged POC subcontractors.<sup>123</sup> The Court held that the State could conclude that such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action.<sup>124</sup> The Court concluded the anecdotal evidence indicated that racial discrimination is a critical factor underlying the gross statistical disparities presented in the disparity study.<sup>125</sup> Thus, the Court held that the State presented substantial statistical evidence of gross disparity corroborated by "disturbing" anecdotal evidence.<sup>126</sup>

**e. Public and private sector evidence.** In demonstrating a compelling government interest, agencies are not required to show proof of their own discriminatory practices, but instead can also provide evidence of private sector discrimination in the relevant industry. In *Concrete Works II*, the Court rejected the district court's conclusion that a municipality may only remedy its own discrimination. The Court stated this conclusion is contrary to the holdings in *Concrete Works II* and the plurality opinion in *Croson*.<sup>127</sup> The Court held it previously recognized in this case that "a municipality has a compelling interest in taking affirmative steps to remedy both public and private discrimination specifically identified in its area."<sup>128</sup> The Court stated, "We do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination."<sup>129</sup>

The Court stated that the City and County of Denver could meet its burden of demonstrating its compelling interest with evidence of private sector discrimination in the local construction industry coupled with evidence that it has become a *passive participant* in that discrimination.<sup>130</sup> Thus, Denver was not required to demonstrate that it is "guilty of prohibited discrimination" to meet its initial burden.<sup>131</sup> The Court pointed out that rather than offering any evidence in rebuttal, CWC merely stated that this empirical evidence did not prove that the Denver government itself discriminated against MBEs and WBEs.<sup>132</sup> CWC asked the Court to define the appropriate market as limited to contracts with the City and County of Denver.<sup>133</sup> But, the Court

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<sup>120</sup> 615 F.3d 233 at 249, quoting *Concrete Works*, 321 F.3d at 989.

<sup>121</sup> *Id.* at 249.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 251.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 251.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added).

<sup>129</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>130</sup> *Id.* at 973.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 1529.

<sup>133</sup> *Id.*

said that such a request ignored the lesson of *Croson* that a municipality may design programs to prevent tax dollars from “financ[ing] the evil of private prejudice.”<sup>134</sup>

The Court found that what the Denver MSA data did not indicate, however, was whether there was any linkage between Denver’s award of contracts and evidence of industry-wide discrimination.<sup>135</sup> The Court said it could not tell whether Denver indirectly contributed to private sector discrimination by awarding contracts to firms that in turn discriminated against MBE or WBE subcontractors or whether discrimination was practiced by firms that did not receive any public sector contracts.<sup>136</sup> Neither *Croson* nor its progeny, the Court pointed out, clearly stated whether private discrimination that was in no way funded with public tax dollars could, by itself, provide the requisite strong basis in evidence necessary to justify a municipality’s affirmative action program.<sup>137</sup> The Court said a plurality in *Croson* suggested that remedial measures could be justified upon a municipality’s showing that “it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry.”<sup>138</sup>

***Concrete Works of Colorado, Inc. v. City and County of Denver (“Concrete Works II”), 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003).*** This case is instructive to the District disparity study because it is a decision that upholds the validity of a local government MBE/WBE program. This case also is one of the only cases to have found private sector marketplace discrimination as a basis to uphold an MBE/WBE-type program. Plaintiff, Concrete Works of Colorado, Inc. (“CWC”) challenged the constitutionality of an “affirmative action” ordinance enacted by the City and County of Denver (hereinafter the “City” or “Denver”). The ordinance established participation goals for POCs and women on certain City construction and professional design projects.<sup>139</sup>

The City enacted an Ordinance No. 513 (“1990 Ordinance”) setting forth annual goals for MBE/WBE utilization on all competitively bid projects.<sup>140</sup> A prime contractor could also satisfy the 1990 Ordinance requirements by using “good faith efforts.”<sup>141</sup> In 1996, the City replaced the 1990 Ordinance with Ordinance No. 304 (the “1996 Ordinance”). The district court stated that the 1996 Ordinance differed from the 1990 Ordinance by expanding the definition of covered contracts to include some privately-financed contracts on City-owned land; added updated information and findings to the statement of factual support for continuing the program; refined the requirements for MBE/WBE certification and graduation; mandated the use of MBE/WBEs on change orders; and expanded sanctions for improper behavior by MBEs, WBEs, or majority-

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<sup>134</sup> *Id.*, quoting, *Croson*, 488 U.S. at 492.

<sup>135</sup> *Id.* at 1529.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 1529, quoting, *Croson*, 488 U.S. at 492.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 956.

<sup>141</sup> *Id.*

owned contractors in failing to perform the affirmative action commitments made on City projects.<sup>142</sup>

The 1996 Ordinance was amended in 1998 by Ordinance No. 948 (the “1998 Ordinance”). The 1998 Ordinance reduced annual percentage goals and prohibited an MBE or a WBE, acting as a bidder, from counting self-performed work toward project goals.<sup>143</sup> CWC filed suit challenging the constitutionality of the 1990 Ordinance.<sup>144</sup> The district court conducted a bench trial on the constitutionality of the three ordinances.<sup>145</sup> The district court ruled in favor of CWC and concluded that the ordinances violated the Fourteenth Amendment.<sup>146</sup> The City then appealed to the Tenth Circuit Court of Appeals.<sup>147</sup> The Court of Appeals reversed and remanded.<sup>148</sup>

The Court of Appeals applied strict scrutiny to race-based measures and intermediate scrutiny to gender-based measures.<sup>149</sup> The Court also cited *Croson* for the proposition that a governmental entity “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”<sup>150</sup> Because “an effort to alleviate the effects of *societal* discrimination is not a compelling interest,” the Court held that Denver could demonstrate that its interest is compelling only if it: (1) identified the past or present discrimination “with some specificity;” and (2) demonstrated that a “strong basis in evidence” supports its conclusion that remedial action is necessary.<sup>151</sup>

The Court held that Denver could meet its burden without conclusively proving the existence of past or present racial discrimination.<sup>152</sup> Rather, Denver could rely on “empirical evidence that demonstrates ‘a significant statistical disparity between the number of qualified POC contractors ... and the number of such contractors actually engaged by the locality or the locality’s prime contractors.’”<sup>153</sup> Furthermore, the Court held that Denver could rely on statistical evidence gathered from the six-county Denver Metropolitan Statistical Area (MSA) and could supplement the statistical evidence with anecdotal evidence of public and private discrimination.<sup>154</sup>

The Court held that Denver could establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination.<sup>155</sup> The Court further held that once Denver met its burden, CWC had to introduce “credible, particularized evidence to rebut [Denver’s] initial showing of the existence of a compelling interest, which could include a race- and gender-neutral explanation for the

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<sup>142</sup> *Id.* at 956-57.

<sup>143</sup> *Id.* at 957.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 954.

<sup>149</sup> *Id.* at 957-58, 959.

<sup>150</sup> 488 U.S. 469, 492 (1989) (plurality opinion).

<sup>151</sup> *Id.* at 958, quoting *Shaw v. Hunt*, 517 U.S. 899, 909-10 (1996).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*, quoting *Croson*, 488 U.S. at 509 (plurality opinion).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

statistical disparities.”<sup>156</sup> The Court held that CWC could also rebut Denver’s statistical evidence “by (1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data.”<sup>157</sup> The Court held that the burden of proof at all times remained with CWC to demonstrate the unconstitutionality of the ordinances.<sup>158</sup>

Denver presented historical, statistical, and anecdotal evidence in support of its MBE/WBE programs, including disparity analysis results related to the city’s contracting, MBE/WBE utilization in the overall Denver MSA construction market, and interviews with MBEs, WBEs, majority-owned construction firms, and government officials.<sup>159</sup> Based on this information, which came from a 1990 disparity study, the City Council enacted the 1990 Ordinance.<sup>160</sup>

After the Tenth Circuit decided *Concrete Works II*, Denver commissioned another study (the “1995 Study”).<sup>161</sup> Using 1987 Census Bureau data, the 1995 Study again examined utilization of MBEs and WBEs in the construction and professional design industries within the Denver MSA.<sup>162</sup> The 1995 Study concluded that MBEs and WBEs were more likely to be one- person or family-run businesses. The Study concluded that Hispanic-owned firms were less likely to have paid employees than white-owned firms but that Asian/Native American-owned firms were more likely to have paid employees than white- or other POC-owned firms. To determine whether these factors explained overall market disparities, the 1995 Study used Census data to calculate disparity indices for all firms in the Denver MSA construction industry and separately calculated disparity indices for firms with paid employees and firms with no paid employees.<sup>163</sup>

The Census Bureau information was also used to examine average revenues per employee for Denver MSA construction firms with paid employees. Hispanic-, Asian-, Native American-, and women-owned firms with paid employees all reported lower revenues per employee than majority-owned firms. The 1995 Study also used 1990 Census data to calculate rates of self-employment within the Denver MSA construction industry. The Study concluded that the disparities in the rates of self-employment for Blacks, Hispanics, and women persisted even after controlling for education and length of work experience. The 1995 Study controlled for these variables and reported that Blacks and Hispanics working in the Denver MSA construction industry were less than half as likely to own their own businesses as were whites of comparable education and experience.<sup>164</sup>

In late 1994 and early 1995, a telephone survey of construction firms doing business in the Denver MSA was conducted.<sup>165</sup> Based on information obtained from the survey, the consultant calculated percentage utilization and percentage availability of MBEs and WBEs. Percentage

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<sup>156</sup> *Id.* (internal citations and quotations omitted).

<sup>157</sup> *Id.* (internal citations and quotations omitted).

<sup>158</sup> *Id.* at 960.

<sup>159</sup> *Id.* at 962.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 963.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 964.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 965.

utilization was calculated from revenue information provided by the responding firms. Percentage availability was calculated based on the number of MBEs and WBEs that responded to the survey question regarding revenues. Using these utilization and availability percentages, the 1995 Study showed disparity indices of 64 for MBEs and 70 for WBEs in the construction industry. In the professional design industry, disparity indices were 67 for MBEs and 69 for WBEs. The 1995 Study concluded that the disparity indices obtained from the telephone survey data were more accurate than those obtained from the 1987 Census data because the data obtained from the telephone survey were more recent, had a narrower focus, and included data on C corporations. Additionally, it was possible to calculate disparity indices for professional design firms from the survey data.<sup>166</sup>

In 1997, the City conducted another study to estimate the availability of MBEs and WBEs and to examine, *inter alia*, whether race and gender discrimination limited the participation of MBEs and WBEs in construction projects of the type typically undertaken by the City (the “1997 Study”).<sup>167</sup> The 1997 Study used geographic and specialization information to calculate MBE/WBE availability. Availability was defined as “the ratio of MBE/WBE firms to the total number of firms in the four-digit SIC codes and geographic market area relevant to the City’s contracts.”<sup>168</sup> The 1997 Study then compared MBE/WBE availability and utilization in the Colorado construction industry.<sup>169</sup> Disparity indices for the statewide construction market in Colorado were as follows: 41 for Black American firms, 40 for Hispanic firms, 14 for Asian and other POCs, and 74 for women-owned firms.<sup>170</sup>

The 1997 Study also contained an analysis of whether Black Americans, Hispanics, or Asian Americans working in the construction industry are less likely to be self-employed than similarly situated whites.<sup>171</sup> Using data from the Public Use Microdata Samples (“PUMS”) of the 1990 Census of Population and Housing, the Study used a sample of individuals working in the construction industry. The Study concluded that in both Colorado and the Denver MSA, Black Americans, Hispanics, and Native Americans working in the construction industry had lower self-employment rates than whites. Asian Americans had higher self-employment rates than whites.

Using the availability figures described above, the Study then compared the actual availability of MBE/WBEs in the Denver MSA with the potential availability of MBE/WBEs if they formed businesses at the same rate as whites with the same characteristics.<sup>172</sup> Finally, the Study examined whether self-employed POCs and women in the construction industry have lower earnings than white males with similar characteristics.<sup>173</sup> Using linear regression analysis, the Study compared business owners with similar years of education, similar ages, doing business in the same geographic area, and having other similar demographic characteristics. Even after

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 966.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 968.

controlling for such factors, the results showed that self-employed Black Americans, Hispanics, Native Americans, and women had lower earnings than similarly-situated white males.<sup>174</sup>

The 1997 Study also conducted a mail survey of both MBE/WBEs and non-MBE/WBEs to obtain information on their experiences in the construction industry. Of the MBE/WBEs who responded, 35 percent indicated that they had experienced at least one incident of disparate treatment within the last five years while engaged in business activities. The survey also posed the following question: “How often do prime contractors who use your firm as a subcontractor on public sector projects with [MBE/WBE] goals or requirements ... also use your firm on public sector or private sector projects without [MBE/WBE] goals or requirements?” Fifty-eight percent of POCs and 41 percent of white women who responded to this question indicated they were “seldom or never” used on non-goals projects.<sup>175</sup>

MBE/WBEs were also asked whether the following aspects of procurement made it more difficult or impossible to obtain construction contracts: (1) bonding requirements, (2) insurance requirements, (3) large project size, (4) cost of completing proposals, (5) obtaining working capital, (6) length of notification for bid deadlines, (7) prequalification requirements, and (8) previous dealings with an agency. This question was also asked of non-MBE/WBEs in a separate survey. MBE/WBEs generally considered each aspect of procurement more problematic than non-MBE/WBEs. To determine whether a firm’s size or experience explained the different responses, a regression analysis was conducted that controlled for age of the firm, number of employees, level of revenues and other factors. The results again showed that MBE/WBEs generally had more difficulties than non-MBE/WBEs.<sup>176</sup>

After the 1997 Study was completed, the City enacted the 1998 Ordinance. The 1998 Ordinance reduced the annual goals to 10 percent for both MBEs and WBEs and eliminated a provision which previously allowed MBE/WBEs to count their own work toward meeting project goals.<sup>177</sup> The anecdotal evidence included the testimony of the senior vice-president of a large, majority-owned construction firm who stated that when he worked in Denver, he received credible complaints from POC- and woman-owned construction firms that they were subject to different work rules than majority-owned firms.<sup>178</sup> He also testified that he frequently observed graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, he stated that he believed, based on his personal experiences, that many majority-owned firms refused to hire POC- or women-owned subcontractors, because they believed those firms were not competent.<sup>179</sup>

Several MBE/WBE witnesses testified that they experienced difficulty prequalifying for private sector projects and projects with the City and other governmental entities in Colorado. One individual testified that her company was required to prequalify for a private sector project while no similar requirement was imposed on majority-owned firms. Several others testified

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 968-69.

<sup>177</sup> *Id.* at 969.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*



that they attempted to prequalify for projects but their applications were denied even though they met prequalification requirements.<sup>180</sup> Other MBE/WBEs testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations.<sup>181</sup> There was testimony detailing the difficulties MBE/WBEs experienced in obtaining lines of credit. One WBE testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations.<sup>182</sup> The Court also pointed out anecdotal testimony involving recitations of racially- and gender- motivated harassment experienced by MBE/WBEs at work sites. There was testimony that POC and women employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of 80 feet.<sup>183</sup>

The Court held that the district court incorrectly believed Denver was required to prove the existence of discrimination. Instead of considering whether Denver had demonstrated strong evidence from which an inference of past or present discrimination could be drawn, the district court analyzed whether Denver's evidence showed that there is pervasive discrimination.<sup>184</sup> The Court, *quoting Concrete Works II*, stated that "the Fourteenth Amendment does not require a court to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination."<sup>185</sup> Denver's initial burden was to demonstrate that strong evidence of discrimination supported its conclusion that remedial measures were necessary. Strong evidence is that "approaching a prima facie case of a constitutional or statutory violation," not irrefutable or definitive proof of discrimination.<sup>186</sup> The burden of proof at all times remained with the plaintiff to prove by a preponderance of the evidence that Denver's "evidence did not support an inference of prior discrimination and thus a remedial purpose."<sup>187</sup>

Denver, the Court held, introduced evidence of discrimination against each group included in the ordinances.<sup>188</sup> Thus, Denver's evidence did not suffer from the problem discussed by the Court in *Croson*. The Court held the district court erroneously concluded that Denver must demonstrate that the private firms directly engaged in any discrimination in which Denver passively participates do so intentionally with the purpose of disadvantaging POCs and women. The *Croson* majority concluded that a "city would have a compelling interest in preventing its tax dollars from assisting [local trade] organizations in maintaining a racially segregated

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 969-70.

<sup>184</sup> *Id.* at 970.

<sup>185</sup> *Id.* at 970, *quoting Concrete Works II*, 36 F.3d 1513, 1522 (10th Cir. 1994).

<sup>186</sup> *Id.* at 97, *quoting Croson*, 488 U.S. at 500.

<sup>187</sup> *Id.*, *quoting Adarand VII*, 228 F.3d at 1176.

<sup>188</sup> *Id.* at 971.

construction market.”<sup>189</sup> Thus, the Court held Denver’s burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and linked its spending to that discrimination.<sup>190</sup>

The Court noted the Supreme Court has stated that the inference of discriminatory exclusion can arise from statistical disparities.<sup>191</sup> Accordingly, it concluded that Denver could meet its burden through the introduction of statistical and anecdotal evidence. Denver, according to the Court, was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or POCs.<sup>192</sup> The Court found Denver’s statistical and anecdotal evidence relevant because it identifies discrimination in the local construction industry, not simply discrimination in society. The Court held the genesis of the identified discrimination is irrelevant and the district court erred when it discounted Denver’s evidence on that basis.<sup>193</sup>

The Court held the district court erroneously rejected the evidence Denver presented on marketplace discrimination.<sup>194</sup> The Court rejected the district court’s erroneous legal conclusion that a municipality may only remedy its own discrimination. The Court stated this conclusion is contrary to the holdings in *Concrete Works II* and the plurality opinion in *Croson*.<sup>195</sup> The Court held it previously recognized in this case that “a municipality has a compelling interest in taking affirmative steps to remedy both public *and private* discrimination specifically identified in its area.”<sup>196</sup> In *Concrete Works II*, the Court stated that “we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination.”<sup>197</sup> The Court stated that Denver could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination.<sup>198</sup> Thus, Denver was not required to demonstrate that it is “guilty of prohibited discrimination” to meet its initial burden.<sup>199</sup>

Additionally, the Court had previously concluded that Denver’s disparity studies, which compared utilization of MBE/WBEs to availability, supported the inference that “local prime contractors” are engaged in racial and gender discrimination.<sup>200</sup> Thus, the Court held that Denver’s disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination.<sup>201</sup>

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<sup>189</sup> *Id.* at 971, quoting *Croson*, 488 U.S. 503.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*, citing *Croson*, 488 U.S. at 503.

<sup>192</sup> *Id.* at 972.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 973.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added).

<sup>197</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>198</sup> *Id.* at 973.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 974, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>201</sup> *Id.*

Use of marketplace data. The Court held the district court, *inter alia*, erroneously concluded that the disparity studies upon which Denver relied were significantly flawed because they measured discrimination in the overall Denver MSA construction industry, not discrimination by the City itself.<sup>202</sup> The Court found that the district court's conclusion was directly contrary to the holding in *Adarand VII* that evidence of both public and private discrimination in the construction industry is relevant.<sup>203</sup> The Court held the conclusion reached by the majority in *Croson* that marketplace data are relevant in equal protection challenges to affirmative action programs was consistent with the approach later taken by the Court in *Shaw v. Hunt*.<sup>204</sup> In *Shaw*, a majority of the Court relied on the majority opinion in *Croson* for the broad proposition that a governmental entity's "interest in remedying the effects of past or present racial discrimination may in the proper case justify a government's use of racial distinctions."<sup>205</sup> The *Shaw* court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The Court, however, did set out two conditions that must be met for the governmental entity to show a compelling interest: "First, the discrimination must be identified discrimination. The City can satisfy this condition by identifying the discrimination, 'public or private, with some specificity.'"<sup>206</sup> The governmental entity must also have a "strong basis in evidence to conclude that remedial action was necessary."<sup>207</sup> Thus, the Court concluded *Shaw* specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality's burden of producing strong evidence.<sup>208</sup>

In *Adarand VII*, the Court noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation: "[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant*."<sup>209</sup> Further, the Court pointed out in this case that it earlier rejected the argument CWC reasserted here that marketplace data are irrelevant and remanded the case to the district court to determine whether Denver could link its public spending to "the Denver MSA evidence of industry-wide discrimination."<sup>210</sup> The Court stated that evidence explaining "the Denver government's role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*" was relevant to Denver's burden of producing strong evidence.<sup>211</sup>

Consistent with the Court's mandate in *Concrete Works II*, the City attempted to show at trial that it "indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their

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<sup>202</sup> *Id.* at 974.

<sup>203</sup> *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67.

<sup>204</sup> *Id.* at 975.

<sup>205</sup> *Id.*, quoting *Shaw*, 517 U.S. at 909.

<sup>206</sup> *Id.* at 976, citing *Shaw*, 517 U.S. at 910, quoting *Croson*, 488 U.S. at 504 (emphasis added).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 976.

<sup>209</sup> *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67 (emphasis added).

<sup>210</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>211</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1530 (emphasis added).

business.”<sup>212</sup> The City can demonstrate that it is a “‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry” by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination.<sup>213</sup>

The Court rejected CWC’s argument that the lending discrimination studies and business formation studies presented by Denver were irrelevant. In *Adarand VII*, the Court concluded that evidence of discriminatory barriers to the formation of businesses by POCs and women and fair competition between MBE/WBEs and majority-owned construction firms shows a “strong link” between a government’s “disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination.”<sup>214</sup> The Court found that evidence that private discrimination resulted in barriers to business formation is relevant, because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for public construction contracts. The Court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the Denver MSA construction industry, studies showing that discriminatory barriers to business formation exist in the Denver construction industry are relevant to the City’s showing that it indirectly participates in industry discrimination.<sup>215</sup>

The City also presented evidence of lending discrimination to support its position that MBE/WBEs in the Denver MSA construction industry face discriminatory barriers to business formation. Denver introduced a disparity study prepared in 1996 and sponsored by the Denver Community Reinvestment Alliance, Colorado Capital Initiatives, and the City. The study concluded that “despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial.”<sup>216</sup> In *Adarand VII*, the Court concluded that this study, among other evidence, “strongly support[ed] an initial showing of discrimination in lending. Lending discrimination alone of course does not justify action in the construction market. However, the persistence of such discrimination ... supports the assertion that the formation, as well as utilization, of minority-owned construction enterprises has been impeded.”<sup>217</sup> The City also introduced anecdotal evidence of lending discrimination in the Denver construction industry.

CWC did not present any evidence that undermined the reliability of the lending discrimination evidence but simply repeated the argument, foreclosed by circuit precedent, that it is irrelevant. The Court rejected the district court criticism of the evidence based on the fact that it failed to determine whether the discrimination resulted from discriminatory attitudes or from the neutral application of banking regulations. Rather, the Court concluded that discriminatory motive can be inferred from the results shown in disparity studies. The Court held the district

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<sup>212</sup> *Id.*

<sup>213</sup> *Id.*, quoting *Croson*, 488 U.S. at 492.

<sup>214</sup> *Id.* at 977, quoting *Adarand VII*, 228 F.3d at 1167-68.

<sup>215</sup> *Id.* at 977.

<sup>216</sup> *Id.* at 977-78.

<sup>217</sup> *Id.* at 978, quoting, *Adarand VII*, 228 F.3d at 1170, n. 13.

court's criticism did not undermine the study's reliability as an indicator that the City is passively participating in marketplace discrimination. The Court noted that in *Adarand VII* it took "judicial notice of the obvious causal connection between access to capital and ability to implement public works construction projects."<sup>218</sup>

Denver also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The 1990 and 1995 disparity studies both showed that all POC groups in the Denver MSA formed construction firms at rates lower than the total population but that women formed construction firms at higher rates. A 1997 disparity study examined self-employment rates and controlled for gender, marital status, education, availability of capital, and family variables. The study concluded that Black Americans, Hispanics, and Native Americans working in the construction industry have lower rates of self-employment than similarly-situated whites. The 1997 study also concluded that POC and female business owners in the construction industry, with the exception of Asian American owners, have lower earnings than white male owners. This conclusion was reached after controlling for education, age, marital status, and disabilities.<sup>219</sup>

The Court held that the district court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with *Adarand VII*. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion."<sup>220</sup>

In sum, the Court held the district court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the City's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary.<sup>221</sup>

CWC challenged Denver's disparity studies as unreliable because the disparities shown in the studies may be attributable to firm size and experience rather than discrimination. Denver countered, however, that a firm's size has little effect on its qualifications or its ability to provide construction services and that MBE/WBEs, like all construction firms, can perform most services either by hiring additional employees or by employing subcontractors. CWC responded that elasticity itself is relative to size and experience. MBE/WBEs are less capable of expanding, because they are smaller and less experienced.<sup>222</sup> The Court concluded that even if it assumed that MBE/WBEs are less able to expand because of their smaller size and more limited experience, CWC did not respond to Denver's argument and the evidence it presented, which showed that experience and size are not race- and gender-neutral variables and that MBE/WBE construction firms are generally smaller and less experienced *because* of industry

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<sup>218</sup> *Id.* at 978, quoting *Adarand VII*, 228 F.3d at 1170.

<sup>219</sup> *Id.* at 978.

<sup>220</sup> *Id.* at 979, quoting *Adarand VII*, 228 F.3d at 1174.

<sup>221</sup> *Id.* at 979-80.

<sup>222</sup> *Id.* at 980.

discrimination.<sup>223</sup> The lending discrimination and business formation studies, according to the Court, both strongly supported Denver’s argument that MBE/WBEs are smaller and less experienced because of marketplace and industry discrimination. In addition, Denver’s expert testified that discrimination by banks or bonding companies would reduce a firm’s revenue and the number of employees it could hire.<sup>224</sup>

Based on the uncontroverted evidence presented at trial, the Court concluded that the district court did not give sufficient weight to Denver’s disparity studies because of its erroneous conclusion that the studies failed to adequately control for size and experience. The Court held that Denver is permitted to make assumptions about capacity and qualifications of MBE/WBEs to perform construction services if it can support those assumptions. The Court found the assumptions made in this case were consistent with the evidence presented at trial and supported the City’s position that a firm’s size does not affect its qualifications, willingness, or ability to perform construction services and that the smaller size and lesser experience of MBE/WBEs are, themselves, the result of industry discrimination. Further, the Court pointed out CWC did not conduct its own disparity study using marketplace data and thus did not demonstrate that the disparities shown in Denver’s studies would decrease or disappear if the studies controlled for size and experience to CWC’s satisfaction. Consequently, the Court held CWC’s rebuttal evidence was insufficient to meet its burden of discrediting Denver’s disparity studies on the issue of size and experience.<sup>225</sup>

The district court also faulted Denver’s disparity studies because they did not control for firm specialization. The Court noted the district court’s criticism would be appropriate only if there was evidence that MBE/WBEs are more likely to specialize in certain construction fields.<sup>226</sup> The Court found there was no identified evidence showing that certain construction specializations require skills less likely to be possessed by MBE/WBEs. The Court found relevant the testimony of the City’s expert, that the data he reviewed showed that MBEs were represented “widely across the different [construction] specializations.”<sup>227</sup> There was no contrary testimony that aggregation bias caused the disparities shown in Denver’s studies.<sup>228</sup> The Court held that CWC failed to demonstrate that the disparities shown in Denver’s studies are eliminated when there is control for firm specialization. In contrast, one of the Denver studies, which controlled for subspecialty and still showed disparities, provided support for Denver’s argument that firm specialization does not explain the disparities.<sup>229</sup> The Court pointed out that disparity studies may make assumptions about availability as long as the same assumptions can be made for all firms.<sup>230</sup>

CWC argued that Denver could not demonstrate a compelling interest because it overutilized MBE/WBEs on City construction projects. This argument, according to the Court, was an

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<sup>223</sup> *Id.* at 981.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 982.

<sup>226</sup> *Id.* at 982.

<sup>227</sup> *Id.* at 982-83.

<sup>228</sup> *Id.* at 983.

<sup>229</sup> *Id.* at 983.

<sup>230</sup> *Id.* at 983.

extension of CWC's argument that Denver could justify the ordinances only by presenting evidence of discrimination by the City itself or by contractors while working on City projects. Because the Court concluded that Denver could satisfy its burden by showing that it is an indirect participant in industry discrimination, CWC's argument relating to the utilization of MBE/WBEs on City projects goes only to the weight of Denver's evidence.<sup>231</sup>

Consistent with the Court's ruling in *Concrete Works II*, at trial, Denver sought to demonstrate that the utilization data from projects subject to race- and gender-conscious goals were tainted by the program and "reflect[ed] the intended remedial effect on MBE and WBE utilization."<sup>232</sup> Denver argued that the non-goals data were the better indicator of past discrimination in public contracting than the data on all City construction projects.<sup>233</sup> The Court concluded that Denver presented ample evidence to support the conclusion that the evidence showing MBE/WBE utilization on City projects not subject to the ordinances or the goals programs is the better indicator of discrimination in City contracting.<sup>234</sup>

The Court rejected CWC's argument that the marketplace data were irrelevant but held that the non-goals data were relevant to Denver's burden. The Court noted, however, that Denver did not rely heavily on the non-goals data at trial but focused primarily on the marketplace studies to support its burden.<sup>235</sup> In sum, the Court held Denver demonstrated that the utilization of MBE/WBEs on City projects had been affected by the affirmative action programs that had been in place in one form or another since 1977. Thus, the non-goals data were the better indicator of discrimination in public contracting. The Court concluded that, on balance, the non-goals data provided some support for Denver's position that racial and gender discrimination existed in public contracting before the enactment of the ordinances.<sup>236</sup>

Anecdotal evidence. The anecdotal evidence, according to the Court, included several incidents involving profoundly disturbing behavior on the part of lenders, majority-owned firms, and individual employees.<sup>237</sup> The Court found that the anecdotal testimony revealed behavior that was not merely sophomoric or insensitive, but which resulted in real economic or physical harm. While CWC also argued that all new or small contractors have difficulty obtaining credit and that treatment the witnesses characterized as discriminatory is experienced by all contractors, Denver's witnesses specifically testified that they believed the incidents they experienced were motivated by race or gender discrimination. The Court found they supported those beliefs with testimony that majority-owned firms were not subject to the same requirements imposed on them.<sup>238</sup>

The Court held there was no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. The Court stated that anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and

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<sup>231</sup> *Id.* at 984.

<sup>232</sup> *Id.* at 984, quoting *Concrete Works II*, 36 F.3d at 1526.

<sup>233</sup> *Id.* at 984-85.

<sup>234</sup> *Id.* at 985.

<sup>235</sup> *Id.* at 985.

<sup>236</sup> *Id.* at 987-88.

<sup>237</sup> *Id.* at 989.

<sup>238</sup> *Id.*

including the witness' perceptions.<sup>239</sup> After considering Denver's anecdotal evidence, the district court found that the evidence "shows that race, ethnicity and gender affect the construction industry and those who work in it" and that the egregious mistreatment of POC and women employees "had direct financial consequences" on construction firms.<sup>240</sup> Based on the district court's findings regarding Denver's anecdotal evidence and its review of the record, the Court concluded that the anecdotal evidence provided persuasive, un rebutted support for Denver's initial burden, concluding that anecdotal evidence presented in a pattern or practice discrimination case was persuasive because it "brought the cold [statistics] convincingly to life."<sup>241</sup>

The Court held the record contained extensive evidence supporting Denver's position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs.<sup>242</sup> The information available to Denver, and upon which the ordinances were predicated, according to the Court, indicated that discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination. To rebut Denver's evidence, the Court stated CWC was required to "establish that Denver's evidence did not constitute strong evidence of such discrimination."<sup>243</sup> CWC could not meet its burden of proof through conjecture and unsupported criticisms of Denver's evidence. Rather, it must present "credible, particularized evidence."<sup>244</sup> The Court held that CWC did not meet its burden. CWC *hypothesized* that the disparities shown in the studies on which Denver relied could be explained by any number of factors other than racial discrimination. However, the Court found it did not conduct its own marketplace disparity study controlling for the disputed variables and presented no other evidence from which the Court could conclude that such variables explained the disparities.<sup>245</sup>

Narrow tailoring. Having concluded that Denver demonstrated a compelling interest in race-based measures and an important governmental interest in gender-based measures, the Court held it must examine whether the ordinances were narrowly tailored to serve the compelling interest and are substantially related to the achievement of the important governmental interest.<sup>246</sup> The Court stated it had previously concluded in its earlier decisions that Denver's program was narrowly tailored. CWC appealed the grant of summary judgment and that appeal culminated in the decision in *Concrete Works II*. The Court reversed the grant of summary judgment on the compelling interest issue and concluded that CWC had waived any challenge to the narrow tailoring conclusion reached by the district court. Because the Court found CWC did not challenge the district court's conclusion with respect to the second prong of *Croson's* strict scrutiny standard—that is, that the Ordinance is narrowly tailored to remedy past and present discrimination—the Court held it need not address the issue.<sup>247</sup> The Court concluded that the

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<sup>239</sup> *Id.*

<sup>240</sup> *Id.* at 989, quoting *Concrete Works III*, 86 F. Supp.2d at 1074, 1073.

<sup>241</sup> *Id.* at 989-90, citing *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977).

<sup>242</sup> *Id.* at 990.

<sup>243</sup> *Id.* at 991, quoting *Concrete Works II*, 36 F.3d at 1523.

<sup>244</sup> *Id.*, quoting *Adarand VII*, 228 F.3d at 1175.

<sup>245</sup> *Id.* at 991-92.

<sup>246</sup> *Id.* at 992.

<sup>247</sup> *Id.* at 992, citing *Concrete Works II*, 36 F.3d at 1531, n. 24.



district court lacked authority to address the narrow tailoring issue on remand, because none of the exceptions to the law of the case doctrine were applicable. The district court’s earlier determination that Denver’s affirmative-action measures were narrowly tailored is law of the case and binding on the parties.

**f. Burden of proof.** Under strict scrutiny, and to the extent a state or local governmental entity has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a strong basis in evidence—including statistical and anecdotal evidence—to support its remedial action.<sup>248</sup> In applying strict scrutiny, the courts hold that the burden is on the government to show both a compelling interest and narrow tailoring.<sup>249</sup> In addition, the government must also demonstrate “a strong basis in evidence for its conclusion that remedial action [is] necessary.”<sup>250</sup> If the government makes its initial showing, the burden shifts to the challenger to rebut that showing.<sup>251</sup> The challenger bears the ultimate burden of showing that the governmental entity’s evidence “did not support an inference of prior discrimination.”<sup>252</sup>

Since the decision by the Supreme Court in *Croson*, “numerous courts have recognized that disparity studies provide probative evidence of discrimination.”<sup>253</sup> Courts have held that “an inference of discrimination may be made with empirical evidence that demonstrates ‘a significant statistical disparity between a number of qualified minority contractors ... and the number of such contractors actually engaged by the locality or the locality’s prime

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<sup>248</sup> See *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242, 247-258 (4th Cir. 2010); *Rothe Development Corp. v. Department of Defense*, 545 F.3d 1023, 1036 (Fed. Cir. 2008); *N. Contracting, Inc. Illinois*, 473 F.3d at 715, 721 (7th Cir. 2007) (Federal DBE Program); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 990-991 (9th Cir. 2005) (Federal DBE Program); *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964, 969 (8th Cir. 2003) (Federal DBE Program); *Adarand Constructors Inc. v. Slater* (“Adarand VII”), 228 F.3d 1147, 1166 (10th Cir. 2000) (Federal DBE Program); *Eng’g Contractors Ass’n*, 122 F.3d at 916; *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 713 (9th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092; *DynaLantic*, 885 F.Supp.2d 237, 2012 WL 3356813; *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County*, 333 F. Supp.2d 1305, 1316 (S.D. Fla. 2004).

<sup>249</sup> *Id.*; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990; *See also Majeske v. City of Chicago*, 218 F.3d 816, 820 (7th Cir. 2000); *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>250</sup> *Croson*, 488 U.S. at 500; *see, e.g., Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242; *Sherbrooke Turf*, 345 F.3d at 971-972; *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>251</sup> *Adarand VII*, 228 F.3d at 1166; *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d Cir. 1993); *Eng’g Contractors Ass’n*, 122 F.3d at 916; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>252</sup> *See, e.g., Adarand VII*, 228 F.3d at 1166; *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d Cir. 1993); *Eng’g Contractors Ass’n*, 122 F.3d at 916; *see also Sherbrooke Turf*, 345 F.3d at 971; *N. Contracting*, 473 F.3d at 721; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>253</sup> *Midwest Fence Corporation v. USDOT*, 2015 W.L. 1396376 at \*7 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *see, e.g., Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1195-1200; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Concrete Works of Colo. Inc. v. City and County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994); *Geyer Signal*, 2014 WL 1309092 (D. Minn. 2014); *see also, Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP II”), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“CAEP I”), 6 F.3d 996, 1005-1007 (3d Cir. 1993).

contractors.”<sup>254</sup> Anecdotal evidence may be used in combination with statistical evidence to establish a compelling governmental interest.<sup>255</sup>

In addition to providing “hard proof” to support its compelling interest, the government must also show that the challenged program is narrowly tailored.<sup>256</sup> Once the governmental entity has shown acceptable proof of a compelling interest and remedying past discrimination and illustrated that its plan is narrowly tailored to achieve that objective, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional.<sup>257</sup> Therefore, notwithstanding the burden of initial production rests with the government, the ultimate burden remains with the party challenging the application of a DBE or MBE/WBE Program to demonstrate the unconstitutionality of an affirmative-action type program.<sup>258</sup>

To successfully rebut the government’s evidence, the Courts hold that a challenger must introduce “credible, particularized evidence” of its own that rebuts the government’s showing of a strong basis in evidence for the necessity of remedial action.<sup>259</sup> This rebuttal can be accomplished by providing a neutral explanation for the disparity between MBE/WBE/DBE utilization and availability, showing that the government’s data is flawed, demonstrating that the observed disparities are not statistically significant, or presenting contrasting statistical data.<sup>260</sup> Conjecture and unsupported criticisms of the government’s methodology are insufficient.<sup>261</sup> The

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<sup>254</sup> *Id.*, quoting *Concrete Works*; 36 F.3d 1513, 1522 (quoting *Croson*, 488 U.S. at 509), affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir.)2016); see also, *Sherbrooke Turf*, 345 F.3d 233, 241-242 (8th Cir. 2003); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996,1005-1007 (3d. Cir. 1993).

<sup>255</sup> *Croson*, 488 U.S. at 509; see, e.g., *AGC, SDC v. Caltrans*, 713 R.3d at 1196; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 WL 1396376 at \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>256</sup> *Adarand Constructors, Inc. v. Pena*, (“*Adarand III*”), 515 U.S. 200 at 235 (1995); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Majeske v. City of Chicago*, 218 F.3d at 820; *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>257</sup> *Majeske*, 218 F.3d at 820; see, e.g. *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 277-78; *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Midwest Fence*, 2015 WL 1396376 \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Geyer Signal, Inc.*, 2014 WL 1309092; *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

<sup>258</sup> *Id.*; *Adarand VII*, 228 F.3d at 1166.

<sup>259</sup> See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); seealso, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>260</sup> See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; see, generally, *Engineering Contractors*, 122 F.3d at 916; *Coral Construction, Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991).

<sup>261</sup> *Id.*; *H. B. Rowe*, 615 F.3d at 242; see also, *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Sherbrooke Turf*, 345 F.3d at 971-974; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E.Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

Courts have held that mere speculation that the government’s evidence is insufficient or methodologically flawed does not suffice to rebut a government’s showing.<sup>262</sup>

Courts have noted that “there is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.”<sup>263</sup> Courts have held that a state need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.<sup>264</sup> Instead, the Supreme Court stated that a government may meet its burden by relying on “a significant statistical disparity” between the availability of qualified, willing, and able POC subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.<sup>265</sup> It has been further held by other courts that the statistical evidence be “corroborated by significant anecdotal evidence of racial discrimination” or bolstered by anecdotal evidence supporting an inference of discrimination.<sup>266</sup>

The Fourth Circuit in *H.B. Rowe* stated the strict scrutiny standard was applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically “fatal in fact.”<sup>267</sup> The Court pointed out that “[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.”<sup>268</sup> In so acting, a governmental entity must demonstrate it had a compelling interest in “remediating the effects of past or present racial discrimination.”<sup>269</sup> Thus, the Fourth Circuit found that to justify a race-conscious measure, a government must identify that discrimination with some specificity and must have a strong basis in evidence for its conclusion that remedial action is necessary.<sup>270</sup> The Court in *H.B. Rowe* after finding that there is no “precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark, stated the

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<sup>262</sup> *H.B. Rowe*, 615 F.3d at 242; see *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 991; see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>263</sup> *H.B. Rowe*, 615 F.3d at 241, quoting *Rothe Dev. Corp. v. Dep’t of Def.*, 545 F.3d 1023, 1049 (Fed. Cir. 2008) (quoting *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 n. 11 (5th Cir. 1999)); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>264</sup> *H.B. Rowe Co.*, 615 F.3d at 241; see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 958; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>265</sup> *Croson*, 488 U.S. 509, see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *H.B. Rowe*, 615 F.3d at 241; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>266</sup> *H.B. Rowe*, 615 F.3d at 241, quoting *Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *AGC, San Diego v. Caltrans*, 713 F.3d at 1196; see also, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>267</sup> 615 F.3d 233 at 241.

<sup>268</sup> *Id.*, 615 F.3d at 241, quoting *Alexander v. Estep*, 95 F.3d 312, 315 (4th Cir. 1996).

<sup>269</sup> *Id.*, quoting *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

<sup>270</sup> 615 F.3d 233 at 241 quoting, *Croson*, 488 U.S. at 504 and *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986) (plurality opinion), see, e.g., *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993).

sufficiency of the State’s evidence of discrimination “must be evaluated on a case-by-case basis.”<sup>271</sup>

***Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore and Maryland Minority Contractors Association, Inc.*, 83 F. Supp.2d 613 (D. Md. 2000).** Plaintiff

Associated Utility Contractors of Maryland, Inc. (“AUC”) challenged the continued implementation of the affirmative action program created by a Baltimore City Ordinance (“the Ordinance”).<sup>272</sup> The Ordinance was enacted in 1990 and authorized the City to establish annual, numerical set-aside goals applicable to a wide range of public contracts, including construction subcontracts.<sup>273</sup> In enacting Ordinance 610, the City Council found that it was justified as an appropriate remedy of “[p]ast discrimination in the City’s contracting process by prime contractors against minority and women’s business enterprises.”<sup>274</sup> The City Council also found that “[m]inority and women’s business enterprises have had difficulties in obtaining financing, bonding, credit and insurance” and further that “[t]he City of Baltimore has created a number of different assistance programs to help small businesses with these problems [but that t]hese assistance programs have not been effective in either remedying the effects of past discrimination or in preventing ongoing discrimination.”<sup>275</sup> No study ever was undertaken to support the implementation of the affirmative action program generally or to support the establishment of any annual goals, the Court concluded, and the City did not collect the data which could have permitted such findings.<sup>276</sup> Thus, the Court held the City had no reliable record of the availability of MBE/WBEs for each category of contracting, and thus no way of determining whether its 20 percent and 3 percent goals were rationally related to extant discrimination (or the continuing effects thereof) in the letting of public construction contracts.<sup>277</sup>

In evaluating the compelling interest prong of strict scrutiny, the Court held that it must limit its inquiry to evidence which the City actually considered before enacting the numerical goals.<sup>278</sup> The Court found the Supreme Court has established the standard that pre-enactment evidence must provide the “strong basis in evidence” that race-based remedial action is necessary.<sup>279</sup> The Court noted that in *Wygant*, the plurality opinion of the Supreme Court held that a state entity “must ensure that, before it embarks on an affirmative-action program, it has convincing evidence that remedial action is warranted. That is, it must have sufficient evidence to justify the conclusion that there has been prior discrimination.”<sup>280</sup> The Court stated that because of this controlling precedent, it was compelled to analyze the evidence before the City when it adopted the 1999 set-aside goals specifying the 20 percent MBE participation in City construction

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<sup>271</sup> *Id.*, 615 F.3d at 241. (internal quotation marks omitted).

<sup>272</sup> 83 F.Supp.2d 613 (D. Md. 2000).

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.* at 620.

<sup>279</sup> *Id.* at 620-621.

<sup>280</sup> *Id.* at 621, quoting *Wygant*, 476 U.S. at 277.

subcontracts, and for analogous reasons, the percent WBE preference must also be justified by pre-enactment evidence.<sup>281</sup>

The Court noted that three courts had held, prior to *Shaw*, that post enactment evidence may be relied upon to satisfy the *Croson* “strong basis in evidence” requirement.<sup>282</sup> In addition, the Eleventh Circuit held in 1997 that “post-enactment evidence is admissible to determine whether an affirmative action program” satisfies *Croson*.<sup>283</sup> Because the Court believed that *Shaw* and *Wygant* provided controlling authority on the role of post-enactment evidence in the “strong basis in evidence” inquiry, it did not find these cases persuasive.<sup>284</sup> The District Court enjoined enforcement of the Ordinance as to construction contracts entered into by the City, and consequently, implementation of the affirmative action program as whole, with respect to the City’s 1999 numerical set-aside goals for MBE/WBEs.<sup>285</sup>

The City appealed the entry of the December injunction to the United States Court of Appeals for the Fourth Circuit. In addition, the City filed a motion for stay of the injunction.<sup>286</sup> The City contended that the Court erred in failing to forebear from the adjudication of this case and of the motion for summary judgment until after it had completed an alleged disparity study which, it contended, would establish a justification for the set-aside goals established for 1999.<sup>287</sup> The Court said this argument, which it rejected, rested on the notion that a governmental entity might permissibly adopt an affirmative action plan including set-aside goals and wait until such a plan is challenged in court before undertaking the necessary studies upon which the constitutionality of the plan depends.<sup>288</sup>

The Court found that the City considered no evidence in 1999 before promulgating the construction subcontracting set-aside goals of 20 percent for MBEs and 3 percent for WBEs.<sup>289</sup> Based on the absence of any record of what evidence the City considered prior to promulgating the set-aside goals for 1999, the Court held there was no dispute of material fact foreclosing summary judgment in favor of plaintiff.<sup>290</sup> The Court thus found that the 20 percent MBE preference was not supported by a “strong basis in evidence” showing a need for a race-conscious remedial plan in 1999 nor was the 3 percent WBE preference shown to be “substantially related to achievement” of the important objective of remedying gender discrimination in the construction industry in Baltimore.<sup>291</sup>

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<sup>281</sup> *Id.* at 621.

<sup>282</sup> *Concrete Works of Colorado, Inc. v. Denver*, 36 F.3d 1513 (10th Cir.1994), *cert. denied*, 514 U.S. 1004, 115 S.Ct. 1315, 131 L.Ed.2d 196 (1995); *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 60 (2d Cir.1992); and *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir.1991). *Id.*

<sup>283</sup> *Engineering Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 911–12 (11th Cir.1997), *cert. denied*, 523 U.S. 1004 (1998).

<sup>284</sup> *Id.* at 621.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* at 621.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

The Court rejected the City’s assertions throughout the case that it should uphold the set-aside goals based upon statistics, which the City was in the process of gathering in a disparity study it had commissioned.<sup>292</sup> The Court said the City did not provide any legal support for the proposition that a governmental entity might permissibly adopt an affirmative action plan including set-aside goals and wait until such a plan is challenged in court before undertaking the necessary studies upon which the constitutionality of the plan depends.<sup>293</sup> The in-process study was not complete as of the date of the Court’s decision.<sup>294</sup> The Court thus stated the study could not have produced data upon which the City actually relied in establishing the set-aside goals for 1999.<sup>295</sup>

The Court noted that if the data the study produced were reliable and complete, the City could have the statistical basis upon which to make the findings Ordinance 610 required and which could satisfy the constitutionally-required standards for the promulgation and implementation of narrowly tailored set-aside race-and gender-conscious goals.<sup>296</sup> Nonetheless, as the record stood when the Court entered the December 1999 injunction and as it stood as of the date of the decision, there were no data in evidence showing a disparity, let alone a gross disparity, between MBE/WBE availability and utilization in the subcontracting construction market in Baltimore City.<sup>297</sup> The City possessed no such evidence when it established the 1999 set-aside goals challenged in the case.<sup>298</sup> The Court held that a percentage set-aside measure, like the MBE/WBE goals at issue, could only be justified by reference to the overall availability of MBE/WBEs in the relevant markets.<sup>299</sup> In the absence of such figures, the aside figures were arbitrary and unenforceable in light of controlling Supreme Court and Fourth Circuit authority.<sup>300</sup> The Court held that for these reasons it entered the injunction against the City on December 1999 and it remained fully in effect.<sup>301</sup> Accordingly, the City’s motion for stay of the injunction order was denied and the action was dismissed without prejudice.<sup>302</sup>

**2. Narrow tailoring.** Once a government entity can show that there is a sufficient disparity demonstrating discrimination in the relevant market, the second prong of strict scrutiny requires that a race-based program implemented to remedy that discrimination be “narrowly tailored” to reach that objective. If it is possible to address the disparity without using a plan that explicitly identifies the race as the priority, then the government must attempt to use non-racial designation first. “Race-neutral” attempts such as providing technical assistance, financial aid, the easing of bonding requirements, making bidding generally easier, training for all POC businesses in the marketplace, or any other available assistance that is not tied to race

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<sup>292</sup> *Id.* at 622.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.* at 622.

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 622.

<sup>302</sup> *Id.* at 622.

designations for the actual contract distribution can be used.<sup>303</sup> This includes outreach programs, expansion of advertising for and toward POC businesses, structuring bids for smaller operators to be able to compete on projects of a scale, training seminars, or any other remedy that can make the contracting successful and provide fair opportunities to POC businesses without tying the contracting to a racial designation.<sup>304</sup> Courts have made clear that the governmental entity does not have to try everything under the sun before reaching for a race-conscious remedy that meets the strict scrutiny standard, only that it takes a serious, “good faith” at providing a fair, race-neutral playing field.<sup>305</sup>

If race-neutral attempts have proven to be insufficient in addressing racial discrimination and the government can demonstrate the depth of the problem, narrow tailoring also obligates the government to distribute these contract dollars so that doing so does not merely rely on race as a designation. If the jurisdiction has taken the time to do the statistical analysis mentioned above, and it is supported by anecdotal evidence, then it is likely necessary. However, courts have held that these programs must include good faith designations of non-race remedies, flexibility, waiver provisions, and time constraints or sunset provisions on the program to make sure that the system promotes a fairness that can be backed up by showing the perniciousness of the discrimination and the specificity of the remedy.<sup>306</sup> The intent is for the race-conscious remedy to be surgical and specific to the burdened groups and not general protection for POC contractors. If there is no racial discrimination against a certain group in the geographic pool, then a remedy cannot include that group in its application if it is to be considered narrowly tailored.

The same considerations that led to the implementation of the disparity study can be used to demonstrate that the program is narrowly tailored. Making sure that the geographic designation is specific, specifying the population of available contractors, and the non-reliance on general demographic data during the disparity assessment process will help the government to ensure the program meets this high burden.

**a. Consideration of race-neutral remedies.** The Courts require that a local or state government seriously consider race- and gender-neutral efforts to remedy identified discrimination.<sup>307</sup> And

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<sup>303</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 243-245, 252-255; *Western States Paving*, 407 F.3d at 998; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services*, 140 F.Supp.2d at 1247-1248; see also *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>304</sup> See, e.g., *Crosen*, 488 U.S. at 509-510; *H. B. Rowe*, 615 F.3d 233, 252-255; *N. Contracting*, 473 F.3d at 724; *Adarand VII*, 228 F.3d 1179; 49 CFR § 26.51(b); see also, *Eng’g Contractors Ass’n*, 122 F.3d at 927-29; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d.Cir. 1993).

<sup>305</sup> *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 732-47, 127 S.Ct 2738, 2760-61 (2007); *AGC, SDC v. Caltrans*, 713 F.3d at 1199, citing *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Eng’g Contractors Ass’n*, 122 F.3d at 927.

<sup>306</sup> See *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 252-255; *Sherbrooke Turf*, 345 F.3d at 971-972; *Eng’g Contractors Ass’n*, 122 F.3d at 927; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>307</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 937-938, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Adarand VII*, 228 F.3d at 1179; *Eng’g Contractors Ass’n*, 122 F.3d at 927; *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608- 609 (3d. Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1008-1009 (3d. Cir. 1993); *Coral Constr.*, 941 F.2d at 923.

the Courts have held unconstitutional those race-conscious programs implemented without consideration of race-neutral alternatives to increase POC-owned business participation in state and local contracting.<sup>308</sup> The Court in *Croson*, followed by decisions from federal courts of appeal, found that local and state governments have at their disposal a “whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”<sup>309</sup> Examples of race- and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial and financial assistance;
- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- “How to do business” seminars;
- Sponsoring networking sessions throughout the state acquainting small firms with large firms;
- Creation and distribution of MBE/WBE and DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.<sup>310</sup>

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<sup>308</sup> See, *Croson*, 488 U.S. at 507; *Drabik I*, 214 F.3d at 738 (citations and internal quotations omitted); see also, *Eng’g Contractors Ass’n*, 122 F.3d at 927; *Viridi*, 135 Fed. Appx. At 268; *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>309</sup> *Croson*, 488 U.S. at 509-510.

<sup>310</sup> See, e.g., *Croson*, 488 U.S. at 509-510; *H. B. Rowe*, 615 F.3d 233, 252-255; *N. Contracting*, 473 F.3d at 724; *Adarand VII*, 228 F.3d 1179; 49 CFR § 26.51(b); see also, *Eng’g Contractors Ass’n*, 122 F.3d at 927-29; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d.Cir. 1993).



The Courts have held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race- and gender-neutral alternative, it does require serious, good faith consideration of workable race-neutral alternatives.<sup>311</sup>

The Court in *H.B. Rowe* held that narrowly tailoring requires “serious, good faith consideration of workable race-neutral alternatives,” but a state need not “exhaust [ ] ... every conceivable race-neutral alternative.”<sup>312</sup> The Court found that the study the government relied upon detailed numerous alternative race-neutral measures aimed at enhancing the development and competitiveness of small or otherwise disadvantaged businesses in North Carolina.<sup>313</sup> The Court pointed out various race-neutral alternatives and measures, including a Small Business Enterprise Program; waiving institutional barriers of bonding and licensing requirements on certain small business contracts of \$500,000 or less; and support services to assist disadvantaged business enterprises with bookkeeping and accounting, taxes, marketing, bidding, negotiation, and other aspects of entrepreneurial development.<sup>314</sup> The Court found that the plaintiff identified no viable race-neutral alternatives that North Carolina had failed to consider and adopt. The Court also found that the State had undertaken most of the race-neutral alternatives identified by the United States Department of Transportation in its regulations governing the Federal DBE Program.<sup>315</sup> The Court concluded that the State gave serious good faith consideration to race-neutral alternatives prior to adopting the statutory scheme.<sup>316</sup>

The Court concluded that despite these race-neutral efforts, the study demonstrated that disparities continued to exist in the utilization of Black American and Native American subcontractors in state-funded highway construction subcontracting, and that these “persistent disparities indicate the necessity of a race-conscious remedy.”<sup>317</sup>

***Associated Gen. Contractors v. Drabik*, 50 F. Supp.2d 741 (S.D. Ohio 1999).** The district court in this case pointed out that it had struck down Ohio’s MBE statute that provided race-based preferences in the award of state construction contracts in 1998.<sup>318</sup> Two weeks earlier, the district court for the Northern District of Ohio, likewise, found the same Ohio law unconstitutional when it was relied upon to support a state mandated set-aside program adopted by the Cuyahoga Community College.<sup>319</sup>

The state defendant’s appealed this court’s decision to the Sixth Circuit Court of Appeals.<sup>320</sup> Thereafter, the Supreme Court of Ohio held in *Ritchey Produce, Co., Inc. v. The State of Ohio, Department of Administrative*, 704 N.E. 2d 874 (1999), that the Ohio statute, which provided

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<sup>311</sup> *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 732-47, 127 S.Ct 2738, 2760-61 (2007); *AGC, SDC v. Caltrans*, 713 F.3d at 1199, citing *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Eng’g Contractors Ass’n*, 122 F.3d at 927.

<sup>312</sup> 615 F.3d 233 at 252 quoting *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).

<sup>313</sup> *Id.* at 252.

<sup>314</sup> *Id.* at 252.

<sup>315</sup> 615 F.3d 233 at 252, citing 49 CFR § 26.51(b).

<sup>316</sup> *Id.*

<sup>317</sup> 615 F.3d 233 at 252.

<sup>318</sup> 50 F.Supp.2d at 744.

<sup>319</sup> See *F. Buddie Contracting, Ltd. v. Cuyahoga Community College District*, 31 F.Supp.2d 571 (N.D. Ohio 1998). *Id.* at 741.

<sup>320</sup> *Id.*

race-based preferences in the state’s purchase of non-construction-related goods and services, was constitutional.<sup>321</sup> While the district court’s decision related to construction contracts and the Ohio Supreme Court’s decision related to other goods and services, the decisions could not be reconciled, according to the district court.<sup>322</sup> Subsequently, the state defendants moved the district court to stay its order of November 2, 1998 in light of the Ohio State Supreme Court’s decision in *Ritchey Produce*. The district court took the opportunity in this case to reconsider its decision of November 2, 1998, and to the reasons given by the Supreme Court of Ohio for reaching the opposite result in *Ritchey Produce*, and decided in this case that its original decision was correct, and that a stay of its order would only serve to perpetuate a “blatantly unconstitutional program of race-based benefits.”<sup>323</sup>

In its decision, the district court reaffirmed its earlier holding that the State of Ohio’s MBE Program of construction contract awards was unconstitutional. The district court cited to *F. Buddie Contracting v. Cuyahoga Community College*, 31 F. Supp.2d 571 (N.D. Ohio 1998), holding a similar local Ohio program unconstitutional. The district court repudiated the Ohio Supreme Court’s holding in *Ritchey Produce*, 707 N.E. 2d 871 (Ohio 1999), which held that the State of Ohio’s MBE Program as applied to the state’s purchase of non-construction-related goods and services was constitutional. The district court found the evidence to be insufficient to justify the Ohio MBE program and held that the program was not narrowly tailored because there was no evidence that the State had considered a race-neutral alternative.

The district court addressed the second prong of strict scrutiny, and found that the Ohio MBE program at issue was not narrowly tailored. The district court concluded that the state could not satisfy the four factors to be considered in determining whether race-conscious remedies are appropriate.<sup>324</sup> First, the district court stated that there was no consideration of race-neutral alternatives to increase POC participation in state contracting before resorting to “race-based quotas.”<sup>325</sup> The district court held that failure to consider race-neutral means was fatal to the set-aside program in *Croson*, and the failure of the State of Ohio to consider race-neutral means before adopting the MBE Act in 1980 likewise “dooms Ohio’s program of race-based quotas.”<sup>326</sup>

Second, the district court found the Ohio MBE Act was not flexible. The district court stated that instead of allowing flexibility to ameliorate harmful effects of the program, the imprecision of the statutory goals has been used to justify bureaucratic decisions which increase its impact on non-POC business.<sup>327</sup> The district court said the waiver system for prime contracts focuses solely on the availability of MBEs.<sup>328</sup> The district court noted the awarding agency may remove the contract from the set aside program and open it up for bidding by non-POC contractors if no certified MBE submits a bid, or if all bids submitted by MBEs are considered unacceptably high.<sup>329</sup> But, in either event, the district court pointed out the agency is then required to set aside

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<sup>321</sup> *Id.* at 744.

<sup>322</sup> *Id.* at 744.

<sup>323</sup> *Id.* at 745.

<sup>324</sup> *Id.* at 763.

<sup>325</sup> *Id.* at 763-764.

<sup>326</sup> *Id.* at 765.

<sup>327</sup> *Id.* at 765.

<sup>328</sup> *Id.* at 766.

<sup>329</sup> *Id.*

additional contracts to satisfy the numerical quota required by the statute.<sup>330</sup> The district court concluded that there is no consideration given to whether the particular MBE seeking a racial preference has suffered from the effects of past discrimination by the state or prime contractors.<sup>331</sup>

Third, the district court found the Ohio MBE Act was not appropriately limited such that it will not last longer than the discriminatory effects it was designed to eliminate.<sup>332</sup> The court stated the 1980 MBE Act is unlimited in duration, and there is no evidence the state has ever reconsidered whether a compelling state interest exists that would justify the continuation of a race-based remedy at any time during the two decades the Act has been in effect.<sup>333</sup>

Fourth, the district court found the goals of the Ohio MBE Act were not related to the relevant market and that the Act failed this element of the “narrowly tailored” requirement of strict scrutiny.<sup>334</sup> The court said the goal of 15 percent far exceeds the percentage of available POC firms, and thus bears no relationship to the relevant market.<sup>335</sup>

Fifth, the district court found the conclusion of the Ohio Supreme Court that the burdens imposed on non-MBEs by virtue of the set-aside requirements were relatively light was incorrect.<sup>336</sup> The court concluded that non-POC contractors in various trades were effectively excluded from the opportunity to bid on any work from large state agencies, departments, and institutions solely because of their race.<sup>337</sup>

Sixth, the district court found the Ohio MBE Act provided race-based benefits based on a random inclusion of POC groups.<sup>338</sup> The Court stated there was no evidence about the number of each racial group or the respective shares of the total capital improvement expenditures they received.<sup>339</sup> None of the statistical information, the court said, broke down the percentage of all firms that were owned by specific racial groups or the dollar amounts of contracts received by firms in specific racial groups.<sup>340</sup> The Court, thus, concluded that the Ohio MBE Act included racial groups randomly without any specific evidence that any group suffered from discrimination in the construction industry in Ohio.<sup>341</sup>

This opinion underscored that governments must show several factors to demonstrate narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies, (2) flexibility and duration of the relief, (3) relationship of numerical goals to the relevant labor market, and

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<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.* at 766.

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 767-768.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.* at 768.

<sup>337</sup> *Id.* at 678.

<sup>338</sup> *Id.* at 770-771.

<sup>339</sup> *Id.* at 770.

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 771.

(4) impact of the relief on the rights of third parties. The district held the Ohio MBE program failed to satisfy narrow tailoring.

**b. Flexibility and duration of race-conscious remedies.** Once a government entity has exhausted race-neutral remedies, if they turned to a race-conscious option, it must not be rigid nor last indefinitely. The Sixth Circuit Court of Appeals in *Associated Gen. Contractors v. Drabik* (“*Drabik II*”), stated: “Adarand teaches that a court called upon to address the question of narrow tailoring must ask, “for example, whether there was ‘any consideration of the use of race-neutral means to increase minority business participation’ in government contracting ... or whether the program was appropriately limited such that it ‘will not last longer than the discriminatory effects it is designed to eliminate.’”<sup>342</sup>

The Appellate Court in *Drabik II* agreed with the district court that the subject program was narrowly tailored in that it set a specific expiration date and required a new disparity study every five years.<sup>343</sup> The Court found that the program’s inherent time limit and provisions requiring regular reevaluation ensure it is carefully designed to endure only until the discriminatory impact has been eliminated.<sup>344</sup>

Second, the Court held that the unlimited duration of the Act’s racial goals negated a finding of narrow tailoring. “[R]ace conscious ... policies must be limited in time.”<sup>345</sup> The Court held that because the government interest could have been achieved utilizing race-neutral measures, and because the racial goals were not temporally limited, the program could not withstand strict scrutiny and was unconstitutional on its face.<sup>346</sup>

**c. Application of race-conscious remedies to only discriminated-against groups.** Even when evidence of discrimination exists within agencies’ RGMAs, the use of race- and gender-conscious measures is narrowly tailored only when it is limited to those business groups that have been shown to actually suffer from discrimination in their marketplaces.

**i. Builders Ass’n of Greater Chicago v. County of Cook, Chicago (“Cook County”), 256 F.3d 642 (7th Cir. 2001).** In *Builders Ass’n* the Seventh Circuit Court of Appeals held that the Cook County, Chicago MBE/WBE Program was unconstitutional. The Court concluded there was insufficient evidence of a compelling interest and that there was no credible evidence that Cook County in the award of construction contacts discriminated against any of the groups “favored” by the Program. The Court also found that the Program was not “narrowly tailored” to remedy the wrong sought to be redressed, in part because it was over-inclusive in the definition of POCs. The Court noted the list of POCs included groups that have not been subject to discrimination by Cook County.

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<sup>342</sup> *Associated Gen. Contractors of Ohio, Inc. v. Drabik* (“*Drabik II*”), 214 F.3d 730, 738 (6th Cir. 2000).

<sup>343</sup> 615 F.3d 233 at 253.

<sup>344</sup> *Id.* at 253, citing *Adarand Constructors v. Slater*, 228 F.3d at 1179 (quoting *United States v. Paradise*, 480 U.S. 149, 178 (1987)).

<sup>345</sup> *Id.*, citing *Grutter*, 539 U.S. at 342, and *Walker v. City of Mesquite, TX*, 169 F.3d 973, 982 (5th Cir. 1999).

<sup>346</sup> *Id.* at 268.

The Court considered as an unresolved issue whether a different, and specifically, a more permissive standard than strict scrutiny is applicable to preferential treatment on the basis of gender, rather than race or ethnicity.<sup>347</sup> The Court noted that the United States Supreme Court in *United States v. Virginia* (“*VMI*”), 518 U.S. 515, 532 and n.6 (1996), held racial discrimination to a stricter standard than gender discrimination, although the Court in *Cook County* stated the difference between the applicable standards has become “vanishingly small.”<sup>348</sup> The Court pointed out that the Supreme Court said in the *VMI* case, that “parties who seek to defend gender-based government action must demonstrate an ‘exceedingly persuasive’ justification for that action ...” and, realistically, the law can ask no more of race-based remedies either.”<sup>349</sup> The Court indicated that the Eleventh Circuit Court of Appeals in the *Engineering Contract Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 910 (11th Cir. 1997) decision created the “paradox that a public agency can provide stronger remedies for gender discrimination than for race discrimination; it is difficult to see what sense that makes.”<sup>350</sup> But, since Cook County did not argue for a different standard for the POC and women’s “set aside programs,” the women’s program the Court determined “must clear the same ‘hurdles’ as the minority program.”<sup>351</sup>

The Court found that since the ordinance requires prime contractors on public projects to reserve a substantial portion of the subcontracts for POC contractors, which is inapplicable to private projects, it is “to be expected that there would be more soliciting of these contractors on public than on private projects.”<sup>352</sup> Therefore, the Court did not find persuasive that there was discrimination based on this difference alone.<sup>353</sup> The Court pointed out the County “conceded that [it] had no specific evidence of pre-enactment discrimination to support the ordinance.”<sup>354</sup> The Court held that a “public agency must have a strong evidentiary basis for thinking a discriminatory remedy appropriate *before* it adopts the remedy.”<sup>355</sup>

The Court stated that POC enterprises in the construction industry “tend to be subcontractors, moreover, because as the district court found not clearly erroneously, they tend to be new and therefore small and relatively untested—factors not shown to be attributable to discrimination by the County.”<sup>356</sup> The Court held that there was no basis for attributing to the County any discrimination that prime contractors may have engaged in.<sup>357</sup> The Court noted that “[i]f prime contractors on County projects were discriminating against minorities and this was known to the County, whose funding of the contracts thus knowingly perpetuated the discrimination, the

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<sup>347</sup> 256 F.3d at 644.

<sup>348</sup> *Id.*

<sup>349</sup> 256 F.3d at 644, quoting in part *VMI*, 518 U.S. at 533.

<sup>350</sup> 256 F.3d at 644.

<sup>351</sup> 256 F.3d at 644- 645.

<sup>352</sup> *Id.*

<sup>353</sup> 256 F.3d at 645.

<sup>354</sup> 256 F.3d at 645 quoting the district court decision, 123 F.Supp.2d at 1093.

<sup>355</sup> 256 F.3d at 645 (emphasis in original).

<sup>356</sup> 256 F.3d at 645 (citing 123 F.Supp.2d at 1115).

<sup>357</sup> *Id.*

County might be deemed sufficiently complicit ... to be entitled to take remedial action.”<sup>358</sup> But, the Court found “of that there is no evidence either.”<sup>359</sup>

The Court stated that if the County had been complicit in discrimination by prime contractors, it found “puzzling” to try to remedy that discrimination by requiring discrimination in favor of POC stockholders, as distinct from employees.<sup>360</sup> The Court held that even if the record made a case for remedial action of the general sort found in the ordinance by the County, it would “flunk the constitutional test” by not being carefully designed to achieve the ostensible remedial aim and no more.<sup>361</sup> The Court held that a state and local government that has discriminated just against Blacks may not by way of remedy discriminate in favor of Blacks and Asian Americans and women.<sup>362</sup> Nor, the Court stated, may it discriminate more than is necessary to cure the effects of the earlier discrimination.<sup>363</sup> “Nor may it continue the remedy in force indefinitely, with no effort to determine whether, the remedial purpose attained, continued enforcement of the remedy would be a gratuitous discrimination against nonminority persons.”<sup>364</sup> The Court, therefore, held that the ordinance was not “narrowly tailored” to the wrong that it seeks to correct.<sup>365</sup>

The Court thus found that the County both failed to establish the premise for a racial remedy, and also that the remedy goes further than is necessary to eliminate the evil against which it is directed.<sup>366</sup> The Court held that the list of “favored minorities” included groups that have never been subject to significant discrimination by Cook County.<sup>367</sup> The Court found it unreasonable to “presume” discrimination against certain groups merely on the basis of having an ancestor who had been born in a particular country.<sup>368</sup> Therefore, the Court held the ordinance was overinclusive.

The Court found that the County did not make any effort to show that, were it not for a history of discrimination, POCs would have 30 percent, and women 10 percent, of County construction contracts.<sup>369</sup> The Court also rejected the proposition advanced by the County in this case—“that a comparison of the fraction of POC subcontractors on public and private projects established discrimination against POCs by prime contractors on the latter type of project.”<sup>370</sup>

***ii. Kossman Contracting, Inc. v. City of Houston (“Kossman”), WL 1104363 (S.D. Tex. 2016).*** Plaintiff Kossman alleged that the City of Houston’s race- and gender-conscious contracting program was unconstitutional on the grounds that it denied non POC- and woman-owned

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<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> 256 F.3d at 646.

<sup>361</sup> 256 F.3d at 646.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> 256 F.3d at 647.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> 256 F.3d at 647.

<sup>370</sup> 256 F.3d at 647-648.

businesses equal protection of the law. The city's program set a 34 percent POC- and woman-owned business participation goal for construction projects.<sup>371</sup> The city set this goal based on a disparity study issued in 2012.<sup>372</sup> The study analyzed the status of POC- and women-owned businesses in the geographic and product markets of the city's construction contracts. The study found that Native-American-owned businesses were utilized at a higher rate in the city's construction contracts than would be anticipated based on their rate of availability in the relevant market area.<sup>373</sup> The consultant the city retained to conduct the disparity study stated that the high utilization rate for Native Americans stemmed largely from the work of two Native-American-owned firms and suggested that, without these two firms, the utilization rate for Native Americans would decline substantially, yielding a statistically significant disparity ratio.<sup>374</sup> The city's remedial goals program included Native Americans, based in part on the disparity study consultant's findings after removing the two firms from the analysis.

The District Court in Houston referred Kossman's constitutional challenge to a Magistrate Judge. The Magistrate Judge found that the city's program was constitutional under strict scrutiny, except with respect to the inclusion of Native-American-owned businesses. The court noted that the finding that Native-American-owned businesses were utilized at a higher rate in the city's construction contracts than would be anticipated based on their rate of availability would tend to negate the presence of discrimination against Native Americans in Houston's construction industry. The Magistrate Judge found there was insufficient evidence to establish a need for remedial action for businesses owned by Native Americans, but found there was sufficient evidence to justify remedial action and inclusion of other POC- and woman-owned businesses.<sup>375</sup>

The District Court approved and adopted the Magistrate Judge's explanation that the opinion of the disparity study consultant that a statistically significant disparity would exist if two of the Native- American-owned businesses were disregarded is not evidence of the need for remedial action.<sup>376</sup> The District Court found no equal protection significance to the fact the majority of contracts let to Native-American-owned businesses were to only two firms.<sup>377</sup> Therefore, the utilization goal for businesses owned by Native Americans was not supported by a strong evidentiary basis.<sup>378</sup> The court stated the situation presented by the disparity study consultant of a "hypothetical non-existence" of these firms is not evidence and cannot satisfy strict scrutiny. The District Court adopted the Magistrate Judge's recommendation with respect to excluding Native-American-owned businesses from the city's goals program. The court noted that a preference for Native-American-owned businesses could become constitutionally valid in the

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<sup>371</sup> 2016 WL 1104363 at \*1.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.* at \*4.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.* at \*1

<sup>376</sup> *Id.* at \*5.

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

future if there were sufficient evidence of discrimination against Native-American-owned businesses in the city's construction contracts.<sup>379</sup>

**d. Additional factors considered under narrow tailoring.** In addition to the required consideration of the necessity for the relief and the efficacy of alternative remedies (race- and ethnicity-neutral efforts), the Courts require evaluation of additional factors as listed above.<sup>380</sup> For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility;<sup>381</sup> (2) good faith efforts provisions;<sup>382</sup> (3) waiver provisions;<sup>383</sup> (4) a rational basis for goals;<sup>384</sup> (5) graduation provisions;<sup>385</sup> (6) remedies only for groups for which there were findings of discrimination;<sup>386</sup> (7) sunset provisions;<sup>387</sup> and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.<sup>388</sup>

**i. Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991).** In *Coral Construction Co. v. King County*, the Ninth Circuit Court of Appeals examined the constitutionality of King County, Washington's POC and women business set-aside program in light of the standard set forth in *Croson*. The Court held that although the County presented ample anecdotal evidence of disparate treatment of MBE contractors and subcontractors, the total absence of pre-program enactment statistical evidence was problematic to the compelling government interest component of strict scrutiny. The Court remanded to the district court for a determination of whether the post-program enactment studies constituted a sufficient compelling government interest. Per the narrow tailoring prong of the strict scrutiny test, the Court found that although the program included race-neutral alternative measures and was flexible (i.e., included a waiver provision), the over breadth of the program to include MBEs outside of King County was fatal to the narrow tailoring requirement.

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<sup>379</sup> *Id.*

<sup>380</sup> See *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 252-255; *Sherbrooke Turf*, 345 F.3d at 971-972; *Eng'g Contractors Ass'n*, 122 F.3d at 927; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>381</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1009; *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality* ("AGC of Ca."), 950 F.2d 1401, 1417 (9th Cir. 1991); *Coral Constr. Co. v. King County*, 941 F.2d 910, 923 (9th Cir. 1991); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 917 (11th Cir. 1990).

<sup>382</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1019; *Cone Corp.*, 908 F.2d at 917.

<sup>383</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *AGC of Ca.*, 950 F.2d at 1417; *Cone Corp.*, 908 F.2d at 917; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>384</sup> *Id.*; *Sherbrooke Turf*, 345 F.3d at 971-973; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>385</sup> *Id.*

<sup>386</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 253-255; *Western States Paving*, 407 F.3d at 998; *AGC of Ca.*, 950 F.2d at 1417; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d at 593-594, 605-609 (3d. Cir. 1996); *Contractors Ass'n (CAEP I)*, 6 F.3d at 1009, 1012 (3d. Cir. 1993); *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016); *Sherbrooke Turf*, 2001 WL 150284 (unpublished opinion), aff'd 345 F.3d 964.

<sup>387</sup> See, e.g., *H. B. Rowe*, 615 F.3d 233, 254; *Sherbrooke Turf*, 345 F.3d at 971-972; *Peightal*, 26 F.3d at 1559; . see also, *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016).

<sup>388</sup> *Coral Constr.*, 941 F.2d at 925.



The Court also remanded on the issue of whether the plaintiffs were entitled to damages under 42 U.S.C. §§ 1981 and 1983, and in particular to determine whether evidence of causation existed. With respect to the WBE program, the Court held the plaintiff had standing to challenge the program, and applying the intermediate scrutiny analysis, held the WBE program survived the facial challenge.

In finding the absence of any statistical data in support of the County's MBE Program, the Court made it clear that statistical analyses have served and will continue to serve an important role in cases in which the existence of discrimination is a disputed issue.<sup>389</sup> The Court noted that it has repeatedly approved the use of statistical proof to establish a prima facie case of discrimination.<sup>390</sup> The Court pointed out that the Supreme Court in *Croson* held that where "gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination."<sup>391</sup>

The Court points out that statistical evidence may not fully account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral.<sup>392</sup> The Court noted that the record contained a plethora of anecdotal evidence, but that anecdotal evidence, standing alone, suffers the same flaws as statistical evidence.<sup>393</sup> While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, according to the Court, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.<sup>394</sup> Nonetheless, the Court held that the combination of convincing anecdotal and statistical evidence is potent.<sup>395</sup> The Court pointed out that individuals who testified about their personal experiences brought the cold numbers of statistics "convincingly to life."<sup>396</sup> The Court also pointed out that the Eleventh Circuit Court of Appeals, in ruling on a POC set aside program similar to the one in King County, concluded that the testimony regarding complaints of discrimination combined with the gross statistical disparities uncovered by the County studies provided more than enough evidence on the question of prior discrimination and need for racial classification to justify the denial of a Motion for Summary Judgment.<sup>397</sup>

The Court found that the MBE Program of the County could not stand without a proper statistical foundation.<sup>398</sup> The Court addressed whether post-enactment studies done by the County of a statistical foundation could be considered in connection with determining the validity of the MBE Program. The Court held that a municipality must have some concrete evidence of discrimination in a particular industry before it may adopt a remedial program.<sup>399</sup> However, the Court said this requirement of some evidence does not mean that a program will be automatically struck down if the evidence before the municipality at the time of enactment does

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<sup>389</sup> 941 F.2d at 918.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.* at 918, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08, and *Croson*, 488 U.S. at 501.

<sup>392</sup> *Id.* at 919.

<sup>393</sup> *Id.* at 919.

<sup>394</sup> *Id.*

<sup>395</sup> *Id.* at 919.

<sup>396</sup> *Id.* at 919, quoting *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977).

<sup>397</sup> *Id.* at 919, citing *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990).

<sup>398</sup> *Id.* at 919.

<sup>399</sup> *Id.* at 920.

not completely fulfill both prongs of the strict scrutiny test.<sup>400</sup> Rather, the Court held, the factual predicate for the program should be evaluated based upon all evidence presented to the district court, whether such evidence was adduced before or after enactment of the MBE Program.<sup>401</sup> Therefore, the Court adopted a rule that a municipality should have before it some evidence of discrimination before adopting a race-conscious program while allowing post-adoption evidence to be considered in passing on the constitutionality of the program.<sup>402</sup> The Court, therefore, remanded the case to the district court for determination of whether the consultant studies that were performed after the enactment of the MBE Program could provide an adequate factual justification to establish a “propelling government interest” for King County’s adopting the MBE Program.<sup>403</sup>

The Court also found that *Croson* does not require a showing of active discrimination by the enacting agency, and that passive participation, such as the infusion of tax dollars into a discriminatory industry, suffices.<sup>404</sup> The Court pointed out that the Supreme Court in *Croson* concluded that if the City had evidence before it, that non-POC contractors were systematically excluding POC businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion.<sup>405</sup> The Court points out that if the record ultimately supported a finding of systemic discrimination, the County adequately limited its program to those businesses that receive tax dollars, and the program imposed obligations upon only those businesses which voluntarily sought King County tax dollars by contracting with the County.<sup>406</sup>

The Court addressed several factors in terms of the narrowly tailored analysis, and found that first, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing POC business participation and public contracting.<sup>407</sup> The second characteristic of the narrowly-tailored program, according to the Court, is the use of POC utilization goals on a case-by-case basis, rather than upon a system of rigid numerical quotas.<sup>408</sup> Finally, the Court stated that an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction.<sup>409</sup>

Among the various narrowly tailored requirements, the Court held consideration of race-neutral alternatives is among the most important.<sup>410</sup> Nevertheless, the Court stated that while strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative.<sup>411</sup> The Court noted that it does not intend a government entity exhaust every alternative, however irrational, costly,

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<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.* at 922.

<sup>404</sup> *Id.* at 922, citing *Croson*, 488 U.S. at 492.

<sup>405</sup> *Id.* at 922.

<sup>406</sup> *Id.*

<sup>407</sup> *Id.* at 922, citing *Croson*, 488 U.S. at 507.

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

<sup>410</sup> *Id.* at 922.

<sup>411</sup> *Id.* at 923.

unreasonable, and unlikely to succeed such alternative might be.<sup>412</sup> Thus, the Court required only that a state exhausts race-neutral measures that the state is authorized to enact, and that have a reasonable possibility of being effective.<sup>413</sup> The Court noted in this case the County considered alternatives, but determined that they were not available as a matter of law.<sup>414</sup> The County cannot be required to engage in conduct that may be illegal, nor can it be compelled to expend precious tax dollars on projects where potential for success is marginal at best.<sup>415</sup>

The Court noted that King County had adopted some race-neutral measures in conjunction with the MBE Program, for example, hosting one or two training sessions for small businesses, covering such topics as doing business with the government, small business management, and accounting techniques.<sup>416</sup> In addition, the County provided information on assessing Small Business Assistance Programs. The Court found that King County fulfilled its burden of considering race-neutral alternative programs.<sup>417</sup>

A second indicator of a program's narrowly tailoring is program flexibility.<sup>418</sup> The Court found that an important means of achieving such flexibility is through the use of case-by-case utilization goals, rather than rigid numerical quotas or goals.<sup>419</sup> The Court pointed out that King County used a "percentage preference" method, which is not a quota, and while the preference is locked at five percent, such a fixed preference is not unduly rigid in light of the waiver provisions. The Court found that a valid MBE Program should include a waiver system that accounts for both the availability of qualified MBEs and whether the qualified MBEs have suffered from the effects of past discrimination by the County or prime contractors.<sup>420</sup> The Court found that King County's program provided waivers in both instances, including where neither POC nor a woman's business is available to provide needed goods or services and where available POC or women's businesses have given price quotes that are unreasonably high.<sup>421</sup> The Court also pointed out other attributes of the MBE program's flexibility, including a bidder that does not meet planned goals may nonetheless be awarded the contract by demonstrating a good faith effort to comply.<sup>422</sup> The actual percentages of required MBE participation are determined on a case-by-case basis. Levels of participation may be reduced if the prescribed levels are not feasible, if qualified MBEs are unavailable, or if MBE price quotes are not competitive.<sup>423</sup>

The Court concluded that an MBE program must also be limited in its geographical scope to the boundaries of the enacting jurisdiction.<sup>424</sup> Here the Court held that King County's MBE program failed. The Court found the definition of "minority business" included in the Program indicated that a POC-owned business may qualify for preferential treatment if the business has been discriminated against in the particular geographical areas in which it operates. The Court held

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<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*

<sup>416</sup> *Id.* at 923.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.* at 924.

<sup>419</sup> *Id.* at 924.

<sup>420</sup> *Id.* at 924.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> *Id.* at 925.

this definition as overly broad.<sup>425</sup> The Court held that the County should ask the question whether a business has been discriminated against in King County.<sup>426</sup> This determination, according to the Court, is not an insurmountable burden for the County, as the rule does not require finding specific instances of discriminatory exclusion for each MBE.<sup>427</sup> Rather, if the County successfully proves malignant discrimination within the King County business community, an MBE would be presumptively eligible for relief if it had previously sought to do business in the County.<sup>428</sup>

In other words, if systemic discrimination in the County is shown, then it is fair to presume that an MBE was victimized by the discrimination.<sup>429</sup> For the presumption to attach to the MBE, however, it must be established that the MBE is, or attempted to become, an active participant in the County's business community.<sup>430</sup> Because King County's program permitted MBE participation even by MBEs that have no prior contact with King County, the program was overbroad to that extent.<sup>431</sup> Therefore, the Court reversed the grant of summary judgment to King County on the MBE program on the basis that it was geographically overbroad.

The Court also considered the gender-specific aspect of the MBE program. The Court determined the degree of judicial scrutiny afforded gender-conscious programs was intermediate scrutiny, rather than strict scrutiny.<sup>432</sup> Under intermediate scrutiny, gender-based classification must serve an important governmental objective, and there must be a direct, substantial relationship between the objective and the means chosen to accomplish the objective.<sup>433</sup>

In this case, the Court concluded, that King County's WBE preference survived a facial challenge.<sup>434</sup> The Court found that King County had a legitimate and important interest in remedying the many disadvantages that confront women business owners and that the means chosen in the program were substantially related to the objective.<sup>435</sup> The Court found the record adequately indicated discrimination against women in the King County construction industry, noting the anecdotal evidence including an affidavit of the president of a consulting engineering firm.<sup>436</sup> Therefore, the Court upheld the WBE portion of the MBE program and affirmed the district court's grant of summary judgment to King County for the WBE program.

***ii. Thompson Building Wrecking Co. v. Augusta, Georgia, No. 1:07CV019, 2007 WL 926153 (S.D. Ga. Mar. 14, 2007)(Slip. Op.).*** This case considered the validity of the City of Augusta's local DBE program. The district court enjoined the City from favoring any contract bid on the basis of racial classification and based its decision principally upon the outdated and insufficient data proffered by the City in support of its program.<sup>437</sup> The City of Augusta enacted a local DBE program based upon the results of a disparity study completed in 1994. The disparity study examined the

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<sup>425</sup> *Id.* at 925.

<sup>426</sup> *Id.*

<sup>427</sup> *Id.*

<sup>428</sup> *Id.*

<sup>429</sup> *Id.* at 925.

<sup>430</sup> *Id.*

<sup>431</sup> *Id.*

<sup>432</sup> *Id.* at 930.

<sup>433</sup> *Id.* at 931.

<sup>434</sup> *Id.* at 932.

<sup>435</sup> *Id.*

<sup>436</sup> *Id.* at 933.

<sup>437</sup> 2007 WL 926153 at \*9-10.

disparity in socioeconomic status among races, compared Black-owned businesses in Augusta with those in other regions and those owned by other racial groups, examined “Georgia’s racist history” in contracting and procurement, and examined certain data related to Augusta’s contracting and procurement.<sup>438</sup> The plaintiff contractors and subcontractors challenged the constitutionality of the DBE program and sought to extend a temporary injunction enjoining the City’s implementation of racial preferences in public bidding and procurement.

The City defended the DBE program arguing that it did not utilize racial classifications because it only required vendors to make a “good faith effort” to ensure DBE participation.<sup>439</sup> The Court rejected this argument noting that bidders were required to submit a “Proposed DBE Participation” form and that bids containing DBE participation were treated more favorably than those bids without DBE participation. The Court stated: “Because a person’s business can qualify for the favorable treatment based on that person’s race, while a similarly situated person of another race would not qualify, the program contains a racial classification.”<sup>440</sup>

The Court noted that the DBE program harmed subcontractors in two ways: first, because prime contractors will discriminate between DBE and non-DBE subcontractors and a bid with a DBE subcontractor would be treated more favorably; and second, because the City would favor a bid containing DBE participation over an equal or even superior bid containing no DBE participation.<sup>441</sup> The Court applied the strict scrutiny standard set forth in *Croson* and *Engineering Contractors Association* to determine whether the City had a compelling interest for its program and whether the program was narrowly tailored to that end. The Court noted that pursuant to *Croson*, the City would have a compelling interest in assuring that tax dollars would not perpetuate private prejudice. But, the Court found (*citing to Croson*), that a state or local government must identify that discrimination, “public or private, with some specificity before they may use race-conscious relief.” The Court cited the Eleventh Circuit’s position that “gross statistical disparities between the proportion of minorities hired by the public employer and the proportion of minorities willing and able to work” may justify an affirmative action program.<sup>442</sup> The Court also stated that anecdotal evidence is relevant to the analysis.

The Court determined that while the City’s disparity study showed some statistical disparities buttressed by anecdotal evidence, the study suffered from multiple issues.<sup>443</sup> Specifically, the Court found that those portions of the study examining discrimination outside the area of subcontracting (e.g., socioeconomic status of racial groups in the Augusta area) were irrelevant for purposes of showing a compelling interest. The Court also cited the failure of the study to differentiate between different races as well as the improper aggregation of race- and gender-based discrimination referred to as Simpson’s Paradox.

The Court assumed for purposes of its analysis that the City could show a compelling interest but concluded that the program was not narrowly tailored and thus could not satisfy strict scrutiny. The Court found that it need look no further beyond the fact of the 13-year duration of the program absent further investigation, and the absence of a sunset or expiration provision, to

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<sup>438</sup> *Id.* at \*1-4.

<sup>439</sup> *Id.* at \*6.

<sup>440</sup> *Id.*

<sup>441</sup> *Id.*

<sup>442</sup> *Id.* at \*7.

<sup>443</sup> *Id.* at \*7-8.

conclude that the DBE program was not narrowly tailored.<sup>444</sup> Noting that affirmative action is permitted only sparingly, the Court found: “[i]t would be impossible for Augusta to argue that, 13 years after last studying the issue, racial discrimination is so rampant in the Augusta contracting industry that the City must affirmatively act to avoid being complicit.”<sup>445</sup> The Court held in conclusion, that the plaintiffs were “substantially likely to succeed in proving that, when the City requests bids with minority participation and in fact favors bids with such, the plaintiffs will suffer racial discrimination in violation of the Equal Protection Clause.”<sup>446</sup>

***iii. Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services, 140 F.Supp.2d 1232 (W.D. OK. 2001).*** Plaintiffs, non-POC contractors, brought this action against the State of Oklahoma challenging POC bid preference provisions in the Oklahoma Minority Business Enterprise Assistance Act (“MBE Act”). The Oklahoma MBE Act established a bid preference program by which certified MBEs are given favorable treatment on competitive bids submitted to the state.<sup>447</sup> Under the MBE Act, the bids of non-POC contractors were raised by 5 percent, placing them at a competitive disadvantage according to the district court.<sup>448</sup> The named plaintiffs bid on state contracts in which their bids were increased by 5 percent as they were non-POC business enterprises. Although the plaintiffs actually submitted the lowest dollar bids, once the 5 percent factor was applied, POC bidders became the successful bidders on certain contracts.<sup>449</sup>

In determining the constitutionality or validity of the Oklahoma MBE Act, the district court was guided in its analysis by the Tenth Circuit Court of Appeals decision in *Adarand Constructors, Inc. v. Slater*, 288 F.3d 1147 (10th Cir. 2000). The district court pointed out that in *Adarand VII*, the Tenth Circuit found compelling evidence of barriers to both POC business formation and existing POC businesses.<sup>450</sup> In sum, the district court noted that the Tenth Circuit concluded that the Government had met its burden of presenting a strong basis in evidence sufficient to support its articulated, constitutionally valid, compelling interest.<sup>451</sup>

The district court, following *Adarand VII*, applied the strict scrutiny standard, arising out of the Fourteenth Amendment’s Equal Protection Clause, in which a race-based affirmative action program withstands strict scrutiny only if it is narrowly tailored to serve a compelling governmental interest.<sup>452</sup> The district court pointed out that it is clear from Supreme Court precedent, there may be a compelling interest sufficient to justify race-conscious affirmative action measures.<sup>453</sup> The Fourteenth Amendment permits race-conscious programs that seek both to eradicate discrimination by the governmental entity itself and to prevent the governmental entity from becoming a “passive participant” in a system of racial exclusion practiced by private businesses.<sup>454</sup> Therefore, the district court concluded that both the federal

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<sup>444</sup> *Id.* at \*8.

<sup>445</sup> *Id.*

<sup>446</sup> *Id.* At \*9.

<sup>447</sup> 140 F.Supp.2d at 1235–36.

<sup>448</sup> *Id.* at 1235–1236.

<sup>449</sup> 140 F.Supp. at 1237.

<sup>450</sup> *Id.* at 1238.

<sup>451</sup> 140 F.Supp.2d at 1239, citing *Adarand VII*, 228 F.3d 1147, 1174.

<sup>452</sup> *Id.* at 1239.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.* at 1240.

and state governments have a compelling interest assuring that public dollars do not serve to finance the evil of private sector prejudice.<sup>455</sup>

The district court stated that a “mere statistical disparity in the proportion of contracts awarded to a particular group, standing alone, does not demonstrate the evil of private or public racial prejudice.”<sup>456</sup> Rather, the court held that the “benchmark for judging the adequacy of a state’s factual predicate for affirmative action legislation is whether there exists a strong basis in the evidence of the state’s conclusion that remedial action was necessary.”<sup>457</sup> The district court found that the Supreme court made it clear that the state bears the burden of demonstrating a strong basis in evidence for its conclusion that remedial action was necessary by proving either that the state itself discriminated in the past or was “a passive participant” in private industry’s discriminatory practices.<sup>458</sup>

With this background, the State of Oklahoma stated that its compelling state interest “is to promote the economy of the State and to ensure that MBEs are given an opportunity to compete for state contracts.”<sup>459</sup> Thus, the district court found the State admitted that the MBE Act’s bid preference “is not based on past discrimination,” rather, it is based on a desire to “encourag[e] economic development of MBEs which in turn will benefit the State of Oklahoma as a whole.”<sup>460</sup> In light of *Adarand VII* and prevailing Supreme Court case law, the district court found that this articulated interest is not “compelling” in the absence of evidence of past or present racial discrimination.<sup>461</sup>

The district court considered testimony presented by Intervenors who participated in the case for the defendants and asserted that the Oklahoma legislature conducted an interim study prior to adoption of the MBE Act, during which testimony and evidence were presented to members of the Oklahoma Legislative Black Caucus and other participating legislators. The study was conducted more than 14 years prior to the case and the Intervenors did not actually offer any of the evidence to the court in this case. The Intervenors submitted an affidavit from the witness who serves as the Title VI Coordinator for the Oklahoma Department of Transportation. The court found that the affidavit from the witness averred in general terms that POC businesses were discriminated against in the awarding of state contracts. The district court found that the Intervenors had not produced—or indeed even described—the evidence of discrimination.<sup>462</sup> The district court found that it cannot be discerned from the documents which POC businesses were the victims of discrimination, or which racial or ethnic groups were targeted by such alleged discrimination.<sup>463</sup>

The district court also found that the Intervenors’ evidence did not indicate what discriminatory acts or practices allegedly occurred, or when they occurred.<sup>464</sup> The district court stated that the

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<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Id.* at 1240, citing to *Associated General Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 735 (6th Cir. 2000) and *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 at 486-492 (1989).

<sup>459</sup> *Id.* at 1240.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.* at 1241.

<sup>463</sup> *Id.*

<sup>464</sup> *Id.*

Intervenors did not identify “a single qualified, minority-owned bidder who was excluded from a state contract.”<sup>465</sup> The district court, thus, held that broad allegations of “systematic” exclusion of POC businesses were not sufficient to constitute a compelling governmental interest in remedying past or current discrimination.<sup>466</sup> The district court stated that this was particularly true in light of the “State’s admission here that the State’s governmental interest was not in remedying past discrimination in the state competitive bidding process, but in ‘encouraging economic development of minority business enterprises which in turn will benefit the State of Oklahoma as a whole.’”<sup>467</sup> The district court found that the State defendants failed to produce any admissible evidence of a single, specific discriminatory act, or any substantial evidence showing a pattern of deliberate exclusion from state contracts of POC-owned businesses.<sup>468</sup>

The district court also noted that the Sixth Circuit Court of Appeals in *Drabik* rejected Ohio’s statistical evidence of underutilization of POC contractors, because the evidence did not report the actual use of POC firms. Rather, it reported only the use of those POC firms that had gone to the trouble of being certified and listed by the state.<sup>469</sup> The district court stated that, as in *Drabik*, the evidence presented in support of the Oklahoma MBE Act failed to account for the possibility that some POC contractors might not register with the state, and the statistics did not account for any contracts awarded to businesses with POC ownership of less than 51 percent, or for contracts performed in large part by POC-owned subcontractors where the prime contractor was not a certified POC-owned business.<sup>470</sup>

The district court found that the POC bidding preference set forth in the MBE Act was not predicated upon a finding of discrimination in any particular industry or region of the state, or discrimination against any particular racial or ethnic group. The court stated that there was no evidence offered of actual discrimination, past or present, against the specific racial and ethnic groups to which the preference was extended, other than an attempt to show a history of discrimination against Black Americans.<sup>471</sup> The district court found that even if the State’s goals could not be considered “compelling,” the State also did not show that the MBE Act was narrowly tailored to serve those goals. The court pointed out that the Tenth Circuit in *Adarand VII* identified six factors that must be considered in determining whether the MBE Act’s POC preference provisions were sufficiently narrowly tailored to satisfy equal protection: (1) the availability of race-neutral alternative remedies; (2) limits on the duration of the challenged preference provisions; (3) flexibility of the preference provisions; (4) numerical proportionality; (5) the burden on third parties; and (6) over- or under-inclusiveness.<sup>472</sup>

First, in terms of race-neutral alternative remedies, the court found that the evidence offered showed, at most, that nominal efforts were made to assist POC-owned businesses prior to the adoption of the MBE Act’s racial preference program.<sup>473</sup> The court considered evidence regarding the Minority Assistance Program, but found it to be made up primarily informational

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<sup>465</sup> *Id.*

<sup>466</sup> *Id.* at 1242.

<sup>467</sup> *Id.* at 1242.

<sup>468</sup> *Id.* at 1241 - 1242, footnote 11.

<sup>469</sup> *Id.* at 1242, footnote 12.

<sup>470</sup> *Id.*

<sup>471</sup> *Id.* at 1242.

<sup>472</sup> *Id.* at 1242-1243.

<sup>473</sup> *Id.* at 1243.



services only and not designed to actually assist POCs or other disadvantaged contractors to obtain contracts with the State of Oklahoma.<sup>474</sup> In contrast to this “informational” program, the court noted the Tenth Circuit in *Adarand VII* favorably considered the federal government’s use of race-neutral alternatives aimed at disadvantaged businesses, including assistance with obtaining project bonds, assistance with securing capital financing, technical assistance, and other programs designed to assist start-up businesses.<sup>475</sup>

The district court found that it does not appear from the evidence that Oklahoma’s Minority Assistance Program provided the type of race-neutral relief required by the Tenth Circuit in *Adarand VII*, in the Supreme Court in the *Croson* decision, nor does it appear that the Program was race-neutral.<sup>476</sup> The court found that the State of Oklahoma did not show any meaningful form of assistance to new or disadvantaged businesses prior to the adoption of the MBE Act, and thus, it found that the state defendants had not shown that Oklahoma considered alternative means to achieve the State’s goal prior to adoption of the POC bid preference provisions.<sup>477</sup>

In a footnote, the district court pointed out that the Tenth Circuit has recognized race-neutral programs designed to assist all new or financially disadvantaged businesses in obtaining government contracts tend to benefit POC-owned businesses and can help alleviate the effects of past and present-day discrimination.<sup>478</sup> The court considered the evidence offered of post-enactment efforts by the State to increase POC participation in State contracting. The court found that most of these efforts were directed toward encouraging the participation of certified MBEs, “and are thus not racially neutral. This evidence fails to demonstrate that the State employed race-neutral alternative measures prior to or after adopting the Minority Business Enterprise Assistance Act.”<sup>479</sup> Some of the efforts the court found were directed toward encouraging the participation of certified MBEs, and thus not race-neutral, included mailing vendor registration forms to POC vendors, telephoning and mailing letters to POC vendors, providing assistance to vendors in completing registration forms, assuring the vendors received bid information, preparing a POC business directory and distributing it to all state agencies, periodically mailing construction project information to POC vendors, and providing commodity information to POC vendors upon request.<sup>480</sup>

In terms of durational limits and flexibility, the district court found that the goal of 10 percent of the state’s contracts being awarded to certified MBEs had never been reached, or even approached, during the 13 years since the MBE Act was implemented.<sup>481</sup> The court found the defendants offered no evidence that the bid preference was likely to end at any time in the foreseeable future or that it is otherwise limited in its duration.<sup>482</sup> Unlike the federal programs at issue in *Adarand VII*, the court stated the Oklahoma MBE Act has no inherent time limit, and no provision for disadvantaged POC-owned businesses to “graduate” from preference

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<sup>474</sup> *Id.* at 1243.

<sup>475</sup> *Id.* at 1243 citing *Adarand VII*, 228 F.3d at 1178-1179.

<sup>476</sup> *Id.* at 1243.

<sup>477</sup> *Id.* at 1243.

<sup>478</sup> *Id.* at 1243, footnote 15 citing *Adarand VII*.

<sup>479</sup> *Id.* at 1244.

<sup>480</sup> *Id.* at 1244, footnote 16.

<sup>481</sup> *Id.* at 1244.

<sup>482</sup> *Id.*

eligibility.<sup>483</sup> The court found the MBE Act was not limited to those POC-owned businesses which are shown to be economically disadvantaged.<sup>484</sup>

The district court stated that the MBE Act made no attempt to address or remedy any actual, demonstrated past or present racial discrimination, and the MBE Act's duration was not tied in any way to the eradication of such discrimination.<sup>485</sup> Instead, the court found the MBE Act rests on the "questionable assumption that 10 percent of all state contract dollars should be awarded to certified minority-owned and operated businesses, without any showing that this assumption is reasonable."<sup>486</sup> By the terms of the MBE Act, the POC preference provisions would continue in place for five years after the goal of 10 percent POC participation was reached, and thus the district court concluded that the MBE Act's POC preference provisions lacked reasonable durational limits.<sup>487</sup> With regard to the factor of "numerical proportionality" between the MBE Act's aspirational goal and the number of existing, available POC-owned businesses, the court found the MBE Act's 10 percent goal was not based upon demonstrable evidence of the availability of POC contractors who were either qualified to bid or who were ready, willing and able to become qualified to bid on state contracts.<sup>488</sup> The court pointed out that the MBE Act made no attempt to distinguish between the four relevant racial groups, so that contracts awarded to members of all of the preferred races were aggregated in determining whether the 10 percent aspirational goal had been reached.<sup>489</sup> In addition, the court found the MBE Act aggregated all state contracts for goods and services, so that POC participation was determined by the total number of dollars spent on state contracts.<sup>490</sup>

The district court stated that in *Adarand VII*, the Tenth Circuit rejected the contention that the aspirational goals were required to correspond to an actual finding as to the number of existing POC-owned businesses.<sup>491</sup> The court noted that the government submitted evidence in *Adarand VII*, that the effects of past discrimination had excluded POCs from entering the construction industry, and that the number of available POC subcontractors reflected that discrimination. *Id.* In light of this evidence, the district court said the Tenth Circuit held that the existing percentage of POC-owned businesses is "not necessarily an absolute cap" on the percentage that a remedial program might legitimately seek to achieve.<sup>492</sup> Unlike *Adarand VII*, the court found that the Oklahoma State defendants did not offer "substantial evidence" that the POCs given preferential treatment under the MBE Act were prevented, through past discrimination, from entering any particular industry or that the number of available POC subcontractors in that industry reflects that discrimination.<sup>493</sup> The court concluded that the Oklahoma State defendants did not offer any evidence of the number of POC-owned businesses doing business in any of the many industries covered by the MBE Act.<sup>494</sup>

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<sup>483</sup> *Id.*

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.* at 1244.

<sup>487</sup> *Id.* at 1245.

<sup>488</sup> *Id.* at 1246–1247.

<sup>489</sup> *Id.* at 1246.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* at 1246.

<sup>492</sup> *Id.* at 1246, citing *Adarand VII*, 228 F.3d at 1181.

<sup>493</sup> 140 F.Supp.2d at 1246.

<sup>494</sup> *Id.* at 1246–1247.

With regard to the impact on third parties, the district court pointed out the Tenth Circuit in *Adarand VII* stated the mere possibility that innocent parties will share the burden of a remedial program is itself insufficient to warrant the conclusion that the program is not narrowly tailored.<sup>495</sup> The district court found the MBE Act's bid preference provisions prevented non-POC businesses from competing on an equal basis with certified MBEs, and that in some instances, plaintiffs had been required to lower their intended bids because they knew POC firms were bidding.<sup>496</sup> The court pointed out that the MBE preference is applicable to all contracts awarded under the state's Central Purchasing Act with no time limitation.<sup>497</sup> In terms of the "under- and over-inclusiveness" factor, the court observed that the MBE Act extended its bidding preference to several racial groups without regard to whether each of those groups had suffered from the effects of past or present racial discrimination.<sup>498</sup> The district court reiterated the Oklahoma State defendants did not offer any evidence at all that the racial groups identified in the Act had actually suffered from discrimination.<sup>499</sup>

Second, the district court found the MBE Act's bidding preference extends to all contracts for goods and services awarded under the State's Central Purchasing Act, without regard to whether members of the preferred racial groups had been the victims of past or present discrimination within that particular industry or trade.<sup>500</sup>

Third, the district court noted the preference extends to all businesses certified as POC- owned and controlled without regard to whether a particular business is economically or socially disadvantaged or has suffered from the effects of past or present discrimination.<sup>501</sup> The Court thus found that the factor of over-inclusiveness weighs against a finding that the MBE Act was narrowly tailored.<sup>502</sup>

The district court concluded that the Oklahoma MBE Act violated the Constitution's Fifth Amendment guarantee of equal protection and granted the plaintiffs' Motion for Summary Judgment.

### **C. Intermediate Scrutiny**

Businesses led by women face similar difficulties in seeing a fair share of contracting dollars. Women are considered a suspect class as well, and a remedy that includes these business entities is evaluated by courts under a different standard. Rather than strict scrutiny, courts have applied intermediate scrutiny when reviewing programs that emphasize a need to eradicate discrimination based on gender. Intermediate scrutiny is a two-pronged analysis. Under intermediate scrutiny, the gender-conscious remedy must be supported by both "sufficient probative" evidence or "exceedingly persuasive justification" in support of the stated rationale for the program and "substantially related" to the achievement of that underlying objective. Under the traditional intermediate scrutiny standard, the Court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for

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<sup>495</sup> *Id.* at 1247.

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> *Id.* at 1247.

<sup>499</sup> *Id.*

<sup>500</sup> *Id.*

<sup>501</sup> *Id.*

<sup>502</sup> *Id.*

the claim that woman-owned businesses have suffered discrimination and whether the gender-conscious remedy is an appropriate response to such discrimination.<sup>503</sup>

The relationship between the need for the remedy and the program itself does not have to be as categorically and exhaustively considered. Intermediate scrutiny is by definition and application a less difficult burden to meet than strict scrutiny. If there is a solid reason for the program, the government actor does not have to demonstrate that it has attempted to avoid using gender-conscious remedies.<sup>504</sup> Some courts have stated that intermediate scrutiny does not need to show a statistical disparity or that level of analysis by the government to show the need for the program, *per se*. Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for the claim that woman-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the state actor to present “sufficient probative” evidence in support of its stated rationale for the program. This reduced level of review indicates that if the program includes woman-owned businesses and POC businesses, and it was created to survive strict scrutiny in the courts, then the remedy should pass intermediate scrutiny.<sup>505</sup>

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<sup>503</sup> *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); *see, e.g., Serv. Emp. Int’l Union, Local 5 v. City of Hous.*, 595 F.3d 588, 596 (5th Cir. 2010); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993).

<sup>504</sup> *See, e.g., AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); *see also U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”).

<sup>505</sup> *See, e.g., AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Assoc. Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); *see, also, U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”)

# APPENDIX C.

## Quantitative Analyses of Marketplace Conditions

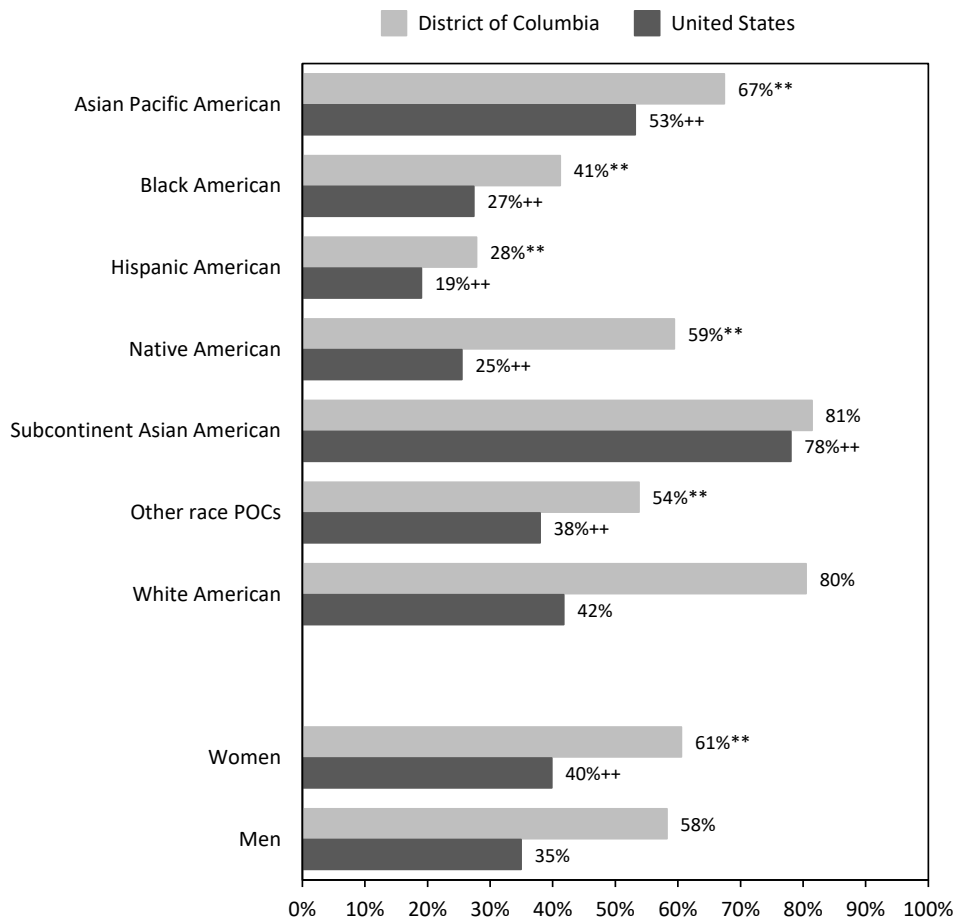
BBC-Pantera-Tiber conducted extensive quantitative analyses of marketplace conditions in the Washington, D.C. area to assess whether persons of color (POCs), women, and POC- and woman-owned businesses face any barriers in the local construction; professional services; and non-professional services, goods, and supplies industries. For most analyses, we defined the Washington D.C. area as the geographical area including Washington, D.C., Montgomery and Prince George's Counties in Maryland; Fairfax and Arlington Counties in Virginia; and the cities of Fairfax, Alexandria, and Falls Church in Virginia, which accounted for 92 percent of the relevant contract and procurement dollars the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) awarded during the study period, based on where the businesses that participated in that work were located.

BB-Pantera-Tiber examined local marketplace conditions in four primary areas:

- **Human capital**, to assess whether POCs and women face barriers related to education, employment, and gaining experience;
- **Financial capital**, to assess whether POCs and women face barriers related to wages, homeownership, personal wealth, and financing;
- **Business ownership** to assess whether POCs and women own businesses at rates comparable to white Americans and men, respectively; and
- **Business success** to assess whether POC- and woman-owned businesses have outcomes similar to those of businesses owned by white Americans and men, respectively.

Appendix C presents a series of figures that present results from those analyses. We present and discuss key marketplace results along with information from secondary research in Chapter 3.

**Figure C-1.**  
**Percent of all workers 25 and older with at least a**  
**four-year degree in Washington, D.C. and the United States, 2015-2019**

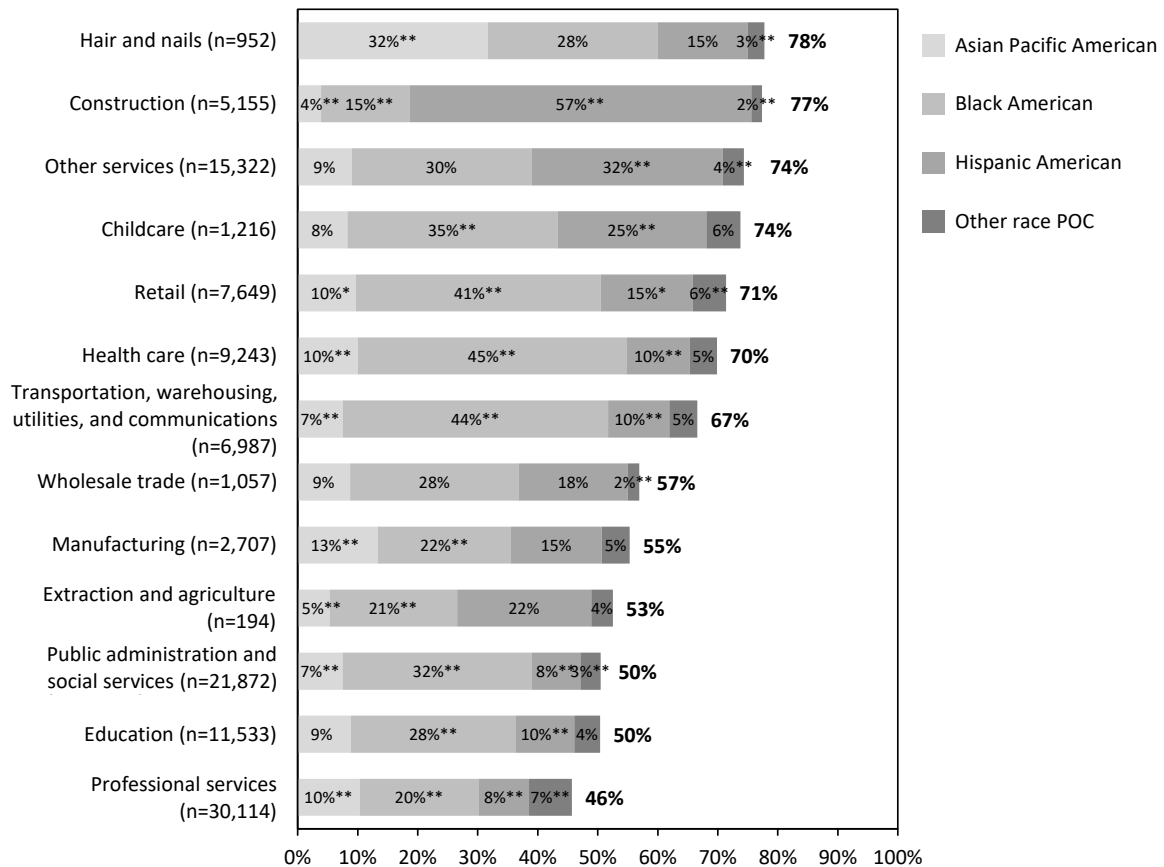


Note: \*\*, ++ Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 95% confidence level for Washington, D.C. and the United States, respectively.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Figure C-1 indicates that, compared to white American workers (80%), Asian Pacific American (67%), Black American (41%), Hispanic American (28%), Native American (59%), and other race POC workers (54%) are substantially less likely to have four-year college degrees in Washington, D.C.

**Figure C-2.**  
**Percent representation of POCs in various Washington, D.C. industries**



Note: \*\* Denotes that the difference in proportions between POC workers in the specified industry and all industries is statistically significant at 95% confidence level.

The representation of POCs among all Washington, D.C. workers is 9% for Asian Pacific Americans, 30% for Black Americans, 16% for Hispanic Americans, 5% for other race POCs, and 60% for all POCs considered together.

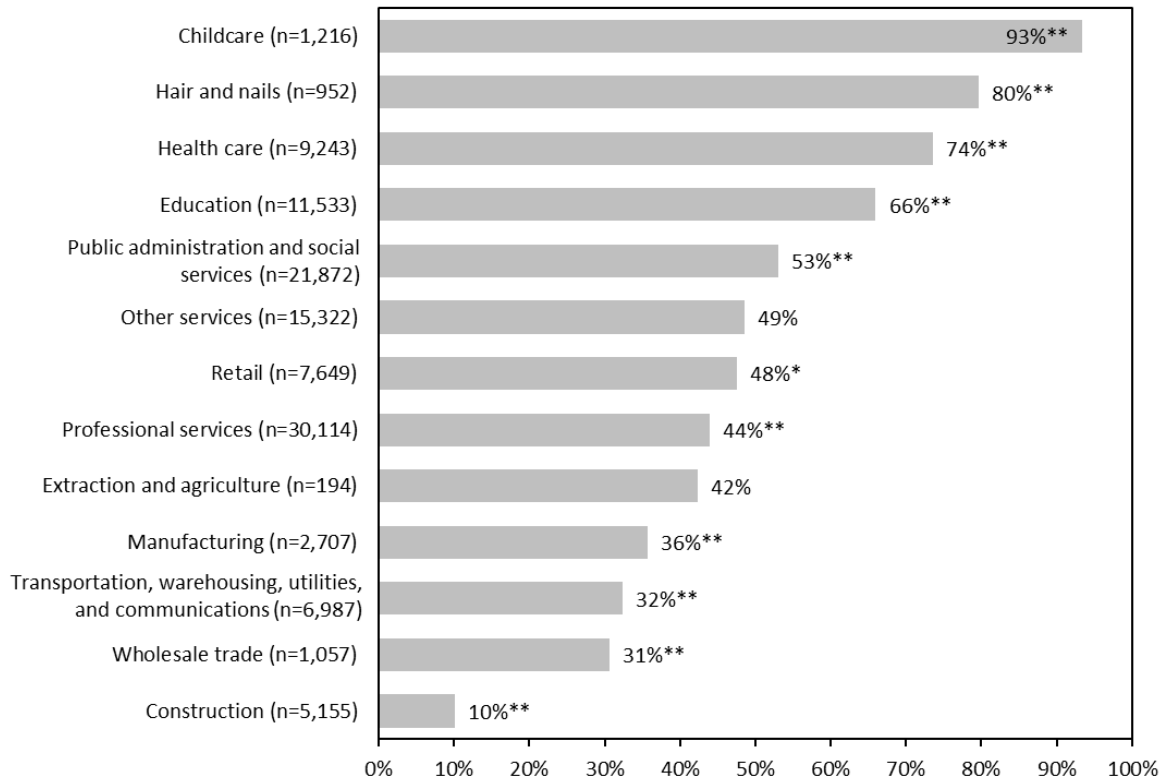
"Other race POC" includes Subcontinent Asian Americans, Native Americans, and other races.

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services. Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-2 indicates that the Washington, D.C. industries with the highest representations of POC workers are hair and nails (78%), construction (77%), and other services (74%). The industries with the lowest representations of POC workers are public administration and social services (50%), education (50%), and professional services (46%).

**Figure C-3.**  
**Percent representation of women in various Washington, D.C. industries**



Note: \*,\*\* Denotes that the difference in proportions between women workers in the specified industry and all industries is statistically significant at the 90% and 95% confidence level, respectively.

The representation of women among all Washington, D.C. workers is 49%

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services. Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-3 indicates that the Washington, D.C. industries with the highest representations of women workers are childcare (93%), hair and nails (80%), and health care (74%). The industries with the lowest representations of women are transportation, warehousing, utilities, and communications (32%); wholesale trade (31%); and construction (10%).



**Figure C-4.**  
**Demographic characteristics of workers in study-related industries**  
**and all industries in Washington, D.C. and the United States, 2015-2019**

	All Industries (n=116,376)	Construction (n=5,155)	Professional Services (n=8,006)	Non-prof. services, goods, and supplies (n=2,789)
<b>Race/ethnicity</b>				
Asian Pacific American	9.0 %	3.9 % **	8.8 %	2.3 % **
Black American	29.6 %	14.7 % **	16.8 % **	44.9 % **
Hispanic American	16.2 %	57.0 % **	7.8 % **	39.0 % **
Native American	0.4 %	0.3 % *	0.3 % **	0.2 % *
Subcontinent Asian American	3.8 %	0.9 % **	5.1 % **	1.1 % **
Other race POC	0.4 %	0.6 %	0.3 % **	0.7 %
White American	40.5 %	22.6 % **	60.9 % **	11.8 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
<b>Gender</b>				
Women	48.6 %	10.1 % **	40.4 % **	47.2 %
Men	51.4 %	89.9 % **	59.6 % **	52.8 %
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
United States	All Industries (n=7,818,941)	Construction (n=485,217)	Professional Services (n=198,486)	Non-prof. services, goods, and supplies (n=163,211)
<b>Race/ethnicity</b>				
Asian Pacific American	5.0 %	1.8 % **	5.8 % **	2.7 % **
Black American	12.6 %	5.9 % **	7.2 % **	20.1 % **
Hispanic American	17.3 %	28.6 % **	10.3 % **	27.7 % **
Native American	1.2 %	1.3 % **	0.8 % **	1.1 %
Subcontinent Asian American	1.6 %	0.3 % **	2.8 % **	0.6 % **
Other race POC	0.2 %	0.3 %	0.2 % **	0.4 % **
White American	62.1 %	61.7 % **	72.9 % **	47.4 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
<b>Gender</b>				
Women	47.2 %	9.7 % **	36.3 % **	39.5 % **
Men	52.8 %	90.3 % **	63.7 % **	60.5 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>

Note: \*, \*\* Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 90% or 95% confidence level, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-4 indicates that compared to all industries considered together:

- Smaller percentages of Asian Pacific Americans (3.9%), Black Americans (14.7%), Native Americans (0.3%), and Subcontinent Asian Americans (0.9%) work in the Washington, D.C. construction industry. In addition, a smaller percentage of women (10.1%) work in the construction industry.
- Smaller percentages of Black Americans (16.8%), Hispanic Americans (7.8%), Native Americans (0.3%), and other race POCs (0.3%) work in the Washington, D.C. professional services industry. In addition, a smaller percentage of women (40.4%) work in the professional services industry.
- A smaller percentage of Asian Pacific Americans (2.3%), Native Americans (0.2%), and Subcontinent Asian Americans (1.1%) work in the Washington, D.C. non-professional services, goods, and supplies industry.

**Figure C-5.  
Percent of non-owner  
workers who worked  
as managers in study-  
related industries in  
Washington, D.C. and  
the United States,  
2015-2019**

Notes:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes that significant differences in proportions were not reported due to small sample size.

Source:

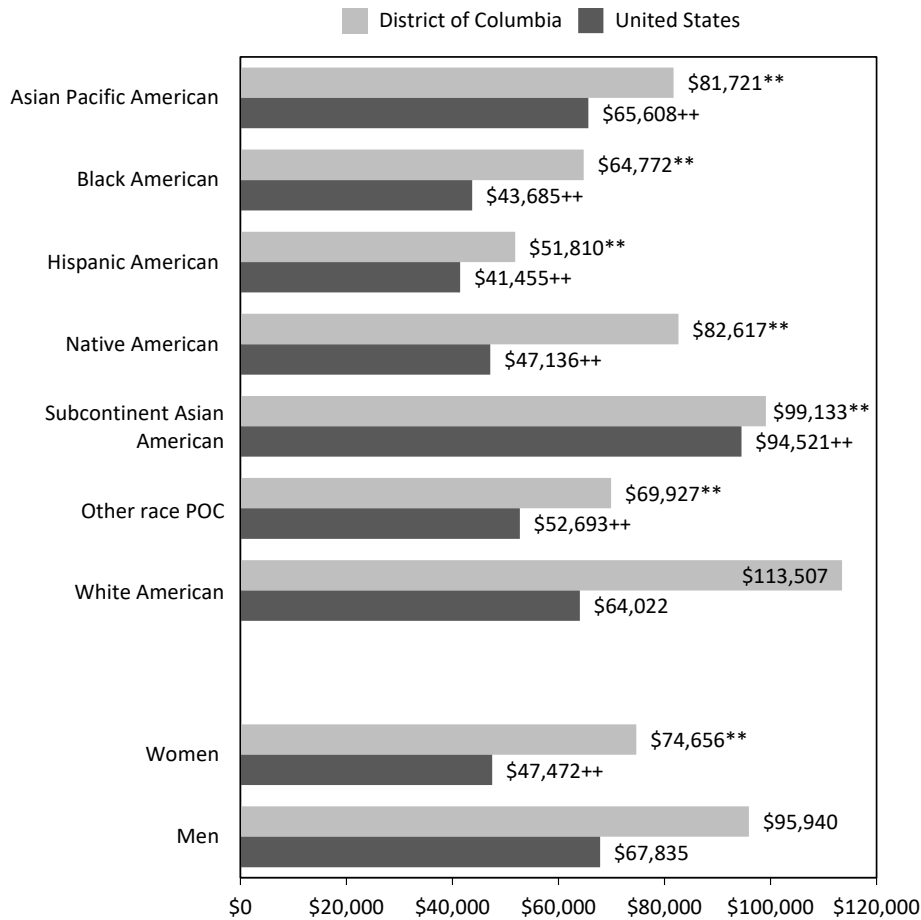
BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Washington, D.C.	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian Pacific American	9.9 % **	3.9 % *	1.9 %
Black American	5.9 % **	2.6 % **	1.2 % **
Hispanic American	2.2 % **	3.2 % **	0.4 % **
Native American	0.0 % †	3.9 % †	0.0 % †
Subcontinent Asian American	25.2 %	5.5 %	0.0 %
Other race POC	11.2 % †	0.0 % †	3.4 % †
White American	19.8 %	5.7 %	3.6 %
<b>Gender</b>			
Women	8.1 %	3.6 % **	0.4 % **
Men	6.6 %	5.6 %	1.9 %
United States	Construction	Professional Services	Goods & Services
<b>Race/ethnicity</b>			
Asian Pacific American	8.1 % **	2.9 % **	1.8 % **
Black American	3.4 % **	2.2 % **	0.7 % **
Hispanic American	2.6 % **	2.5 % **	0.7 % **
Native American	5.3 % **	3.6 %	2.1 %
Subcontinent Asian American	10.4 %	4.1 %	1.7 %
Other race POC	2.4 % **	4.3 %	1.7 %
White American	9.2 %	4.4 %	2.4 %
<b>Gender</b>			
Women	6.4 % **	2.5 % **	0.9 % **
Men	6.8 %	4.7 %	1.9 %

Figure C-5 indicates that:

- Smaller percentages of Asian Pacific Americans (9.9%), Black Americans (5.9%), and Hispanic Americans (2.2%) work as managers in the Washington, D.C. construction industry than white Americans (19.8%).
- Smaller percentages of Asian Pacific Americans (3.9%), Black Americans (2.6%), and Hispanic Americans (3.2%) work as managers in the Washington, D.C. professional services industry than white Americans (5.7%). In addition, a smaller percentage of women (3.6%) than men (5.6%) work as managers in the professional services industry.
- A smaller percentage of Black Americans (1.2%) and Hispanic Americans (0.4%) work as managers in the Washington, D.C. non-professional services, goods, and supplies industry than white Americans (3.6%). In addition, a smaller percentage of women (0.4%) than men (1.9%) work as managers in the non-professional services, goods, and supplies industry.

**Figure C-6.**  
**Mean annual wages in Washington, D.C. and the United States, 2015-2019**



Note: The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

Note: \*\*, ++ Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 95% confidence level for Washington, D.C. and the United States, respectively.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-6 indicates that all relevant groups of POCs in Washington, D.C. earn substantially less than white Americans (\$113,507). In addition, women earn substantially less than men (\$95,940).

**Figure C-7.  
Predictors of annual wages in  
Washington, D.C, 2015-2019**

**Notes:**

The regression includes 36,832 observations.

The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

\*\* Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables is as follows: white Americans for the race variables, high school diploma for the education variables, manufacturing for industry variables.

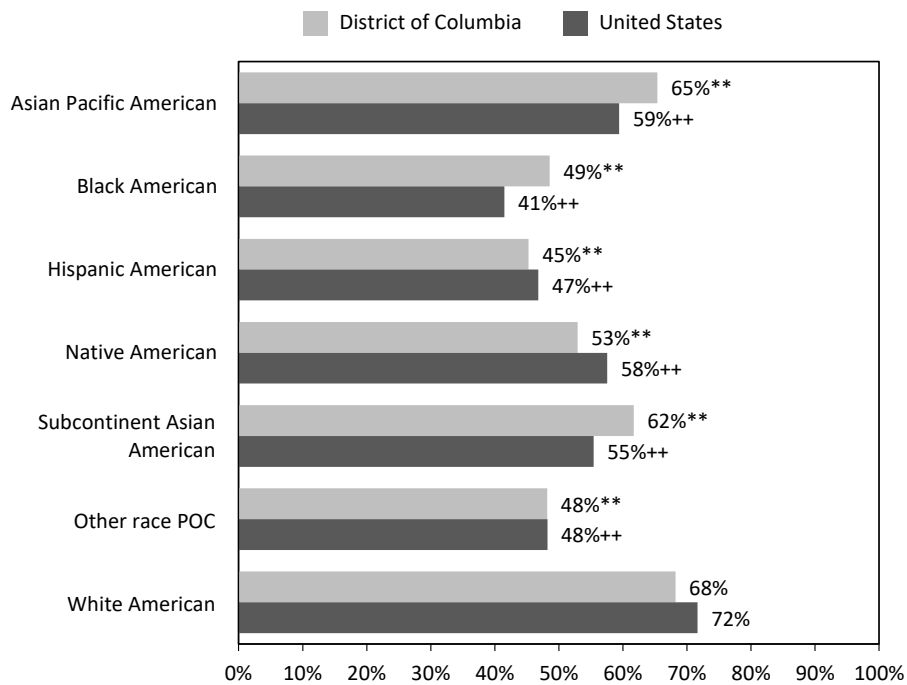
**Source:**

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Variable	Exponentiated Coefficient
Constant	8238.069 **
Asian Pacific American	0.826 **
Black American	0.795 **
Hispanic American	0.800 **
Native American	0.789 **
Subcontinent Asian American	0.844 **
Other race POC	0.753 **
Women	0.858 **
Less than high school education	0.941 **
Some college	1.186 **
Four-year degree	1.576 **
Advanced degree	1.998 **
Disabled	0.843 **
Military experience	1.027 **
Speaks English well	1.323 **
Age	1.072 **
Age-squared	0.999 **
Married	1.069 **
Children	1.014 **
Number of people over 65 in household	0.909 **
Public sector worker	1.146 **
Manager	1.242 **
Part time worker	0.322 **
Extraction and agriculture	0.715 **
Construction	0.822 **
Wholesale trade	0.808 **
Retail trade	0.624 **
Transportation, warehouse, & information	0.895 **
Professional services	1.073 **
Education	0.610 **
Health care	0.856 **
Other services	0.656 **
Public administration and social services	0.890 **

Figure C-7 indicates that, compared to being a white American in Washington, D.C., being Asian Pacific American, Black American, Hispanic American, Native American, Subcontinent Asian American, or other race POC is related to lower annual wages, even after accounting for various other personal characteristics. (For example, the model indicates that being Black American is associated with making approximately \$0.80 for every dollar that a white American makes, all else being equal.) In addition, compared to being a man, being a woman is related to lower annual wages, even after statistically accounting for other personal characteristics.

**Figure C-8.**  
**Home ownership rates in Washington, D.C. and the United States, 2015-2019**



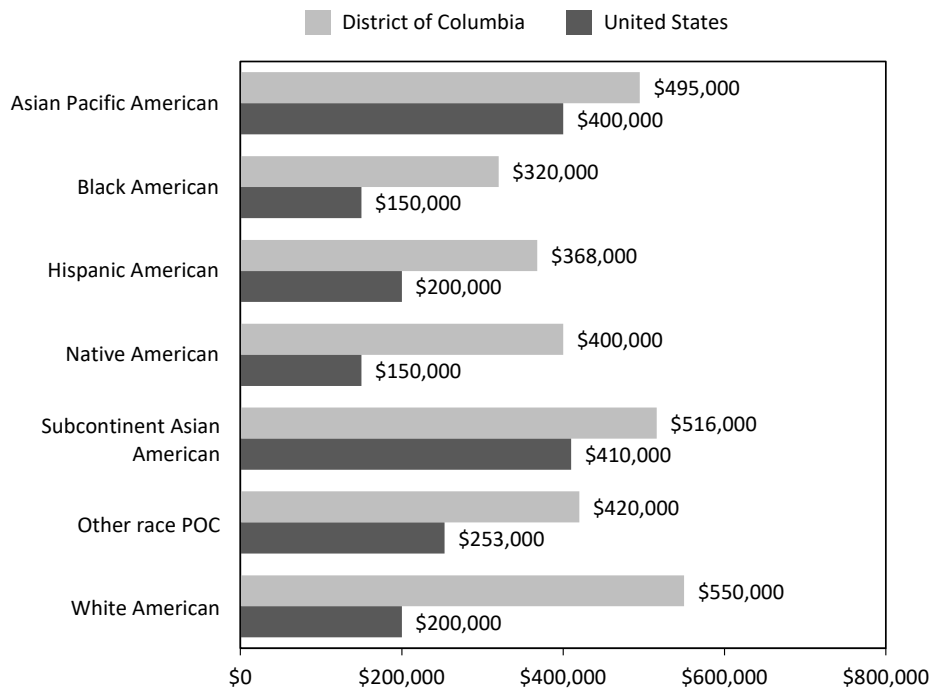
Note: The sample universe is all households.

\*\*, ++ Denotes statistically significant differences from white Americans at the 95% confidence level for Washington, D.C. and the United States as a whole, respectively.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-8 indicates that all relevant groups of POCs in Washington, D.C. exhibit homeownership rates lower than that of white Americans (68%).

**Figure C-9.**  
**Median home values in Washington, D.C. and the United States, 2015-2019**



Note: The sample universe is all owner-occupied housing units.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-9 indicates that homeowners of all relevant racial/ethnic groups in Washington, D.C. own homes that, on average, are worth less than those of white Americans (\$550,000).

**Figure C-10.**  
**Denial rates of**  
**conventional purchase**  
**loans for high-income**  
**households in Washington,**  
**D.C. and the United States,**  
**2019**

Note:

High-income households are those with 120% or more of the HUD area median family income.

Source:

FFIEC HMDA data 2019. The raw data was obtained from Consumer Financial Protection Bureau HMDA data tool: <http://www.consumerfinance.gov/hmda/explore>.

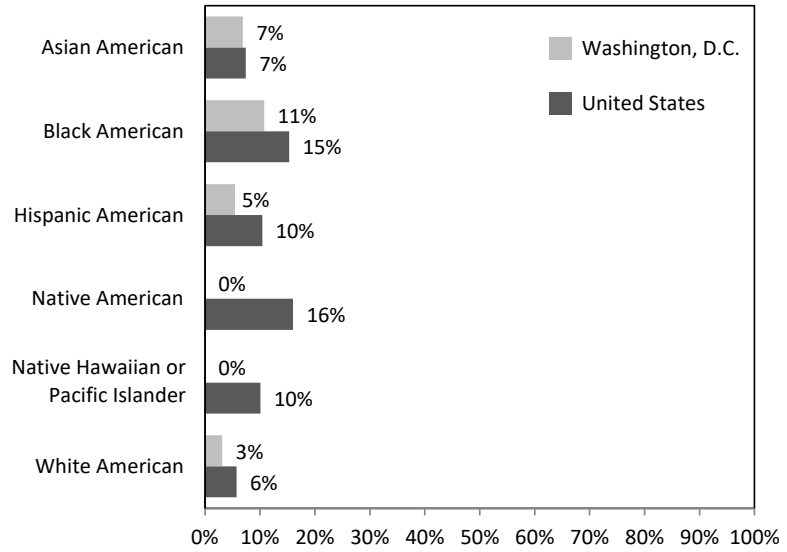


Figure C-10 indicates that Asian Americans (7%), Black Americans (11%), and Hispanic Americans (5%) in Washington, D.C. are denied home loans at higher rates than white Americans (3%).



**Figure C-11.**  
**Percent of conventional**  
**home purchase loans that**  
**were subprime in**  
**Washington, D.C. and the**  
**United States, 2019**

Note:

Subprime loans are those with a rate spread of 1.5 or more. Rate spread is the difference between the covered loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set.

Source:

FFIEC HMDA data 2017. The raw data extract was obtained from the Consumer Financial Protection Bureau HMDA data tool:  
<http://www.consumerfinance.gov/hmda/explore>.

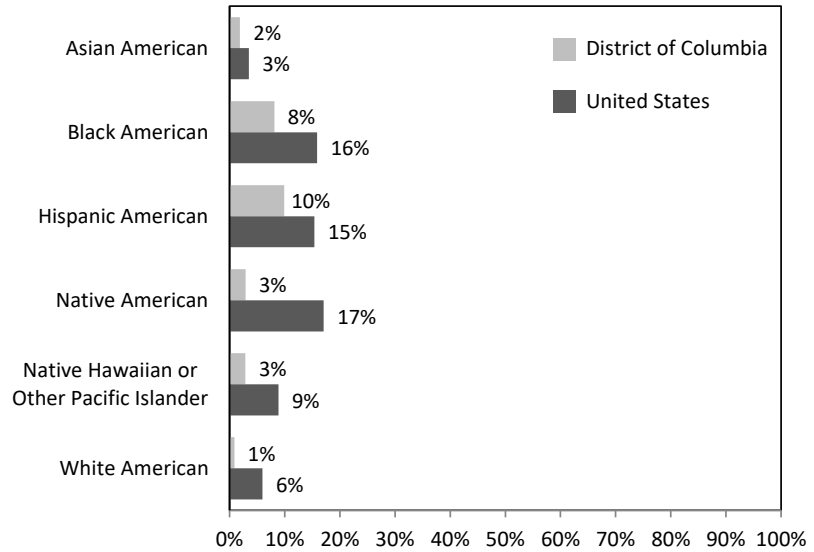


Figure C-11 indicates that Black Americans (8%), Hispanic Americans (10%), Native Americans (3%), and Native Hawaiian or other Pacific Islanders (3%) in Washington, D.C. are awarded subprime conventional home purchase loans at greater rates than white Americans (1%).

**Figure C-12.  
Business ownership  
rates in study-  
related industries in  
Washington, D.C.  
and the United  
States, 2015-2019**

Notes:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans, and women and men is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes that significant differences in proportions were not reported due to small sample size.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center:  
<http://usa.ipums.org/usa/>.

Washington, D.C.	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian Pacific American	32.3 % *	9.4 % **	14.9 %
Black American	14.5 % **	11.6 % **	4.1 % **
Hispanic American	12.5 % **	12.4 % **	11.7 %
Native American	22.0 % †	20.2 % †	12.4 % †
Subcontinent Asian American	28.2 %	9.9 % **	3.7 % **
Other race POC	10.1 % †	7.4 % †	1.2 % †
White American	25.1 %	17.4 %	13.6 %
<b>Gender</b>			
Women	10.5 % **	13.9 % *	11.2 % **
Men	17.3 %	15.6 %	5.9 %
United States	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian Pacific American	22.5 % **	15.1 % **	11.1 % **
Black American	16.4 % **	15.5 % **	6.1 % **
Hispanic American	17.8 % **	14.6 % **	16.0 % **
Native American	19.6 % **	20.7 % **	13.9 % **
Subcontinent Asian American	20.9 % **	12.5 % **	7.5 % **
Other race POC	26.3 %	16.1 % **	22.0 % *
White American	25.3 %	23.5 %	17.2 %
<b>Gender</b>			
Women	16.0 % **	20.1 % **	19.3 % **
Men	23.2 %	21.8 %	11.2 %

Figure C-12 indicates that, in Washington, D.C.:

- Black Americans (14.5%) and Hispanic Americans (12.5%) own construction businesses at lower rates than white Americans (25.1%). In addition, women own construction businesses (10.5%) at a lower rate than men (17.3%).
- Asian Pacific Americans (9.4%), Black Americans (11.6%), Hispanic Americans (12.4%), and Subcontinent Asian Americans (9.9%) own professional services businesses at lower rates than white Americans (17.4%). In addition, women (13.9%) own professional services businesses at a lower rate than men (15.6%).
- Black Americans (4.1%) and Subcontinent Asian Americans (3.7%) own non-professional services, goods, and supplies businesses at lower rates than white Americans (13.6%).

**Figure C-13.  
Predictors of business ownership in  
construction in Washington, D.C.,  
2015-2019**

Note:

The regression included 4,436 observations.

\*\* Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa>.

Variable	Coefficient
Constant	-2.5373 **
Age	0.0348 **
Age-squared	-0.0001
Married	0.1393 **
Disabled	-0.1898
Number of children in household	0.0522 **
Number of people over 65 in household	-0.0674
Owns home	0.0624
Home value (\$000s)	0.0003 **
Monthly mortgage payment (\$000s)	-0.0082
Interest and dividend income (\$000s)	0.0020
Income of spouse or partner (\$000s)	0.0003
Speaks English well	0.2833 **
Less than high school education	0.0103
Some college	0.1212
Four-year degree	-0.0719
Advanced degree	-0.2485
Asian Pacific American	0.3271 **
Black American	-0.2633 **
Hispanic American	-0.1855 **
Native American	-0.5131
Subcontinent Asian American	0.3629
Other POC group	-1.1926 **
Woman	-0.4183 **

Figure C-13 indicates that being Black American, Hispanic American, or other race POC in Washington, D.C. is associated with a lower likelihood of owning a construction business relative to being white American, even after statistically accounting for other personal characteristics. In addition, being a woman is associated with a lower likelihood of owning a construction business relative to being a man, even after statistically accounting for other personal characteristics.

**Figure C-14.**  
**Simulated business ownership rates for**  
**Washington, D.C. construction workers, 2015-2019**

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Black American	13.7%	21.4%	64
Hispanic American	12.2%	18.7%	65
Other POC group	2.1%	23.1%	9
White woman	14.1%	27.8%	51

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) dependent variable. Thus, the study team made comparisons between actual and benchmark self-employment rates only for the subset of the sample for which the dependent variable was observed.

Analyses are limited to those groups that showed negative coefficients that were statistically significant in the regression model.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Figure C-14 indicates that, in Washington D.C.:

- Black Americans (13.7%) own construction businesses at a rate that is 64 percent that of similarly situated white American men (i.e., white American men who share similar personal characteristics) (21.4%).
- Hispanic Americans (12.2%) own construction businesses at a rate that is 65 percent that of similarly situated white American men (18.7%).
- Other race POCs (2.1%) own construction businesses at a rate that is 9 percent that of similarly situated white American men (23.1%).
- White women (14.1%) own construction businesses at a rate that is 51 percent that of similarly situated white American men (27.8%).

**Figure C-15.  
Predictors of business ownership  
in professional services in  
Washington, D.C., 2015-2019**

Note:

The regression included 7,288 observations.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa>.

Variable	Coefficient
Constant	-4.3550 **
Age	0.0826 **
Age-squared	-0.0005 **
Married	0.0210
Disabled	0.1441
Number of children in household	0.0267
Number of people over 65 in household	0.1436 **
Owens home	-0.1491 *
Home value (\$000s)	0.0002 **
Monthly mortgage payment (\$000s)	0.0040
Interest and dividend income (\$000s)	0.0005
Income of spouse or partner (\$000s)	0.0005 **
Speaks English well	-0.1614
Less than high school education	-0.1275
Some college	0.4462 **
Four-year degree	0.7211 **
Advanced degree	0.8104 **
Asian Pacific American	-0.2912 **
Black American	-0.0542
Hispanic American	0.0423
Native American	0.2368
Subcontinent Asian American	-0.2290 *
Other POC group	-0.0196
Woman	0.0302

Figure C-15 indicates that being Asian Pacific American or Subcontinent Asian American in Washington, D.C. is associated with a lower likelihood of owning a professional services business compared to being white American, even after statistically accounting for other personal characteristics.

**Figure C-16.**  
**Simulated business ownership rates for Washington, D.C.**  
**professional services workers, 2015-2019**

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Asian Pacific American	8.5%	12.8%	66
Subcontinent Asian American	10.4%	13.7%	76

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) dependent variable. Thus, the study team made comparisons between actual and benchmark self-employment rates only for the subset of the sample for which the dependent variable was observed.

Analyses are limited to those groups that showed negative coefficients that were statistically significant in the regression model.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Figure C-16 indicates that in Washington, D.C.:

- Asian Pacific Americans (8.5%) own professional services businesses at a rate that is 67 percent that of similarly situated white American men (12.8%).
- Subcontinent Asian Americans (10.4%) own professional services businesses at a rate that is 76 percent that of similarly situated white American men (13.7%).

**Figure C-17.  
Predictors of business ownership in  
non-professional services, goods, and  
supplies in Washington D.C.,  
2015-2019**

Note:

The regression included 2,342 observations.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

The referent for each set of categorical variables variable is as follows: high school diploma for the education variables and white Americans for the race variables

Source:

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa>.

Variable	Coefficient
Constant	-3.7111 **
Age	0.0611 *
Age-squared	-0.0004
Married	0.0606
Disabled	0.0206
Number of children in household	0.0020
Number of people over 65 in household	-0.1542 *
Owens home	0.0282
Home value (\$000s)	0.0001
Monthly mortgage payment (\$000s)	0.0022
Interest and dividend income (\$000s)	0.0049
Income of spouse or partner (\$000s)	0.0011
Speaks English well	0.4064 **
Less than high school education	-0.0131
Some college	0.1435
Four-year degree	0.0771
Advanced degree	-0.1483
Asian Pacific American	-0.0176
Black American	-0.6524 **
Hispanic American	0.0601
Native American	-0.0101
Subcontinent Asian American	-1.0466 **
Other POC group	-1.1333 **
Woman	0.3826 **

Figure C-17 indicates that being Black American, Subcontinent Asian American, or other race POC in Washington, D.C. is associated with a lower likelihood of owning a non-professional services, goods, and supplies business relative to being white American.

**Figure C-18.**  
**Simulated business ownership rates for Washington, D.C.**  
**non-professional services, goods, and supplies workers, 2015-2019**

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Black American	4.0%	14.2%	28
Subcontinent Asian American	2.4%	18.1%	13
Other POC group	1.3%	14.4%	9

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) dependent variable. Thus, the study team made comparisons between actual and benchmark self-employment rates only for the subset of the sample for which the dependent variable was observed.

Analyses are limited to those groups that showed negative coefficients that were statistically significant in the regression model.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Figure C-18 indicates that in Washington, D.C.:

- Black Americans (4.0%) own non-professional services, goods, and supplies businesses at a rate that is 28 percent that of similarly situated white American men (14.2%).
- Subcontinent Asian Americans (2.4%) own non-professional services, goods, and supplies businesses at a rate that is 13 percent that of similarly situated white American men (18.1%).
- Other race POCs (1.3%) own non-professional services, goods, and supplies businesses at a rate that is 9 percent that of similarly situated white American men (14.4%).



**Figure C-19.**  
**Rates of business closure and expansion, Washington, D.C. and the United States, 2002-2006**

Note:

Data include only non-publicly held businesses.

Equal Gender Ownership refers to those businesses for which ownership is split evenly between women and men.

Statistical significance of these results cannot be determined, because sample sizes were not reported.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

Lowrey, Ying. 2014. "Gender and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

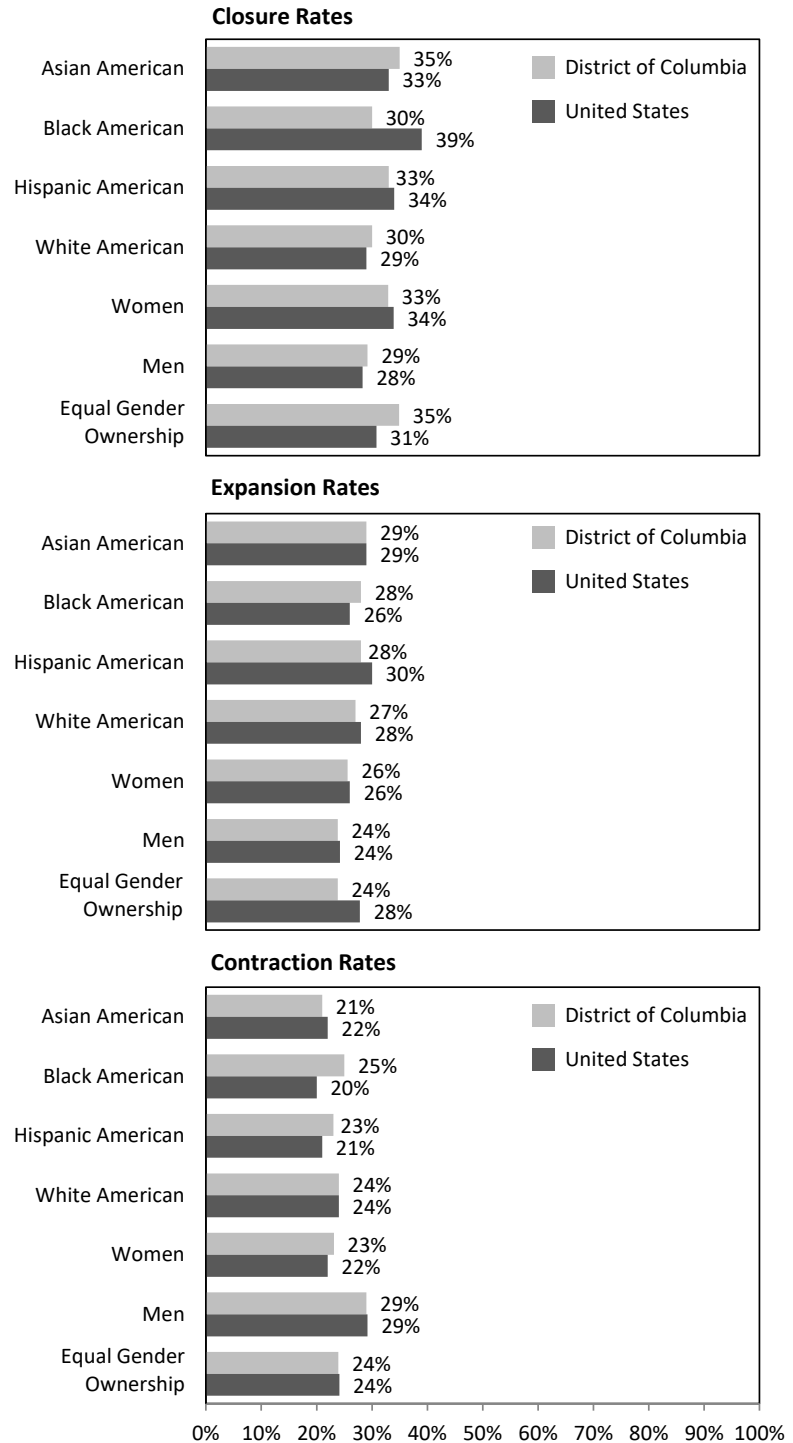
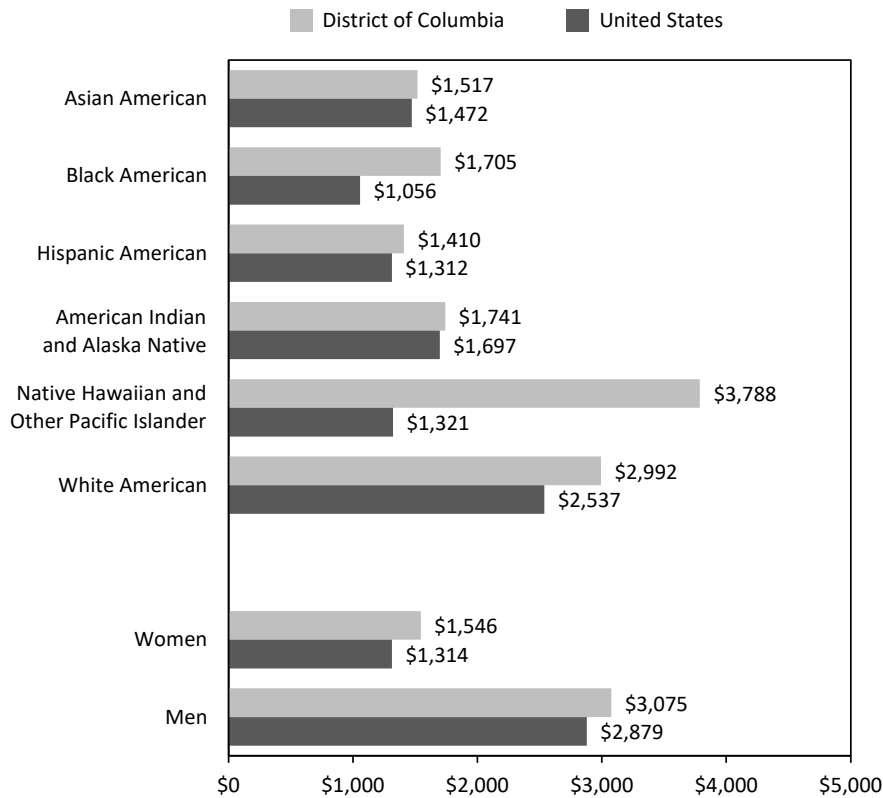


Figure C-19 indicates that Asian American- (35%) and Hispanic American-owned (33%) businesses in Washington, D.C. appear to close at higher rates than white American-owned businesses (30%). In addition, woman-owned (33%) businesses appear to close at higher rates than businesses owned by men (29%).

**Figure C-20.**  
**Mean annual business receipts (in thousands)**  
**in Washington, D.C. and the United States, 2012**

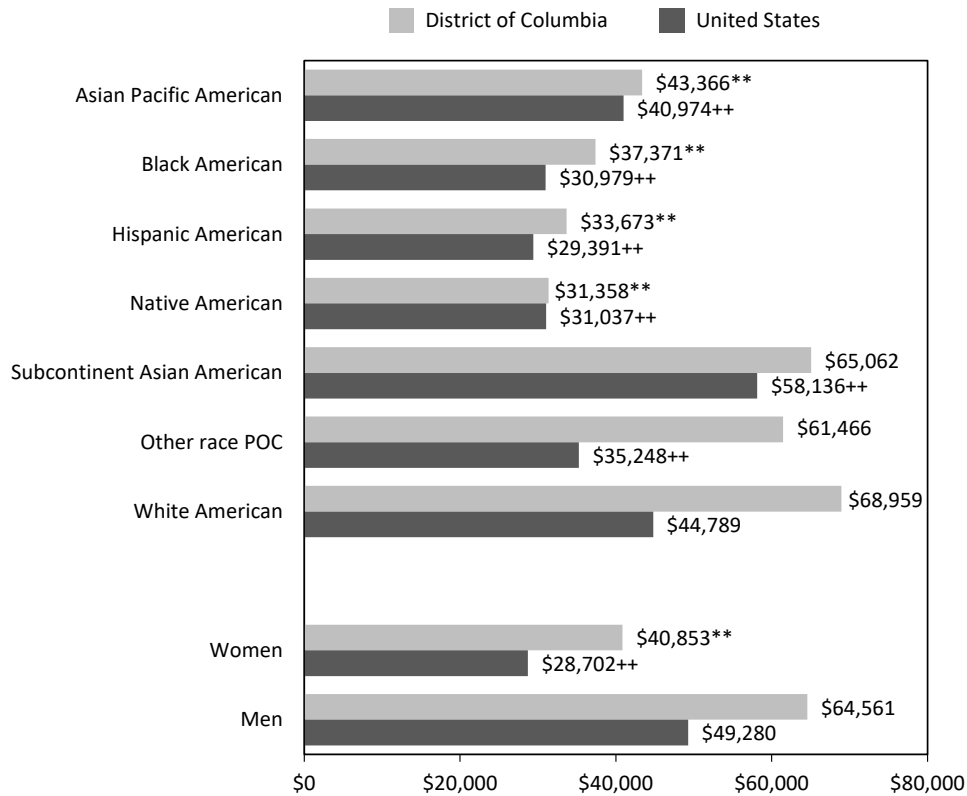


Note: Includes employer and non-employer firms.  
 Does not include publicly traded companies or other firms not classifiable by race/ethnicity and gender.

Source: 2012 Survey of Business Owners, part of the U.S. Census Bureau's 2012 Economic Census.

Figure C-20 indicates that, in 2012, Asian American-, Black American-, Hispanic American-, American Indian-, and Alaska Native American-owned businesses in Washington, D.C. showed lower mean annual business receipts than businesses owned by white Americans (\$2,992). In addition, woman-owned businesses showed lower mean annual business receipts than businesses owned by men (\$3,075).

**Figure C-21.**  
**Mean annual business owner earnings in**  
**Washington, D.C. and the United States, 2015-2019**



Note: The sample universe is business owners age 16 and over who reported positive earnings. All amounts in 2017 dollars.

\*\*, ++ Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 95% confidence level for Washington, D.C. and the United States as a whole, respectively.

Source: BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the Minnesota Population Center: <http://usa.ipums.org/usa/>.

Figure C-21 indicates that Asian Pacific American (\$43,366), Black American (\$37,371), Hispanic American (\$33,673), and Native American business owners (\$31,358) in Washington, D.C. earn less on average than the owners of white American-owned businesses (\$68,959). In addition, woman business owners (\$40,853) earn less on average than male business owners (\$64,561).

**Figure C-22.  
Predictors of business owner  
earnings in Washington, D.C.,  
2015-2019**

**Notes:**

The regression includes 5,965 observations.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

The sample universe is business owners age 16 and over who reported positive earnings.

\*\* Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

**Source:**

BBC-Pantera-Tiber from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Variable	Exponentiated Coefficient
Constant	390.679 **
Age	1.177 **
Age-squared	0.998 **
Married	1.197 **
Speaks English well	1.048
Disabled	0.696 **
Less than high school	0.802 **
Some college	1.137
Four-year degree	1.271 **
Advanced degree	1.821 **
Asian Pacific American	0.943
Black American	0.742 **
Hispanic American	0.991
Native American	0.489
Subcontinent Asian American	1.100
Other race POC	1.649
Woman	0.599 **

Figure C-22 indicates that, compared to being a white American business owner in Washington, D.C., being a Black American business owner is related to lower business earnings, even after accounting for various other business and personal characteristics. Similarly, compared to being a male business owner, being a woman business owner is related to lower business earnings.

# APPENDIX D.

## Anecdotal Evidence

Appendix D presents anecdotal evidence BBC Research & Consulting (BBC) collected from business owners and other stakeholders as part of the Government of the District of Columbia (DC Government) Disparity Study. Appendix D presents that evidence, organized into the following sections:

- A. Background on relevant industries** summarizes information about how businesses become established, what products and services they provide, business growth, and marketing efforts;
- B. Ownership and certification** presents information about businesses' statuses as person of color (POC)- and woman-owned businesses, certification processes, and business owners' experiences with DC Government's certification programs;
- C. Experiences in the private and public sectors** presents business owners' experiences pursuing private and public sector work;
- D. Doing business as a prime contractor or subcontractor** summarizes information about businesses' experiences working as prime contractors and subcontractors, how they obtain that work, and experiences working with POC- and woman-owned businesses;
- E. Doing business with public agencies** describes business owners' experiences working with or attempting to work with DC Government and other agencies and identifies potential barriers to doing work for them;
- F. Marketplace conditions** presents information about business owners' and managers' current perceptions of economic conditions in the Washington, D.C. area and what it takes for businesses to be successful;
- G. Potential barriers to business success** describes barriers and challenges businesses face in the local marketplace;
- H. Effects of race and gender** presents information about any knowledge business owners and managers have of discrimination in the local marketplace and how it affects POC- or woman-owned businesses;
- I. Business assistance programs** describes business owners' and managers' awareness of, and opinions about, business assistance programs and other steps to remove barriers for businesses in the Washington, D.C. area;
- J. Insights regarding race- and gender-based measures** includes business owners' and managers' comments about current or potential race- or gender-based programs;
- K. Other insights and recommendations** presents additional comments and recommendations for DC Government to consider; and
- L. Focus group discussions** presents the recommendations, comments, and insights collected during focus group discussions.

We denote availability survey comments by the prefix “AV,” focus group comments by the prefix “FG,” and public forum comments by the prefix “PT,” and written comments by the prefix “WT.” In-depth interview comments do not have a prefix.

The comments BBC-Pantera-Tiber present in Appendix B reflect the views, perceptions, and opinions of the business owners, trade association representatives, and other stakeholders who participated in the anecdotal evidence process. We did not edit them for accuracy or content, aside from making small edits for clarity. We summarized the various themes that emerged from the raw comments we collected to present the viewpoints and beliefs that exist throughout the marketplace, regardless of inaccuracies or falsehoods related to DC Government’s, Events DC’s, or UDC’s actual contracting policies or programs. None of the comments presented in Chapter 4 or Appendix B should be taken to necessarily reflect the study team’s own views, perceptions, or opinions or those of DC Government, Events DC, or UDC. In addition, they should not be taken to necessarily accurately represent the actual policies or practice each organization uses.

## A. Background on Relevant Industries

Part A includes the following information:

1. Business characteristics;
2. Business formation and establishment;
3. Types, locations, and sizes of contracts; and
4. Growth of the firm.

**1. Business characteristics.** The business owners interviewed for the study represented a variety of different business types and business histories, from well-established firms to newly established firms, and worked on small-to-large contracts in the Washington, D.C. marketplace. Interviewees described the types of work that their firm performs.

**Industry.** The study team interviewed 11 construction firms, 17 firms providing professional services, and 8 firms supplying goods and services.

***Eleven firms worked in the construction industry*** [#1, #2, #5, #8, #15, #20, #26, #30, #34, #38, #40]. For example:

- The Black American woman owner of a construction company stated her company provides water management services in the Washington, D.C. area. [#1]
- The Black American male owner of a CBE-certified construction company explained his company is a “full service general contractor.” [#2]
- The Black American male owner of a construction company explained his company is a “construction contractor.” [#5]
- The Black American woman owner of a CBE- and DBE-certified construction company stated that her company is a general contractor “specializing in electrical and facility maintenance.” [#8]

- The Hispanic American owner of a construction company explained his company is a high voltage construction company. [#15]
- The owner of a WBE-certified business stated her company is a piping construction company. [#20]
- The owner of a majority-owned construction company stated his company is a general contractor. [#26]
- The majority woman owner of a WBE-, MBE-, and CBE-certified business stated her company is a construction company. [#30]
- The representative of a majority-owned company stated his company is a real estate development company. [#34]
- The Asian American owner of a construction company explained his company does commercial construction. [#38]
- The Hispanic American woman owner of an MBE-certified company explained her company is a construction company. [#40]

***Nineteen firms worked in the engineering and professional services industry*** [#4, #6, #7, #9, #10, #11, #12, #13, #16, #17, #18, #21, #22, #23, #24, #25, #31, #36, #37]. For example:

- The Black American woman representative of a CBE- and DBE-certified professional services firm described the type of work her company does as civil and structural professional services and program and construction management. [#4]
- The Black American woman owner of an MBE-, SBE-, SDVOSB-, disabled veteran-, and CBE-certified business stated that her company is a “holistic, wellness, health” company. [#6]
- The Black American male owner of a professional services firm stated his company is a professional services consulting firm that started in 2009. [#7]
- The Black American woman owner of a professional services company explained that her company provides “management for small businesses and individuals.” [#9]
- The Black American woman owner of a VBE- and DVBE-certified company noted, “We are a full-service program and construction management company. We also provide professional services, and we do this in the construction space.” [#10]
- The principal of a majority-owned professional services firm stated his firm specializes in, “professional services and interior design.” [#11]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm noted her firm provides, “civil, traffic, structural, water resources professional services to public agencies.” [#12]
- The principal of a majority-owned professional services firm noted his company provides, “land surveying, civil engineering design, dry utility design, and landscape architecture.” [#13]
- The representative of a majority-owned professional services firm noted his company is an IT firm. [#16]

- The Asian American woman owner of a professional services noted her firm is an IT firm. [#17]
- The owner of a majority-owned, DVBE-certified, professional services company stated his firm is an IT firm. [#18]
- The owner of a majority-owned professional services company stated his firm is an architectural firm. [#21]
- The owner of a majority-owned professional services company stated his firm specializes in improving energy efficiencies in buildings. [#22]
- The owner of a majority-owned professional services company stated his firm specializes in energy consulting. [#23]
- The owner of a majority-owned professional services company stated his firm specializes in real estate services. [#24]
- The owner of a majority-owned professional services company stated his company provides professional staffing. [#25]
- The Black American woman owner of a professional services company stated her company provides IT training. [#31]
- The male Asian American owner of an MBE- and DBE-certified professional services firm noted his firm is an engineering firm. [#36]
- The Black American woman owner of a professional services company explained that her company provides, “Consulting and development services.” [#37]

**Ten firms worked in the goods and services industry** [#3, #14, #19, #27, #28, #29, #32, #33, #35, #39]. For example:

- The principal of a majority-owned, CBE-certified company stated his company is a manufacturing company. [#14]
- The male representative of an Asian American-owned goods and services firm noted the company provides water quality products. [#19]
- The owner of a majority-owned, DVBE-certified company stated his firm provides facilities maintenance. [#27]
- The owner of a majority-owned goods and services company stated his firm is an electrical contractor. [#28]
- The woman representative of an MBE-certified goods and services firm noted the company provides direct mailing services. [#29]
- The Black American male owner of an MBE-certified goods and services firm stated his company is a property management company. [#32]
- The owner of a majority-owned goods and services company stated his firm is the automotive industry. [#33]



- The male representative of an DBE-, MBE-, and WBE-certified goods and services firm noted the company is a relocation management company. [#35]
- The Black American male owner of a CBE-certified goods and services firm stated his company provides commercial and government moving. [#39]

**Years in business.** Forty businesses reported their date of establishment. The majority of firms (27 out of 40 that provided years in business) reported that they were well-established businesses; they had been in business for more than ten years. Nine out of the 40 businesses had been in business for between five and ten years. Four firms were newly established, having been in business for less than four years.

**Four firms reported they had been in business for fewer than four years** [#6, #9, #15, #30]. For example:

- The Black American woman owner of WBE-, MBE- and VBE started her business four years ago “to initiate change.” [#6]
- The Black American woman owner of a professional services company stated, “I started this business in 2020. I started that actual business, created the LLC in 2020.” [#9]

**Nine firms reported they had been in business for five to ten years** [#2, #5, #8, #10, #16, #17, #18, #19, #35]. For example:

- The Black American male owner of a CBE-certified construction company stated his company was started in 2017 [#2]
- The Black American male owner of a construction company noted he has been in business “A little over five years.” [#5]
- The Black American woman owner of a CBE/DBE certified construction company stated that her company has been in business for eight years. [#8]
- The Black American woman owner of a VBE- and DVBE-certified company noted she has been in business for five years.” [#10]
- The Asian American woman owner of a professional services IT firm noted she has been in business since 2016. [#16]
- The male representative of an Asian American owned goods and services firm noted the company has been in business since 2015. [#19]

**Twenty-seven firms reported they had been in business for more than ten years** [#1, #3, #4, #7, #11, #12, #13, #14, #20, #21, #22, #23, #24, #25, #26, #27, #28, #29, #31, #32, #33, #34, #36, #37, #38, #39, #40]. For example:

- The Black American woman owner whose company provides water construction services in the Washington, D.C. area has been in business since 2011. [#1]
- The Black American woman owner of a CBE-certified goods and services company that provides doors, frames, and hardware has been in business for 10 years. [#3]

- The Black American woman representative of a CBE- and DBE-certified professional services firm described the type of work her company does, civil and structural professional services and program and construction management stated that her company has been in business for 48 years. [#4]
- The Black American owner of a professional services firm stated his company started in 2009. [#7]
- The principal of a majority-owned professional services firm stated his firm was started in 1964. [#11]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm noted her firm has been around “Since May 2011.” [#12]
- The representative of a majority-owned professional services company stated they have been around for 12 years [#13]
- The principal of a majority-owned, CBE-certified signage manufacturing company stated his company has been in business for 81 years. [#14]
- The representative of a majority-owned, SDVOB-certified professional services company stated they have been around for 12 years [#16]
- The owner of a WBE-certified construction company stated her company has been in business since 1997. [#20]
- The owner of a majority-owned, DVBE-certified company stated his firm stated his company has been in business since 2004. [#27]
- The woman representative of an MBE-certified goods and services firm noted the company has been in business for 38 years. [#29]
- The Black American owner of an MBE-certified goods and services firm stated his company has been in business since 1993. [#32]
- The owner of a majority-owned goods and services company stated his firm has been in business for 24 years. [#33]
- The representative of a majority-owned construction company noted his company has been in business since 1980. [#34]
- The Black American owner of a CBE-certified goods and services firm stated his company has been in business for 12 years. [#39]
- The Hispanic American woman owner of an MBE-certified company explained her company has been in business since 1999. [#40]

**2. Business formation and establishment.** Most interviewees reported that their companies were started (or purchased) by individuals with connections in their respective industries.

**The majority of business owners and founders had worked in the industry or a related industry before starting their own businesses.** This experience helped founders build up industry contacts and expertise. Businesspeople were often motivated to start their own firms by the

prospects of self-sufficiency and business improvement. Most interviewees reported that their companies were started (or purchased) by individuals with connections in their respective industries. [#4, #9, #10, #11, #12, #13, #14, #16, #17, #18, #21, #25, #33, #37, #38, #39, #40, #AV]. Here are some of the founder stories from interviews:

- The Black American woman representative of a CBE- and DBE-certified professional services firm explained the company's founder was a Black American male professor of professional services. She stated that he wanted to start a professional services firm because, "...he saw a disparity in minority professional services firms and wanted to continue that in the professional sense in a business. [#4]
- The Black American woman owner of a professional services company stated, "I've been doing this, I want to say about seven years now, and so that I decided to create a business and grow my business. " [#9]
- The Black American woman owner of a VBE- and DVBE-certified professional services company, who previously worked for another firm noted, "In my search for black women owned companies that did roads, bridges, streetlights, gas lines, power lines, electrical lines, there were not any in the DC area, and in fact, I could not find any in the nation." [#10]
- The principal of a majority-owned professional services firm stated that its founder was an architect. "He grew up in Connecticut. He was working for some of the major New York city firms at the time .... And there was some opportunity where Yale University was looking for some outside help with its planning and professional services. It did not have a facilities department at the time as institutions like it have today. And so, he took the opportunity to move back to Connecticut and start his own firm." [#11]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm noted that before she started her firm, "I was a senior project manager in another professional services firm for over 12 years and I have always aspired to have my own business. Kind of like taking the adventure to start something from the ground up and go through all the ups and downs. That's a leap of faith and that's how I ended up resigning from the firm or company and started my business 11 years ago." [#12]
- The principal of a majority-owned professional services firm described how the company was started, "They formed it because they were based out in Reston, Virginia, a sister company, and they were doing a lot of work in the district at the time. They found it would've been advantage to have a local office in D.C., possibly because of CBE reasons. I'm not sure. They started the D.C. business, and it just grew from something small into being the lion share of the two companies. Now it's the only company. We don't run the Virginia company anymore." [#13]
- The principal of a majority-owned, CBE-certified manufacturing company stated his company was obtained by purchase. The principal's father worked for the company and made an offer to buy it after the company was operating at a deficit. The principal and his two brothers (also principals) have been involved with the company since then. [#14]
- The Asian American woman owner of a professional services IT firm explained, "I have been doing job from more than 15 years, and after understanding the businesses, what they're dealing with and their issues with the technology, so being experienced with the

technology for 15 years, plus after working in DC Government for a couple of years, I thought of like, 'I can help other people, other businesses to solve their business processes.'" [#17]

- The owner of a majority-owned, DVBE-certified professional services company noted he had, "...more than 20 years of commercial experience in commercial software companies." [#18]
- The owner of a majority-owned professional services company stated, "I worked for somebody doing what I do and decided I would like to continue what I was doing on my own. Just decided to do it one day." [#21]
- The owner of a majority-owned professional services company stated, "I've been in this industry for about 25 years now. And then I had an opportunity to start this company in 2009..." [#25]
- The owner of a majority-owned goods and services company stated he worked in the automotive industry prior to starting his company. [#33]
- The Black American woman owner of a professional services company stated, "I went to work for the federal government for three years and then started up another firm that did much of the same work." [#37]
- The Asian American owner of a construction company explained, "I was working with my brother, and he has a much larger company. And he motivated me to start my company and just see and work. So, he motivated me to start my company." [#38]
- The Black American male owner of a CBE-certified goods and services firm stated, "Previous to owning my company, I was employed with several other small companies. Each one of them actually had gone through a hardship and I was on my fourth layoff. And I decided I wasn't going to go back to an employer, and I started my own company." [#39]
- The Hispanic American woman owner of an MBE-certified construction company explained, "I've always been in construction. I've always been around construction. My dad, he had his own company. Basically, it's been a part of my life. When my husband lost his job, we were like, 'What are we going to do?' My dad's like, 'Hey, I've just completed the 8a,' it's called the 8a program. It's a minority program that helps small businesses get their foot in the door to government contracting. He said, 'Why don't you guys come here, start a company. I can mentor you.' He had a lot of contacts in the government. That's basically what we decided to do." [#40]
- A representative of a Black American woman-owned goods and services company stated, "I have been doing this for ten years, but the business is new. Sometimes it is a problem with a new business getting contracts." [#AV67]

**Other motivations.** There were also other reasons and motivations for the establishment of their business [#1, #2, #3, #5, #6, #7, #8, #15, #20, #26, #28, #31, #36]. For example:

- The Black American woman owner of a construction company explained, "So, I actually started the company with the intent of doing painting because at the time I started it, I

knew the Smithsonian was going to do the African American museum...I now do construction. I do real construction..." [#1]

- The Black American male owner of a CBE-certified construction company explained he noticed all the development happening in the City (Washington, DC) and saw an opportunity to start his own construction company. [#2]
- The Black American woman owner of a CBE-certified goods and services company explained she started her company out of necessity. She was unemployed due to downsizing and saw an opportunity becoming a supplier. [#3].
- The Black American male owner of a construction company noted he was, "...just struggling to stay employed and I couldn't understand why that was the case when I was showing up to work and I was doing what I was told, but yet still I was still finding myself unemployed. So, I guess it just led me on the path to entrepreneurship, because it was unsustainable to stay in that situation if you know what I mean." [#5]
- The Black American woman owner of an MBE-, SBE-, SDVOSB-, disabled veteran-, and CBE-certified company stated, "I wanted to start the company to initiate change." She noted she, "Identified a gap, and the gap in health and wellness while being employed." [#6]
- The Black American male owner of a professional services firm explained his company was started, "...as a result of the market downfall of 2008, 2009. The firm I was working at the time had to downsize. So I was one of the casualties of that. After a long time of sending out applications, no one was hiring. So I just decided to go solo from there..." [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company stated that when she worked for a contractor, "I got a taste of the contracting world." The owner of the company she worked for "...encouraged me. Because him being a minority-owned company with a HubZone address, he had always encouraged me to be a minority, woman-owned and HubZone. He felt like that was the trifecta, like I checked off all of the major boxes to be able to be in a position to receive set asides. Even though it wasn't my main interest or goal at that point in my life, I did start a company...in 2013 and have been in business ever since." [#8]
- The Hispanic American owner of a construction company explained why he started his company, "Well, being perfectly honest, moving to the Washington, D.C. area and realizing how much need of a good contractor is needed, as well as a contractor with a good work ethic and knowledge. Therefore, I decided to say, 'You know what? I'm just kind of tired of working with these contractors who don't have the same work ethic I do.' So, I decided to open my own company..." [#15]
- The representative of an Asian American-owned goods and services firm noted the firm was started because the owner was looking for new opportunities to bring a new product to the market. [#19]
- The owner of a WBE-certified construction company stated her company is a family business started by her late father. [#20]
- The owner of a majority-owned construction company formed his company after working in IT. [#26]

- The owner of a majority-owned, DVBE-certified company stated, “Well, I was a federal employee for several years. I got an early out and I ended up being the director of a nonprofit. What we did in that nonprofit for about five years is we created laws for service-disabled veterans in federal procurement. After five years, we had got the laws in place and I decided, well, let me start a business and see how this goes with federal contracting. That’s how it all started.” [#27]
- The owner of a majority-owned goods and services company explained, “To get an opportunity to get ahead. I wasn’t getting ahead. I was not in the clique to get ahead, so I went on my own.” [#28]
- The woman owner of a WBE-, MBE-, and CBE-certified construction company noted that she started her business after a career as a researcher and discussing the industry with a family member and friends. [#30]
- The Black American woman owner of a professional services company stated she bought the company when she discovered the original owner wanted to sell the business. [#31]
- The representative of an DBE-, MBE-, and WBE-certified goods and services firm noted, “basically, through a relationship with some of our teaming partners, we discovered that there were some opportunities on the federal level that they may not have been necessarily eligible to compete for... So that’s pretty much what prompted that.” [#35]
- The Asian American owner of an MBE- and DBE-certified professional services firm noted he started his firm because, “It’s something I wanted to do.” [#36]

**3. Types, locations, and sizes of contracts.** Interviewees discussed the range of sizes and types of contracts their firms pursue and the locations where they work.

**Businesses reported working on contracts as small as several hundred dollars to contracts worth more than one hundred million dollars.** [#1, #3, #5 #8, #10, #12, #13, #14, #15, #16, #17, #18, #20, #23, #27, #30, #32, #34, #37, #39]. For example:

- The Black American woman owner of a construction company stated that her contracts are, “anywhere from a half a million to a million and the larger contracts can go 5 million and above.” [#1]
- The Black American woman owner of a CBE-certified goods and services company noted her company seeks work within a 200-mile radius of DC and that contracts range from \$80k – \$250k. [#3]
- The Black American owner of a construction company said, “We look as far as Philadelphia, Chicago, City of Dallas. We typically stay in a range of 50,000 and below because pretty much that’s where all small companies have to start due to lack of access to capital reasons and just, that’s initially where you get to perform and build up capacity and performance so you could go on to bigger and better things pretty much.” [#5]
- When asked the size of contracts the company performs on the Black American woman owner of a CBE- and DBE-certified construction company stated, “It can range, honestly, anywhere from I would say 5,000 to 2 million.” [#8]

- When asked about the size of contracts the company performs the Black American woman owner of a VBE- and DVBE-certified professional services company explained, “So with a partner, a larger partner that has more bonding capacity, et cetera, we're comfortable with 300 million. The latest contract that we've won as a partner is 309 million. I can bid independently without a partner of about 55 million.” [#10]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm indicated, “We typically go after anything between 500,000 to 3/4/\$5 million.” She also noted, “We seek business everywhere over Maryland and also go to D.C. and Virginia. That's pretty much where our projects are. We have not been out of DMV areas yet.” [#12]
- The principal of a majority-owned professional services firm stated, “The majority of our clients were small contracts probably in the range of \$10,000 to maybe \$50,000. Now we're trying to lean more towards the bigger value contracts... The vast majority will be between 50 and \$200,000. We occasionally have projects that are, and increasingly so, we have projects that go from 200 all the way up to 800,000.” [#13]
- The principal of a majority-owned, CBE-certified signage manufacturing company stated his company works on contracts from \$100.00 to \$5M. [#14]
- The Hispanic American owner of a construction company stated, “...it can be a job that is a \$100,000, and it could be a job that can be \$10 million.” [#15]
- The owner of a majority-owned, DVBE-certified professional services company noted, “I don't have a minimum contract. However, the contract that I would like to be going after is between half a million and a million.” [#18]
- The owner of a WBE-certified construction company stated her company's revenue average, “...is in the \$125,000 to \$200,000 range...” [#20]
- The owner of a majority-owned professional services company stated, “I'm not really selective on size. I've taken comparatively small contracts, but because we're only a small firm, I think the largest contract we've ever had is less than half a million.” [#23]
- The owner of a majority-owned, DVBE-certified company stated, “So right now the joint venture with my partner, we can go up to a hundred million.” [#27]
- The woman owner of a WBE-, MBE-, and CBE-certified construction company noted, “Right now we have contracts in the hundreds of thousands, two to three to \$400,000.” [#30]
- The Black American owner of an MBE-certified goods and services firm explained the growth of his company as, “I will over broadly characterize businesses in the three categories, oversimplifying, of course, and there's the companies that start and jump up into the million-dollar category. I'm not in that. And then there's the mom-and-pop type organization that muddle along and under a million dollars a year revenue. And then there's the last category of companies that never really get going to function. So I'm in that second category.” [#32]
- The representative of a majority-owned construction company stated, “I would say anywhere from 25 million to 75 million.” [#34]
- The Black American woman owner of a professional services company noted, “Retainers can be from \$15,000 to \$25,000 a month on a consulting side. And it really depends on the

project. There can be fees generated of \$200,000 to \$250,000 on a fee basis for development projects.” [#37]

- The Black American owner of a CBE-certified goods and services firm stated, “I would say our average would be somewhere between 10,000 and 25,000.” [#39]

**Multiple firms reported working on contracts in Washington, DC.** [#13, #20, #26, #28, #AV]. Some firms worked only in Washington, D.C. , while others focused on work in the neighboring states of Maryland or Virginia. For example:

- The principal of a majority-owned professional services firm stated they primarily seek their work in D.C. [#13]
- The owner of a WBE-certified construction company noted, “We try to stay D.C. and then Prince George’s County and then Eastern Montgomery County. We try not to go beyond Silver Spring, time wise, it’s not cost effective.” [#20]

**Most firms reported working in the Washington, D.C. marketplace and with clients outside of Washington, D.C. .** [#4, #5, #7, #8, #11, #12, #14, #15, #16, #18, #25, #29, #30, #35, #37]. For example:

- The Black American woman representative of a CBE- and DBE-certified professional services firm noted, “The farthest of our projects right now is Puerto Rico on the program and construction management side. We have a federal contract with the Federal Transit Authority. That can be anywhere in the country. It’s primarily been on the east coast.” [#4]
- The Black American owner of a construction company said, “We look as far as Philadelphia, Chicago, City of Dallas.” [#5]
- The Black American owner of a professional services firm stated, “I primarily work in the Maryland district, in the Virginia area. I haven’t really done much out of that yet.” [#7]
- When asked how far her company seeks work, the Black American woman owner of a CBE- and DBE-certified certified construction company stated, “we actually cover DC, Maryland and Virginia. We can go as far as Delaware and that’s probably as far north, and as far south as maybe West Virginia.” [#8]
- The principal of a majority-owned professional services firm explained, “we’re primarily focused on DC, Maryland and Virginia. And when I say DC, Maryland, Virginia, it’s all of Maryland and all of Virginia. So we’ve done projects as far as the South is, Norfolk, Virginia, now to Virginia Tech and Maryland out to the Eastern shore. So it’s the full area of those three states, which we look at as the mid-Atlantic. But we have from time to time also looked at projects a little further field into Delaware, into Pennsylvania and into North Carolina.” [#11]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm noted, “We seek business everywhere over Maryland and also go to D.C. and Virginia. That’s pretty much where our projects are. We have not been out of DMV areas yet.” [#12]
- The principal of a majority-owned, CBE-certified manufacturing company stated his company works in DC but also the throughout the United States. He also noted that



indirectly, his US Clients have facilities in other countries that his products are used in. [#14]

- The owner of a majority-owned, DVBE-certified professional services company noted, “So South Carolina was the farthest away. We were awarded a contract by the South Carolina Department of Health and Human Services and are an authorized vendor on their state Medicaid program, but that’s as far.” [#18]
- The representative of an Asian American-owned goods and services firm noted they have global distribution rights to the products they carry. [#19]
- The owner of a majority-owned professional services company stated, “I’m not geographically limited. I’ve been all the way to Calgary and Canada. I’ve been to the Virgin Islands. I’ve been to Guam, Hawaii, California, New Mexico, Arizona.” [#23]
- The owner of a majority-owned professional services company stated, “Well, we focus on DC, so DC, Maryland, Virginia, but many of our clients, or at least some of our clients, are national or international organizations or law firms. So, for instance, right now we’re doing searches in California. We’re doing searches in Chicago, in Boston, in New York, in Florida.” [#25]
- The owner of a majority-owned, DVBE-certified company noted, “Our footprint is anywhere in the US.” [#27]
- The representative of an DBE-, MBE-, and WBE-certified goods and services firm stated, “We probably have the ability to reach, let’s see, probably at least 20 of the lower 48 states.” [#35]
- The Black American woman owner of a professional services company noted her work is mostly in DC but, “...can be as far as Richmond.” [#37]

**4. Growth of the firm.** Business owners and managers mentioned the growth of the firm over time. For example:

- The Black American woman owner of a water construction company stated that the growth of her company is slight better than industry standard. She elaborated, “And I only say slightly better because again, I’m a native Washingtonian, so I know a lot of people. And so, as a consequence, and actually as an out group of my business model, I don’t tend to look for work, work tends to find me. And I’ve been very blessed by that. Because people call me up and say, ‘You do this, can you do this job?’ Which I think is not a typical for a company my size, particularly of a woman of color, it just doesn’t happen. But I think that I’ve had some interesting interactions we’ll call that, with larger companies in the industry.” [#1]
- The Black American woman representative of a CBE- and DBE-certified professional services firm noted that the growth of her company, “primarily had a lot to do with the influx of other comparative civil and structural professional services firms into the district’s CBE program. So as a result of the ability for national firms to become CBEs, it increased the number of options for, and increased the level of competition. And a lot of the local developers, at least on the private side, have national relationships. So those firms were able to come in and penetrate and, in a sense, take some of the market share that our firm was accustomed to prior the changing of the CBE.” [#4]

- When asked about the growth of her company compared to others in the industry the Black American woman owner of a CBE- and DBE-certified construction company stated, “I would say that our growth is definitely a lot slower than the average, considering that this is a male-dominated industry, specifically a white male-dominated industry. I would attribute that pace and growth to the availability of funding to be able to fund projects that is, I feel, more widely available to that demographic that I just mentioned as opposed to mine. I think that it is a little bit harder to be able to access that capital as a Black woman.” [#8].
- The Black American woman owner of a VBE- and DVBE-certified professional services company explained, “I honestly don't know how to answer that question, but all I know is that it's very challenging to get into this space, people don't take you seriously as a Black woman in this space. And so, the growth of construction is billions and we command about 0.01% of that.” [#10]
- The principal of a majority-owned, CBE-certified manufacturing company explained the growth of his company is slightly better than industry average. He attributed this to the company's location in DC and that a lot of his business is derived from the surge of real estate development projects that DC has experienced. [#14]
- The representative of a majority-owned, SDVOB-certified professional services company noted, “Well, the last four or five years it's been on a pretty steady, consistent growth pattern, probably added an additional two or three positions each year. And then now with the product side, I anticipate that we'll see revenue probably a little bit over \$5,000,000 on the product side this year. And so that should put us into the eight or \$9 million category.” [#16]
- The owner of a WBE-certified construction company noted, “What we do is a little niche. So, the contracts that we end up doing and the jobs that we end up doing are too big for Joe Schmo plumber and they're too small for the big guys. So, I can't really say because what we do is just different. [#20]
- The owner of a majority-owned professional services company noted, “My understanding is our growth is actually a bit higher than the industry average.” [#25]
- The representative of an MBE-certified goods and services firm explained, “I would say, actually, there's not much growth, especially in the past several years since the... Actually, it's COVID. Since COVID, there's very little growth in it.” [#29]
- The Black American owner of a CBE-certified goods and services firm stated, “I would say that we are probably equal. I haven't seen a lot of growth in several of the other companies. There has been a lot of closures with several of the other companies. So, we're small. The market of us is small. I think in DC there are, listed on the CBE, maybe 25, 30 companies. But active on the streets it's probably only four or five of us doing business.” [#39]

## B. Ownership and Certification

Business owners and managers discussed their experiences with the Department of Small and Local Business Development (DSLBD) and certification programs. This section captures their comments on the following topics:

1. DSLBD and other certification statuses;
2. Advantages and disadvantages of certification; and
3. Experiences with the certification process.

**1. DSLBD and other certification statuses.** Business owners discussed their certification status with the Department of Small and Local Business Development and other certifying agencies and shared their opinions about why they did or did not seek certification. For example:

**Nine firms interviewed confirmed they were certified as a CBE, DBE, MBE, or WBE** [#2, #3, #4, #6, #8, #13, #14, #38, #39]. For example:

- The principal of a majority-owned, CBE-certified goods and services company explained they became a CBE, “To obtain business in DC.” [#14]

**Twenty-eight business owners and managers explained why their firms had not pursued certification.** Many uncertified firms were unaware of the certification or its benefits [#1, #5, #7, #9, #10, #11, #12, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #37, #40]. For example:

- The Black American woman owner of a construction explained why she is will not become a CBE until, “...I really feel in my heart and in my mind that it is something that will be beneficial and that we are really going to be true to the spirit of the CBE law...” [#1]
- The Black American woman owner of a VBE- and DVBE-certified company stated she is not a CBE because, “The paperwork is challenging.” [#10]
- The representative of an Asian American-owned goods and services firm noted the company was once a CBE but is no longer a CBE because their certification lapsed. [#19]
- The principal of a majority-owned professional services firm stated, “Because we looked at the requirements and determined that the effort to do so would not be worth the benefit for us, and the outcome would be uncertain.” [#11]

**2. Advantages and disadvantages of certification.** Interviewees discussed how CBE/DBE/MBE/WBE certification is advantageous and has benefited their firms. Others discussed the downsides to certification [#1, #2, #4, #6, #8, #13, #14, #19, #37, #38, #39]. For example:

- The Black American woman owner of construction company feels, “The City needs find a way of making sure that the companies that are getting certified are legit, that they're more than a shell company, that they're a true legitimate company.” [#1]

- The Black American owner of a construction believes the benefit of the program are the spending goals but added he is not seeing the value. [#2]
- The representative of a CBE- and DBE-certified professional services firm noted, “The benefit is that as a local firm, we are in a sense guaranteed some opportunities on all of the DC Government contract, whether it be as a prime or a sub-consultant. So even if the project is too large for us to prime, we still know that there's an opportunity to win a place on a team of a national firm that may be going after the opportunity.” [#4]
- The Black American woman owner of an MBE-, SBE-, SDVOSB-, and CBE-certified company noted she became a CBE, “So that I can try to get opportunities.” [#6]
- The Black American woman owner of a CBE- and DBE-certified construction company noted she became a CBE, “Because I met the qualifications and I thought that if it were an avenue to be able to receive more work or have an advantage in receiving work, then why not?” [#8]
- The representative of a majority-owned professional services company noted, “I mean, the obvious benefit is that it gets us into a group of people that have an increased probability of getting ourselves on a team. That's really the benefit of it for us, you know?” [#13]
- The principal of a majority-owned, CBE-certified goods and services company stated that the certification process is, “Much better now that everything is online.” He also noted that a disadvantage is, “Convincing clients of your capabilities based on perceptions of who CBEs are.” [#14]
- The representative of an Asian American-owned goods and services firm noted, “I was going to say if there is a disadvantage, it's all psychological. I think a lot of people out there often will look at certified businesses as something less than. And I know that's unfair, but I think it's an opinion that some have. [#19]
- The Black American woman owner of a professional services company noted, “In general, it was fine.” She further explained, “I found that some of the employees were very non-entrepreneurial and that it was clear that they had never attempted to run a business before, and that they, for the most part, that they did not live in DC. There was an attitude of closing up the books at five o'clock and getting home to the suburbs that I found frustrating. But ultimately, it was not fun, but doable. [#37]
- The Asian American owner of a construction company noted his company directly benefits by becoming a CBE. He stated, “I would say all of my work has been because I'm a CBE.” [#38]
- The Black American owner of a CBE-certified goods and services firm noted, “One, we are a DC based business. Long term resident business. And of course, we're minority owned. So it makes sense that we basically pour back into our city of ... if we live here, we work here, it's just a cycle of money. We take from the city, and we put it back in the city. So that's how we are.” [#39]

**3. Experiences with the certification process.** Businesses owners shared their experiences with DSLBD certification processes [#2, #4, #6, #38, #39, #3, #13, #37, #14, #AV]. Their comments included:

- The Black American woman owner of an MBE-, SBE-, SDVOSB-, and CBE-certified company stated, "I thought it was smooth. I didn't have any issues." [#6]
- The representative of a majority-owned professional services company noted, "It's tough but I'm okay with it being tough because I don't want it to be a free for all for everyone. It's not a complaint really. It's just more of like, oh, it is a burden, but that's okay." [#13]
- The representative of an Asian American-owned goods and services firm stated, "The only other one that I've encountered is in Washington State. So interesting, the two Washingtons. And it was incredibly easy in Washington State. Just filled out a form, couple of questions, and that was it. [#19]
- The Black American woman owner of a professional services company noted, "Pain in the ass. Not particularly difficult. Not easy. And it probably has to do with my temperament, and I should probably get someone else to do it." [#37]
- The Black American owner of a CBE-certified goods and services firm noted, "It was relatively easy. It's the same basic questions that any certification format takes. They've even improved the recertification process where it's not as laborious as it was before. They've kind of streamlined a lot of it." [#39]
- A representative of a Black American-owned professional services company stated, "The process done with ease, with reference to getting the business started and certified. Also being certified with the D.C. for disadvantage [is] favorable for our company and [we] have won contracts as a prime and sub consultants." [#AV91]

**Recommendations for improving the certification process.** Interviewees recommended a number of improvements to the certification process. For example:

- The Black American woman owner of a CBE- and DBE-certified construction company feels improvements need to be made around "oversight and regulation". She explained, "I think the oversight into the validity of these businesses is very lax, so that just opens the door for perpetrators to take advantage. I think that that's one thing that could be worked on." [#8]
- A respondent from a public meeting stated, "In the district, generally small businesses, minority businesses, there is a cap. You can't make more than, let's say \$1 million dollars in this category or else you're booted out. Now, that in itself inhibits growth, because let's say the cap is \$2 million, you reach \$2 million that in itself inhibits growth it really interferes with a business growth. You get to a certain point and agencies, they can't deal with you because you are out of that category, but yet still you're not ready for the next category of growth and there's no real proper transition. So, you get to that point and then you're lost. You can't compete with the folks in the other category, you can't compete with the other folks because you're ruled out. That in itself to me is a disparity." [#PT3]
- A respondent from a public meeting stated, "So many of the CBEs they subcontracted to the Arlington County and Alexandria and Prince George's County, which is where the money

goes. You have to remember a CBE ... like a roofer or plumbing, or HVAC, they don't get the work. The work goes to Maryland and Virginia, but it goes through as CBE. And the contracting officer is happy to tell you that this was awarded to CBE, but the money went to Alexandria or Fairfax County or Montgomery County or PG County." [#PT6]

- The CBE-certified professional services firm stated, "DC and VA do not have reciprocity for their small business certification like DC and MD do. This makes small businesses choose one or the other. That narrows down the business opportunities for small businesses. The DMV region should consider a single certification. Even better, the Federal certification should suffice. If at all, business size limits can change based on location, but the part about > 50% minority/women-owned/small business does not change by state/Fed. Having to do it for every state seems redundant." [#WT6]
- The CBE-certified professional services firm stated, "It is critical that the group examine not just whether CBEs are awarded contracts but whether the CBE has and utilizes District residents to work on the project. We often find that the CBE has a mailbox in the District by all of the people who work on the project are Maryland or Virginia residents which completely defeats the purpose and spirit of creating employment and contracting opportunities for DC-based companies that provide jobs to DC residents." [#WT7]
- The Black American woman owner of a professional services company noted, "Kind of recognize where business has gone. I think there's been this huge ... Since DSLBD certification process regs were written, small businesses have gone to cooperative ... the WeWorks of the world. And I think to look upon that as somehow not being sufficient cuts out ... it just isn't in touch with how business is done anymore. You know, having to have a physical place, one year lease. It just isn't the way in which business is done. And I think there have got to be ways to both protect DC from sort of being hoodwinked while recognizing that business is being done very differently, so I'd be interested in the sort of collapsing of the process to recognize national certifications." [#37]

## C. Experiences in the Private and Public Sectors

Business owners and managers discussed their experiences with the pursuit of public- and private-sector work. Section C presents their comments on the following topics:

1. Mixture of public and private sector work;
2. Experiences getting work in the public and private sectors;
3. Differences between public and private sector work; and
4. Profitability.

**1. Mixture of public and private sector work.** Business owners or managers described the division of work their firms perform across the public and private sectors and noted that this proportion often varies year to year.

**Ten business owners or managers explained that their firms only engaged in private sector work** [#6, #7, #10, #12, #20, #22, #25, #26, #34, #37]. For example:

- The Black American owner of a professional services firm noted, “I’m almost a hundred percent private, to be honest” [#7]
- When asked about the proportion of work the company performs in the owner of a majority-owned, VBE- and disabled-certified professional services company commented, “Well, at least 90 percent of our work comes from the private sector.” [#10]
- The owner of a WBE-certified construction company stated, “Probably 99% of us are private. We don’t, yeah, we work for private contractors.” [#20]
- The owner of a majority-owned professional services company stated, Right now, it’s 100% private.” [#22]
- The Black American woman owner of a professional services company noted, “Hundred percent private sector.” [#37]

**Five business owners or managers explained that their firms only engaged in public sector work.** [#10, #11, #27, #39, #40]. For example:

- The owner of a WBE-certified construction company noted, “Almost all of our work is public, I would say it’s 90-95 percent public versus private. We will get calls from developers, contractors, where they might need an entrance at a subdivision, or they’re tying in a public road into the entrance of the subdivision, so they need us to do a lane restriction, closure, merge, or something to tie it all in. But those requests compared to us actively bidding INDOT work, or city work is pretty small.” [#10]

**For seven firms, the largest proportion of their work was in the private sector** [#3, #14, #24, #17, #23, #29, #32]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted that the largest proportion of her work is in the private sector but expressed she would like to do more public sector work. [#3]
- The principal of a majority-owned, CBE-certified goods and services company noted that 30% of his work comes from the public sector vs. 70% from the private sector. [#14]
- When asked about the portion of work that comes from the private sector versus the public sector the Subcontinent Asian American male owner of an MBE- and DBE-certified construction company noted, “Last year, I would say 70 percent private, 30 percent public. This year, there may be a shift in the wind because we found that we’ve been more profitable in doing some of the public work, because the private sector has been very, very tight on markups and margins. In the public sector, we bid three jobs with the city. One is not profitable, the second one was so-so, and the third one seems to be profitable, so right now we’re probably going to bid more public once we find our sweet spot.” [#24]

**For nine firms, the largest proportion of their work was in the public sector** [#1, #4, #9, #11, #12, #16, #35, #36, #38]. For example:

- The representative of a CBE- and DBE-certified professional services firm noted the reason they lean more towards public sector work is because, “Private sector sometimes focuses heavily on established relationships. And private sector doesn't have the same local requirements at times as some of the public sector work.” [#4]

**Five firms reported a relatively equal division of work between the public and private sectors while acknowledging year-to-year variability due to changes in the marketplace and economy** [#2, #6, #8, #19, #23]. For example:

- The Black American woman owner of a CBE- and DBE-certified construction company stated, “I would say it's almost split. I would say between 40 to 50% in the private sector and the other 50 in the public.” She went on to explain, “We definitely, I would say, branched off into different capabilities after my fifth year in business, maybe fourth to fifth year, specializing more in electrical. That was not a capability that we really provided in the initial years. [#8]
- The representative of an Asian American-owned goods and services firm stated, “I'd say it's probably been about that level. And it was probably in the first year of operations. It was probably a 80-20 private-public. Public grew and private shrank, partly as a result of loss of capital. But because of the way we've diversified, I think we're probably looking at a 50-50 split for a while.” [#19]
- The owner of a majority-owned professional services company explained, “It's varied over time. I like to try to establish or keep it somewhere around 50/50, but right now it's a little more private sector. But I'm open to clients and regardless of where they come from just happens to be that way now.” [#23]

**2. Experiences getting work in the public and private sectors.** Business owners and managers commented on what it's like to seek work with public and private sector clients in the Washington, D.C. area.

**Five business owners elaborated on the challenges associated with pursuing public sector work** [#1, #16, #28, #AV]. Their comments included:

- The Black American woman owner of a construction company explained her challenge pursuing public sector work in DC. She stated, “Municipalities (public sector), what I have found is it is more highly political...” She went on to explain that out of state companies are able to receive public sector work in DC because they are able to utilize local, “certifications to their favor...” and “by our government are never held accountable.” [#1]
- A representative of a Black American-owned construction company stated, “A lot of loopholes, and red tape with the government very time consuming. You need relationships to get contracts and bids...” [#AV166]



- A representative of a Black American woman-owned construction company stated, "The government needs to open the doors for new contractors, and not keep with the same contractors they are familiar with." [#AV261]

**Two business owners and managers described public sector work as easier or saw more opportunities in this sector** [#3, #8]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted that although public sector work requires more paperwork, it is easier to get work because the playing field is more level due to certification requirements. [#3]

**Two business owners or managers noted that it is not easier to get work in one sector as compared to the other** [#4, #11]. For example:

- The representative of a CBE- and DBE-certified professional services firm explained, "On the private side it's more relationship based. So, it's building relationships with developers and architecture firms. So, it really is familiarizing yourself, versus on the public side, it's more certification based. So, it's relationships and certification. So, the firms know you on the public side, but they also are looking for what certifications you have to meet subcontracting goals." [#4]
- The principal of a majority-owned professional services firm noted, "I think that there are aspects that are easier in each, the readily available information on the public side is easier than the private, but the fully open competitive field along the public side, as well as some of these other issues that I've already mentioned make the public maybe a little harder to deal with than the private. I think they're both easier and harder in their own ways." [#11]

**3. Differences between public and private sector work.** Business owners and managers commented on key differences between public and private sector work.

**Sixteen business owners and managers highlighted key differences between public and private sector work** [#3, #8, #11, #14, #15, #16, #19, #21, #22, #25, #27, #29, #32, #38, #39, #AV]. Their comments included:

- The Black American woman owner of a CBE- and DBE-certified construction company explained, "I would say that contractually, there's not a whole lot of steering from the contract. Everything that's in the contract is very cut and clear from the beginning. I would say that the systems that are in place in the private are more efficient because they are streamlined and catered to their specific industry, as opposed to dealing with a broad spectrum, as I do think that the government tends to do. I think that that just makes a lot of things easier. I think that payment comes easier. I think accounting and workload is streamlined in a more efficient way." [#8]
- The principal of a majority-owned professional services firm stated, "Pursuing public sector work, there's generally more information readily available. And so, kind of the research or investigation of opportunities and deciding what to target is one kind of thing, generally publicly available information. And we could supplement that by direct outreach. And the

private sector more often than not, the only way to get information is through outreach.”  
[#11]

- The principal of a majority-owned, CBE-certified goods and services company noted that private sector is more knowledgeable and flexible versus the public which he feels is not as vested. [#14]
- The representative of a majority-owned professional services firm noted, “The number one difference is so on the product side, there is very little difference, but on the services side, one of the big differences is that most of the time, the people that are doing the actual work, we have to show proof of their citizenship. So, either that we have to prove that they're an American citizen, or we have to show that they have a green card. And also, we are restricted from having somebody that's a foreign citizen being able to go in and do the work. In the commercial side, none of that really matters or very rarely does it matter.”  
[#16]
- The representative of an Asian American-owned goods and services firm stated, “So on the private side, it's just a lot more streamlined. Once you find a decision-maker, and you give them the data, it's a yes or no. And it happens fast. On the public side, you got to go through all sorts of hoops and s#@t to get a positive decision. However, once you're in, then I think ... for instance, NYCHA, which is the New York City Housing Authority of clients. And getting that first account took forever. And now, we're selling them a lot. So just decision-making structure on the public side is just a lot more cumbersome.” [#19]
- The owner of a majority-owned professional services company stated, “Well, generally speaking, private sector work...the person you're working for has a very immediate interest in working with you. They have a specific problem that needs to be solved or something that needs to be done...None of that occurs in public sector, in honest public sector where deliberately the selection is supposed to be a non-personal relationship based on objective criteria. Sometimes, in the best of cases it is like that. If it gets too personal, then it tends to become corrupt, unlike the private sector where it's inherently personal.” [#22]
- The Black American owner of an MBE-certified goods and services firm noted, “It's easier to get work in the private sector for me.” He reasoned this by saying, “You're dealing with peers. You're dealing directly with the decision maker, and there's more sources of work around.” [#32]
- The Black American woman owner of a CBE-certified goods and services company noted there are challenges in both sectors. She noted the paperwork and financial burdens brought on by public sector work and the longer delays in receiving payments in private sector work. [#3]
- The representative of a CBE- and DBE-certified professional services firm explained, “Private sometime can be faster paced or it could be slower. It varies. I think it can be the same. Public sector is, I would say, more steady. It's more routine in a sense, because the schedules are usually set prior to a solicitation or opportunity coming out, whereas private, it could start and it could stop just depending on financing and things like that, other factors.” [#4]

- The principal of a majority-owned, CBE-certified goods and services company noted that work in the public sector is better than the private sector. He noted that the private sector micromanages. [#14]
- The Hispanic American owner of a construction company explained, “I think working in the private sector, you have a little more flexibility, and you don't have to inquire about all these permits. You don't have a lot of restriction when it comes to hours that you can work and operate. You can actually go out there and get the job done without having any state, local or county restrictions, as long as you follow OSHA standards and the utility standards.” [#15]
- The representative of a majority-owned professional services firm noted, “Yes. Part of the challenge that we have had on the commercial sector, is that so far, we have not done as good a job as we should in advertising and educating potential customers about what we can do. One of the advantages for us in the public sector is that they take the time to have very specific requirements and then they post them up so that we can publicly see them, and we can evaluate upfront whether it's something we can do or not do. And so, it makes it easier for us to choose what type of work to go after.” [#16]
- The representative of an MBE-certified owned goods and services believes, “Public (private) it's easier to get work than it is in the government...Public, you can go out to the seminars, and you pretty much know the people. And so, it's more like a word of mouth type thing. Government is like you always never know unless you really make a connection to somebody. It's like you bring a group of people together, and they all have the same interest, but you really don't get to know anybody in the government.” [#29]
- The Black American owner of a CBE-certified goods and services firm noted, “The private sector is a little more streamlined. The approval process, rather, is a little more streamlined. The decision-making process is faster. Can't really say the payment process is faster. They're about the same. DC has come a long way in paying faster. So, I would say they're probably equivalent once they get all the paperwork. But that's about it.” [#39]
- A representative of a majority-owned construction company stated, “The paperwork is just out of control which is why generally why we shy away working for government agencies.” [#AV371]
- The Asian American owner of a construction company noted, “The government is more regulated, and they have more criteria in making a selection. They have better processes than the private sector. Whereas the private sector do not need to follow any guidelines but their own. And they find justifications to follow their own guidelines. And I have been a victim of meeting the deadlines for that private company. And they have not. And only to know that they did what's called the bidding project. They reached out to other companies to beat my number. And I was not awarded a project for that. But we did put in an extremely detailed amount of time to do what is required or expected of us to meet that deadline. And to know that other companies provided their price after the deadline and were awarded the projects were discouraging and many more.” [#38]

**4. Profitability.** Business owners and managers shared their thoughts on and experiences with the profitability of public and private sector work.

**Six business owners perceived public sector work as more profitable** [#3, #4, #23, #25, #29, #32]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted that public sector work is more profitable because you don't have to finance the job. [#3]
- When asked if profitability differs in the public sector versus the private sector, the representative of a CBE- and DBE-certified professional services firm explained, "I would say sometimes public projects. It varies. Sometimes public projects can be more than private because private budgets are smaller than public projects." [#4]
- The representative of an MBE-certified owned goods and services noted, "You make more money government." [#29]

**Two business owners and managers perceived private sector work as more profitable** [#11, #15]. For example:

- The principal of a majority-owned professional services firm noted, "Profitability is more difficult in the public sector speaking broadly. It does vary by agency by client." [#11]
- The Hispanic American owner of a construction company explained, "It all depends. I say it does. Public sector is usually longer, and longer projects, they obviously can give you more profit. And private jobs are usually short projects, which it can range from three days all the way to a month. And you can actually be very profitable. Because as I mentioned again, the restrictions are working long hours in a safe environment, in a safe manner. You can bid that job for 10 days and you can finish it in five" [#15]

**Four business owners did not think profitability differed between sectors** [#8, #19, #13, #38]. For example:

- The Black American woman owner of a CBE- and DBE-certified construction company explained, "It certainly can, but I would honestly say that it can really depend on the contract in either sector. I think that depending on the project or the service being provided, that the margins can vary, but I think that that is in either sector." [#8]
- The representative of an Asian American-owned goods and services firm stated, "For us, no. Other than the time expanded getting the work in the first place." [#19]
- The Asian American owner of a construction company noted, "It shouldn't be. I'm not aware of that. I don't think so." [#38]

## **D. Doing Business as a Prime Contractor or Subcontractor**

Part D summarizes business owners' and managers' comments related to the:

1. Mix of prime contract and subcontract work;
2. Prime contractors' use of certified subcontractors;

3. Prime contractors' decisions to hire and preferences for working with certain subcontractors;
4. Subcontractors' experiences with and methods for obtaining work from prime contractors; and
5. Subcontractors' preferences to work with certain prime contractors.

**1. Mix of prime contract and subcontract work.** Business owners described the contract roles they typically pursue and their experience working as prime contractors and/or subcontractors.

**Eleven firms reported that they primarily work as subcontractors but on occasion have served as prime contractors.** Most of these firms serve mainly as subcontractors due to the nature of their industry, the workload associated with working as a prime, the benefits of subcontracting, or their specialized expertise [#3, #4, #6, #10, #15, #17, #20, #25, #26, #27, #36]. For example:

- The Hispanic American owner of a construction company explained, “Just basically, to compete against a general contractor who has been in business for a long, long time is very hard. So, like I said, you have to build up to it. So, being a brand-new company, you have to build your reputation.” [#15]
- The owner of a WBE-certified construction company stated, “Nobody for what we do, it's either a repair if you want to call us a prime on a repair or if it's a new install, you're part of a project. So, we're not contractors, we're utility people.” [#20]

**The majority of firms (15 of 29) firms that the study team interviewed reported that they usually or always work as prime contractors or prime consultants** [#2, #14, #19, #21, #22, #23, #24, #29, #32, #34, #35, #37, #38, #39, #40]. For example:

- The owner of a majority-owned professional services company explained, “As the architect, I should be the lead for the way I like to work and what I do, is to manage and control the project properly, whether it's what the client's looking for. If I'm a subcontractor to somebody else, I don't have that type of interface with the client. And I don't like that as an architect.” [#21]
- The owner of a majority-owned professional services company noted, “I'm always the prime contractor, and indeed rarely, in fact never, do I have subcontractors.” [#22]

**Three firms reported that they work as both prime contractors and as subcontractors, depending on the nature of the project** [#7, #11, #24]. For example:

- The Black American male owner of a professional services firm explained, “It just depends on the project. Again, I work with some contractors who they get the job. So, they're basically the prime. Then I just tag along with them because I have a business relationship with them, a longstanding business relationship with them.” [#7]
- The owner of a majority-owned professional services company that specializes in real estate services stated that he has internal staff that can handle minor jobs but will hire subcontractors for more specialized services. [#24]

**2. Prime contractors' use of certified subcontractors.** The study team asked business owners if and how they decide to subcontract out work and the tools they use to find certified subcontractors when they are the prime contractor. Business owners and managers also shared their experiences soliciting and working with certified subcontractors.

**Prime contractors mentioned what methods they use to find disadvantaged businesses and why they use them** [#2, #11, #14, #19, #29, #3, #4, #12, #17, #27]. For example:

- The Black American owner of a CBE-certified construction company noted he finds disadvantaged businesses from “recommendations, word of mouth, relationships and DSLBD’s database, and chooses to use them to be “competitive”. [#2]
- The Black American woman owner of a CBE-certified goods and services company noted that she selects disadvantaged businesses based on word of mouth and uses disadvantaged firms because she likes to see other firms get opportunities. [#3]
- The representative of a CBE- and DBE-certified professional services firm explained they explained, “If we don't have a relationship with them, we'll look through the log or again, reach out to our industry friends to see if they have any referrals or smaller businesses that they may have used and have had a good working relationship with.” She also explained they like to use disadvantaged businesses because, “we consider ourselves a minority and disadvantage business, we want to ensure that if we are able to land an opportunity that we work with other minority firms as well, because we understand the challenges associated with being selected through a team.” [#4]
- The Asian American owner of an MBE- and WBE-certified professional services firm noted, “We have connections with many local disadvantaged businesses and we kind of know all of them, like what kind of services they provide. On the other hand, there's also this DBE directories from MDOT or Baltimore City DOT, MWBOO's directory.” [#12]
- The Asian American woman owner of a professional services IT firm explained, “There's a WBNC, in Washington, D.C. , metropolitan women-owned business, networking events from there, I get their sites and I'm on their LinkedIn profiles too, to get their work and then ask them about it.” She also noted why she used POC-owned firms by noting, “I support them because everybody is struggling right now to get some work. And if I can get the work from them, why not?” [#17]
- The owner of a majority-owned, DVBE-certified company stated, “I would rather work with the disadvantaged companies. I'm also a chairman of a nonprofit, and we hire people with disabilities. That's big on my list, especially service-disabled vets, but also people with disabilities.” [#27]
- The principal of a majority-owned professional services firm explained, “Combination of networking. I mean, it could be general industry networking. I meet people at conferences and if I get stuck then I'm utilizing the database and seeing if I find someone in a discipline that has a certain credential. To be honest that last one doesn't usually bear fruit. I typically find that I already know who's out there and I haven't done very much, but sometimes I'm surprised.” [#11]

- The principal of a majority-owned, CBE-certified goods and services company stated that they usually find POC-owned businesses using DSLBD's website. He further noted one of the reasons they do so is based on a requirement or need. [#14]
- The representative of an Asian American-owned goods and services firm explained, "It's just been through relationships. I either knew them or I called someone up and said, 'I need a name.'" He later explained why they like to use disadvantaged businesses, "I think that the answer is out of habit and a sense of civic responsibility." [#19]
- The representative of an MBE-certified owned goods and services stated, "Because we are disadvantaged. Well, we're not disadvantaged, but we are a minority business, so we try to support..." [#29]
- The Asian American owner of a construction company explained, "Because they're similar to me and I want to give them a chance and an opportunity..." [#38]

**Prime contractors described their experience working with POC-owned, women-owned, or other disadvantaged businesses as subs compared with non-disadvantaged subs** [#7, #11, #12, #14, #19, #21, #29, #34, #35, #38, #3, #4, #13, #17]. For example:

- The Black American owner of a professional services firm stated, "I find that they're easier to deal with. A lot of times, we can collaborate and make project decisions on the fly more easily, change or renegotiate the elements of the contract more easily. I think collaboration is easier because there's less red tape and protocols to go through." [#7]
- The Black American woman owner of a CBE-certified goods and services company noted that disadvantaged businesses work harder. [#3]
- The representative of a CBE- and DBE-certified professional services firm stated, "I don't have any significant difference in working with minority-owned or women-owned." [#4]
- The representative of a majority-owned professional services company explained, "I can't say I can speak authoritatively on that. I was just thinking there, there was one business that we used out in Virginia that was minority-owned. I mean, absolutely had no impact on our working relationship. It's just the same as anyone else. Yeah. There's nothing different about it." [#13]
- The Asian American woman owner of a professional services IT firm explained, "I have a good experience. They are experienced people and I have got my capability statement done and other projects, some small projects, everything was good." [#17]
- The owner of a majority-owned, DVBE-certified company stated, "Mixed! I had one that was so-so, and I didn't really like the quality of the work. So, I had to change to a larger company, but anyway, that's really the only experience I can remember." [#27]
- The principal of a majority-owned professional services firm explained, "From my perspective, I would say in both cases the important thing is that they are good to work with and have the capacity and the capability. I have very, very good experiences and very, very bad experiences with minority- and woman-owned firms. I have very good experiences and very bad experiences with firms that are not minority- or woman-owned. And that's really the first cut, we have to know their firm is going to perform." [#11]

- The Asian American owner of an MBE- and WBE-certified professional services firm noted, “I would not say there isn’t any remarkable differences because we are in a professional field and all the companies and firms, whether large or small they all have professional expertise.” [#12]
- The principal of a majority-owned, CBE-certified goods and services company stated there is no difference working with disadvantaged businesses as subs compared with non-disadvantaged subs. [#14]
- The representative of an Asian American-owned goods and services firm noted, “First part of the answer is it depends on who the sub is. But the longer answer is if you get the right sub and the right relationship, it's excellent.” [#19]
- The owner of a majority-owned professional services company explained, “I've worked with a lot over the 30 years, and I've never had any issues working with them versus not. I honestly don't think of that way, but I've had woman-owned construction companies, even the prime one I work with right now is woman run. I've worked with them for nearly 30 years. So, I can't say I've had any issues or that I could tell you any difference.” [#21]
- The representative of an MBE-certified owned goods and services stated, “Well, it could be the same.” [#29]
- The representative of a majority-owned construction company stated, “I would say to you that when minority contractors are hungry, they're just as hardworking and as industrious, maybe even more so, because they're trying to get there. And respect for them, and I appreciate that, that they're out there to push to earn money and do a good job. I mean, there's pride in what they do.” [#34]
- The representative of a DBE-, MBE-, and WBE-certified goods and services firm stated, “Well, the level of quality is not where we would like it to be. And we find that since those type businesses pursue contracts based on lowest price, then the labor tends to be on the low end. That's just fact. Like they say, you get what you paid for. We've had in the national capital region where we've dealt with a couple companies where... Even me, it's like, ‘Well, wait a minute. That's all you're charging?’ So yeah, my experience is that when we look at the ones that I've worked with, the hub zones and the CBEs and some of the MBEs and those small businesses, the level of quality is not where we want it to be to put out in front of the kind of customers that we attract.” [#35]
- The Asian American owner of a construction company explained, “It depends on the owner and then it's going to be good and bad. Some owners don't have the experience. And sometimes they come up as a front. So, they don't do the work. They just get someone else to do the work for them. And they have their front, that's what I've learned. But the ones that have been in business for a while, they are solid.” [#38]

**Seventeen firms that the study team interviewed discussed their work with certified subcontractors and explained why they hire certified subs** [#2, #7, #11, #14, #29, #38, #19, #35, #39, #3, #4, #6, #10, #12, #17, #27, #20]. Their comments included:

- The Black American owner of a professional services firm stated, “Yes. I typically like to work with minority-owned businesses.” [#7]



- The Black American woman owner of an MBE-, SBE-, SDVOSB-, and CBE-certified company noted, “To be honest with you, I don't think I do anything other than that.” [#6]
- The Black American woman owner of a VBE- and DVBE-certified company stated that in “99% of the case” she looks to hire companies owned by minority women because she feels that demographic does not “have enough opportunities.” [#10]
- The representative of a majority-owned professional services company explained, “No! ...If they were minority-owned or something, yes, absolutely. No problem. It just happens that the ones that we use aren't. At least they're not that I'm aware of. They're just regular sub-consultants.” [#13]
- The owner of a WBE-certified construction company stated they “almost never” have sub out any work because they perform their services with their own personnel. [#20]
- The owner of a majority-owned, DVBE-certified company noted, “Not often, because there's a lot of things. I got a call the other day from Homeland Security. They wanted us to do some parking garages, and you're limited to the companies that can actually do that particular project, maybe three or four that can do it. So, you are limited sometimes in that way. You can't think about, well, I like a service-disabled vet company, but I just can't. You can't go any further.” [#27]
- The representative of an Asian American-owned goods and services firm noted, “It's not very often just because of the volume of the work.” He later explained that when there is more volume of work, “... 100% of our work would be done by CBE firms. Our installation work.” [#19]
- The owner of a majority-owned professional services company explained, “I don't specifically look for anything. I'm looking for the people that I've worked with in the past, but a lot of them, they are women-owned businesses, are minorities just by who I've worked with and over the years.” [#21]
- The owner of a majority-owned professional services company that specializes in real estate services when asked about his experiences working with minority contractors noted, “Well, I'm going to pick on your wording. Just because they're minority or women-owned, I wouldn't necessarily call them disadvantaged. I really don't care who owns the company, what color their skin is, what gender they identify with, I care about the job getting done. So, I don't spend a lot of time worrying about the issues of ownership, I just worry about the quality of the work.” [#24]
- The representative of an MBE-certified owned goods and services stated, “Every time. All the time.” [#29]
- The representative of a DBE-, MBE-, and WBE-certified goods and services firm stated, “I'd probably say definitely less than 50% because we find that more times than not, the smaller 8(a)s or CBEs, they're not big enough to support the efforts that we're going after.” [#35]
- The owner of a majority-owned construction company stated he does not select his subcontractors based on race but based on the quality of their work. [#26]
- The representative of a majority-owned construction company stated, “I would say we never really have, per se. I will tell you that I know that we... There were certain times, like

when we were doing that HUD work, you better believe you had to have... A certain segment of the work had to be performed by minority contractors.” [#34]

- The Black American owner of a CBE-certified goods and services firm noted, “I just haven’t had a need to solicit any subs.” [#39]

### **3. Prime contractors’ decisions to hire and preferences for working with certain subcontractors.** Prime contractors described how they select and decide to hire subcontractors, and if they prefer to work with certain subcontractors on projects.

**Prime contractors described how they select and decide to hire subcontractors** [#2, #4, #10, #13, #11, #12, #14, #19, #21, #24, #29, #34, #35, #38, #39, #2, #7, #19, #26]. Prime contractors shared the methods used to find subcontractors and the factors considered when selecting a subcontractor. For example:

- The principal of a majority-owned professional services firm noted that subcontractors are selected based on, “A combination of their expertise for a given kind of project, their familiarity and relationships with a client that we’re serving, our positive experience working with them knowing that they could perform and credentials, if any are required.” [#11]
- The Black American owner of a CBE-certified construction company explained his company hires subcontractors based on established relationships. [#2]
- The representative of a CBE- and DBE-certified professional services firm explained they choose subcontractors, “Based on, I guess, our past history with them, or their reputation, their familiarity with whatever project or agency we’re working with.” [#4]
- The Black American woman owner of a VBE- and DVBE-certified company noted, “Truth be told, I am going to hire black women, if I can find them. If I can’t than any other minorities, that will do.” [#10]
- The representative of a majority-owned professional services company noted, “Primarily history. We have a... We call it a library of subcontractors here, sub-consultants, and we dip into that, but it’s usually the same service again and again that we would require. I mean, when it’s the same service again and again, you know what you’re getting into, you already have a good working relationship established. They understand us, we understand them.” [#13]
- The Black American owner of a professional services firm explained that he selects subcontractors based on, “Firms I’ve interacted with in the past.” [#7]
- The representative of an Asian American-owned goods and services firm noted, “It’s all relationships.” [#19]
- The owner of a majority-owned professional services company that specializes in real estate services when asked why he uses certain subcontractors noted, “Responsiveness, quality of work.” [#24]
- The owner of a majority-owned construction company stated he selects his subcontractors based on relationships. [#26]

- The Asian American owner of an MBE- and WBE-certified professional services firm noted, “Based on networking and interest that we filled among the companies that provide certain services that we are looking for.” [#12]
- The principal of a majority-owned, CBE-certified goods and services company explained they select subcontractors based on capabilities and price. [#14]
- The representative of an Asian American-owned goods and services firm stated, “Well, it's all relationship based. And so, in the district, it was just because we knew them and literally just called them up and asked them to do it. They were CBE.” [#19]
- The owner of a majority-owned professional services company that specializes in real estate services noted that he uses, “...a Rolodex of firms I typically go to. But we certainly, for those jobs that are unique that we haven't dealt with before, we'll call up... I use Angie's List or some referrals from people that I know in the business for the appropriate contractors.” [#24]
- The representative of an MBE-certified owned goods and services noted, “Most of the time, it's people you already know. It's network.” [#29]
- The representative of a majority-owned construction company stated, “...we have a roster of subs we've used for many years. That's our first point of contact for that.” [#34]
- The representative of an DBE-, MBE-, and WBE-certified goods and services firm noted that they select subcontractors based on relationships. He went on to say, “I think we can touch about 62 markets nationally. So, what I've done is I've identified some companies that are large enough where I can have a hub. I've set up a hub with a company that's large enough, it's got multiple locations.” [#35]
- The Asian American owner of a construction company noted, “I use the DSLBD website, CBE website. I use the blue book. I use the WBC, ABC member network. I also use word of mouth. I ask around. I see advertisement on vans and then that's what I would use. That's how I find my subs. Referrals also from other general contractors.” [#38]
- The Black American owner of a CBE-certified goods and services firm noted, “Well, we have a strategic partner that we've been working with for years. So, they're generally our primary sub.” [#39]

**Primes discussed the effect working in the public or private sector has on their decision to hire subcontractors** [#7, #19, #29]. For example:

- The Black American owner of a professional services firm explained, “When it comes to the work product, yeah, I don't care, you know, if you're disadvantaged or green, blue, black, whatever, as long as we get what we need from you, then that's fine.” [#7]
- The representative of an Asian American-owned goods and services firm noted, “No. They're interchangeable for us.” [#19]
- The representative of an MBE-certified owned goods and services stated, “No, because we select quality...I mean quality people.” [#29]

**Firms who work as prime contractors explained that they do not want to work with subcontractors who are unreliable and consistently under-perform.** Preferred subs usually have a long-standing relationship with the prime and are responsive to the needs of the project [#2, #3, #7, # 11, #19, #21, #24, #26, #11, #19, #21, #24, #29]. For example:

- The Black American owner of a CBE-certified construction company noted he will not work with subs that “are not good”. He also noted that certified firms “seem to have their stuff in order”. [#2]
- The Black American woman owner of a CBE-certified goods and services company noted that there are subs she uses all the time due to great performance. [#3]
- The representative of a CBE- and DBE-certified professional services firm explained, “Well, in the firms that we use regularly, we’ve established a rapport. We know their work; we trust their abilities to perform. So, there’s no question in regards to if they team with us, if there’ll be any challenges.” [#4]
- The representative of a majority-owned professional services company explained, “Familiarity and established working relationships.” [#13]
- The owner of a majority-owned, DVBE-certified company stated there are subs they use all the time due to the following, “Dependable. You know you can depend on. You know the quality of work is good. Their price is competitive, and you know you can trust them.” [#27]
- The representative of a CBE- and DBE-certified professional services firm stated, “If they have a bad reputation or have failed to perform with us on a project, then we do not work with them.” [#4]
- The representative of a majority-owned professional services company explained, “There are, yes, but for no other reason than we’ve had a bad experience with them on a particular job. Nothing to do with their minority status or anything like that.” [#13]
- The Black American owner of a professional services firm stated, “Based on any past bad experiences, yeah, I wouldn’t work with them again.” [#7]
- The principal of a majority-owned professional services firm stated that his decision to not use firms is based only, “Because they have performed very, very poorly.” When discussing preferred subcontractors he stated, “I mean, the lead things are performance and communication. I know I can rely on them. They communicate effectively with me and with the clients. Those are the ones I want to use all the time.” [#11]
- The male representative of an Asian American-owned goods and services firm noted why there are some subs he won’t work with. He explained, “I found them to be overwhelmed, unresponsive, undependable. And probably because of all the challenges of running a very small business and being under-resourced and maybe lacking some business acumen.” When asked if it depends if they are disadvantaged versus non-disadvantaged, he stated, “Well, I just think disadvantaged businesses ... I mean it’s just so hard to start and manage a business. And they’re starting from a significant disadvantage in terms of capital and maybe business training. They’re very under-resourced, so they’re doing everything. And it’s just really, really, really hard, and they don’t have the resources or the network to help them out to the degree that ... I think anyone would need.” [#19]

- The owner of a majority-owned professional services company explained, “Generally, in this day in age, they've either gotten too expensive or too busy to even bother answering the phone. I'm a small guy, but I try to be very loyal to who I work with and if they're not, I'm not. So, I've come across some that I've had to work with for contractual reasons, with buildings and things that I honestly will never call again for any purpose.” He further explained, “Honestly, there's only a couple firms I wouldn't work with, and I don't necessarily know where they would qualify in those areas, those categories.” When discussing preferred subcontractors, he stated, “I think it falls into the category. They'll answer the phone. They'll do the work. You know the work is good, you know the cost is good, you know how they work. Because I do small projects, it's a very one-on-one type of relationship. So, I can't have a lot of cooks out there. And it's that type of a personality, it's like picking a friend.” [#21]
- The owner of a majority-owned professional services company that specializes in real estate services stated, “Well, there's always a number of variables. Poor workmanship certainly is a big one. Non-responsiveness, double billing. I mean, those would be the big things.” [#24]
- The owner of a majority-owned construction company stated he does not work with subs that are not timely and have bad behavior. [#26]
- The representative of an MBE-certified owned goods and services stated she uses subs all the time because of, “Quality of their work. You know the quality of their work.” [#29]
- The representative of a majority-owned construction company stated, “Well, I would say yes. There is a tier of subs where they like to do bonded work, like carpenters or a drywall contractor. And the reason is that they make more money doing bonded work because so few of them can get a bond.” [#34]

**4. Subcontractors' experiences with and methods for obtaining work from prime contractors.** Interviewees who worked as subcontractors had varying methods of marketing to prime contractors and obtaining work from prime contractors. Some interviewees explained that there are primes they would not work with.

**Two subcontractors reported that they are often contacted directly by primes because of their specialization, their certification status, or because of they are known in the industry** [#15, #17]. For example:

- The Hispanic American owner of a construction company explained, “They know about me, third parties, individuals, construction managers, project managers say, ‘Hey, you should reach out to this guy, who is a minority.’ And a lot of it is because of the minority status. I mean, that's one of the biggest reasons, because it's mandated for them to have X, Y, Z on DBE spend. So, that's the reason they reach out to me.” He continued, “I usually get invites. And let's face it, the construction world is a very small world. I mean, it's a big world, but it's a small world. So people talk. And basically, you start making phone calls. And also, construction managers, project managers, they know you, let's just face it, when you're a project manager or construction manager, you want the least amount of headaches. So, they want people who are going to minimize those headaches. So, they want you to be a part of their projects.” [#15]

- The Asian American woman owner of a professional services IT firm stated, “People reach it to reach out to me and I’ll bid on some of them too.” [#17]

**Two interviewees said that they get much of their work through prior relationships with or past work performed for primes.** They emphasized the important role building positive professional relationships plays in securing work [#7, #12]. For example:

- The Black American owner of a professional services firm stated, “I have contractors that I have a relationship within. So, they’ll just bring me on board once they get any project.” [#7]
- The Asian American owner of an MBE- and WBE-certified professional services firm explained, “...we had a prior relationship with technical teams of the big firms and through collaboration and successful completion of many projects that came to know our abilities and trusted our design on their projects. With more successful completed projects, we get to sustain the relationship and continue to provide services for those big primes.” [#12]

**Four business owners reported that they actively research upcoming projects and market to prime contractors.** Those businesses reported that they research upcoming projects and sometimes identify prime contractors using online and other resources. Some firms then contact the prime contractor directly to discuss their services [#4, #10, #13, #27]. For example:

- The owner of a majority-owned, DVBE-certified company noted, “...we have our own primes that we go to that do work for us, or we can also Google, and find out who’s available. Most of the time we know people that do the work that we need to be.” [#27]
- The representative of a CBE- and DBE-certified professional services firm explained, “By reaching out to firms that are priming to see if we can join them for various pursuits.” [#4]
- The Black American woman owner of a VBE- and DVBE-certified company explained the primes they target are, “Those who have deep relationships in the city. Those who may have the same vision that we have, a unique service. That’s pretty much how.” [#10]
- The representative of a majority-owned professional services company explained, “We reach out to them. The marketing department does and says, ‘Hi there, we saw this recently announced RFP. Here’s an example of similar projects that we’ve worked on in the area. Here are projects that we’ve worked on with you.’ And a link to each of them and send it off to them. It’s specific to each of the opportunities. We just market directly by email basically and by phone.” [#13]

**5. Subcontractors' preferences to work with certain prime contractors.** Business owners whose firms typically work as subcontractors discussed whether they preferred working with certain prime contractors.

**Many business owners and managers indicated that they prefer to work with prime contractors who are good business partners and pay promptly** [#4, #12, #15, #3, #6, #7, #20, #27]. Examples of their comments included:

- The representative of a CBE-, and DBE-certified professional services firm explained that the reason there are primes they prefer to work with is because, "...they pay on time. Prompt payment. And we have a good rapport with the people that we're working with." She explained that there are no firms that they will not work with but noted, "There are primes we are cautious of, I'll say that." [#4]
- The Asian American owner of an MBE- and WBE-certified professional services firm stated, "Because of their track record, in their capabilities, their personnel who have the knowledge and their timely communication of all events and identification of any issues. Basically, based on their professionalism and capabilities." [#12]
- The Hispanic American owner of a construction company explained why he prefers certain primes. He noted, "First of all, they pay on time. That's one thing. And two is, they allow me to run the project the way that it needs to be run. They trust me to run the project without being a helicopter partner, or a helicopter prime, per se." [#15]
- The Black American woman owner of a CBE-certified goods and services company stated there are primes she won't work with because they were "racist and disrespectful". [#3]
- The Black American woman owner of an MBE-, SBE-, SDVOSB-, and CBE-certified company explained, "Because they have poor pass performance. We know by word of mouth. Again, and sometimes, just actually seeing it, that the quality of work and what they're about. I won't work with anybody that doesn't take care of their people. Will not!" [#6]
- The Black American owner of a professional services firm stated, "Any prime that is unnecessarily rigid or doesn't pay on time, doesn't pay at all, that would be an issue." [#7]
- The Hispanic American owner of a construction company explained why there are some primes he will not work with, "Difference of opinions, difference of mentalities, maybe a bad experience in the past from their leadership, and that I don't agree with the way they treated or the way they speak to people. So, more personal than business oriented." [#15]
- The owner of a WBE-certified construction company stated, "...we had a good working relationship for a very big prime contractor in DC and the last couple of superintendents we had did not like us being women. So even though they were a good prime, their guys were horrible. So, we dropped them as a prime because we were just not going to deal with the talking down to attitude and having to define ourselves every time and defend it." [#20]
- The owner of a majority-owned, DVBE-certified company stated, "Most large primes, I'm not dealing with them. I've been doing that trying to get in there, but I've been trying to work with them for years and it never worked out, so." [#27]

- The owner of a WBE-certified construction company stated, “The majority that we stay with they are what we call good pay. Their superintendents are not arrogant. They don't look down at us for being women.” [#20]

**Subcontractors discussed the effect working in the public or private sector has on their decision or ability to work with certain primes** [#4, #12]. For example:

- The representative of a CBE- and DBE-certified professional services firm stated, “If we've established a rapport with them going after a public sector job, then if they have ... feel good about us, then they'll bring us over to some private sector jobs as well.” [#4]

**Subcontractors discussed their experiences working with certified primes** [#3, #4, #11, #12, #14, #27]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted that her experience has been more positive, greater level of access to the owners, and a better level of transparency when payments are delayed. [#3]
- The representative of a CBE- and DBE-certified professional services firm noted, “No, we haven't seen a difference. Other than more paperwork.” [#4]
- The principal of a majority-owned professional services firm stated, “I've had some very good experiences and sub experiences that I do again any day of the week, because it was great. And there are some that I would never do again and there are some that I might, not great, but we could make it work.” [#11]
- The Asian American owner of an MBE- and WBE-certified professional services firm noted, “there's not pronounced differences.” [#12]
- The principal of a majority-owned, CBE-certified goods and services company categorized the experience as good and better. He elaborated that its, “Not even close!” [#14]
- The owner of a majority-owned, DVBE-certified company stated, “Well, our partner is an 8(a), so I mean, we're having a great experience with this particular guy, with this company, but there are a lot of 8(a)'s I wouldn't trust. There's a lot of companies I don't trust. If you don't know them, it'd be difficult to get in there with a company that you're going to do a lot of business with that you don't know. So, most of the time it's the word of mouth. Right? You know, don't forget this company, they screwed me last year, blah, blah, blah, blah. A lot of it is word of mouth, but my 8(a) company right now is great.” [#27]

## **E. Doing Business with Public Agencies**

Interviewees discussed their experiences attempting to get work and working for public agencies. Section E presents their comments on the following topics:

1. General experiences working with public agencies in the Washington, D.C. marketplace;
2. Barriers and challenges to working with public agencies in the Washington, D.C. marketplace; and
3. DC Government's bidding and contracting processes.



**1. General experiences working with public agencies in the Washington, D.C. marketplace.** Interviewees spoke about their experiences with public agencies in the Washington, D.C. area.

**Twenty business owners had experience working with or attempting to get work with public agencies in the Washington, D.C. area and in other places** [#1, #2, #3, #4, #6, #8, #10, #11, #12, #14, #16, #19, #25 #29, #30, #36, #37, #38, #39, #40]. Their comments included:

- The representative of a CBE- and DBE-certified professional services firm explained, “The experience has been good attempting to get work. We have not been as successful as I stated earlier, in sometimes in our competing, because we still feel that there are some barriers in the selection process, but as far as us responding to the proposal and going after opportunities, we haven’t seen any issues with that.” [#4]
- The Black American woman owner of a CBE- and DBE-certified construction company explained, “I would say that when I was working, the most with these DC agencies that I was actually... They were seeking me out for the work.” [#8]
- The Black American woman owner of a VBE- and DVBE-certified company explained, “By the time you find out about these, other people and/or primes have already put together teams or have already gotten to know folks better, seem to have more lead time with the client. So, some of those things, we just have a really challenging time getting in the door.” [#10]
- The principal of a majority-owned professional services firm stated, “It’s a lot of work. It’s complicated. We’ve been successful sometimes and very proud of the work that we’ve been able to do with DC public agencies.” [#11]
- The principal of a majority-owned, CBE-certified goods and services company noted they have attempted to work with all DC Government agencies and stated, “they all have their challenges.” [#14]
- The representative of an Asian American-owned goods and services firm noted, “Well, on the human level, wonderful, polite to people, they’re good. They will call you back. On the actually getting business and getting things done level, it’s been frustrating, to say the least.” [#19]
- The owner of a majority-owned professional services company noted, “So at the very beginning of COVID, DC put out a request for teams to submit bids on contact tracing. And we teamed up with our law partner that I mentioned earlier, and we actually had a third partner who was a specialist in contact tracing, had done it for other states. We thought it was a fantastic team. We put together a great bid. So, it seemed like it was a great team. We had the small business, the woman-owned business, minority-owned business. We were a small business, all registered in DC. We found out that we were in the top three for the bids, which was great. And then they went and awarded the contract to a large staffing agency in DC, which made no sense, got us angry, but that was DC. I tried calling... I couldn’t even get anybody to call me back, which really bothered me. It’s like, come on, do you really want us to bid on that? And then when we’ve got some questions, you’re not even going to answer our questions? I just felt that was very unfair and told me a lot about whether DC really cares about small businesses. So, on the one hand, yes, DC says all the right things, that we

care about small businesses, we want to contract with them, we want to help them. Especially then in the middle of COVID, when small businesses had taken the brunt of the issues, you would think that DC would've bent over backwards to help small businesses. And that just didn't happen. And that was wrong. Bottom line is that was wrong." [#25]

- The representative of an MBE-certified goods and services noted her company received an award but then the award was taken back. She explained, "We don't know why. We didn't get an answer as to why they withdrew the bid, and so we haven't heard anything else about it. That was about a year ago." [#29]
- The Asian American owner of an MBE- and DBE-certified professional services firm noted their experience working with DC agencies has been, "Pretty good. DC Government is probably a bit more focused on... It's more varied and diverse, so it helps to work with them." [#36]
- The Black American woman owner of a professional services company described her experience attempting to get work in DC as, "Awful!" [#37]
- The Asian American owner of a construction company explained his experience with DGS. "I think they have a very fair system. It's evolved over many years, and it changes based on administration. That's only downside" [#38]
- The Black American owner of a CBE-certified goods and services firm noted, "It's pretty straightforward. We will either be invited to, for a solicitation, or we will be called upon directly from that agency. Generally, we schedule a walk through or they'll schedule a walk through. And then we'll submit pricing." [#39]
- The Hispanic American woman owner of an MBE-certified construction company noted, "It wasn't difficult. I think, you have to prove yourself. Obviously, if they give you a small contract, you perform, you do a good job, they're always looking for companies that do that, and turn their paperwork in timely, and correctly. They saw that we did that, we proved ourselves, and the work flows very nicely from DC." [#40]

**Business owners were asked if there are agencies who are easier or harder to work with** [#3, #4, #8, #10, #11]. For example:

- The Black American woman owner of a CBE-certified goods and services company stated that the billing process with DGS was painful and noted that lack of competency within DGS and DCPL. [#3]
- The representative of a CBE- and DBE-certified professional services firm noted that they had a recent unpleasant experience with DDOT that needed some intervention to resolve. However, she also noted that, "...our experiences with the DGS, they've been pretty easy. We haven't had any serious challenges on any projects we've worked on with them. Or with, I think we worked on some projects with DMPED as well. We haven't had any issues." [#4]
- The Black American woman owner of a CBE- and DBE-certified construction company noted, "I would say that the engagement for a request, for a proposal. Specifically with DGS, I found that the timeframe in which I would submit the proposal and hear back on the project was also fairly quick. I think that that made it a pleasant experience to just submit and then know quickly about what the outcome of that was." [#8]

- The Black American woman owner of a VBE- and DVBE-certified company did explain her challenge working with the DC Government. She stated, “What I would say is challenging in terms of, again, the barrier to entry being a new kid on the block versus the folks that you always see winning the contracts and that type of thing. So, that would be across the board in district government agencies.” [#10]

**2. Barriers and challenges to working with public agencies in the Washington, D.C. marketplace.** Interviewees spoke about the challenges they face when working with public agencies in the Washington, D.C. area. For example:

- The Black American male owner of a professional services firm explained noted there is more a barrier seeking public sector works vs. private sector work. He noted, “I think in public sector work, just knowing how to navigate all the various requirements and information that you need, phone numbers, contacts, in order to navigate getting public work. I think that that is a barrier. As far as getting private work, since I have already built like a client base, so I wouldn't have much issues with that. Possibly a firm that's just getting started, just developing those client relations, then that client base would be a challenge.” [#7]
- The representative of a majority-owned professional services SDVOB company noted contract vehicles are a barrier. He explained, “One of the dynamic changes that has happened over the last 10 years is that now when dealing with public sector, so the federal Government, state government, local government, the majority of work is done through specific contract vehicles. And unless your company is on that contract vehicle, it is just not open to you.” [#16]
- A representative of a Black American-owned professional services company stated, “It moves to slow. It's highly competitive market in D.C.” [#AV19]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, “If the government offices would process the documents for small business in a timelier manner, it will bring more revenue to D.C.” [#AV54]
- A representative of a Black American woman-owned goods and services company stated, “I have not tried for work in D.C. [because of] manpower, have to get staff licensed, takes too long, back log.” [#AV4]
- A representative of a woman-owned construction company stated, “They take too long to pay, and they take too long to process paperwork to get paid.” [#AV30]
- A representative of a Black American woman-owned construction company stated, “Being able to get resources. We are having problems getting contracts. There is no one directory. As a novice business, it can be very confusing.” [#AV33]
- A representative of a Black American-owned professional services company stated, “It appears to be a gray area in establishing business. Mentorship would be key.” [#AV34]
- A representative of a Black American-owned professional services company stated, “A barrier is not having a D.C. presence or D.C. address.” [#AV35]

- A representative of a Black American-owned professional services company stated, "I haven't tried to get local government work in a long time because I have not been successful. The work that I get is from local developers and that is what sustains me. Over the years I have had a steady stream of local references, so I don't have time to go after local government agencies." [#AV58]
- A representative of a Hispanic American woman-owned professional services company stated, "Only problem is certification and paperwork." [#AV294]
- A representative of a Hispanic American-owned construction company stated, "We have bid on a couple of government work and the price was too low, and the amount of paperwork was too large." [#AV309]
- A representative of a Hispanic American-owned construction company stated, "It is difficult to work with the government at this time." [#AV324]
- A representative of a majority-owned construction company stated, "Some of the programs are difficult to work with. Their goals are unattainable." [#AV349]
- A representative of a majority-owned construction company stated, "The paperwork is just out of control which is why generally why we shy away working for government agencies." [#AV371]
- A representative of a Black American-owned construction company stated, "It is harder to get contracts if you are not based in D.C." [#AV377]
- A representative of a Black American woman-owned professional services company stated, "We haven't tried working with DC government. We tried with Maryland and Virginia with no success. And it was a lot of work. We don't have enough resources to dedicate. Especially with COVID. Unless we have a promise of a subcontract, we can't devote the resources." [#AV440]
- A representative of a woman-owned goods and services company stated, "A lot of red tape. Every time you turn around there is always something that changes, and you have to fill out more forms." [#AV453]
- A representative of a majority-owned professional services company stated, "Never worked w/DC but have worked w/Agencies & government organizations. From my perception marketing conditions & the pandemic have dampen the economic climate." [#AV504]
- A representative of a Black American-owned goods and services company stated, "Red tape, trying to get correct licenses because we are doing security work. Trying to get to the right person, and response takes a long time. Quite often it is just smoke..." [#AV521]
- A representative of a Black American woman-owned construction company stated, "Trying to work w/DC but taking a long time, bureaucracy why does it have to be so difficult? I am trying to get my business started and keeps getting delayed. Still waiting to start, paperwork has been sent in, trying to get a foot hold, they make it so difficult, delay our business." [#AV541]
- A representative of a majority-owned construction company stated, "The only difficulty is the paperwork. Getting access to sites, and slow paying." [#AV65]

- A representative of a majority-owned construction company stated, "Not worth the time or effort, bureaucracy." [AV13]
- A representative of a majority-owned goods and services company stated, "I am white, but my workers are diverse, if you are trying points for a contract what can I show (documentation) that I am diversified employer, and they are being punished for my skin. ... My complaint D.C. has a security officer min wage that is \$16 plus \$5 fringe benefits. They do not have a special police minimum wage. What companies are doing to low bids or cut cost is replace security officers that make \$20 with special police and pay." [#AV20]
- A representative of a woman-owned professional services company stated, "Typically disadvantaged as [we're] not located in D.C. Do you we have to be located in D.C. to get D.C. work?" [#AV60]
- A representative of a Black American woman-owned goods and services company stated, "In the state of Maryland, you have to know somebody that knows somebody to get a bid. They have issues with processing their payments and they do bait and switches where you are bidding on something then they switch you to something else. D.C. has been. It's a little difficult to be a woman who owns a security services firm--it's a hard fight." [#AV169]
- The Black American male owner of a CBE- and MBE-certified company stated, "Me personally, I have been in business now for about 12 years, and I have found that it is very difficult to actually be a Black owned business in D.C., if you pin or try to say that your success is dependent on just business within the District of Columbia. Fortunately finding that out, I've built my business with the widest is mousetrap that I can find, and that has made me have some success." [#PT2]
- A representative of a woman-owned construction company stated, "Knowing the right people to talk to and all the hoops you have to jump through." [#AV102]
- A representative of a woman-owned professional services company stated, "There used to be a time when there was difficulty getting paid, for a small business six months is a difficulty... I think there needs to be better education for LLC small business owners around the Business Franchise Tax, UBT, registering for the account with the correct EIN, and not running it through their Social Security Number." [#AV64]
- A representative of a Black American-owned professional services company stated, "We have worked with D.C. government and one of the biggest issues is getting paid in a timely manner... Sometimes financial is difficult to expand growth." [#AV241]
- A representative of a Black American-owned professional services company stated, "We work with some D.C. government grantees and contractors. D.C. government is slow in terms of paying and the process is complex in terms of compliance." [#AV303]
- A representative of a majority-owned goods and services company stated, "The only obstacle is the government is [it is] slow to pay." [#AV308]
- A representative of a majority-owned goods and services company stated, "I have heard that D.C. government does not pay in a timely fashion. It is concerning the condition of how D.C. has changed quite a bit over the last two years. Typically, it has changed beneficial to our business, there is a need for services like ours that is why I would be interested in working with D.C. government." [#AV368]

- A representative of a Hispanic American woman-owned construction company stated, “The only thing that holds me back with government would be receiving payment in a timely manner. The big issue with DC is government regulations – need to make them the same across the board – universal licenses for everyone an easy to acquire meaning make it user friendly.” [#AV417]
- A representative of a woman-owned goods and services company stated, “They just take forever to pay their bills and that is the reason we are not interested in dealing with them. Other hoops too – bureaucratic requirements. ... The quantity of qualified workers. Do they show up for work, on time, etc...” [#AV427]
- A representative of a Black American woman-owned professional services company stated, “Misinformation about DC Government, error with information and then a delay in payment.” [#AV439]
- A representative of a Native American woman-owned professional services company stated, “Been a long time, 10 years but when we did work with them it was difficult to get paid on time - ruined our cash flow. If I do business with them, it has to be a really good deal. ... The location for business headquarters is cost prohibitive.” [#AV490]
- The woman owner of a construction company stated, “I do know that there is solutions if we can come together on a mutual terms. And I believe it's sitting down with the government and subcontractors to really come to an understanding, I would say a mutual understanding, if you will on what it's like to run a small business, particularly if you're going to have to finance the job completely, which happens the quick payment isn't happening as I believe it should. And this pay when paid clause, it happens in contracts. We need to look at the contracts and say, hey, we got to have a mutual contract where I'm bound to something, and you're bound to something and that we cannot finance the job completely like we're doing. And I think the approval on change orders need to be accurate and fair. And that all goes with being a subcontractor in construction and they have slow payment for all subcontractors, not just CBES.” [#PT5]
- The Black American female owner of a professional services firm stated, “In the case of D.C. Library, [we] had to advance the payments for advertisements- slow to pay.” [#WT1]
- Written testimony from a local construction trade organization stated, “How can DC help Women and Minority CBEs be successful? Pay on the 10th of the month following proper invoice on the 20th of the previous month. This will lower the number of days the subcontractor is waiting for payment from 68 days to 30 days Contractors are told to meet the schedule and adhere to billing dates, adhere to the contract schedule shifts, and invest the time to see the project through to completion at any cost; to include overtime and change orders that cannot be billed. Yet, Owners and GCs are not required to adhere to a payment schedule, leaving contractors to wonder when a payment will be made. There should be an absolute payment date requirement (the 10th) that Owners and GCs must meet at any cost to them on the same date every month. The entire economic system relies on the 30-day payment cycle. The credit bureaus base personal FICO scores on the 30-day cycle for car notes, mortgages, creditors, suppliers, etc. There is no reason why Owners (DC) and GCs should not be held to the same system. If subcontractors are told to send in an invoice no later than the 20th of the month, projected through the end of the month, then

the Owner and GC should be prepared to have that invoice approved and paid by the 10th of the following month - without exception - every month. This one change means subcontractors can budget finances, assure creditors of payment dates, plan for new equipment, hire personnel, increase capacity, etc. Such changes are vital for ensuring the financial well-being of small and emerging businesses. ... The District enforces the use of local MBE and WBE owned businesses in their RFP's by requiring a significant percentage of the billions of dollars in construction performed by District agencies be awarded to these entities. Some subcontractors have the financing and wherewithal to survive on the District's current payment cycle. Others, who are small and/or disadvantaged cannot survive this cycle. If the District wants to assist in the growth and sustainability of its MBE and WBE CBEs, it is vital that the District provide the financial requirement that these businesses be paid timely and consistently. Sureties, investors, bankers, and landlords review the credit scores of businesses to assess credit worthiness, character, and sustainability. By enforcing payment on the 10th of each month, every month, the District ensures MBE's and WBE's are able to maintain credibility with financial institutions insuring their viability in the industry. Often, the rational is that an MBE or WBE needs credit counseling in order to obtain credit worthiness when, in actuality, all they need is to be paid timely. It is an unspoken fact that subcontractors finance the construction industry. MBE and WBE businesses are not generationally established and consequently they do not have the financial foundations to support the industry through the payment cycle without great harm to their businesses. Payment to subcontractors should be treated the same as a paycheck. Just like when running any business, if someone is sick or on vacation, the employees still get paid. There should be no excuse for missing payment on the 10th if the work is completed and invoiced correctly. ... Make it a prerequisite that all invoices for projects that require Minority and Women owned CBE participation be paid on the 10th of the month following submission of a proper invoice as defined by contract documents and regulation. GCs and the District should be required to standardize a payment schedule that ensures Subcontractors are paid on the 10th. Those who do not follow the standardized schedule should be held responsible for payment as required. That means GCs cannot refer to 'pay when paid' clauses in their subcontracts to absolve themselves from the requirements. (See Law in Massachusetts.) Educate District personnel about invoice processing. Invoices are a contractor's paycheck. When given that perspective, the importance of standardizing payment funding for MBE and WBE CBEs may be easier to comprehend. Provide funding for Minority and Women CBEs to tap into in the bidding process. Funds and proper procedures to allow identified companies to bid without financing the construction." [#WT8]

- A representative of a woman-owned construction company stated, "They take too long to pay, and they take too long to process paperwork to get paid." [#AV30]
- A representative of a majority-owned goods and services company stated, "I haven't dealt with local governments because they are too slow to pay." [#AV174]
- A representative of a Black American woman-owned professional services company stated, "We have encountered barriers regarding marketing and advertising by the D.C. government of available contracts. I think we are limited; we just don't have a voice." [#AV5]

- A representative of a majority-owned professional services company stated, "There can be difficulties. District of Columbia has become very tech savvy and much of work has been moved a web portal base system, and so sometimes and those portals are not streamlined, 16 different places to go, and have different passwords. The District of Columbia is not open to business's even though they say they are. Not welcoming I think." [#AV47]
- A representative of a Black American-owned goods and services company stated, "Do always we know what contract are available - or proper procedures on how to apply. This is a very welcome call and encouraged by it. Never received a call from D.C. before... Good you are looking out to small business." [#AV63]
- A representative of a majority-owned construction company stated, "We were just bidding a D.C. Housing Authority job and asked for specific things to make the bid, which were supposed to be given, but we were told to file an FOIR. The bottom line, in my opinion, they wanted to keep their existing contractor. Make the bidding process more realistic." [#AV130]
- A representative of a majority-owned professional services company stated, "The barrier is we're not a minority business and D.C. in particular definitely looks to hire those types of consultants. It's difficult to break in but were beyond that at this point. I still think it's difficult to be recognized by the various public agencies." [#AV149]
- A representative of a Black American-owned construction company stated, "I'd like to know the avenues to getting work in D.C., especially with the District government and federal government." [#AV189]
- A representative of a Black American-owned professional services company stated, "Getting business from the District is a very difficult thing, and we have done extensive work for the D.C. over the last 20 to 25 years." [#AV197]
- A representative of an Asian Pacific American-owned professional services company stated, "It's an elite club of prime contractors. It's hard to break through and hard to find resources the D.C. government does publish their requirements. We tried to in the past and it is very hard to get started." [#AV204]
- A representative of a Subcontinent Asian American-owned professional services company stated, "process of registering very complicated needs to be more easy and seamless process, also to find government jobs to bid on. ." [#AV258]
- A representative of a Black American-owned professional services company stated, "We have wanted to work with the D.C. We have only had initial talks, but nothing solid. We need the opportunity and want to work with the D.C government." [#AV262]
- A representative of a Black American woman-owned goods and services company stated, "Just trying to figure out how to work with D.C. government. I went online and it is hard to find those types of resources. I did go online but never got contacted back." [#AV365]
- A representative of a Black American woman-owned goods and services company stated, "Not sure where to find opportunities to work with local government." [#AV442]
- A representative of a woman-owned professional services company stated, "We're not even aware of the bidding process, it would be nice to have a mailing list." [#AV460]



- A representative of a woman-owned construction company stated, "We would like to be invited or have opportunity of bidding on contracts." [#AV535]
- A Black American respondent from a public meeting stated, "We're going to need to make sure that they're also, that this group plays a role in arbiter between the district and the black business community so that there's always a flow of information between them, right? Doesn't help if a great opportunity comes, but it's buried on the website. And we're experiencing that every day, right? Great that we have, we've had for 26 years. They rolled out an RFP. We didn't even know about it. How do you roll out an RFP and not tell the person who's been running it for 26 years? Not again, it's a system issue, it's not a particular person. So, opportunities that come, how do you make sure that they get to the folks? I mean, I know he's still a little... We're all a little upset about the Black Lives Matter Plaza, and that is an absolute example of why a disparity study and a race conscious program needs to be put in place. ... We don't need to say who, but the system didn't think that it important to honor the spirit of Black Lives Matter Plaza and make sure that it was being redone by black vendors. It didn't even put out a call." [#PT1]
- A Black American respondent from a public meeting stated, "We want to ensure that the only people who are finding out about business opportunities, grant opportunities are not those people who were in the know or who formerly worked for the D.C. government and have those inside connections as to the dissemination of information, but we want to ensure that we are really able to change some of the systemic and institutional shortcomings that have limited the appropriate distribution of information in reaching all aspects of the community, and most importantly, black and brown small businesses in underserved and vulnerable communities all over the city, but particularly east of the river, which is also overlooked and underserved." [#PT1]
- The Black American woman owner of a professional services firm stated, "I did receive an IDIQ from DGS over a five-year period of time, and I kept asking to get work on it, and never did. I received the five-year IDIQ before that. For five years, we did very well, people liked our work, it was no problem. But then I found out that there were people in DGS who, they were using the same companies over and over again. I did bring that to small business, DSLBD's attention, and I even attended a couple of workshops and presented it to some folks, nothing happened." [#PT4]
- The CBE-certified professional services firm stated, "It is extraordinarily hard to track every RFP coming out of every agency in DC. Large companies subscribe to services that comb through websites. We cannot afford this. DC needs a central clearinghouse for all DC Gov RFPs (Like the Feds and like Virginia's eVA). Small businesses should then be able to find opportunities based on keywords. (This also requires that DC agencies be required to post their RFPs 'properly' tagged with key words and/or NAICS codes, - otherwise we often miss opportunities even with a digital clearinghouse." [#WT6]

**3. DC Government's bidding and contracting processes.** Interviewees shared a number of comments about DC Government's contracting and bidding processes.

**Business owners described their experiences working with or attempting to get work with DC Government specifically.** For example:

- The owner of a WBE-certified construction company noted, "Honestly, DC Government is one of the biggest potential barriers and variations because they don't communicate with each other." [#20]
- A representative of a Black American-owned construction company stated, "We have had a negative experience in D.C., and we were in a project 2-3 yrs. ago, not a good experience and we left the job." [#AV1]
- A representative of a Black American-owned professional services company stated, "We work with some D.C. government grantees and contractors. D.C. government is slow in terms of paying and the process is complex in terms of compliance." [#AV303]
- A representative of a Black American woman-owned professional services company stated, "We have encountered barriers regarding marketing and advertising by the D.C. government of available contracts. I think we are limited; we just don't have a voice." [#AV5]
- A representative of a woman-owned professional services company stated, "We would love to work and would love to apply but it is very hard to talk to someone there. They don't respond to either phone calls or emails. I tried for days and days then I just stopped." [#AV304]
- A representative of a Black American woman-owned goods and services company stated, "Just trying to figure out how to work with D.C. government. I went online and it is hard to find those types of resources. I did go online but never got contacted back." [#AV365]
- A representative of a majority-owned professional services company stated, "Some departments work more efficiently than others." [#AV8]
- A representative of a Black American-owned professional services company stated, "We have tried, but nobody has called us, even when you call them you don't get any answer of any follow up. I don't know how to submit a bid for the D.C. government, because we don't get any follow up." [#AV117]
- A representative of a majority-owned professional services company stated, "We have had an easy time working with D.C. Some of the forms are difficult and complicated when questions you need to get answered. But by and large it has been an easy environment to operate in." [#AV121]
- A representative of a majority-owned professional services company stated, "I think when we looked into working with D.C. based public schools, we ran into an issue that we had to be a D.C. based firm. Our address had to be in the District of Columbia as our business location." [#AV147]
- A representative of a majority-owned goods and services company stated, "There were times it was difficult to work with D.C., but with other states we never had issues." [#AV153]

- A representative of a Black American-owned construction company stated, "Prime example is Black Lives Matter Plaza - across from the White House -- that work to create it is not given to the Black contractors as an opportunity to perform. The city puts out RFP's or RFQ's - the packages are not broken down so that small contractors [can bid]. Access to capital - money. Given proven track record of past performance it is still difficult to get funding for projects. Bonding is also difficult for small black contractors. Those two items are gateways to success in contracting." [#AV182]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "We don't know how D.C. government works, or what is the process, or how to get started. We find it difficult and intimidating." [#AV184]
- A representative of a majority-owned construction company stated, "[There is] a lack of coordination between D.C. government agencies." [#AV215]
- A representative of a woman-owned construction company stated, "It is very difficult to work in D.C. because of the D.C.RA review process, license renewal every two years, historical review and parking." [#AV240]
- A representative of a Hispanic American-owned construction company stated, "It is not easy working with the government. We have not worked with D.C. government directly it is not easy. The system is a little complicated on how to work with the government." [#AV268]
- A representative of a majority-owned construction company stated, "The only barrier is that they want you to be a D.C. business in D.C. area. Trying to [get an] office space in the District is expensive including the tax structure. You get to write expenses off but that takes out of your operating costs." [#AV271]
- A representative of a Black American-owned goods and services company stated, "D.C. is a good place to start a business because they have great resources, PTAC, great classes and webinars and are free to how to start a business." [#AV277]
- A representative of a majority-owned professional services company stated, "D.C. government is tough to get a hold of and they are rough to work with. D.C. can get confusing when penalizing and getting the details with tax records etc." [#AV345]
- A representative of a majority-owned construction company stated, "No good thoughts! We will not work with D.C. government again. Parking is a mess getting, inspections in a timely manner is terrible. We have to hire our own people to come out and do inspections because D.C. government holds up jobs." [#AV358]
- A representative of a Black American-owned construction company stated, "The DC government is a little convoluted as in the process in term of searching for available opportunities whether minority set-a-side or open competition that fall within our company capabilities. I guess for me I would say that many projects within the capabilities of local small business are given favoritism to large business prior to many small businesses being aware that these opportunities are available to them." [#AV518]
- A representative of a Black American-owned goods and services company stated, "DC government deals with mostly with DC businesses only and they will not give DBE or MBE

to us. We want to do business with DC government. We have a lot of customers in commercial sector in DC." [#AV520]

- A representative of a woman-owned goods and services company stated, "[There is] a lot of corruption in DC government... I bid on jobs, then contractors, that are involved in management, they are all bed together—brothers/cousin, they get the work. Would expand more, they took \$300,000 of business, and gave it to one their cronies, I won't give kickbacks that why they took it from me." [#AV533]
- A respondent from a public meeting stated, "I've heard a lot of conversations about, even though I was the lowest, I still did not get the contract. I've heard a lot of conversations, where people who have gotten contracts and when you ask the district to prove to them why they got the contract, they say they don't have to show you. They in a lot of times are not transparent and they're not truthful, and I find that we are more on a track of them against us, instead of us being in partnership or we being in partnership with them. I find it to be like what I'm seeing from the beginning. There's probably... and you've mentioned it too. There's probably a lot of businesses, to just say why should I even do business in D.C. or and D.C.? I can't be successful here, so they don't even either not go into business or they continue to be employees." [#PT2]
- A respondent from a public meeting stated, "Ward seven business owners have not received contracts in their region" [#PT3]
- A respondent from a public meeting stated, "I'm just reading something hot off presses, that there was legislation introduced to place one of the D.C. agencies under OCP. There's a lot of discussions around whether all of them should be, so we don't have this difficulty in trying to get information, and one agency is never going to give you a debriefing. The other agency's going to always give you one in a timely manner. We're trying to get information from this agency, who gives it to us, the other agency acts like it doesn't exist. You know what I'm saying?1" [#PT4]
- The Black American female owner of a professional services firm stated, "Two of the biggest recipients of D.C. contracts in public relations, marketing area [are either not local to the community or majority-owned] are known to regularly pump Black-owned PR businesses for information to try to get info and in at least two cases steal clients." [#WT1]
- The Black American woman owner of a professional services firm stated, "DCRA introduced a contractor rating system in March of 2021. I am opposed to it for the following reasons: a. DCRA should not be in the business of rating contractors. Government is not Angie's List of Houzz. DCRA should be a regulatory, licensing and permitting agency. b. The rating system is not a true barometer of a professional's competence. Particularly since restaurant, deck, hospitals, and houses are within the same algorithm. I have a rating of 3 out of 5 with 2 projects identified. In the last three years, I have had more than 15 projects receive permits from DCRA. What happens when incorrect information is disseminated through the rating system? I was contacted earlier this week from an architect who received a 5. She asked me for assistance. c. I am a registered architect. Our duty to the citizens of the District of Columbia is to protect life, health, safety, and welfare. I have professional liability insurance, employee dishonesty insurance. employment practices insurance and general liability insurance. If I engage in unethical practice, my license is revoked. Board of Architects was

never contacted to assist in the rating system. Instead, DCRA contacted a volunteer organization, American Institute of Architects. I have been in business since 1991. d. This is an example of disparate impact in which the grading system now holds the appearance of neutrality but can at some point have a disproportionately adverse effect on our companies. Will this rating system adversely affect me in future bidding projects? What happens when there is a change in administration due to a new mayor? e. The photo that is used on the rating system's website is the photo I submitted upon renewal of my architect license. I did not give permission for the use of my picture for anything outside of the architect license. They did not ask my permission to use my photo. Government should not be in the business of rating architects, engineers, contractors, etc. 3. Now, DCRA has started something called the Digital Marketplace to market certified third-party inspection companies. Why does DCRA feel they need to market us? It only hurts blacks and women." [#WT4]

- The CBE-certified construction company stated, "The \$14 Billion currently being spent by the DC Government in the construction industry has been spent to the detriment of the subcontracting community." [#WT5]

**Business owners shared recommendations as to how DC Government, or other public agencies could improve their contract notification or bid process** [#1, #2, #3, #4, #12, #14, #16, #30, #38, #8, #11, #12, #29, #PT, #AV]. For example:

- The Hispanic American male owner of a construction company exclaimed, "Honestly, you have two options. Either you pay them, or you remove them. So, either you pay the people a higher salary or a higher hourly salary, or you remove the mandates in order for companies to go and actually continue to do business within the District. Those are your two other options. That's the only two options you have." [#15]
- The Black American owner of a CBE-certified construction company suggested noted that more lead time should be given to respond to RFPs due to the fact that small businesses may not have the manpower of large businesses that may have a team. He also suggested that DC create tailor made solicitations that are project specific and he would like to see dates associated with forecasted projects. [#2]
- The representative of a majority-owned, SDVOB-certified professional services company believes that better transparency in receiving information about which primes have been awarded contracts would help. [#16]
- The representative of an MBE-certified owned goods and services explained, "I think the biggest, if you can really help us, that appeal process really work. Because if you spend all this time and you bid on an RFP or something, you should be able to talk to someone, communicate back and get some answers that says why you didn't get it. Everything is not necessary for me to challenge it. It's just a matter of understanding and educational purpose. I really think that appeal process should be strengthened." [#29]
- The owner of a majority-owned goods and services company believes, "Hire better prepared people." [#33]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company believes more lead time should be given in order for small companies to respond to RFPs. She stated that, "Maybe more time. We see a lot of short suspense

opportunities come out. And so, the smaller businesses just doesn't have the manpower or the ... we just can't scramble." She further elaborated that lead times ranging between, "A minimum of 30 and 90 would be nice." [#6]

- The owner of a majority-owned, DVBE-certified professional services company stated, "Transparency...!" [#18]
- The representative of a majority-owned, SDVOB-certified professional services company noted, "By lessening some of the prequalification things, it would make it easier for smaller companies to be able to effectively compete against the larger businesses." [#16]
- The owner of a majority-owned, DVBE-certified company noted, "You have to change the culture of the particular agency." [#27]
- The Asian American owner of a construction company believes, "Better planning by the client. Better plan and better coordination. I would say a lot of that is by the client because sometimes they say something is going to start, let's say, in January. And you prepare to start in January, but then it doesn't start until May. And then they want you to drop everything and deal with that delay, which was caused by their side." [#38]
- The Black American woman owner of a construction company feels government agencies can play a larger role in ensuring businesses receive timely payments. She noted, "Well, I think some agencies, I'm hearing that some agencies are starting to validate that the subcontractors have been paid, right? When they release a paycheck to the prime, they give it about five days or so and then they go out to the subs that are in that plan and say, 'Hey, you get your money?' And that's what they need to do because the games are ridiculous." [#1]
- The representative of a CBE- and DBE-certified professional services firm noted that the government is offering some assistance to cover payment gaps. She stated, "I guess what I've seen is if... And I know DC Government has tried to work with this, is offering lines of credit associated with the contract that the company is awarded that can help in cases where there may be some delinquency on their end in paying the company on time as promised." [#4]
- The Black American woman owner of a CBE- and DBE-certified construction company explained, "I think, especially for a business of a certain size, there should be a mandate for a reasonable timeframe for payment maybe worked into the contract." [#8]
- The Hispanic American owner of a construction company suggested, "Make sure you annoy the hell out of them and tell them that you need a 30-day net or what is it? Net 30, in order for you to keep your people afloat and to pay subcontractors, as well as to pay individuals who work for you." [#15]
- The owner of a majority-owned professional services company stated, "Check the credit worthiness of the person you're going to do business with. Again, I go back to DC in particular. One of the reasons that I ceased even considering the DC Government is that they either pay late or don't pay at all. DC Government has a rotten reputation for not paying properly." [#22]
- The owner of a majority-owned professional services company stated, "I think particularly in government, government ought to endeavor to pay all bills on a very timely basis,

particularly for small firms. Pay in 30 days and if you have a problem, work it out in the next cycle or allow for adjustments. You could have some contract language that you could adjust things maybe later down the road, but yeah, timely payment is very critical to small firms.” [#23]

- The owner of a majority-owned goods and services company noted, “It’s got to be in the way you write your contract out. That’s got to incorporate the specific payment.” [#28]
- The Black American woman owner of a construction believes contracting officers should have an overall understanding of the commodities they purchase, She stated, “...that if you’re supporting this agency and they buy commodity A, B and C, you need to sit down with the project manager or the program manager. You need to understand what you’re buying, because every, it’s not a one size fits all, some things are. But with the specialties in this industry, and a lot of industries, there are some very intricate nuances, we’ll call it, that are not cut and paste....” [#1]
- The representative of a CBE- and DBE-certified professional services firm would like for there to be a better way to receive contracting opportunities, “Well, they used to previously send alerts when RFPs would come out. So now you have to just continuously check their website. But that’s not just for DGS. It’s DDOT as well. We used to get notices on new opportunities that came out, but now you just have to constantly look at their websites every day, at least once a day to make sure you’re not missing anything.” [#4]
- The Asian American owner of an MBE- and WBE-certified professional services firm explained, “Yeah. I think the best experience is when the public agency shares information about the project they’re soliciting services in a timely manner and provide answers to the RFIs also in a timely manner and host a pre-proposal meeting and share the list of attendees. And also provide the information about the consultants who provided incumbent or past services on similar type of contracts and be transparent of the selection criteria and stick with the schedule when they wanted to have the consultant or contractors selected and when they are going to NTP. If they do all of the above, then that’ll give the best experience.” [#12]
- The principal of a majority-owned, CBE-certified goods and services company would like to see a better notification process with more lead time, and that “Contracting officers need more education on what they are buying.” [#14]
- When asked if the District could improve its bidding process, the representative of a majority-owned professional services firm sated, “Yes. At least, my experience has been that the way they’re notifying is by sending emails to certain CBE Companies, versus publishing them up on a publicly acceptable website. So as an example, the state of Virginia has EVA, and that is a web-based environment. And anybody that wants to can use the search engine, you can find, what the requirements are for specific locations or specific types of technology, or work, or whatever. And also all the criteria that they’re going to use, is published out there on the portal. For us, we don’t know what the criteria is or what the requirements are, unless somebody shares an email with us. And so that limits our ability to be able to offer our services or our products to the district.” [#16]
- The owner of a WBE-, MBE-, and CBE-certified construction company stated, “I think having a central portal that and again, all these agencies are one would think that they talk to each

other, but they don't really. And I think given the kind of pushback that they've gotten, there's some recognition that they need to coordinate better." [#30]

- The Asian American owner of a construction company noted a downside when working with DGS. He explained, "Right now it's sometimes their staff does not understand the construction industry or do not understand the process. I'm experiencing that on a current project right now I think they have a very fair system. It's evolved over many years, and it changes based on administration. That's only downsides." [#38]
- The Black American woman owner of a CBE- and DBE-certified construction company noted. "I think the system in which the bidding is done, I do think that it should be electronic. I do think that all of the prequalifications and all of that can also be embedded into an electronic system that would even stop you from bidding if you don't have what's required in the prequalifications. And basically, just that all of the questions, anything like that should all be done on a platform that's made available to all bidders, as opposed to, I believe, what's done now is email chains or something like that, that can be very confusing. But I think it does just depend on the job. I've experienced both." [#8]
- The principal of a majority-owned professional services firm stated, "So just in terms of notification, the other public entities in the area, talking about Virginia and Maryland, each have a state system of notification for public procurement that I would say we found to be much more reliable than what anybody in DC does." [#11]
- The Asian American owner of an MBE- and WBE-certified professional services firm explained, "Yeah. I think the best experience is when the public agency shares information about the project they're soliciting services in a timely manner and provide answers to the RFIs also in a timely manner and host a pre-proposal meeting and share the list of attendees. And also provide the information about the consultants who provided incumbent or past services on similar type of contracts and be transparent of the selection criteria and stick with the schedule when they wanted to have the consultant or contractors selected and when they are going to NTP. If they do all of the above, then that'll give the best experience." [#12]
- The Black American woman owner of a CBE-certified goods and services would like for DC to abide and enforce "that subcontractors are paid when general contractors are paid. [#3]
- The representative of a CBE- and DBE-certified professional services firm requests, "Just continue to focus on paying companies on a timely man. Any kind of company, but especially small or medium-sized companies that may not have extensive lines of credit to cover them. If they have submitted all the appropriate information, then they should properly be paid." [#4]
- The Black American woman owner of a CBE- and DBE-certified construction company believes, "I think that there should be caps on timeframe in terms of payment turnaround. And I think everything should be on one electronic platform." [#8]
- The Black American woman owner of a VBE- and DVBE-certified company stated, "They've just got to pay on time. I know it's hard with a bunch of different folks admitting invoices and double-checking them to make sure they're correct and all of that. I don't have a recommendation on how to improve that process, but you've got to pay on time." [#10]



- The representative of a majority-owned professional services firm stated, “On the payment method - It should be 100% electronic transfer and they should use that. And also, they should shorten the time. So, since they already have dollars available before they award the contract, they should not delay in paying on the invoices that they validate.” [#16]
- The representative of an MBE-certified goods and services noted, “Communicate. They have to communicate. If they’re going to change the process or change... Well, if they’re going to make a decision like that, you need to know why. And it should be some kind of... somebody you can go and talk to find out what happened.” [#29]
- The Asian American owner of an MBE- and DBE-certified professional services firm stated, “I mean, I think these experiences are dependent upon the project manager that you get. Once again, you have a good project manager, he’s going to work with you, mentor you, and take you through the process. You’ve got somebody’s who’s just interested in pointing issues, then you lose trust, and it becomes frustration.” [#36]
- The Asian American owner of a construction company believes better training is the key. He noted, “I think they need to do better training with their personnel and retention because these guys seem to be new. And yeah, they make demands that are not practical.” [#38]
- A representative of an Asian Pacific American woman-owned professional services company stated, “I would like to see more DDE outreach opportunities.” [#AV250]
- A representative of a Subcontinent Asian American-owned construction company stated, “When the government announces for contracts for small businesses, they should announce that the contract should be a small size contract.” [#AV459]
- A representative of a majority-owned construction company stated, “Not knowing who to contact... a directory would be helpful.” [#AV482]
- A representative of a Black American woman-owned professional services company stated, “There has always been a question about whether a company had to be headquartered in Washington D.C. or just able to work within D.C. I have received confusing information about that. I haven’t pursued much business in D.C. because of the confusion regarding certification to work for the D.C. government. It makes it difficult for small businesses.” [#AV74]
- A representative of an Asian Pacific American woman-owned professional services company stated, “For me one of the biggest is that being a firm based in Maryland I have never been able to demonstrate that there are more than 50 percent of employees residing in D.C. to be a based D.C. based company. You have to be located in D.C. or have more that. I hope that there will be outreach match making events hosted by D.C. DOT or DGS to assist outside business to work in D.C.” [#AV96]
- A representative of a majority-owned professional services company stated, “I believe we have a challenge with D.C. because they have preference for firms being headquarter in the District as we are not.” [#AV108]
- A representative of a woman-owned construction company stated, “They need to eliminate their conditions with their contracts about hiring DC residents.” [#AV532]

- A representative of a Black American-owned goods and services company stated, "D.C. must improve the accessibility to where to go for the bids." [#AV235]
- A representative of a Hispanic American woman-owned goods and services company stated, "We don't know where to bid in D.C." [#AV322]
- A Black American respondent from a public meeting stated, "The public to private partnerships need to, in our eyes, need to be included. Those developments are where a lot of money are being invested. And I think, especially when we're talking about 47% of the population being black and our tax dollars, those are also our tax dollars. So, I think we should be thinking about how those tax dollars should be recirculating in our community, even if it is a large development. I think there are things that we need to do above and beyond kind of just the normal help you get, send you out the opportunity. So, the other piece that we really want to make sure, and that is that we are inclusive of the authentic voice of the black business community. ... When you talk about how structural racism manifests itself, government to government, PP's, the triple P's, that's just a way for the government to get away from being accountable." [#PT1]
- A respondent from a public meeting stated, "When we look at some of the requirements, we have to reach to be compliant and then we end up having to compete against someone who is completely outside of the city, in many cases in my industry, they don't even have a license to work here. That's controlled by the government agency." [#PT2]
- A Black American respondent from a public meeting stated, "D.C. historically has been plagued by not maintaining or collecting data based on race." [#PT2]
- A respondent from a public meeting stated, "Then I bring out two contracts, the lottery contract, which was a sold for \$240 million a year with no real CBE participation. Because I just read an article about the CBEs that they were supposed to be getting \$900,000, undoubtedly a system like that. Then I also look at the current MCO contract, that's Managed Care Organization, \$1.3 billion. You mean the two, you mean they can't cut out 10%, which is \$130 million for CBEs? I understand in healthcare, okay, that 85% of the money that is paid the healthcare companies have to go to pay the claims. All right. So 5%, and this is just something, because CareFirst was one of the MCOs and CareFirst is a multi-billion dollar company. So you trying to tell me that you can't set aside 10%, \$135 million for CBEs and minorities? Something's wrong with that picture. Those are the things you need to look at. the DC supply schedule is a mechanism used by the City to make purchases a lot simpler, a lot more streamlined than traditional routes. However, the caps, the ceilings or the limit to the various categories in the DC supply schedule is relatively limited now. It has been, I don't know, maybe 10 or 15 years. If a purchasing agent does not have the will to be creative with their purchases and tend to lean towards a DC supply schedule of methodology, the transaction might not be had. So I'm bringing this to your attention, to look at what would the raising of the DC supply schedule cap would have in increasing more opportunities for minority contractors?" [#PT3]
- A Black American respondent from a public meeting stated, "That's the need that I spoke about earlier, of having a specialist in the agency that understands the work that they're soliciting for. As I stated before, on the federal level, they have someone in the various agencies that can speak to the issues that the agency needs to address with the MBE or with

the minority business community in mind. I think that could help mitigate some of those issues.” [#PT4]

- The woman owner of a construction company stated, "When it comes to construction it's its own entity. The industry is different than any other industry, comparatively speaking. It has its own barriers if you will. I think some of the keys are complete transparency of all communications and I think with the government closing the gaps between the agencies would be phenomenal, because even in my small business to even close my gaps is hard, I can't imagine being a government agency and having all those gaps. And there are a lot of them. ... I also think there could be an educational process for the government too when it comes to construction and the way it works today because I constantly do talk about boots on the ground. We build in the trenches, so to speak and in the work areas it's open and we're in the trenches and it's almost like there's no governing over, well, it's getting better. Let me just say it's getting better, but there's not a lot of governance. You're not in an office and nobody's looking at, you can get stuck in corners, so to speak.” [#PT5]
- A respondent from a public meeting stated, "Contracting opportunities that not for profits are specifically created so that they can receive these dollars and not for profits are not certifiable under the DSLBD's CBE program to be in a protected class or contracting arena. So there are significant amount of dollars that are given to non for profits that actually could have gone to CBEs. ... that is another reason why CBEs are not getting dollars because many contracts are categorized as quote unquote government nonprofit, or that only have a national market, when these could have been JVs that included CBE participation.” [#PT6]
- The Black American male owner of a CBE- and MBE-certified company stated, “A large amount of money has gone to these public private partnerships. And once they go to these public private partnerships, the people who actually receive the dollars are in control of the dollars and how the dollars are spent. Now, also, we understand that also some of that does go back to DLSBD under the CBE program that they have to have a certain amount of requirements. But my understanding of that is that those statistics that are sent back to them really doesn't have a minority or a gender related type of data collected along that. ... We still have to renew our business license every year, pay for the reports every year. And we don't have the money, to keep the business really going. I mean, it is a struggle, but why should we have to keep paying for reports? And like you said, you don't have the work, you're not doing it. We're paying \$300 just to no changes. They should consider something for the small businesses that don't have the funds, the business, cut back on the taxes or something.” [#PT6]

## **F. Marketplace Conditions**

Part F summarizes business owners' and managers' perceptions of Washington, D.C.'s marketplace. It focuses on the following three topics:

1. Current marketplace conditions;
2. Relief programs for businesses affected by COVID-19;
3. Past marketplace conditions; and
4. Keys to business success.

**1. Current marketplace conditions.** Interviewees offered a variety of thoughts about current marketplace conditions across the public and private sectors in light of the COVID-19 pandemic. For example:

- The Black American woman owner of a water construction company explained, “So I've had three initiatives that were underway before COVID went full force. Two contracts stopped dead cold before we got started, we were awarded them, they went away. And the other was a partnership that I had begun with a major electric car manufacturer. Well, they closed down the factory, so that kind of died on the vine. But I'm revitalizing that particular segment of my business as we speak.” [#1]
- The Black American male owner of a CBE-certified construction company explained he was able to grow his business during the Covid crisis. He was able to pivot his business model to provide cleaning government buildings to protect against the spread of the COVID-19 virus. He noted he was able to hire 100 DC residents for a cleaning contract he landed. He also noted he was able to increase his bonding and lines of credit. [#2]
- The Black American woman owner of a CBE-certified goods and services company experienced growth during the pandemic. She stated that demand was high but also noted her costs increased which decreased profits. [#3]
- The Black American owner of a construction company explained, “Well, we're a new business and new businesses automatically by default have struggles, especially being African American. So whatever struggles we were having trying to run and grow a business, that was doubled and tripled with COVID-19. So, access to capital issues, advertising issues, just being able to scale up and expand, it pretty much kind of slowed our trajectory big time.” [#5]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified company stated that due to the COVID crisis, she was, “Just not able to get out there and really solicit. All I can do is go on the website. And without people really understanding the concept of what I'm doing, they probably don't think it fits.” [#6]
- The Black American woman owner of a CBE- and DBE-certified certified construction company stated that, “Given that we special in facility maintenance and that being the core of our business, when those facilities were not in use at the level that they were prior to COVID, I think that that had a huge impact. I think that because we do specialize in services that are considered essential, that did keep a streamline of work going. However, we definitely saw a decrease in business. And I personally would attribute that to just the facilities not being in use, especially during that beginning time of COVID.” [#8]
- The Black American woman owner of a VBE- and DVBE-certified professional services company explained, “All of the contracts that we were working on because we're a small player, were postponed or put on hold.” [#10]
- The principal of a majority-owned professional services firm explained, “We saw a very substantial drop off in business at the beginning of the pandemic, largely around our educational market sectors, which make more than half of our business historically. And there was a really precipitous drop off in both K12 clients, as well as higher education clients advancing work, certainly during the first part of the pandemic, they were very

consumed with their daily operations and how to just go through the day to day. So, there was a huge drop off there.” [#11]

- The Asian American woman owner of an MBE- and WBE-certified professional services firm noted, “Prior to the COVID-19, we had many contracts with Maryland State Highway Administration, WMATA and Maryland Transportation Authority. In June of 2020, we have been told that almost all the Maryland State Highway Administration professional services and design tasks have been put on hold and they don't have money to continue any of the design task. They only have enough money for that fiscal year and the next to maintain their own staff to do some in-house work. That is like cutting more than 50% of our project incomes. Also, on the other hand, WMATA has experienced low ridership during pandemic, and many of the design tasks were put on hold as well. That's why we did suffer a pretty severe blow during pandemic.” [#12]
- When asked if his business had been affected by the Covid 19 health crisis, the principal of a majority-owned professional services firm stated, “It was, but only minimally. The reason I say that is because a lot of the projects we work on are long... Well, I won't say long term, but they could have a duration of between six and 12 months. When COVID happened at the beginning, there was a sudden freeze on work. Then as people realized you could work from home and we could continue designing, we adapted very quickly, so it didn't really impact us.” [#13]
- The principal of a majority-owned, CBE-certified goods and services company explained that the retail side of his business saw a 20% reduction and forced his company to take down existing signage. He further noted that his company was able to make up the difference because there was a demand to produce COVID stickers. [#14].
- The representative of an Asian American-owned goods and services firm noted, “Nobody was spending money. And our clients are ... well, they're public, but there's a lot of private clients, and from a capital perspective, they just weren't spending money.” [#19]
- The owner of a WBE-certified construction company noted, “What we do is a little niche. So, the contracts that we end up doing and the jobs that we end up doing are too big for Joe Schmo plumber and they're too small for the big guys. So, I can't really say because what we do is just different.” [#20]
- The owner of a majority-owned professional services company that specializes in real estate services explained, “Well, mostly it's been affected by tenants who don't want to pay their rent because they've heard about all these wonderful programs at DC, and PG County and Montgomery County want to pay on behalf of tenants, but then the tenants won't do what's necessary to qualify for the program, and so we end up with tenants who then decide to move out, leaving the owners with 20, 30, 40,000 dollars' worth of unpaid rent. There's no way to collect.” [#24]
- The representative of a majority-owned construction company stated, “Obviously, this whole thing with the supply chain disruption. I mean, we've got appliances even today that we had ordered back in February that still haven't arrived. We had instances where people who were employees of subcontractors who... They were felled by the COVID-19 virus and couldn't come to work. So, it slowed production.” [#34]

- A representative of a Black American-owned professional services company stated, "Never had a problem. My first government contract was with the government in 1983. The market right now is not a good because of the pandemic. The pandemic put a damper in the industry." [#AV40]
- A representative of a Black American-owned professional services company stated, "Just getting over COVID now so things are picking up." [#AV86]
- A representative of a majority-owned goods and services company stated, "Being a small business my concern would be getting timely paid for services. My business has been impacted by the pandemic and we were not working for 4 months." [AV196]
- A representative of a majority-owned professional services company stated, "The pandemic increased our workload. It is hard to contact people over the phone." [#AV43]
- A representative of a majority-owned professional services company stated, "We have not been on any projects, so we haven't had any problems. Observation is that with COVID we have gone to a dispersed model to where we have people working at home. We've found that we can get it done without all of us gathering together so we have shrunk our office space." [#AV71]
- A representative of a majority-owned construction company stated, "No difficulties, we have built on and for the D.C. government several times in the company history. Currently, we don't have people with the knowledge or relationships to call on. Recently, we only got on a list because a landlord knew us; it was a con. Market conditions continue to be pretty strong given the pandemic. It is competitive from the price and supply chain areas. Certain trades are hard to find good people in." [#AV83]
- A representative of a majority-owned professional services company stated, "Right now we are incredibly busy, between the housing boom and now huge push with medical research related facilities." [#AV186]
- A representative of a Black American-owned goods and services company stated, "We actually have gotten a lot of calls from companies wanting to do business. Like the Embassy. We also got a call from Union Station as well." [#AV302]
- A representative of a Hispanic American-owned construction company stated, "This city is a perfect place to start a business. A lot of work." [#AV311]
- A representative of a majority-owned professional services company stated, "Our C.B.E. status has helped us, but COVID has interfered with a lot. Half of our business is commercial real estate which is dead now..." [#AV15]
- A representative of a woman-owned professional services company stated, "COVID period has been bad for everyone including us. I think things are going to stay slow, COVID related." [#AV161]
- A representative of a Subcontinent Asian American-owned construction company stated, "COVID has put a damper on the business." [#AV259]
- A representative of an Asian Pacific American woman-owned construction company stated, "Obtaining work has been difficult due to COVID. It has been very slow and has put a

burden on the company and employees in order to do the work as well as gaining access to the work site with all the restrictions put in place by D.C. government.” [#AV274]

- A representative of an Asian Pacific American-owned professional services company stated, "Post COVID, it has been tough, supply shortages, etc. Lots of empty office buildings. They are converting buildings. The smaller firm is suffering [for] people." [#AV316]
- A representative of a majority-owned construction company stated, "Every day the market has definitely changed for the worse." [#AV500]
- A representative of a majority-owned professional services company stated, "Just the global pandemic but nothing outside of that." [#AV14]
- A representative of a Black American-owned construction company stated, "Especially with COVID, it is hard to find proper contacts to market and reach out to." [#AV26]
- A representative of a Black American woman-owned construction company stated, "Unusual conditions because of COVID." [#AV12]
- A representative of a majority-owned construction company stated, "So working for the government currently. Was unaware when we started or initiated the study. Everything more difficult because of COVID. The working force is not getting vaccinated as quickly as the general public. Could create an issue with trying to get construction work done." [#AV152]
- A representative of a Black American-owned construction company stated, "COVID and bureaucracy changed the submittal and bidding has effected everyone. It's who you know than what you know, you know what your capabilities are. Business is passed around to friends, instead giving a new guy a chance even if he is more qualified." [#AV246]
- A representative of a Hispanic American woman-owned professional services company stated, "D.C. is one of the most difficult places to open, own and operate a business. D.C. market is a financially stable real estate market." [#AV205]
- A representative of a Black American woman-owned construction company stated, "A lot of competition in our field." [#AV140]
- A representative of a Black American woman-owned goods and services company stated, "It's a highly competitive market in Washington D.C." [#AV165]
- A representative of a Hispanic American-owned professional services company stated, "Highly competitive and crowded market." [#AV183]
- A representative of a majority-owned construction company stated, "The market is tight which is increasing prices for everybody. The price of materials and labor is much higher." [#AV384]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "Obtaining work is a bit hard and the competition is very high. I feel like if you have a network, it's easier to get but we only moved to DC last year so we don't have that network yet." [#AV431]
- A representative of a majority-owned professional services company stated, "Competitive market." [#AV496]

- A representative of a Black American woman-owned construction company stated, "Very competitive. The companies that been here a long time have gotten most of the business." [#AV542]
- A representative of a Black American-owned professional services company stated, "The pandemic has created a general, potential unstable contracting environment." [#AV359]

**2. Relief programs for businesses affected by COVID-19.** Interviewees shared their experiences applying for and receiving programs to reduce the impact of COVID-19 on their businesses.

**Business owners and managers were asked what measures were taken, or what assistance programs they used, or were aware of, in response to the COVID-19 health crisis.** For example:

- The Black American woman owner of a water construction company had this to say regarding assistance grants, "The grant process and some of the things that have been put out there for the general market, in my very cynical way, are not targeted to us and are not meant for us. So, I did not pursue any of the PPP, any of the EIDL, even though I may consider the EIDL now based on some other business that I've gained now that things have kind of, people have kind of started to normalize towards COVID." [#1].
- The Black American woman representative of a CBE- and DBE-certified professional services firm confirmed her company benefitted from PPP and asserted, "...it definitely helped cover payroll as needed during the time when things slowed down initially, as people were transitioning into the new way of doing business at home or remotely." [#4].
- The Black American owner of a construction company stated, "We seek the resources, but we've been seeking the last five years and it's just been, 'You're going to have to make it on your own out here.' That's the impression we got." [#5]
- Black American woman owner of a VBE- and DVBE-certified professional services company explained she was aware of assistance programs, "...but unfortunately, they were not such that we could take advantage of them, because of the certain criteria that was put in place." [#10]
- The principal of a majority-owned professional services firm noted, "We were granted two rounds of PPP loans, which enabled us to hold on to, I wouldn't say all of our staff, much of our staff." [#11]
- The Asian American woman owner of an MBE- and WBE-certified professional services firm stated, "we got the COVID PPP loans, which were extremely helpful." [#12]
- The principal of a majority-owned professional services firm confirmed they made use of two programs, stating, "Yes. I knew of two that we made use of. One was the PPP, and the other was the representative retention tax credit. We had applied for the PPP when... I mean when I think back on it now really makes me shiver. At that beginning period, we had no idea where the economy was going and it looked like, I mean, we were one payroll away from having no money left and we applied for it. Then by the time the PPP came through, business had started to come back to something that we could support ourselves again. Thankfully it pulled us through. Then the second thing was the representative retention tax



credit. We were very lucky in that we retained... I think everybody stayed. Maybe there was one person that left, but our headcount remained the same the whole way through. We didn't let anybody go, which I was quite proud of." [#13]

- The principal of a majority-owned, CBE-certified manufacturing company noted that his company made use of PPP loans twice. [#14]
- The owner of a majority-owned, DVBE-certified professional services company noted, "Yes, we did take advantage of the payroll protection plan for what we did qualify for... And then we took advantage of EIDL and that was probably more than what we needed." [#18]
- The representative of an Asian American-owned goods and services firm stated, "We did a ... what do they call those - The PPP loans. And I can't remember how much, but that was part of 2020's ... helped us get through it." [#19]
- The owner of a WBE-certified construction company explained why her company eventually applied for a PPP and EIDL loan noting that, "Material prices have jumped a lot and getting material has become incredibly difficult. Some of our pipe is six months out and material has doubled and or tripled in cost." [#20]
- The owner of a majority-owned professional services company explained, "The PPP program, we did that. We decided to switch. We used to have staff meetings every once a week in our office in DC. And we switched to remote staff meetings, which worked really well. So, we've actually switched to what's called a virtual office in DC." [#25]
- The owner of a majority-owned, DVBE-certified company stated his firm received assistance through the PPP program. He noted, "We went through the PPP process and obtained a bit of money from that. That helped us a lot." [#27]
- The representative of an MBE-certified goods and services firm noted, "We had to adjust some of the leases and stuff that we had." [#29]
- The Asian American owner of an MBE- and DBE-certified professional services firm noted, "We had to take projects at lower pricing to keep people busy." [#36]

**Interviewees mentioned their experiences applying for and/or obtaining COVID relief programs.** For example:

- The Black American owner of a construction company stated, "We seek the resources, but we've been seeking the last five years and it's just been, 'You're going to have to make it on your own out here. That's the impression we got.'" He further explained, "it's almost like a situation whereas... In the business community, your business structure is judged based on your credit score. We disagree that anyone should be judging a business based on the credit score, knowing the struggles and challenges that African Americans face every day, having to build businesses with nothing, with no access to capital, no resources, we have to figure out how to win and of course, we're going to make mistakes. Of course, we're going to have bad credit. We're putting everything in." [#5]
- The Black American woman owner of a CBE- and DBE-certified construction company described her experience by stating, "It was good, to be quite honest, especially I would say some of the grants that we came across, obviously as those are grants and not loans, so

you're not necessarily paying them back. We were made aware of several that we applied for, and I would say if we applied for 10, we probably received funds from at least five, which I thought was good." [#8]

- The principal of a majority-owned professional services firm noted, "The PPP loans experience itself was very good. They've all been forgiven, so that's great." [#11]
- The representative of an Asian American-owned goods and services firm noted, "I think it was relatively streamlined." [#19]
- The owner of a WBE-certified construction company explained her experience was, "Confusing. The paperwork was very confusing. And even when... the EIDL wasn't as bad as the PPP, but it was hard to understand what they wanted and then you would submit everything and then there would be like, 'Oh, we still have questions.'" [#20]
- The owner of a majority-owned, DVBE-certified company stated that the PPP process, "...seemed to go pretty well." [#27]
- The representative of an MBE-certified goods and services firm noted that her firm took out a PPP loan and described the experience as, "Oh, that was so easy. That was wonderful." [#29]
- The Black American woman owner of a professional services company noted that the SBA loan process was easy, "It was not that difficult. I mean, it was difficult for most people, but not for me because I'm into IT." [#31]
- A representative of a Black American woman-owned professional services company stated, "I applied for PPP loan and have made zero money in the last three years." [#AV402]

**Interviewees shared suggestions on the most beneficial types of assistance their firms could receive to reduce the effect of COVID-19.** For example:

- The representative of a CBE- and DBE-certified professional services firm suggested, "I guess in addition to Payroll Protection, probably just if there was a line of credit frequently available just to potentially help for any coverages associated with whatever challenges clients may have." [#4]
- The Black American owner of a construction company stated, "Black business owners are not looking for a handout, but we are looking for concrete resources for us to stay in business and for us to be able to expand and grow and create jobs. So, it's just like access to capital is everything. You can't tell me one business owner, if he has access to capital, isn't he not going to have good credit because he has that access to do certain things? So, it's just like access to capital is everything pretty much. So, that's what we need." [#5]
- Black American woman owner of a VBE- and DVBE-certified professional services company explained, "...what we need funds for is for future. So, for instance, we won this contract as a result of COVID, we haven't made any money to save money to pay the people that we have to pay when the contract starts. So, this contract is going to start in April, and I need to onboard eight people immediately, and I have absolutely no idea how I'm going to pay those eight people in the short term. In the long of course, when we invoice the District of Columbia then we'll get paid within two or three months after that, but that means I have to

carry people for two or three months, and that's absolutely insane for government to think that that's a reality." [#10]

- The principal of a majority-owned, CBE-certified manufacturing company noted that their experience with PPP loans was both good and quick. He did note that the experience was made better using a local bank. They initially engaged the services of a national bank but noted that the process took too long. When they engaged a local bank, the process only took 2 days compared to a several-month process they were experiencing with a national bank. [#14].

**3. Past marketplace conditions.** Interviewees offered thoughts on the pre-pandemic marketplace across the public and private sectors, and what it takes to be a competitive business. They also commented on changes in the Washington D.C. marketplace that they have observed over time.

- The Black American woman owner of a construction company explained, "Well, so this is a white male-oriented industry, and that in and of itself presents its own situation, we'll call it." [#1]
- The Black American woman owner of a CBE-certified goods and services company noted that there is a resurgence of racism and companies feel more emboldened to state their sentiments regarding POC-owned firms. [#3]
- The Black American owner of a professional services firm, when asked are there factors other than COVID that have affected his business, he stated, "I would say a shift in consumer trends as far as professional services is concerned. I used to do a lot in the area of multifamily condo types, developments. But the demand, I guess, I haven't seen it to be as high as it used to, so I guess just market forces or the economy in general." [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company expressed, "I would actually say that in the private, as well as... I'll speak specifically to private sector. I think that there have been more opportunities made available to women and minority-owned companies. I've seen more opportunity specifically targeting women and minority-owned businesses." [#8]
- Black American woman owner of a VBE- and DVBE-certified professional services company explained, "I would say that the nature of work has changed, and the nature of work being it is hard to find talent. And because we have specific talent needs, for example, someone to design an electrical system, someone to verify measurements of a streetlight, very specific things, so workforce is a challenge." [#10]
- The principal of a majority-owned professional services firm noted, "The other way that pandemic has impacted us has really just been, I don't know if it's a part of what people are calling now the great resignation, but we've had a real dissipation of staff. In most cases or maybe even in all cases, not so much leaving the firm because they didn't want to be with the firm, but people making really big life decisions that shifted their trajectory in a major way, moving across the world or to another part of the country to be closer to family. It's quite a dissipation of some key staff on that basis." [#11]

- The principal of a majority-owned professional services firm explained, “The other thing that popped into my head there was, well, it is COVID-related. I guess, the whole working from home, like what's much more common now in working from home means probably ultimately there's a reduced demand on commercial office space, which would've been a big thing that we would've been involved in up until this point.” [#13]
- The Hispanic American owner of a construction company explained the local hiring and subcontracting requirements have affected his business. He explained, “I think the only changes, honestly, and I hate to kind of say it, but one of the things that is definitely hindering is the high demands of the utilization of X amount of people. Basically, all this CBE requirements that are being mandated, which I think a lot of times they are, for lack of better terms, unattainable. So, I think that's the only thing that I can honestly tell you that has put a stop on the growth of (company name) ...” [#15]
- The owner of a majority-owned, DVBE-certified company noted that finding personnel has changed in the marketplace. He explained, “We have a state contract where we couldn't find anybody. We were getting ready to dump the contract. I said, ‘I can't really do that. I don't want to do that.’ So anyway, we talked to this contracting officer, and she upped the wages and now we're getting people applying when they want to work.” [#27]
- The Black American owner of an MBE-certified goods and services firm noted, “Market conditions have affected us. One of the things that we try to do is to buy neglected properties, fix them up and turn them around, and there's a flood of capital coming into DC, and that's priced us out so that we can't get those properties. Even when we have the means to get it, we get over bid or it's a cash buyer that jumps in front of us and so we can't do it.” [#32]

**4. Keys to business success.** Business owners and managers also discussed what it takes to be competitive in the Washington, D.C. marketplace, in their respective industries, and in general [#]. For example:

- When asked what factors have the most influence over the success of her business, the Black American woman owner of a construction company explained, “Takes a lot of money. It takes a lot of comfort from industry with you as a person, and with your company's capability to bring something to the table.” [#1]
- The Black American owner of a CBE-certified construction company advised, “know your business!” and further stated that “access to capital” is needed. [#2]
- To be competitive, the Black American owner of a professional services firm explained, “Well, it depends on, again, if we're dealing with the private versus public sector. I think private sector, it helps to have a good client base. I guess the client base is the most important thing. In terms of the public, I guess, just being certified and able to bid on public projects. So that I think those are the challenges to growth for professional services firms.” [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company noted to be successful you must have, “Competency and capability, I think, is huge. I've witnessed many companies be awarded work, especially in the district and they are not capable of being able to execute the task at hand. I would definitely say showing a

successful resume of past performance. I think definitely fair pricing, I think fair work conditions. I would say that, I think, those are key factors to being successful.” [#8]

- The Black American woman owner of a VBE- and DVBE-certified professional services company explained, “That’s a great question. First of all, you have to have specialized talent, which means that you’ve got to be able to have companies or government entities willing to recognize you and reward you for that specialized talent. So, you can’t expect small businesses to grow with in a mom-and-pop framework. The difference between a small business and a large business is that a large business can afford to pay \$150,000 for an engineer, they get a top engineer, that engineer can deliver projects timely and efficiently. I may have a price point where I need to hire someone just a couple years out of school, which means that they require lots of supervision. And I need to take time away from me or my partner to devote to spending with this person, growing that person, which means that’s the less time we have to grow our business in terms of the accounting work that needs to happen, invoicing, marketing, and business development, et cetera.” [#10]
- The Asian American owner of an MBE- and WBE-certified professional services firm stated, “I think number one is you really have the know-how. You have the expertise, or your staff have the expertise and skills that required to produce high quality work. That’s how you stay competitive. I don’t see any other key. I believe that’s number one key.” [#12]
- The principal of a majority-owned professional services firm expressed that in order to remain competitive, “Nowadays, it’s talent. Having good talent to be able to do the tasks required, that our clients require in a clever way. Used to be more price-focused. Now I think it’s more scale-focused.” To remain successful, he further noted, “Good staff is the primary. Without good staff, we can’t do anything. I mean, they’re all so interlinked, but I guess good staff means you’ve got good product, which means the clients keep coming back. If you don’t have the good staff, the whole thing falls apart and quite quickly too on somebody getting a bad impression of your work and then going to a competitor the next time.” [#13]
- When asked what factors have the most influence over the success of businesses in his line of work, the principal of a majority-owned, CBE-certified manufacturing company, explained the need for companies to receive an initial payment up front in order for them to purchase the supplies they need to manufacture their products. [#14]
- The representative of a majority-owned, SDVOB-certified professional services company stated, “Number one, consistent talent. You’ve got to have well qualified, knowledgeable trained engineers and staff, so that you’re able to deliver to the customer what they expect.” [#16]
- The representative of an Asian American-owned goods and services firm noted, “A thick skin and a tenacious spirit.” [#19]
- The owner of a majority-owned professional services company stated, “It’s constantly keeping an eye out what the competition’s doing and making sure you’re staying right with it.” [#21]
- The owner of a majority-owned, DVBE-certified company noted, “In order to be competitive, past performance is the biggest. If you don’t have past performance, you don’t

have anything. You cannot get a contract without past performance. That's a huge thing.”  
[#27]

- The representative of an MBE-certified goods and services firm feels to be competitive, “it's the equipment and technology. That you got to have in this business if you really want to be competitive, what we lack right now.” [#29]
- The owner of a majority-owned goods and services company believes finding a way to get people to call back is what it takes to be competitive in his line of business. [#33]
- The Hispanic American woman owner of an MBE-certified construction company explained, “Seriously, it's the job that you do, that's it. And, getting the work done, and the paperwork, which, we've been doing this for so long, it's just really important that you get that done. That's how you're competitive, I think. It's just basically the work that you get done, and do a good job for them, and turn it over.” [#40]
- A representative of a majority-owned professional services company stated, “I have good experiences and you work with any client. Not every client is a good fit. I have very positive relations with the D.C. government and other companies. Not really it is basically about proving your value to agencies, government, and companies. Show your value and have confidence that you will have delivered a valuable product. My record and experiences show that I do that.” [#AV326]

## **G. Potential Barriers to Business Success**

Business owners and managers discussed a variety of barriers to business development. Section G presents their comments and highlights the most frequently mentioned barriers and challenges first:

1. Obtaining financing;
2. Bonding;
3. Insurance requirements and obtaining insurance;
4. Factors public agencies consider to award contracts;
5. Personnel and labor;
6. Obtaining inventory, equipment, or other materials and supplies;
7. Prequalification requirements;
8. Experience and expertise;
9. Licenses and permits;
10. Learning about work and marketing;
11. Unnecessarily restrictive contract specifications;
12. Bid processes and criteria;
13. Bid shopping or manipulation;
14. Treatment by prime contractors or customers;

15. Payment issues;
16. Size of contracts;
17. Bookkeeping, estimating, and other technical skills; and
18. Other comments about marketplace barriers.

**1. Obtaining financing.** Twenty-six interviewees discussed their perspectives on securing financing. Some firms reported that obtaining financing had been a challenge but did not offer specifics. Many firms described how securing capital had been a challenge for their businesses [#1, #2, #4, #5, #7, #8, #11, #12, #16, #22, #23, #29, #30, #31, #32, #34, #38, #AV, #PT2]. For example:

- The Black American woman owner of a CBE- and DBE-certified construction company stated, “Honestly, I would say access to capital. I think that that's the biggest thing. You need money in order to start a business. You need money, especially in the district to be able to register and pay all of the fees that are necessary to even get a business incorporated or established. And then whatever startup funds that would be necessary to even perform projects. And then there is basically being able to have funding to sustain you during the time period that you are performing a job to getting paid on a job. It's very important that you're able to cover your overhead and pay your expenses without having to worry about how you're going to do that until the next time you're going to see an influx of money. I would say access to capital is probably the biggest barrier to entry in this industry, for certain.” [#8]
- When asked about potential barriers in financing, the Black American woman owner of a construction company exclaimed, “Oh my God, yes. So, this industry takes a lot of money, which is why I think the natural progression in the industry is to subcontract and be responsible for the money you make, until you can actually build up a war chest to not be a sub and to be a prime.” [#1]
- The Black American woman owner of a CBE-certified goods and services company explained she had been turned down for financing for 1 year. It wasn't until a white owner of another local business validated her company had the capability to repay debt. [#3]
- The Black American owner of a professional services firm noted, “Well, a lot of times, I mean, speaking for myself, like credit rating has been a barrier to getting loans, lack of business credit history because some lenders, they don't go off of your personal credit history.” [#7]
- The owner of a majority-owned professional services company stated, “It's a potential barrier in the sense that it causes me to make a business decision as to the kinds of things that I want to do. For example, if I were to go after a contract that required me to purchase a lot of equipment, I wouldn't do that because I am averse to borrowing.” [#22]
- The representative of an MBE-certified goods and services noted, “That depends on the dollar amount. Less than 100,000, no. Anything over 100,000 can be a problem.” [#29]

- The owner of a WBE-, MBE-, and CBE-certified construction company noted, “It has been a barrier only because of the way that our financial systems are structured and you kind of have to have money to get money.” [#30]
- The Black American woman owner of a professional services company noted explained, “I could get a loan, but making sure that I can make the payment back is another problem too, because you have to have a plan and you have to make `sure if I give this money, I’ll do this and then I can profit out of it. That’s just a problem too.” [#31]
- A representative of a woman-owned professional services company stated, “No one’s on the same page. When we are in meetings it seems like those in the know don’t know. Larger companies don’t have to charge the health and welfare benefits that we have to, to cover benefits. We have to add health and welfare benefits. We would like to do more work with the District, but our marks up are always going to be higher and our margins are going to be lower. With federal business you are supposed to adopt a GSA schedule. The paradigm is set.” [#AV120]
- A representative of a Black American-owned goods and services company stated, “because of my financing situation. If I can get financed properly, I can do more business. I would like to obtain more work in D.C. and also expand my business.” [#AV129]
- A representative of a majority-owned goods and services company stated, “The issue goes back 5 years ago when I was in D.C., we applied for the general office supply contract for the District of Columbia office of contracting and procurement we were not qualified to submit a bid because we did not have a physical warehouse location. One of the challenges of expanding a small business is physically being in the District for example rent and leasing space, cost of living for employees and insurances.” [#AV132]
- A representative of a majority-owned professional services company stated, “We’ve received proposals for public work, asking for help. They are looking for responses in too short a time, and it is difficult to respond that quickly. The biggest challenge is maintaining price from the subtracting market, there are supply chain and raw material issues. Wildly variable lead times and material costs with ripple effects. There is exposure for all owners, it is hard to hold down numbers.” [#AV172]
- A representative of a Black American-owned construction company stated, “Prime example is Black Lives Matter Plaza - across from the White House -- that work to create it is not given to the Black contractors as an opportunity to perform. The city puts out RFP’s or RFQ’s - the packages are not broken down so that small contra. Access to capital - money. Given proven track record of past performance it is still difficult to get funding for projects. Bonding is also difficult for small black contractors. Those two items are gateways to success in contracting.” [#AV182]
- A representative of a Hispanic American woman-owned construction company stated, “We need to get more work & line of credit.” [#AV289]
- A representative of a majority-owned professional services company stated, “The barriers were not limited to the DC govt. We had an incredibly difficult time to get a merchant bank to process debit and credit cards for us. We spent a lot of money and a lot of time and still were not able to get the approval.” [#AV477]



- A representative of a woman-owned construction company stated, "The barriers exist as a small business. Most small businesses cannot serve as a prime for financial reasons. It would be better if the packages were broken up to allow small businesses to compete for prime contracts. The construction industry is one of the hardest industries to succeed in mostly because its unique payment schedules. Payments need to be made promptly so that small businesses can survive." [#AV536]
- The Black American male owner of a CBE- and MBE-certified company stated, "what Black business owner's profit. That's important too, because not only if the profit is not there, then you can't hire people. Or you can't pay your employees enough money to keep them there because that's important too. Retention of employees is very important. Not even to include if your prices are not where you can expand to hire people, so what... actually, how do you handle that?" [#PT2]

**2. Bonding.** Public agencies typically require firms working as prime contractors on construction projects to provide bid, payment, or performance bonds. Securing bonding was difficult for some businesses and fourteen interviewees discussed their perspectives on bonding [#1, #3, #5, #7, #8, #11, #13, #20, #29, #30, #38, #AV, #PT3]. For example:

- When asked if bonding is a barrier, the Black American owner of a construction company says bonding requirements are a barrier, he responded, "the larger the project, absolutely. You got to have bonding. So once again, that's going to require credit that if your credit is not in great shape, you're not going to be able to participate." [#5]
- The owner of a WBE-certified construction company noted, "...the potential barrier on that is the expense of being bonded." [#20]
- The owner of a WBE-, MBE-, and CBE-certified construction company stated, "Bonding is also a barrier for me, and I spend a lot of time touting the company that I use. It is across the board in terms of industry, it's a huge barrier." [#30]
- The Asian American owner of a construction company explained, "Yes. I'm very big on bonding. And one of the disadvantages for me is I bid X number of projects with DGS and it hits my capacity. But if they take a while to respond to that, so therefore, it limits me from bidding other projects because I've bid, let's say, three million dollars' worth of possible projects that's in the pipeline, but it's taken five months to get a decision on that. So therefore, my bonding for that period is at a max..." [#38]
- A representative of a Black American-owned construction company stated, "Access to capital - money. Given proven track record of past performance it is still difficult to get funding for projects. Bonding is also difficult for small black contractors. Those two items are gateways to success in contracting." [#AV182]
- A representative of a Black American woman-owned goods and services company stated, "I think getting notices about upcoming opportunities in a timely manner. Sometimes we find bonding is an issued. Sometimes problems with getting paid on time. I wonder why there aren't more set asides for women owned business. There seems to be lots of support available. Lots of webinars. For me the most important thing is translating those into real opportunities." [#AV483]

- A respondent from a public meeting stated, "bonding requirements being an impediment" [#PT3]

**3. Insurance requirements and obtaining insurance.** Sixteen business owners and managers discussed their perspectives on insurance [#1, #5, #7, #8, #10, #12, #14, #16, #23, #24, #25, #28, #30, #AV, #PT4]. For example:

- The owner of a majority-owned professional services company that specializes in real estate services explained, "Well, insurance is very complicated. These policies run to 100-plus pages, and they have coverages and then exclusions, and I'm not an insurance expert, so I rely upon an insurance agent to tell me that they've provided the coverages that I need to the way I've explained what I'm looking for in coverage. And unfortunately, I don't always get that coverage. And that, actually, has cost me the most amount of money, is that I'm paying premiums for insurance that supposedly covers me in a whole bunch of situations that I've delineated, and then when and if that situation happens, the insurance company says, 'No, you're not covered,' and that's probably my biggest hit. The lack of coverage there has probably cost me a little over, or well over, a million dollars." [#24]
- The owner of a majority-owned professional services company explained that insurance, "...was actually a challenge, specifically because we are a staffing company. It sounds ridiculous. And I, to this day, I still don't understand why this is, but a lot of insurance companies will not insure for liability." [#25]
- The owner of a majority-owned goods and services company explained, "That was a big barrier, because what happens, you had to get involved, get insurance, know where to get it, what kind of insurance, because what most people, when they've started off like this, they're shelling out a big package for goods and insurance that you don't really need." [#28]
- The owner of a WBE-, MBE-, and CBE-certified construction company stated, "Insurance requirements in my industry, they're becoming more difficult. Many of these contracts in construction that are coming out are requiring \$10 million general liability policies." [#30]
- A representative of a majority-owned professional services company stated, "We've had some trouble with contracts; long delays on payments and lack of response in closing out projects with retainage and bonus provisions. Some insurance requirements are onerous and drive-up costs for not a lot of value. The certified business system is getting better, but national firms are treated better than local firms, and they get to tap into national resources." [#AV154]
- A representative of a Black American-owned goods and services company stated, "Right now we are regulated by WMATC, Washington Metro Area Transit Commission, the way the insurance is regulated is extremely high, so with the metro area there is a requirement of 1.5 million in cover per vehicle." [#AV235]
- The Black American woman owner of a professional services firm stated, "Government agencies are always asking for different types of insurance. I don't know if anybody's really monitoring that, because I'm finding out, through my insurance agent, that it seems as if attorneys are creating these limits for insurance, opposed to insurance companies. I just had a back and forth, over several weeks, with an agency, and finally the agency succumbed and said, 'Don't worry about that insurance,' but if I'm not worried about that insurance,

why are you even putting it out there? So sometimes I believe that there are barriers. There are these little barriers, a large company would think nothing to put down \$5,000 on an insurance for something that may not even relate to the type of work that we're working on, but that's part of the contract. To look at some of the insurance types that's out there, they're just crazy. I'm not a contractor. I am an architect. So why do I have to pay these things? I'm not looking at social security numbers, so why do I need this type of insurance? I think those are little barriers that adds up to restrict a small business, an African-American business, a minority business, whoever it is, but those things add up. I had to chunk, I had to put \$4,500 on an insurance, just so I can get a contract, and this was about a month ago, and I have yet to start working the contract." [#PT4]

**4. Factors public agencies consider to award contracts.** Twenty-one business owners and managers discussed their perspectives on the factors public agencies consider when awarding contracts and discuss barriers these factors may present for their firms [#1, #2, #7, #8, #11, #13, #15, #16, #18, #20, #22, #23, #28, #32, #36, #38, #AV, #PT4, #PT5]. For example:

- The Black American woman owner of a construction company stated, "I don't think the head of those agencies make it clear that it's going to be unacceptable for you to give us a bid without somebody local, without somebody that you're going to give meaningful work to." [#1]
- The Black American owner of a professional services firm believes factors can be a barrier, "If it's something arbitrary that you can't really control, yes." [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company explained, "I think past performance, I know that was something that I struggled with in the beginning, but at the same time, I do understand why each of those things are in place. I also think that the lowest bid can be tricky because lowest bid does not always translate to quality and execution of work. And so, I think that that's probably one that could be reimaged a little bit." [#8]
- The principal of a majority-owned professional services firm noted one issue he has with factors agencies use to make contract awards. He stated, "The other issue has to do with favoring of credentialed businesses, whether it's small, local or minority. And I'm not going to take issue with the goals of those programs. The goals are laudatory and they're good. The problem is that, I don't know, it's both a feature and a bug. The goals that are set by public agencies are often a little bit in advance of what the market could actually provide." [#11]
- The owner of a majority-owned professional services company stated, "Almost rarely is the very best person selected for the work by, let's say, to be blunt about it, the DC Government." [#22]
- The Black American owner of an MBE-certified goods and services firm stated, "Yes, they are. And again, if they right size the projects so they have something for the big boys, but if they set something aside for the small people then ... Let me be more specific. Sometimes they'll have something where they say that the big guy, the big contractor has to get some minority contractors, some small contractors in there, and then they have their favorites

that they deal with. But I'm talking about the government just saying, 'Okay, these are direct to small vendors.'" [#32]

- A representative of a majority-owned professional services company stated, "There are certain restriction based off preference programs that have made it difficult to compete." [#AV306]
- A representative of a majority-owned professional services company stated, "We generally don't work with government orgs because they generally choose the lowest bidder, and we are a higher bidder." [#AV127]
- A representative of a majority-owned goods and services company stated, "I am white, but my workers are diverse, if you are trying points for a contract what can I show (documentation) that I am diversified employer, and they are being punished for my skin. ... My complaint D.C. has a security officer min wage that is \$16 plus \$5 fringe benefits. They do not have a special police minimum wage. What companies are doing to low bids or cut cost is replace security officers that make \$20 with special police and pay." [#AV20]
- A respondent from a public meeting stated, "one of the biggest issues that we face, the use of the same companies over and over, either due to favoritism, etc." [#PT4]
- The woman owner of a construction company stated, "... competitive bidding, again I'm a subcontractor. So, usually what happens is the lowest bid wins, now my question is, how can we get the playing field level particularly for CBEs? When in fact we operate in the district, we operate in the district, the taxes are higher, we get to pay stadium fees. We got workers comp that's higher, the insurance is higher. We've got an apprenticeship program, the administration costs to run it, to run the apprenticeship program, to also stay in compliance. That's a lot of money and again being a small CBE, it's challenging. So, that's the first step in trying to get a competitive bid." [#PT5]

**5. Personnel and labor.** Thirty-eight business owners and managers discussed how personnel and labor can be a barrier to business development [#1, #2, #4, #5, #7, #8, #10, #12, #14, #16, #17, #18, #19, #20, #22, #23, #25, #26, #27, #28, #29, #32, #33, #36, #38, #39, #40, #AV, #PT2]. For example:

- The Black American owner of a CBE-certified construction company noted the lack of a talented workforce is a barrier preventing him from going larger. [#2]
- The representative of a CBE- and DBE-certified professional services firm stated that, "Finding personnel is a challenge. Because we have such a specialized craft it is very difficult to find local DC residents who have professional services backgrounds, as well as maybe a construction or program management background." [#4]
- The Black American owner of a construction company expressed he had no concerns learning about work. However, he did express that if he had more resources, he could build a team to possibly find additional opportunities. He noted, "Having access to capital so I could put a team together to go and explore and locate those opportunities." [#5]
- The Black American woman owner of a CBE- and DBE-certified construction company stated, "I wish that there was an agency that I could call for when I need a specific type of craftsmen or tradesmen. It can be very difficult. But also, if there were somebody that you

could call, some sort of agency that had qualified, trained, not employees, just basically laborers that could be provided. Because in this industry, unless you can afford to keep a laborer or an employee on full time, it's touch and go as to when and how you're going to be able to access laborers for your project." [#8]

- The representative of a majority-owned, SDVOB-certified professional services company noted, "Yes. That can be, and that's an on ongoing thing that we deal with on a regular basis." [#16]
- The owner of a majority-owned, DVBE-certified professional services company noted, "And so if you want to get new talent, then you got to go and recruit them. And right now, the labor market is really tight, at least in my industry." [#18]
- The owner of a WBE-certified construction company noted, "We have not really had to advertise in many years. And when we've advertised, it's been for truck drivers and where we need a CDL Class A. You get everything from pizza delivery to buses and taxi people. And they're not reading the ad, so they're just throwing their name in so they can say they looked for a job." [#20]
- The owner of a majority-owned professional services company stated is aware of this being a barrier for his industry. He explained, "...a lot of my associates, that's been something they don't have people to work. And in this profession, you need fairly high trained professionals to work, because everything is digital based design work. So, you're looking in that department for employees." [#21]
- The owner of a majority-owned professional services company explained, "It is tougher right now, actually. Everything that we're reading about in the newspaper and seeing in the news about how tough it is to find candidates, it is definitely a candidate driven market right now in that we've had candidates who got so used to working remotely, they will only consider remote work. We've had candidates who retired during COVID. They just said, I'm done. So yeah, it is much tougher." [#25]
- The Black American owner of an MBE-certified goods and services firm noted, "There is an organization called CASA. I don't know if they have any offices in the District of Columbia. They have some in Maryland. And I've been to them, and it's been useful when I needed to locate labor, semi-skilled labor quickly. If CASA or a similar organization could organize semi-skilled labor so that it would be easy to get them for the short-term projects, that would be very beneficial." [#32]
- The owner of a majority-owned goods and services company stated finding labor is a barrier because, "No one wants to do it (work)." [#33]
- The Asian American owner of a construction company explained finding labor, "That can be challenging, especially in our market, most individuals go to the larger companies. And for us being small companies to attract the good employees, it's a little challenging. Yeah. That's difficult." [#38]
- The Black American owner of a CBE-certified goods and services firm stated finding labor is a problem. He stated, "... there's not a shortage of people. There's a shortage of people that want to work." [#39]

- The Hispanic American woman owner of an MBE-certified construction company explained, "Right now, like I said, it's just the employees, lack of employees. People don't want to work. That's been a real struggle for us, finding good people." [#40]
- The Asian American owner of an MBE- and DBE-certified professional services firm noted, "Once we team up with other companies, we do our fair share of work. The biggest problem we face is because it's not prime work, because we do not have the experience. What happens is we get good quality people, we train them, but then they will say, 'Now let me go work for a larger firm.' Sustaining talent base becomes a challenge sometimes." [#36]
- A representative of a Black American woman-owned goods and services company stated, "... manpower, have to get staff licensed ... takes too long, back log." [#AV4]
- A representative of a Black American-owned professional services company stated, "We haven't really focused on the D.C. government per se. New challenges given the environment with COVID. In terms of staffing, locating employees." [#AV216]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "Don't know where to start or what to do. Hard to find workers because of COVID, prices are increased, and margins have increased and companies are making less." [#AV251]
- A representative of a Hispanic American woman-owned goods and services company stated, "Only difficulty is finding employees right now." [#AV291]
- A representative of a majority-owned construction company stated, "The market is tight which is increasing prices for everybody. The price of materials and labor is much higher." [#AV384]
- A representative of a majority-owned professional services company stated, "Hard to find people, people that to work, it the trade, people want to go to college." [#AV398]
- A representative of a woman-owned goods and services company stated, "The quantity of qualified workers. Do they show up for work, on time, etc..?" [#AV427]
- A representative of a woman-owned goods and services company stated, "Labor rate." [#AV452]
- A representative of a Subcontinent Asian American-owned construction company stated, "We haven't tried hard enough to know the where the opportunities are and finding workers is not easy. I think a lack of personnel is the hardest thing." [#AV465]
- A representative of a Subcontinent Asian American-owned professional services company stated, "In this industry it is hard to find engineers right now, expansion is really difficult or entry level." [#AV527]
- The Black American male owner of a CBE- and MBE-certified company stated, "What Black business owner's profit. That's important too, because not only if the profit is not there, then you can't hire people. Or you can't pay your employees enough money to keep them there because that's important too. Retention of employees is very important. Not even to include if your prices are not where you can expand to hire people, so what... actually, how do you handle that?" [#PT2]

**6. Obtaining inventory, equipment, or other materials and supplies.** Fourteen business owners and managers expressed challenges with obtaining inventory or other materials and supplies [#1, #2, #11, #12, #14, #20, #26, #29, #40]. For example:

- The Black American male owner of a CBE-certified construction company noted that obtaining inventory is a barrier due to current high interest rates when purchasing equipment using a line of credit. [#2]
- The principal of a majority-owned, CBE-certified manufacturing company noted that obtaining supplies is a barrier due to the current global economic climate. [#14]
- The owner of a majority-owned construction company noted that supply chain issues have contributed to a barrier. [#26]
- The woman representative of an MBE-certified goods and services stated, “This equipment is very expensive, and the technology is expensive. So, it’s a matter of finance, and that becomes an issue.” [#29]
- The Hispanic American woman owner of an MBE-certified construction company explained noted that inventory has been an issue due to COVID-19. [#40]
- A representative of a majority-owned professional services company stated, “The biggest challenge is maintaining price from the subtracting market, there are supply chain and raw material issues. Wildly variable lead times and material costs with ripple effects. There is exposure for all owners, it is hard to hold down numbers.” [#AV172]
- A representative of an Asian Pacific American-owned professional services company stated, “Post COVID, it has been tough, supply shortages, etc.” [#AV316]
- A representative of a majority-owned construction company stated, “The market is tight which is increasing prices for everybody. The price of materials and labor is much higher.” [#AV384]
- A representative of a majority-owned professional services company stated, “We do not have any available of supplies or equipment to sell, [there is a] shortage of laptops and monitors.” [#AV437]
- A representative of an Asian Pacific American-owned goods and services company stated, “The current market conditions are based on last year or so, so only market conditions that have hindered our growth. Raw material pricing has gone up, so that is a barrier as well we face.” [#AV510]

**7. Prequalification requirements.** Public agencies sometimes require construction contractors to prequalify (meet a certain set of requirements) in order to bid or propose on government contracts. Twenty-eight business owners and managers discussed the benefits and challenges associated with pre-qualification [#1, #2, #5, #7, #10, #11, #16, #18, #19, #20, #22, #23, #25 #28, #32, #33, #36, #38, #AV]. Their comments included:

- The Black American owner of a construction company believe pre-qualification requirements are a barrier when they don’t take the owners experience into consideration. He noted, “So even for me, as a plumber contractor, some of these contracts come out and

they're very attainable, but then when you get to the qualification aspect of it, it can almost eliminate you because it's just like, well, the business hasn't been an operational for five years, but the plumber, the owner has been a plumber for 20 years. So, it's just like, well, that's a disqualification right there. So, it's just like, are they realistically trying to get us involved, or they only pretty much language in this for people who have already been contracting? So yeah, prequalification, sometimes it turns me away from bidding on certain projects that I probably could win." [#5]

- The Black American owner of a professional services firm feels this is a barrier. He exclaimed, "For instance, if you want to get on the bid for school design, and if you haven't done X number of schools, you may not even be considered. So yeah, that is a challenge." [#7]
- The representative of a majority-owned, SDVOB-certified professional services company explained, "Let me give you an example, there are times when as a pre-qualification, you have to meet a certain financial size standard. And so, what that does is that precludes smaller or newer businesses, it precludes them from even being able to bid on the contract. So, there have been several times where we could have delivered to the customer specifically to the state of Maryland, but they put in their thing that we had to be at least \$10,000,000 a year in annual revenue. And we have not hit that number yet. And so, we were not able to respond." [#16]
- The owner of a majority-owned, DVBE-certified professional services company explained, "Yes, justifiably so. I mean, the things that are put in place that are making a barrier, a lot of them are because they're protecting the public interest." [#18]
- The owner of a WBE-certified construction company stated, "And the biggest problem we have with that is all of the pre-qualifications that we've come across, they want our finances. But they're not required to give their finances to us to tell us if they're even going to pay us... they can cough up their financials, especially for that job because a lot of them will actually start a job without having the finances in place with a bank or what have you. And then they'll get halfway through, and they'll go, 'Oh, the bank hasn't approved us for X, Y, and Z.' Well, there's no way for us to know other than based on your word." [#20]
- The owner of a majority-owned professional services company explained, "For example, from time to time over the years, I would get some requests for prequalification for certain kinds of work, such as from the DC Government, for example. Nothing ever comes of it because what seems to happen is that the actual selection of the contractor happens at the time the job is to start. So, prequalification in my experience and for my kind of work has never actually mattered much." [#22]
- The Black American owner of an MBE-certified goods and services firm stated, "Yes, I think it's been a barrier, and I think if they right size the project and they right size the requirements for the different projects, it'll allow new guys, the minorities, the female owned businesses to have a chance." [#32]
- The Black American woman owner of a construction company explained, "Pre-quals can present a challenge, and I say that, because, again, that goes back to your back office if you don't have QuickBooks or somebody or something. If you don't have someone in that company that knows you and knows your work, because let's be realistic about this, there



are rules and then there are rules that can be ignored in every industry. And so it depends on the rules and who knows you and who you know. I don't know how else to say it. But it is a challenge because if no one knows you and you are trying to break into that company or that industry, your stuff is going in file 13, you're not going to read it. Like, yeah, well, okay, thank you... I think the whole prequal needs to be, unfortunately, this would take a lot of work, it needs to be downsized." [#1]

- The owner of a majority-owned professional services company believes, "Well if they're reasonably structured, they're necessary. They can be necessary. I don't have a problem generally just with the concept. Now sometimes it all depends on what they put in these qualifications. But if they're technically necessary, they're appropriate." [#23]
- The owner of a majority-owned professional services company noted, "They're not, only because we don't go for direct government contracts, so we don't need to be pre-qualified." [#25]
- The Asian American owner of an MBE- and DBE-certified professional services firm explained, "Not really, but if the prequalifications require you to have 10 years of experience and a person with 20 years of experience to represent project management, then of course we are kicked out because we do not have too many of those." [#36]
- A representative of a majority-owned construction company stated, "It is hard to get work if you are not a minority-owned business. You also need certain certificates to clean, unless you have a physical address in D.C." [#AV62]
- A representative of a Black American-owned goods and services company stated, "The CBE certification is difficult, requires the business to be located in D.C..." [#AV82]
- A representative of a Black American-owned goods and services company stated, "The prerequisites are tough for someone just starting. The procurement process is difficult. I am just hoping somehow, I can get some contracts." [#AV104]
- A representative of a woman-owned professional services company stated, "Government agencies seem to want a specific project type experience--Architects are trained as generalists and are able to perform any type of architectural project--we are not limited by any specific project." [#AV177]
- A representative of an Asian Pacific American woman-owned construction company stated, "We have all the experience, but the company is new and has not bid jobs under this name. We do not have the minimum prerequisites to bid, such as 3 references for same size and type of project." [#AV181]
- A representative of a majority-owned professional services company stated, "We are not women or minority, so our experience with the bid is the qualifying factor and the pre-qualifying. It's very onerous for the amount of work and the size of contract. Is the juice worth. Right now we are incredibly busy, between the housing boom and now huge push with medical research related facilities." [#AV186]
- A representative of a Black American-owned construction company stated, "We have experienced barriers in terms of being allowed to bid on work being, pre-qualified and getting pre-qualification criteria as well as access to potential work as well. I think the government needs to be better in terms of looking at small businesses in general."

government looks at general contractors for projects they always mandate to D.C. They should subcontract work to minority companies.” [#AV321]

- A representative of a woman-owned goods and services company stated, "The main thing for us is we have recognized in the past contracting opportunities with the D.C. government however it is our understanding without being based in the District of Columbia we do not qualify to bid." [#AV360]
- A representative of a woman-owned professional services company stated, "D.C. government requires having an office in D.C. which excludes most of us." [#AV366]
- A representative of a Black American woman-owned goods and services company stated, "If you are not a CBE you don't get priorities to win bids. With the government it seems to be very relationship based and getting your first job as a small business is difficult." [#AV421]

**8. Experience and expertise.** Interviewees noted that gaining the required experience and expertise to be competitive in the public sector can present a barrier for small, disadvantaged businesses. Experience is often compared to the requirements for prequalification. Others had no difficulty building the experience and expertise and meeting past performance requirements [#1, #2, #3, #5, #6, #7, #8, #11, #16, #17, #18, #19, #23, #32, #36, #38, #AV, #PT2]. For example:

- When asked if gaining the experience to be competitive can be a barrier, the Black American woman owner of a construction company noted, "Well, yeah, it's the knowledge, the knowledge that one, if you've only done a \$10,000 job, the likelihood of you putting together a proposal and winning \$100,000 job by yourself and not teaming with somebody, what are you thinking?" [#1]
- The principal of a majority-owned professional services firm noted that gaining the experience to respond to RFPs can be a barrier when there is, "...an over reliance on insisting on very narrow expertise over a very short timeframe." [#11]
- The Asian American woman owner of a professional services IT firm noted, "response to the RFPs are challenging and that's why I'm looking in that area a lot." [#17]
- The owner of a majority-owned, DVBE-certified professional services company explained, "When it comes to knowledge, skills, and experiences, no. When it comes to past performance, yes. Meaning that the government contracting officer likes to see work that you've done of similar size and scope for, if not the same agency, then like sister agency. And the further you stray outside of that, either in terms of the size of it, or it's not exactly the same thing, or it wasn't really an agency that they're really that familiar with, then you got a harder time growing your experience space, so to speak." [#18]
- The owner of a majority-owned professional services company noted, "Bottom line is if you don't know somebody, if you don't know the contracting officer or people fairly senior in the organization, be it government or private that you're bidding to, your chances of getting the work are pretty low. You've got to be a known quantity and therefore the opportunities for somebody to come in fresh with no experience can be pretty hard to find." [#23]
- The Asian American owner of an MBE- and DBE-certified professional services firm noted, "When people leave you lose that expertise. Let's say we got a job where one expertise was

needed. We got an expert. Now when the job almost got started, we don't have a single job for the next one. You don't have the people." [#36]

- The Black American woman owner of a CBE- and DBE-certified construction company stated, "Yes and no. However, I'm a fond believer that if you're willing to start small and you're willing to take any job, I think that that's the best way to be able to build past performance." [#8]
- The owner of a majority-owned professional services company that specializes in real estate services stated, "It is my personal opinion that if you're starting your own business, you should know what you're doing. And if you need help to figure things out like that, you should be working for somebody else to get that experience." [#24]
- The owner of a majority-owned goods and services company explained, "You got to know a little bit about being competitive before you go into business." [#28]
- The representative of an MBE-certified goods and services stated, "It's not really a barrier, but some of the... Only because as of right now, I am a proposal writer, so I can do it for the company. But some of the RFPs, it's almost written that you can't meet those requirements, especially when the government does a big one..." [#29]
- A representative of a Hispanic American-owned construction company stated, "We have no experience. It's hard. It's a tricky place to do business." [AV150]
- A representative of a Black American-owned construction company stated, "Prime example is Black Lives Matter Plaza - across from the White House -- that work to create it is not given to the Black contractors as an opportunity to perform. The city puts out RFP's or RFQ's - the packages are not broken down so that small contractors [can bid]. Access to capital - money. Given proven track record of past performance it is still difficult to get funding for projects. Bonding is also difficult for small black contractors. Those two items are gateways to success in contracting." [#AV182]
- A representative of an Asian Pacific American woman-owned construction company stated, "We have all the experience, but the company is new and has not bid jobs under this name. We do not have the minimum prerequisites to bid, such as 3 references for same size and type of project." [#AV181]
- A representative of a Hispanic American woman-owned professional services company stated, "I find the proposals were very difficult to navigate I do a lot of writing for my clients and so many requests were convoluted, there was no following up in spite of my many attempts, and no clear indicators of where to go and who to contact for more information. I would like to know what my starting point would be--where do I go to find out what I need so I can see bids and RFPs for projects that are in my area of expertise that I could submit a bid for. It has been so difficult for me to get any government work." [#AV342]
- A representative of a Black American woman-owned goods and services company stated, "Trying to navigate how to get in with that group - the D.C. government. Just trying to submit bids and being a minority-owned company and small has been very challenging." [#AV351]
- A representative of a Black American woman-owned goods and services company stated, "Being a new company hard to get bids to be accepted. Trying figure out to make changes,

get work on a consistent basis. starting, trying to get bids accepted being a new company.”  
[#AV387]

- A representative of a majority-owned professional services company stated, "It is very difficult to be selected if you don't have experience in District contracts that are issued by DGS or other District operated agencies." [#AV393]
- A representative of a Black American-owned goods and services company stated, "We don't have the resources to go after the contracts when they come out. There are so many layers." [#AV448]
- A representative of a Black American woman-owned professional services company stated, "Long and involved complex RFP (request for proposal processes). Not a lot of opportunities for small businesses. Contracts often rewarded to incumbent companies which are often large firms." [#AV463]
- A respondent from a public meeting stated, "For example, situations where you have a prime contractor, who then hires subcontractors, and the subcontractors are subsidiaries of larger business. I came to you to protest, where there was a huge contract that was awarded to a 'minority business' that was a subsidiary of the multibillion-dollar real estate company, the biggest in the city. When I brought that to his attention, I was like, 'Wait a minute. How is it that this entity was even able to compete? Because they came under the guise of being a... They had a Black woman who was in charge of it, but it was a subsidiary of one of the largest real estate companies in the city. They then had the benefit of that company's balance sheet, all their financials, all the strength, all the expertise experience, what and so which then made it impossible for a company like my own, a small, minority-, and woman-owned business to even think about competing." [#PT2]

**9. Licenses and permits.** Certain licenses, permits, and certifications are required for both public and private sector projects. Thirty-six interviewees discussed whether licenses, permits and certifications presented barriers to doing business [#1, #2, #5, #7, #8, #11, #12, #15, #20, #21, #24, #25, #32, #AV, #PT4, #WT8]. For example:

- The owner of a majority-owned professional services company stated permitting in DC is his biggest problem. He explained, "I think the biggest thing is, because the type of work I do is smaller work, they seem to have a one size fits all policy. So the small projects are getting stuck behind. I'm not sure what they're stuck behind, but they take an extreme amount of time to go through the processing. Certain places have multiple tracks or different ways. The timetable is just inconsistent with what the size of the work is, which is also then, very frustrating to my clients who are either looking to build or expand in DC. Honestly, I've actually told a couple to just go across the border in Montgomery county because it was easier to deal with, because they were looking right at the borderline." [#21]
- The Black American woman owner of a construction company explained why licenses and permits can be a barrier noting, "So for the business, it's very expensive. It's expensive to pay somebody \$200 to get a license and then another \$200 or \$400 biannually if you don't have any projects. Really, it's amazing. But to the city's credit, they have realized that that has put a tremendous strain on most of their smaller businesses. So, I think they have reduced it to \$100 or something like that. So, they have tried to make some accommodation

on the backside. Now the permit's nightmare, nightmare, not just for us, for the large companies too. I have a project right now that is being held up because this agency's people haven't reviewed it therefore, we can't go get the permits and get started. I just try to avoid that block because I don't want to be on the six o'clock news because it's so ridiculous. It's like, how difficult is this for you to go and look? I don't know." [#1]

- The Black American owner of a CBE-certified construction company noted that licenses and permits can be costly due to multiple reviews that can occur. [#2]
- The Black American owner of a professional services firm noted, "Just sometimes the licenses and permits required are in terms of their cost could be prohibited. That could be another barrier." [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company noted, "I think that the process by which you have to go in order to obtain them is very discouraging. It's very frustrating. It's very time consuming... It seems like the system that's in place is not efficient, specifically through DC Government. I'm not saying this is specific to DC Government." [#8]
- The owner of a WBE-certified construction company explained, "One of the things that we are required to have because our guys use machinery out in the street is an operator's license. And the test is only available in English. The application is available in like 25 languages, but the test itself is only available in English and the majority of your operators in DC...are Hispanic. So, they cannot read that test. All of them, even if they can speak perfect English, it doesn't mean they can actually read well in English. And the test itself is a, I think it was \$190. And if you miss enough questions, you have to redo it and pay another fee." [#20]
- The owner of a majority-owned professional services company that specializes in real estate services stated, "So in DC you need a BBL [basic business license]. So right now, I'm having difficulty because I have a client who purchased a property and he's having me manage it, and DC has not issued the BBL...Nobody's responsive and we can't get anybody on the phone and no one will actually even talk to me because they say I'm not the owner of the property, even though I've provided the management agreement." [#24]
- The owner of a majority-owned professional services company explained, "In DC, yes. When we were registered to do business, it took three shots for DC to get it right. They lost our paperwork the first two times. And the third time, actually the first time I sent it in again, and I called them, I guess it was DCRA. And I said, 'Well, we still haven't received anything.' And they said, 'Oh no, no, we have you right here.' And they pulled up our file and they said, 'Yeah, you're at 600 Park Avenue, New York City.' I said, 'No, actually we're about four blocks from you.' They had mixed up our paperwork with a company in New York, go figure. So, we had to do it a third time. And so yeah, that's a barrier, but fixing it in DC, it's just, people need to pay better attention. And that's one of the challenges." [#25]
- The Black American owner of a CBE-certified construction company suggested that DC utilize an automated system for permit reviews. [#2]
- The Black American owner of a professional services firm noted the financial costs of licenses and permits should be addressed. He stated, "Well, businesses that's struggling

financially, and then you just layer that as another layer or another hurdle that they have to get over. I think if there's an easier access to capital loans and grants, I think that would go a long way to helping businesses to overcome that." [#7]

- The Hispanic American owner of a construction company noted that changes within government can help overcome this barrier. He stated, "Getting permits is definitely a pain in the butt. I think sometimes people get... And I don't know if it has to do with COVID or it has to do with, again, normal work ethic standards or a work ethics depletion. But I think that a lot of times people, they're not doing their jobs. I find it very hard at times to actually get a permit approved, because people are, in my opinion, not focusing enough on doing their job and they wait until the last minute. And two is, I have never been in a place that required for you to have three different types of permits in order for you to perform work. This is the only place that I have been, which is the District of Columbia, that requires for you to have three different permits before you actually do any type of construction." [#15]
- The owner of a WBE-certified construction company stated, "Having somebody actually understand what is done." [#20]
- The owner of a majority-owned professional services company believes, "So hiring people in the DC Government that can really focus and have a customer service-oriented attitude, I think that would be better." [#25]
- The Black American owner of an MBE-certified goods and services firm stated, "The renewal process is sometimes difficult. Sometimes notifications that a license is expiring, doesn't go out, and the cost and the difficulty of the home improvement license, I had it at one time and I haven't tried to go back and get it because it was just too difficult. And we can do our work without it, but every once in a while, somebody will call up out of the blue. They'll see the truck or something. Can you do this for me? Can you do that for me? And it'll be great if we had a home improvement license, and they just have made the barrier to get that. It can be done. It's just too hard to make it worthwhile for us." [#32]
- A representative of a Black American-owned construction company stated, "Getting a license in the District of Columbia is very difficult. If they can help us in any way to facilitate licensing..." [#AV11]
- A representative of a Black American-owned construction company stated, "I was not able to get the license for D.C. It was challenging at first but I now have it." [#AV44]
- A representative of a Hispanic American-owned construction company stated, "We've done a lot of work for the federal government and military. Waiting for reciprocity for D.C. and also waiting on minority- and woman-owned certification. Expected soon, waiting for a year for it. Want to expand, just waiting for reciprocity for the master's license." [#AV73]
- A representative of a majority-owned construction company stated, "Our biggest problem is we tried to reciprocate our IPM license, and we cannot reach anyone by phone or by email." [#AV122]
- A representative of a majority-owned professional services company stated, "Our biggest difficulty has been in the permitting projects when they cross over the sister agencies. Were primarily involved in getting building permits when doing work but since it sometimes includes the department of water or DOEE..." [#AV124]

- A representative of a majority-owned goods and services company stated, "There is not a central licensing program." [#AV136]
- A representative of a majority-owned goods and services company stated, "Difficulty with communication, it's difficult to exchange information. Today I'm trying to renew our license, they just changed their process and there is really no way to find out how. I even checked their website and there is no information." [#AV173]
- A representative of a woman-owned professional services company stated, "The permit process is impossible, makes me not want to do business in D.C." [#AV179]
- A representative of a majority-owned professional services company stated, "Obtaining permits for building projects is very difficult, especially when the project is for mechanical, plumbing, and electrical." [#AV229]
- A representative of a Black American-owned construction company stated, "I have tried to renew my license, but the politics and paperwork, more and more docs if you call there you get passed around, everyone passes the buck, takes for never. ... Trying to keep your license up to speed they makes changes and add things, got a new system, horrible system, terrible. I went down there, had to take day off, got the run around, to get a permit, and still no license. They make it very difficult." [#AV276]
- A representative of a woman-owned professional services company stated, "Barriers based on incompetence, getting a building permit through D.C. RA is terrible. It should take maybe a month to get a permit [but] it takes much longer." [#AV286]
- A representative of a Subcontinent Asian American-owned construction company stated, "The requirements for D.C. licensing are a challenge." [#AV292]
- A representative of a majority-owned professional services company stated, "It is a little complicated because there have been a lot of changes over the last several years with website access and licenses. Things change from one thing to another and trying to chase down company license requirements has been difficult and complicated." [#AV317]
- A representative of a woman-owned construction company stated, "The web site is very hard to use. The new system is hard to connect business license and your reports. Ease of use is lacking." [#AV328]
- A representative of a majority-owned professional services company stated, "Permit issues." [#AV331]
- A representative of a majority-owned construction company stated, "Getting permits... the process is difficult." [#AV373]
- A representative of a majority-owned construction company stated, "It took a while to get our contracting license, but we got our selves incorporated in D.C. and it was not too difficult." [#AV378]
- A representative of a Hispanic American woman-owned construction company stated, "The only thing that holds me back with government would be receiving payment in a timely manner. The big issue with DC is government regulations - need to make them the same across the board - universal licenses for everyone an easy to acquire meaning make it user friendly." [#AV417]

- A representative of a majority-owned construction company stated, "The permits... increasingly difficult to get permits, building permits, flak from customers because it takes so long for a permit, customers get upset." [#AV498]
- A representative of a Black American-owned goods and services company stated, "Red tape trying to get correct licenses because we are doing security work. Trying to get to the right person, and response takes a long time." [#AV521]
- A representative of a Black American woman-owned professional services company stated, "Technology... how hard it is and it's not user friendly for people, such as renewing license & information for standard business work." [#AV543]
- The Black American woman owner of a professional services firm stated, "Then, there's something else, called, Digital Marketplace, that's about to start, when they're going to put third party inspectors in some kind of a marketplace. I have a serious problem with what they're doing. I don't see why D.C. small business is not ahead of this game, understanding that data is not collected properly when they're reviewing permits and inspections. Now that they've got my business in their hands, I have a serious problem with that. That's a barrier to success. That will be an experience in discrimination, and sooner or later, working with the district, that's a problem." [#PT4]
- The CBE-certified professional services firm stated, "DC ties a business license to a specific address. If the office space closes (like ours did during COVID), we have to apply for a 'new license' for our new address, even though we are just renting office space, and our work remains the same. That is unnecessary cost for a small business. Why does a new address need a new license? Especially for a consulting business (versus a barber shop) which may move around depending on where they get a better rate on the rent." [#WT6]

**10. Learning about work and marketing.** Forty-four business owners and managers discussed how learning about work is a challenge, especially for smaller firms. Networking and marketing their businesses is also a barrier for some businesses [#4, #7, #8, #10, #11, #12, #14, #16, #17, #19, #22, #23, #28, #32, #33, #36, #38, #AV]. For example:

- The principal of a majority-owned professional services firm noted lack of familiarity as a barrier. He stated that, "...clients may tend to favor firms that they've just become most familiar with. So that can be a barrier to us as a firm of our size, up against much, much larger firms that either just invest in the exposure or just have much, much larger portfolios to draw from." [#11]
- The Black American woman owner of a professional services company wishes, "I want to go to one place. I don't want to go to everywhere because there's DC Government, Virginia government, federal government. Oh my God, so many places. So, who has time for that? And then you don't have, this is everything you need to do this. You don't have that." [#31]
- The Asian American owner of an MBE- and WBE-certified professional services firm stated, "The only barrier I think there is for us is like geographic barrier. We're trying to break into a new geographic area. Even though we have the skills and all the knowledge and expertise, but we don't know anyone." [#12]



- The representative of a CBE- and DBE-certified professional services firm noted that learning about work can be a challenge. She stated, “Well, sometimes. I would just give an example for DGS. They used to give announcements when they put out new RFPs. A lot of places no longer do that. You just kind of have to monitor the sites, basically have somebody watching the sites every other day for new opportunities, versus getting pinged or getting some announcement or any information like that.” [#4]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified company stated, “We don’t always know where to go, we don’t always know where the opportunities are being published or when.” [#6]
- The Black American owner of a professional services firm feels learning about work is a barrier. He stated that, “...from my experience years ago, trying to get public sector work and government work, sometimes knowing where to look could be an issue, subscribing to the right newsletters or where these announcements are made or getting on the vendors list, that could be a challenge or knowing how to access these lists to get yourself on. [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company distinguished between the federal and local space by noting, “In my experience in the federal space, no, because I think that there are several platforms. And maybe it is because it’s a much broader space, but there are several ways to be able to identify opportunities and several resources available to assist in the bidding process and several brokers and companies that will help you if you’re unfamiliar...In regard to the local district, I would say that the process just seems a little haphazard in terms of finding out about opportunities.” [#8]
- The Asian American owner of an MBE- and DBE-certified professional services firm explained, “We take the work we get instead of trying to get the work we should want. Somewhat barrier.” [#36]
- The Asian American owner of a construction company stated, “As a small company, we don’t have, like in most large organizations, a person who’s dedicated to marketing or someone who’s dedicated to business development. So, we have to do everything. We’re like the cook, the chef and a bottle washer that dabs into each aspect of a business from estimating to development to quality control to personal management.” [#38]
- A representative of a Black American woman-owned professional services company stated, “We have encountered barriers regarding marketing and advertising by the D.C. government of available contracts. I think we are limited; we just don’t have a voice.” [#AV5]
- A representative of a Black American woman-owned professional services company stated, “The timeline for winning work if you’re a small business... the window for finding out if you have won a contract is so long you cannot retain employs till you find out if you’ve been awarded the contract. and during COVID many people have pulled back.” [#AV131]
- A representative of a Subcontinent Asian American-owned professional services company stated, “We would like more exposure and meetings to learn about opportunities, like quarterly meetings. Anything that gives us opportunities. .” [#AV170]

- A representative of a Black American woman-owned goods and services company stated, "The barriers is not being aware that the opportunities exist. Our company does not know where to go in order to find those opportunities." [#AV188]
- A representative of a Black American-owned construction company stated, "I'd like to know the avenues to getting work in D.C., especially with the District government and federal government." [#AV189]
- A representative of a Hispanic American-owned construction company stated, "I need advice how to get the jobs, but I am in the industry. I am in the area, but I have a license in Maryland also and now I have my master license." [#AV208]
- A representative of a Black American woman-owned professional services company stated, "Need a better understanding on how to start or where to start to get contracts." [#AV212]
- A representative of a Black American woman-owned goods and services company stated, "Need listings for bids and is it broken down by agencies." [#AV213]
- A representative of an Asian Pacific American woman-owned professional services company stated, "Our only barrier is that we don't have enough information about this to be given the opportunity." [#AV226]
- A representative of a Black American-owned goods and services company stated, "Lack of knowledge of what is available in terms of contracts. They want you to already have financing upfront for equipment. So, we get out bid by other companies as they can offer more services. It is almost who you know... the government already has an idea." [#AV245]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "Don't know where to start or what to do." [#AV251]
- A representative of a Black American-owned professional services company stated, "We just need to have more opportunities." [#AV253]
- A representative of a Black American-owned professional services company stated, "We need more info when opportunities arise." [#AV288]
- A representative of a majority-owned construction company stated, "How can I find resources to bid on government contracts, local contracts?" [#AV300]
- A representative of a Black American-owned construction company stated, "Just being aware of solicitations and writing proposals." [#AV314]
- A representative of a Black American woman-owned goods and services company stated, "I want to be knowledgeable about where to locate them for opportunities. A resource center for businesses to access information regarding getting into contracts with government organizations [would help]." [#AV323]
- A representative of a Black American woman-owned goods and services company stated, "We need more information on how to get work, and what the government is offering. We also need places in the community to find out if the government is offering grants, loans, in the community for minority and women owned businesses." [#AV344]
- A representative of a Black American woman-owned professional services company stated, "Trying to get in the area is difficult and cumbersome. ... just trying to find out where and

when things are coming with requesting for proposals. Those are not as easily found.”  
[#AV372]

- A representative of a majority-owned professional services company stated, “We need help getting certifications, [and the] knowledge of the opportunities that are out there.”  
[#AV390]
- A representative of a Subcontinent Asian American-owned construction company stated, “We are open to work. I am just finding a challenge in finding contracts relevant to our work. Biggest hurdle so far.” [#AV395]
- A representative of a Black American-owned professional services company stated, “I just need to find out about more opportunity as a minority-owned business.” [#AV412]
- A representative of a Black American woman-owned goods and services company stated, “They should make it more accessible. It is difficult to find what work is available and where it is available. It should be centralized. This would make easier for smaller companies.” [#AV426]
- A representative of a Black American woman-owned goods and services company stated, “Not sure where to find opportunities to work with local government.” [#AV442]
- A representative of a majority-owned goods and services company stated, “I would have to find a good advertising media to work with DC government, I’ve tried with no luck.”  
[#AV454]
- A representative of a majority-owned professional services company stated, “Provide better awareness of what contract are being procured and where.” [#AV472]
- A representative of a Black American-owned construction company stated, “Need more information about how to obtain work.” [#AV485]
- A representative of a Black American woman-owned professional services company stated, “I don’t know what is out there to bid on.” [#AV66]

**11. Unnecessarily restrictive contract specifications.** The study team asked business owners and managers if contract specifications presented a barrier to bidding, particularly on public sector contracts. Twenty-two interviewees commented on personal experiences with barriers related to bidding on public sector and private sector contracts [#1, #2, #3, #5, #6, #7, #8, #11, #15, #16, #17, #18, #19, #22, #23, #28, #29, #32, #33, #36, #38, #40, #PT4]. Their comments included:

- When asked if bidding procedures are a barrier, the Black American woman owner of a construction company stated, “Yeah, because out of the gate by doing it the standard way that you’ve always done it, if it is not positioned to be a climate that is conducive, it’s a failure, which is what we have.” [#1]
- The Black American owner of a CBE-certified construction company noted that bidding is costly. [#2]
- The Black American male owner of a professional services firm feels restrictive contract specifications are a barrier. He noted that, “I believe a lot of those restrictions and

limitations are made just to wheel the number down to a few companies as possible. ...being able to reduce some of the strict restrictions or guidelines would go a long way for newer or minority companies to getting into some of those contracts.” [#7]

- The representative of an Asian American-owned goods and services firm explained, “I think that specificity in bidding documents is generally born out of trying to solve some prior problem that occurred. So, you end up getting so granular and specific in documentation that it can harm innovation and decision-making at the procurement level. And that's a bit too complex of an answer, but I think it's an issue.” [#19]
- The owner of a majority-owned goods and services company noted, “They can be. They're doing that just to kick you out of the game.” [#28]
- The representative of an MBE-certified goods and services stated, “Yeah, that can be. It depends on the contract and where it's coming from. You do run up against some barriers, especially if the contract is written for a specific person, a specific company.” [#29]
- The Black American owner of an MBE-certified goods and services firm stated, “I bid on one contract and I spoke with somebody, and they said that contract was written for a specific company and that's why you couldn't get it. I just can't tell you how many times we spent tons of hours working on bids and then we just don't get any response. We don't get any feedback on it. It's very frustrating. So, I've just laid off on that for a while.” [#32]
- The owner of a majority-owned goods and services company believes unnecessarily restrictive contract specifications and bidding procedures are a barrier because, “Bid packages don't match the work.” [#33]
- The Asian American owner of an MBE- and DBE-certified professional services firm explained, “What happens is ... [some] projects, they don't change the capability or qualifications requirements between larger contracts where big firms attend and smaller contracts like us. If they will say, ‘This project is only 100,000 dollars of design,’ then we should not have the stringent requirements as we have for a five-million-dollar design job. If they're flexible on that side, we can probably win more bids.” [#36]
- The Black American woman owner of a professional services firm stated, “For example, I went to a pre-bid conference, and this was in Ohio. The way that the folks in Ohio wrote the bid was that you had to have an office within a certain mile radius of the project. There were certain things that basically said, without saying, that people in this area of Ohio to work. Immediately, I said, ‘Forget it. This is not something that I can do.’ Now, I just got off of a webinar with D.C. Housing Authority and with all of the talent that we have in the District of Columbia, I see that there is one firm who has an office in San Francisco. So that's a big concern of mine, and that is taking business away from some other company, simply because they did not have the proper wording in their RFP.” [#PT4]

**12. Bid processes and criteria.** Twenty-two interviewees shared comments about the bidding process for public agency work; business owners or managers highlighted its challenges [#1, #2, #3, #5, #6, #7, #8, #10, #11, #15, #18, #22, #23, #32, #36, #38, #AV]. For example:

- The Black American owner of a construction company stated the bidding process is a barrier, “Because number one, it costs money to bid and a lot of times they send you a bid

package that you can't even bid. You don't have the capital, you don't have the resources, you don't have the estimating capacity, the capabilities to actually bid.” [#5]

- The Black American owner of a professional services firm believes the bidding process can be a barrier, “If they have a lot of requirements, you have to be bonded, certain million. Yes. So, I guess that could be a barrier, like the minimum requirements or qualifications for bidders.” [#7]
- The owner of a majority-owned professional services company noted, “There's a sharp division that you have to make there between lowest bidder bidding, meaning the government just stupidly selects the cheapest price that comes in, which I have experienced. Or there's a different kind of bidding that applies to engineering work in which bidding is not allowed to be on the basis of price but must be on the basis of qualifications. As you know, I'm sure, that's a federal law that engineers aren't selected on the basis of price.” [#22]
- The owner of a majority-owned professional services company believes, “...it's a complicated process and it requires particularly for a new firm getting started, it requires a good bit of understanding that I don't think we teach young people very well, at least not in academic circles.” [#23]
- The owner of a majority-owned goods and services company noted, “That is a huge barrier. If you don't know what you're doing, you put a price together, you can either make a ton of money or lose your ass altogether. You wouldn't last. You'd lose all your money.” [#28]
- The Asian American owner of a construction company stated, “Some projects require just a price. Other projects require technical. And in the technical, they want your past experience. They want your current staff. They want so many other different things. So here you are unable to provide that because you don't have it.” [#38]
- A representative of a majority-owned construction company stated, “We were just bidding a D.C. Housing Authority job and asked for specific things to make the bid, which were supposed to be given, but we were told to file an FOIR. The bottom line, in my opinion, they wanted to keep their existing contractor. Make the bidding process more realistic.” [#AV130]
- A representative of a majority-owned goods and services company stated, “The issue goes back 5 years ago when I was in D.C., we applied for the general office supply contract for the District of Columbia office of contracting and procurement we were not qualified to submit a bid because we did not have a physical warehouse location. One of the challenges of expanding a small business is physically being in the District for example rent and leasing space, cost of living for employees and insurances.” [#AV132]
- A representative of a majority-owned professional services company stated, “We've received proposals for public work, asking for help. They are looking for responses in too short a time, and it is difficult to respond that quickly.” [#AV172]
- A representative of a majority-owned professional services company stated, “When the bid process does not take into account the quality or performance of the company and its waited more towards price.” [#AV279]

- A representative of a majority-owned professional services company stated, "Biggest barrier is the procurement process. There is an increased focus on small, disadvantaged and D.C. based businesses which often discourages other firms outside of D.C. from pursuing work." [#AV352]
- A representative of a majority-owned goods and services company stated, "Mountain of paperwork to be submitted with a price is a disincentive to submit, unless we can win it. Really cool to give a preference to DC area businesses instead." [#AV507]

**13. Bid shopping or manipulation.** Bid shopping refers to the practice of sharing a contractor's bid with another prospective contractor in order to secure a lower price for the services solicited. Bid manipulation describes the practice of unethically changing the contracting process or a bid to exclude fair and open competition and/or to unjustly profit. Twenty-four business owners and managers described their experiences with bid shopping and bid manipulation in the DC Government marketplace [#1, #3, #4, #5, #6, #7, #8, #10, #12, #13, #14, #15, #16, #18, #19, #20, #22, #23, #27, #28, #33, #36, #38, #40]. For example:

- The Black American owner of a construction company believes that bid shopping has, "...been common practice in the industry." [#5]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company noted, "First of all, why is your bid being shown to someone else? Why is it being shopped around? You shouldn't even be able to do that." [#6]
- The owner of a majority-owned, DVBE-certified professional services company noted, "Yeah, it's funny because there was something that from Virginia, I tried to bid that. I thought I got 15 points on these guys. And somehow or other, they got under me. They probably took a loss to do it." [#18]
- The owner of a WBE-certified construction company noted, "We've had that done with us. We've been where... where we've submitted our bid and then it's given to a lower contracted company. They use our price; the prime will use our price for the cheaper sub..." [#20]
- The owner of a majority-owned professional services company stated is aware of this being a barrier explained, "It's not a barrier. It's just a pain in the butt out there. Not so much on my side of things, but on the contract side of things, there's definitely firms out there that are shopping for the bottom and that's always going to be a problem. And it's not I say, barrier, you wish that it gets reined in a little bit better, but that's all I can wish for." [#21]
- The Black American owner of an MBE-certified goods and services firm stated, "Well, I do that myself, so I can't criticize it too much." [#32]
- The Black American woman owner of a CBE-certified goods and services company suggested to stop working with companies that practice bid shopping. [#3]
- To overcome bid shopping, the Black American owner of a construction company believes, "The policy makers and the contract creators to specify that the opportunity has to be for a particular subgroup, meaning like, if they're saying get participation from a minority business and we know some minority businesses in that category is not going to stand a chance, then they need to reclassify it and mandate or specify who's this opportunity

specifically supposed to be for, to pretty much help alleviate... Number one, it's going to provide concrete opportunities for companies and it's going to alleviate you having to put in all this work for them to just take information and give it to somebody else, give it to their buddy. So it is going to take government agencies who's creating these policies and writing these solicitations to have that in mind that, we need to do a better job of welcoming business into the business community, into the contracting space, if you know what I mean? So it starts with the government agencies." [5]

- The principal of a majority-owned, CBE-certified manufacturing company believes legal actions should be taken if someone is caught shopping another company's bid. [#14]
- The representative of a majority-owned, SDVOB-certified professional services company believes the government should take action if it is known that a company is bid shopping on government sponsored projects. [#16]
- The owner of a WBE-certified construction company noted, "It comes down to reading and the owners need to understand exactly what they're reading and not looking at the bottom line." [#20]
- The owner of a majority-owned professional services company stated, "Prosecution!" [#22]
- The owner of a majority-owned goods and services company noted, "Yeah. It's a barrier. All they're doing is they're a low bidder and they're shopping around afterwards. And too often, that's what's going on. It happens quite a bit." [#28]

**14. Treatment by prime contractors or customers.** Nineteen business owners and managers described their experiences with treatment by prime contractors or customers during performance of the work was often a challenge [#1, #3, #4, #5, #7, #8, #10, #11, #14, #17, #18, #20, #23, #27, #32, #38]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted there is a dictatorial tone by General Contractors (GCs). She suggested that GCs should provide bias training to their representatives. [#3]
- The Black American owner of a professional services firm believes that treatment by your customer, "...could affect your profit margin. It could affect your standing in reputation and could affect you getting future work." [#7]
- The owner of a WBE-certified construction company noted, "Yes, and that's mostly because we're women. If our estimator and all of our guys are guys and I will sometimes I'm their first contact, but they will always refer to the guys before they refer to me. Even if I'm the one who goes out and meets them on the job site, they will look past me at the guys and our estimator, our lead estimator. They'll look at him for confirmation before they'll actually listen to me. And it's kind of like, 'Oh, you're just a phone girl.' Like, no, I actually do understand quite a bit more than even he does. And that type of thing. So, we've run into that, yeah." [#20]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "There was some concerns about getting paid. We performed work at grand pre raceway RFK stadium and I heard we were the only ones to get paid. I worked as subcontractor." [#AV7]

- A representative of a Black American-owned construction company stated, "Difficulty getting paid by prime contractors." [#AV10]
- A representative of a Black American woman-owned professional services company stated, "Currently the District pays the prime and the prime pays the sub whenever they want. I have had to take out loans to pay employees and paid interest on those loans. there should be a check to see that the prime pays the sub within 30 days." [#AV131]

**15. Payment issues.** Seventeen business owners and managers described their experiences with late or delayed payments, noting how timely payment was often a challenge for small firms [#1, #3, #4, #5, #6, #7, #8, #10, #15, #16, #18, #20, #22, #23, #24, #28, #32, #36, #38, #39, #40]. For example:

- The Black American woman owner of a CBE-certified goods and services company noted there is a downflow of risks utilizing the "paid when paid" model and would like for GC's to be paid on time. [#3]
- The Black American owner of a professional services firm has this to say concerning timely payments being a barrier, "Because a lot of the public work, they pay on about 30 days or some, 45 days at different milestones. Then sometimes on a big job, I assume you would have to have some alternative revenue streams or take loans in order to wait for the milestone check coming in from the project. So sometimes if a company is not properly capitalized, that could be an issue, surviving until they hit the next milestones." [#7]
- The owner of a majority-owned professional services company noted, "Definitely a barrier. And unfortunately working with governmental entities and this is not just the District, this is much more broadly that tends to be a bit of a problem. I've had some governmental clients and some jurisdictions that pay on a reasonably timely basis. And I have had others it's like pulling teeth, trying to get your money. But the same thing can be true in the private sector. I have some clients that they'll pay me almost the day that I give them invoices and other people sit on it for months." [#23]
- The Black American owner of an MBE-certified goods and services firm stated, "Yes. There should be structured payments so that a contractor is getting money throughout the process. We just finished a project in another jurisdiction, and we had to pay everything up in front, and they still haven't finished their last payment to us, and we don't know when we're going to get it." [#32]
- The Asian American owner of a construction company noted, "Yes. It's tough to get paid within 30 days or 60 days or put through the process of when you start a pay application to put it through to get it approved and to receive the payment in a bank. So that's a huge barrier because you spend money and your creditors expect to be paid, but you're not paid so you can't pay them. So [that] also can affect your credit and all that." [#38]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "There was some concerns about getting paid. We performed work at grand pre-raceway RFK stadium, and I heard we were the only ones to get paid. I worked as Subcontractor." [#AV7]



- A representative of a Black American-owned construction company stated, "Difficulty getting paid by prime contractors." [#AV10]
- A representative of a Black American-owned construction company stated, "Getting paid on time." [#AV42]
- A representative of a majority-owned construction company stated, "They're a terrible payer, their negotiation of change orders takes forever." [#AV76]
- A representative of a woman-owned goods and services company stated, "In the past I have had difficulties getting paid." [#AV93]
- A representative of an Asian Pacific American-owned construction company stated, "One thing is D.C. government is difficult to collect the money from." [#AV103]
- A representative of a Hispanic American-owned construction company stated, "Payment tends to be slow, the payment window tends to be more than 60 days and the kind of puts in an uncomfortable position." [#AV116]
- A representative of a woman-owned construction company stated, "They take too long to pay, and they take too long to process paperwork to get paid." [#AV30]
- A representative of a majority-owned goods and services company stated, "I haven't dealt with local governments because they are too slow to pay." [#AV174]
- A representative of a Black American woman-owned professional services company stated, "Currently the District pays the prime and the prime pays the sub whenever they want. I have had to take out loans to pay employees and paid interest on those loans. there should be a check to see that the prime pays the sub within 30 days." [#AV131]
- A representative of a majority-owned professional services company stated, "We've had some trouble with contracts; long delays on payments and lack of response in closing out projects with retainage and bonus provisions. Some insurance requirements are onerous and drive-up costs for not a lot of value. The certified business system is getting better, but national firms are treated better than local firms, and they get to tap into national resources." [#AV154]
- A representative of a majority-owned goods and services company stated, "The payment is always difficult. All the hoops they want you to jump through. And they do not understand price or list of used furniture." [#AV159]
- A representative of a majority-owned professional services company stated, "Slow payments." [#AV162]
- A representative of a Black American woman-owned goods and services company stated, "In the state of Maryland, you have to know somebody that knows somebody to get a bid. They have issues with processing their payments and they do bait and switches where you are bidding on something then they switch you to something else." [#AV169]
- A representative of a majority-owned goods and services company stated, "Being a small business my concern would be getting timely paid for services. My business has been impacted by the pandemic and we were not working for 4 months." [#AV196]

- A representative of a majority-owned construction company stated, "We worked as a subcontractor to HP group for a major job, we experienced a delay for payment. Don't know who caused the delay, contractor or client? We were the prime contractor for the Dept. of Labor, payment delay there also for several months, a large amount of money." [#AV218]
- A representative of a Black American-owned professional services company stated, "We have worked with D.C. government and one of the biggest issues is getting paid in a timely manner... Sometimes financial is difficult to expand growth." [#AV241]
- A representative of a Black American-owned professional services company stated, "We work with some D.C. government grantees and contractors. D.C. government is slow in terms of paying and the process is complex in terms of compliance." [#AV303]
- A representative of a majority-owned goods and services company stated, "The only obstacle is the government is [it is] slow to pay." [#AV308]
- A representative of a majority-owned goods and services company stated, "I have heard that D.C. government does not pay in a timely fashion." [#AV368]
- A representative of a Hispanic American woman-owned construction company stated, "The only thing that holds me back with government would be receiving payment in a timely manner." [#AV417]
- A representative of a Black American-owned goods and services company stated, "We have trouble getting paid on time - I think they throw away net 30 - maybe every 2 weeks and they give a certain percentage that is awarded to the vendor up front." [#AV420]
- A representative of a woman-owned goods and services company stated, "They just take forever to pay their bills and that is the reason we are not interested in dealing with them." [#AV427]
- A representative of a Black American woman-owned goods and services company stated, "I think getting notices about upcoming opportunities in a timely manner. Sometimes we find bonding is an issue. Sometimes problems with getting paid on time. I wonder why there aren't more set asides for women-owned business. There seems to be lots of support available. Lots of webinars. For me the most important thing is translating those into real opportunities." [#AV483]
- A representative of a Native American woman-owned professional services company stated, "Been a long time, 10 years but when we did work with them it was difficult to get paid on time - ruined our cash flow. If I do business with them, it has to be a really good deal." [#AV490]
- A representative of a woman-owned construction company stated, "The barriers exist as a small business. Most small businesses cannot serve as a prime for financial reasons. It would be better if the packages were broken up to allow small businesses to compete for prime contracts. The construction industry is one of the hardest industries to succeed in mostly because of its unique payment schedules. Payments need to be made promptly so that small businesses can survive." [#AV536]
- A respondent from a public meeting stated, "payment practices are an impediment to the success of women and minority CBEs" [#PT3]

- The Black American female owner of a professional services firm stated, "In the case of D.C. Library, [we] had to advance the payments for advertisements- slow to pay." [#WT1]
- The CBE-certified construction company stated, "The problem was that my company failed at being amicably compensated year after year by some of the same contractors that the DC Government was awarding the General Contractor construction contracts. There is currently no District of Columbia Government law or enforcement to prevent this occurrence from reoccurring." [#WT5]
- Written testimony from a local construction trade organization stated, "How can DC help Women and Minority CBEs be successful? Pay on the 10th of the month following proper invoice on the 20th of the previous month. This will lower the number of days the subcontractor is waiting for payment from 68 days to 30 days Contractors are told to meet the schedule and adhere to billing dates, adhere to the contract schedule shifts, and invest the time to see the project through to completion at any cost; to include overtime and change orders that cannot be billed. Yet, Owners and GCs are not required to adhere to a payment schedule, leaving contractors to wonder when a payment will be made. There should be an absolute payment date requirement (the 10th) that Owners and GCs must meet at any cost to them on the same date every month. The entire economic system relies on the 30-day payment cycle. The credit bureaus base personal FICO scores on the 30-day cycle for car notes, mortgages, creditors, suppliers, etc. There is no reason why Owners (DC) and GCs should not be held to the same system. If subcontractors are told to send in an invoice no later than the 20th of the month, projected through the end of the month, then the Owner and GC should be prepared to have that invoice approved and paid by the 10th of the following month - without exception - every month. This one change means subcontractors can budget finances, assure creditors of payment dates, plan for new equipment, hire personnel, increase capacity, etc. Such changes are vital for ensuring the financial well-being of small and emerging businesses. ... The District enforces the use of local MBE and WBE owned businesses in their RFP's by requiring a significant percentage of the billions of dollars in construction performed by District agencies be awarded to these entities. Some subcontractors have the financing and wherewithal to survive on the District's current payment cycle. Others, who are small and/or disadvantaged cannot survive this cycle. If the District wants to assist in the growth and sustainability of its MBE and WBE CBEs, it is vital that the District provide the financial requirement that these businesses be paid timely and consistently. Sureties, investors, bankers, and landlords review the credit scores of businesses to assess credit worthiness, character, and sustainability. By enforcing payment on the 10th of each month, every month, the District ensures MBE's and WBE's are able to maintain credibility with financial institutions insuring their viability in the industry. Often, the rational is that an MBE or WBE needs credit counseling in order to obtain credit worthiness when, in actuality, all they need is to be paid timely. It is an unspoken fact that subcontractors finance the construction industry. MBE and WBE businesses are not generationally established and consequently they do not have the financial foundations to support the industry through the payment cycle without great harm to their businesses. Payment to subcontractors should be treated the same as a paycheck. Just like when running any business, if someone is sick or on vacation, the employees still get paid. There should be no excuse for missing payment on the 10th if the work is completed and invoiced correctly. ... Make it a prerequisite that all invoices for

projects that require minority- and woman-owned CBE participation be paid on the 10th of the month following submission of a proper invoice as defined by contract documents and regulation. GCs and the District should be required to standardize a payment schedule that ensures Subcontractors are paid on the 10th. Those who do not follow the standardized schedule should be held responsible for payment as required. That means GCs cannot refer to 'pay when paid' clauses in their subcontracts to absolve themselves from the requirements. (See Law in Massachusetts.) Educate District personnel about invoice processing. Invoices are a contractor's paycheck. When given that perspective, the importance of standardizing payment funding for MBE and WBE CBEs may be easier to comprehend. Provide funding for Minority and Women CBEs to tap into in the bidding process. Funds and proper procedures to allow identified companies to bid without financing the construction."[#WT8]

- A representative of a woman-owned professional services company stated, "There used to be a time when there was difficulty getting paid, for a small business six months is a difficulty." [#AV64]

**16. Size of contracts.** Twenty-four interviewees described the size of available contracts as challenging. [#1, #4, #5, #6, #7, #8, #10, #14, #15, #16, #17, #18, #20, #22, #23, #28, #32, #36, #38, #AV, #WT7] For example:

- The Black American owner of an MBE-certified goods and services firm noted, "Our small size is an obstacle for government work. There's a lot of paperwork that needs to be completed to make a good presentation and just haven't had the manpower to go after that, and then some of the contracts are too big for us to address them." [#32]
- The owner of a WBE-certified construction company stated the size of contracts would not be an issue if her company had more manpower. Their lack of manpower prevents them from going after larger contracts. [#20]
- The owner of a majority-owned professional services company stated, "I mean, if I'm a small company and the project is too big for me, then the only way that can be handled is if the client gives me time to build up, but usually that time is too long. So yeah, you have to match the size of the company to the size of the project." [#22]
- A representative of a Black American-owned construction company stated, "The DC government is a little convoluted as in the process in term of searching for available opportunities whether minority set-a-side or open competition that fall within our company capabilities. I guess for me I would say that many projects within the capabilities of local small business are given favoritism to large business prior to many small businesses being aware that these opportunities are available to them." [#AV518]
- A representative of a Hispanic American woman-owned professional services company stated, "Being small was very difficult--a lot of the D.C. contracts were large, and when several times we submitted bids, they brought in an outside company. They do give a lot to companies that have been there a long time, but we are a new company. ... It was difficult to maneuver where the smaller contracts were--I couldn't find them. We attended about every single event that D.C. had, and we were still not able to penetrate--and you can't hire unless you have a backlog." [#AV244]

- A representative of a Black American-owned goods and services company stated, “The biggest difference is they do purchase order contracts that are not the size for my business. The bids are too big and other problem, the paperwork for small companies.” [#AV434]
- A representative of a Black American woman-owned goods and services company stated, “The criteria should be a little more flexible when it comes to smaller [contracts]. I think it is very difficult because smaller companies can't really in the door. The smaller bids get awarded to larger companies. Should be access to smaller contracts. Small purchase orders for building or transportation for three or weeks.” [#AV426]
- The CBE-certified professional services firm stated, “Construction companies often group work together and require that subcontractors be able to perform all of the work. For example, the signage package is an entire set of tasks from creating the signs, manufacturing them, and then installing them. Most small businesses do not have the equipment and manpower to perform all of the tasks and get left out. Also, since at least 50% of the work has to be done by the small business, it limits partnerships to be able to fulfill the requirements” [#WT7]

**17. Bookkeeping, estimating, and other technical skills.** Nine interviewees discussed the challenges back-office work such as bookkeeping, estimating, and other technical skills present [#7, #8, #10, #23, #28, #29, #32, #38, #AV]. For example:

- The Black American owner of a professional services firm noted, “And I can only speak up for small firms like myself. I say, if you don't personally have that expertise, and you have to pay for it, then that could be a barrier.” [#7]
- The Black American woman owner of a CBE- and DBE-certified construction company stated, “Absolutely. If that is not your skill, then that is a skill that you're typically going to have to outsource and, again, that costs money.” [#8]
- The owner of a majority-owned, DVBE-certified professional services company stated, “Yeah, because I got to acquire it. I don't have an in-house. I got to hire out of house to get that bid expertise.” [#18]
- The owner of a majority-owned professional services company that specializes in real estate services stated, “So if you are starting your business and you need some bookkeeping or accounting help, you hire a bookkeeper or an accountant.” [#24]
- The owner of a majority-owned goods and services company explained, “That's a big barrier for me. Estimating, because most people are just guessing at it. If you do it on a T&M basis, having material, that's the best thing to do. But if you're trying to do work, you better have a pretty good idea estimating on that. That's my downfall, anybody's downfall, because you can't estimate. I can still win a million dollars for a contract that's probably going to take two million dollars to deliver. And that's a killer. That's a big killer.” [#28]
- The representative of an MBE-certified goods and services explained, “Definitely, because all industry, and especially this industry is ever changing, especially now with all this shortage and prices being driven up. In fact, we have an estimate coming in on Monday, so we have no clue as to how it affects what the prices should be. Everything seemed to be moving 30 and 40% and some of them 50% higher.” [#29]

- The Black American male owner of an MBE-certified goods and services firm stated, “Every once in a while, I’ll be working with a supplier or a subcontractor and they’ll just spout off a number, ‘Oh, this product costs X dollars per square foot or this is going to generally run you that,’ and it’s a number they know off their head, and they could have told me that before they came out, but that’ll be helpful. So instead of us having to wait for the contractor to come to us to give us a price, if we know a going rate for products, we could reach out to subs and said, ‘Hey, I got a 15,000 square foot of carpet that needs to get put down and we can pay you X,’ and they’ll say yes or no, and that would save a lot of time.” [#32]
- The Asian American owner of a construction company stated, “Bookkeeping is not. Estimating can be, depending on the size of the project and also the client.” [#38]
- A representative of a Black American woman-owned goods and services company stated, “Difficult as far as getting contract opportunities and decent proposal writers.” [#AV433]

**18. Other comments about marketplace barriers.** Interviewees described other challenges in the marketplace and offered additional insights. For example:

- The Black American woman representative of a CBE-, and DBE-certified professional services firm noted misconceptions can be a barrier. She stated that, “I think, in some ways, being misconceived as not having the capabilities or capacity to perform on a similar level as a national firm that may be located here. I think that is happening locally with government clients and sometimes even the private clients. Because we are a local based firm and aren’t as large as some of our competitors nationally, there is a perception that they can only handle so much, we can’t give them too many projects. So we can’t call them routinely to handle it because there’s no back channel of a bunch of workers somewhere in another state or somewhere else. [#4]
- The Black American owner of a professional services firm noted that, “I guess sometimes, not for me, but for some individuals, language could be a barrier. You have these vendor and contracting information are presented in other languages I don’t know. But that could be a challenge.” [#7]
- The principal of a majority-owned, CBE-certified manufacturing company noted that credibility is a barrier due to the perception that DC is not known as being a manufacturing City. [#14]
- A representative of a Hispanic American woman-owned construction company stated, “Parking and traffic is difficult and we will not work in the D.C. area.” [#AV138]
- A representative of an Asian Pacific American-owned goods and services company stated, “Language, business fitting in with the community. Different culture, comes down to language, reading, writing, and dealing with local bidding. My business is tough now due to workflow and regulations and obtaining work for my drivers to stay consistent. Since the pandemic the business shrunk.” [#AV486]
- A respondent from a public meeting stated, “It sounds like you’re going to be looking at his historical data, right? Based on contrast what their existing capacity and historical capacity has been, right? But what I want to put out for consideration is, and I don’t know the

numbers specifically, but let's say African American in businesses, many of which are small businesses, right? Do not currently have the capacity, many do not currently have the capacity to bid on certain large businesses. So, I want to recommend that you take into consideration that the historical and the as is, is not necessarily what should be, right? And then that's one of the things that needs to be factored in." [#PT1]

- The owner of a goods and services company stated, "There are a lot of small business owners that struggle in trying to succeed. And if they just had the opportunity to actually have a contract, it would definitely lighten their load. A lot of the small business owners that I talked to apply for the SDA EIDL, and they still haven't got it, and it's almost a year and they're put them through changes with they need this form, or they need to be reconsidered, but they're not getting the funding that they need to try to sustain their business." [#PT6]
- A representative of a Black American woman-owned goods and services company stated, "Lately not easy to bid for a contract being a small business. Larger qualified companies are able to bid higher and it is hard to compete with those rates." [#AV242]
- A representative of a Hispanic American woman-owned professional services company stated, "Being small was very difficult--a lot of the D.C. contracts were large, and when several times we submitted bids, they brought in an outside company. They do give a lot to companies that have been there a long time, but we are a new company. ... It was difficult to maneuver where the smaller contracts were--I couldn't find them. We attended about every single event that D.C. had, and we were still not able to penetrate--and you can't hire unless you have a backlog." [#AV244]
- A representative of an Asian Pacific American-owned professional services company stated, "It is difficult for small business to get prime or subcontracts." [#AV254]
- A representative of a Hispanic American woman-owned professional services company stated, "Being a small company, it is hard to get contracts." [#AV332]
- A representative of a majority-owned professional services company stated, "It is becoming increasing difficult for small firms to compete. It is going up and down and I think it is at the end of a upswing." [#AV340]
- A representative of a Black American woman-owned construction company stated, "We can't get any work from anyone in D.C.; it is hard to compete with larger companies. It is very difficult to compete with larger companies." [#AV353]
- A representative of a majority-owned goods and services company stated, "I am a small business so competing with large national companies like Amazon. ... Some Federal agencies in the District have gone with selective sourcing initiatives which have essentially blocked my company from being able to sell from them. Made it difficult to service them." [#AV361]
- A representative of a Subcontinent Asian American-owned professional services company stated, "Big players tend to dominate, it makes it difficult for the smaller players." [#AV383]
- A representative of a Black American woman-owned goods and services company stated, "Most of the government jobs go to big companies. We are looking to bridge that gap. We

would like to be able to obtain residential and commercial work. Just to be able to compete." [#AV396]

- A representative of an Asian Pacific American-owned goods and services company stated, "They would prefer in some cases to do business with the large corporations. Extremely difficult with the current climate." [#AV435]
- A representative of a majority-owned professional services company stated, "Very difficult to get in the organizations that are already there make it difficult - they prefers for people they have already worked with instead of trying anyone new. Compete with hundred-million-dollar companies with deep pockets and the clients will pick them over us." [#AV462]
- A representative of a Black American woman-owned professional services company stated, "Long and involved complex RFP (request for proposal processes). Not a lot of opportunities for small businesses. Contracts often rewarded to incumbent companies which are often large firms." [#AV463]
- A representative of a woman-owned professional services company stated, "Process is not setup for small companies like ours." [#AV484]
- A representative of an Asian Pacific American-owned professional services company stated, "Last year applied to Virginia government, not easy to get jobs, because small, not competitive, big companies have relationships already." [#AV509]
- A representative of a woman-owned construction company stated, "Mainly bigger companies take bids faster, and more known and have reputation." [#AV544]
- A respondent from a public meeting stated, "you can be a CBE and be 50 million, you can be a small business, and be a hundred thousand, and be a CBE. So, my question really is whether there be any way of really understanding what may be happening to what I'm going to argue are small businesses, as defined, or is this really just a CBE world?" [#PT4]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "We are always looking for more contracts and networking." [#AV374]
- A representative of a Black American woman-owned professional services company stated, "I am trying to connect with other people to have those contracts with government agencies. Challenging being in a business on my own. Networking with the right people to get minority sponsorship. You have to go to classes to have privy over contracts. A lot is not readily available you have to speak with other business owners who are willing." [#AV423]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "Obtaining work is a bit hard and the competition is very high. I feel like if you have a network, it's easier to get but we only moved to DC last year so we don't have that network yet." [#AV431]
- The CBE-certified professional services firm stated, "We need to network with large businesses to make them aware of our offerings and position ourselves for subcontracts, but DC events typically draw only HR type people from larger agencies and firms. These people are not the ones making the decisions on partnering and purchasing. We need to meet with decision makers/ project managers in our case (we sell consulting services) and



procurement folks in the case of people selling goods. DC Gov needs to facilitate this so that small business owners - who are trying to do EVERYTHING (network, accounting, outreach, delivery, business development) on their own time 24/7 and on their own dime on a shoestring budget can actually get some REAL leads out of the events - so that it's not just a feel-good event and waste of their precious time. A CBE Community website would be very helpful. Where we can 'meet' with other CBEs and buy each other's services." [#WT6]

## H. Effects of Race and Gender

Business owners and managers discussed any experiences they have with discrimination in the local marketplace, and how this behavior affects POC- or woman-owned firms:

1. Price discrimination;
2. Denial of the opportunity to bid;
3. Stereotypical attitudes;
4. Unfair denials of contracts and unfair termination of a contract;
5. Double standards;
6. Discrimination in payments;
7. Unfavorable work environment for POCs or women;
8. 'Good ol' boy network' or other closed networks;
9. Resistance to use of POC- or woman-owned businesses;
10. Fronts or fraud;
11. False reporting; and
12. Other forms of discrimination.

**1. Price discrimination.** Two business owners and managers discussed how price discrimination effects small, disadvantaged businesses with obtaining financing, bonding, materials, and supplies [#22, #23]. For example:

- When asked if bonding is a barrier, the owner of a majority-owned professional services company noted, "They will receive favored treatment for everything except bonding because bonding means somebody's got to put his money at risk and they're not going to do that to benefit a minority." [#22]
- The owner of a majority-owned professional services company stated, "No, I think their problems stem more from just not having the training and background and being able to deal with all the administrative and tax related and governmental reporting hurdles. And once you get behind in those things, then you go to a bank and try to get financing or you go to insurance company and if you haven't been able to check all the other boxes, your chances of getting financing are that much worse. So once again, I go back to the educational process and the fact that we need more training in even high school level education, secondary, and in college education in terms of how to run small businesses." [#23]

**2. Denial of the opportunity to bid.** Three business owners and managers expressed their experiences with any denials of the opportunity to bid on projects [#1, #23, #32, #35, #AV]. For example:

- When asked if the company has ever been denied the opportunity to bid or submit a price quote the Black American woman owner of construction company stated, “Every day, every day. That's why these companies created their own CBEs. That is a way not to be bothered. It's a very effective technique and unfortunately, it's legal.” [#1]
- The owner of a majority-owned professional services company stated, “I'm not aware of a lot of situations where there's been a denial of opportunity to bid that wasn't substantively based. If there're necessary technical criteria that have to be met to perform a project, now what's necessary there may be some subjectivity in that, but generally both government and business are looking for the best people available to do the work. And that sounds a little altruistic, but I think it for the most part that holds up.” [#23]
- The Black American owner of an MBE-certified goods and services firm noted, “One thing that happened to us is I know we put in the lowest bid on this government project, and they have a rule and they called me up and they said, ‘We have a rule that we can just kill the bid and put it back out for bid.’ And I knew I'm the small, hungry guy, so I put in the small, hungry guy bid. And they said, ‘We're not going to take your bid. We're just going to put it back out for bid. You have to go back and do it all over again.’ So yeah.” [#32]
- The representative of a DBE-, MBE-, and WBE-certified goods and services firm stated, “Well, I think the procurement process need some work because I think...these certifications, it limits access to a lot of folks. For instance, the CBE requirement, I don't know how the DC Government works, but on the federal level you have five or six categories and some of them overlap that gives you an opportunity. Even though you might not be on one category, you could still participate in a bidding process. But I think the way these solicitations are released and the way some of the certifications are applied to a specific requirement, I think it restricts a lot of folks. Particularly us because we're not a CBE.” [#35]
- A representative of a Black American woman-owned professional services company stated, “We have been asked to not bid because we have not had a certification. The time that we did bid for a contract, the project was cancelled the next day.” [#AV9]
- A representative of a majority-owned construction company stated, “Minority set aside projects that have prevented us from bidding, not allowed to bid on work we used to do.” [#AV22]
- A representative of a majority-owned professional services company stated, “We typically are short listed sometimes because of our expertise and experience having other firms being in the competition has happened to us.” [#AV46]
- A representative of a Hispanic American woman-owned goods and services company stated, “We need opportunity and resources to try to qualify for bids.” [#AV53]
- A representative of a Black American woman-owned goods and services company stated, “Absolutely. As a matter of fact, I got two notices on solicitations that we summited to the District. The notifications we got today were cancelled. We have been waiting two years

and followed up and got no responses. They have cancelled the solicitation. I think for the most part I said a mouthful, like breaking the contracts up so more companies will have work. The District needs to know small businesses do have the ability to do the work, and we need to be given the opportunity." [#AV190]

- A representative of a Black American-owned construction company stated, "We have experienced barriers in terms of being allowed to bid on work being, pre-qualified and getting pre-qualification criteria as well as access to potential work as well... I think the government needs to be better in terms of looking at small businesses in general. The government looks at general contractors for projects they always mandate to D.C. They should subcontract work to minority companies however, there is not as much." [#AV321]

**3. Stereotypical attitudes.** Six interviewees reported stereotypes that negatively affected small, disadvantaged businesses [#23, #22, #AV, #PT5]. For example:

- The owner of a majority-owned professional services company stated, "The one thing that has come up more than once is this idea that you get special treatment if you're a woman own business. And my wife and I split everything 50/50...I think that's inhibited us getting some work just because we stopped at 50/50 and we work equally ... [it's] nowhere near the problem it was a couple decades ago." [#23]
- The owner of a majority-owned professional services company noted, "There is a general feeling that if you hire somebody on the basis of anything other than quality of work, you're going to get inferior work, and there is a generalized feeling that if somebody wants to get work based on something other than the quality of their work, you're going to get inferior work. That would mean that if someone is being given a project because he has some minority status, you can expect trouble." [#22]
- A representative of a Hispanic American woman-owned goods and services company stated, "It's a little difficult for a woman to be in this industry, but we are working on it and doing things different ways such as having a man do the estimates." [#AV6]
- A representative of a Black American woman-owned goods and services company stated, "Mostly when dealing with a lot clients, they preferred men instead of females and I am not a bit fan of that, I have worked with a lot of females in my industry and they are just as good as the men that I worked with." [#AV165]
- A representative of a Black American-owned construction company stated, "African American minority residents for Washington D.C. have be experienced over the years, discrimination and lack of providing us with contract in the city. My experience in the past 25 yrs. in this city dealing with general construction we have been totally discriminated and we are the ones that have actual hand on hand experience, knowledge of construction that are not giving the fair share." [#AV227]
- The woman owner of a construction company stated, "My worst fear is that being a woman that I might get left behind. And I say that cause I was one of the pioneers, I would say in construction, I don't want to date myself but it's true. When I first walked out on the construction site, I was basically the only woman. I don't have gray hair yet but I'm telling you I was the only woman. And I used to hide in clothing that was baggy. But I found myself, I own the business a hundred percent, I started at a hundred percent, I'm not a front and I

still fear the fact that I'm going to be left behind because I'm afraid that people are going to judge me as a front." [#PT5]

**4. Unfair denials of contracts and unfair termination of a contract.** Four business owners and managers discussed if their firms had ever experienced unfair termination of a contract or denied the opportunity to work on a contract [#]. For example:

- The owner of a majority-owned professional services company noted, "Once again, unfair is in the eye of the beholder. Certainly, most contractors, if they terminated a contract, they generally believe they have reason to do it. And if you get into a situation where you're dealing with a client who terminates your activity, there's something wrong in the relationship to begin with. You're either not performing or they're not very good people to work with. And yeah, you learn very quickly in business that there's not much... If you're not enjoying the work that you're doing, why do it? And if you have a contractor that isn't somebody you can work with, go someplace else, do something else. Get away from them." [#23]
- A representative of a Black American woman-owned goods and services company stated, "Just that companies want experience. I have been doing this for ten years, but the business is new. Sometimes it is a problem with a new business getting contracts." [#AV67]
- A respondent from a public meeting stated, "I've heard a lot of conversations about, even though I was the lowest, I still did not get the contract. I've heard a lot of conversations, where people who have gotten contracts and when you ask the district to prove to them why they got the contract, they say they don't have to show you. They in a lot of times are not transparent and they're not truthful, and I find that we are more on a track of them against us, instead of us being in partnership or we being in partnership with them. I find it to be like what I'm seeing from the beginning. There's probably... and you've mentioned it too. There's probably a lot of businesses, to just say why should I even do business in D.C. or and D.C.? I can't be successful here, so they don't even either not go into business or they continue to be employees." [#PT2]
- The Black American woman owner of a professional services firm stated, "I was awarded a five-year contract to conduct certified third-party inspections. During the five years, I did not receive one building to inspect. Before that, I had a five-year contract and was kept busy. Contracts were given to others. I have had a certified third-party inspection agency since 2006. No one complained about any project that we completed." [#WT4]

**5. Double standards.** Three interviewees discussed whether there were double standards for small, disadvantaged firms [#]. For example:

- The owner of a WBE-certified construction company noted a double standard based on race. She stated, "Yes ... Arguing on change orders. If we have any where they'll nitpick it to death, and if you (a male) submitted it would probably be fine, but we submit it and it would be an argument. ... When we've run crossed it on the race side, others can get away with more than we can." [#20]

- A representative of a majority-owned goods and services company stated, "We definitely feel that there is an ethnic barrier for our company because we are not African American, and we are not white. We are Middle Eastern." [#AV72]
- A respondent from a public meeting stated, "The last thing I want to say it's a misnomer to use the word minority. I know the country we've been hoodwinked into believing that the word minority... I think you should just clarify that minority group because the demographers Pew Research, they'll tell you the Caucasians represent 16% of the world population, which would be the minority versus people of color. Their numbers really about 10%, because people in India and different South America may identify as Caucasian. Even though we have to use this word minority, I guess everyone's looking at it, but the psychological affect there reimburses the thinking of something small, minor, not as good as. You may want to say we're going to go ahead and use this misnomer knowing that this is not the correct name, but just in this particular study, do some type of clarification when you do your report, because I think it self-perpetuates the disrespect that these local businesses are getting. Because it's like, hey, they're not as good as... They are small. Not as competent and that kind of thing. I think that would be something that if you could put in there that, 'Hey, just for the sake of this report, instead of saying businesses that are owned by people of color or something like that, because it deals with the psych of a lot of small businesses to think that they're small and minority and not really...'" [#PT2]

**6. Discrimination in payments.** Slow payment or non-payment by the customer or prime contractor was discussed by one interviewee. For example:

- The owner of a majority-owned professional services company noted, "I think slow and non-payments are a problem. The discrimination in the timing of payments for non-substantive reasons for various forms of bias, I don't see that." [#23]

**7. Unfavorable work environment for POCs or women.** Three business owners and managers commented about their experiences working in or witnessing unfavorable environments [#20, #22, #23]. For example:

- The owner of a WBE-certified construction company noted, "As a woman, you're in construction. There's always some version of an unfavorable comment somewhere along the way. I've been around it long enough, you ignore it, but it has not been done directly to my face in several years." [#20]
- The owner of a majority-owned professional services company noted, "Well, this is an area of hypersensitivity, microaggressions, and other bullshit of that nature. That's universal right now. People go out of their way to take offense, so of course it's going to be there." [#22]
- The owner of a majority-owned professional services company noted, "I think early in my career, I probably saw more of that. I don't find that. And I haven't found that for quite a while now, at least not obvious. They're always somebody doing something that's a little bit...I think the importance of that problem has diminished greatly over the last couple decades." [#23]

**8. 'Good ol' boy network' or other closed networks.** There were a number of comments about the existence of a 'good ol' boy' network or other closed networks. Fourteen firms shared their thoughts [#10, #21, #23, #AV, #PT6]. For example:

- Black American woman owner of a VBE- and DVBE-certified professional services company explained the companies such as hers got overlooked. "The thinking work, the work that involves expertise, black companies most often get shut out of those. They want to hire us to do community relations or to do, I don't know, be the project construction assistant on the job. But when it comes to the decision making, the being at the table, we are largely not at the table." [#10]
- The owner of a majority-owned professional services company stated, "There is a good old boy network, but the network is not the old boy. It is just a very close relationship of a wide variety of people that are again, same way I pick my subcontractors, of how we all work together. It has nothing to do with race, ethnicity, male, female. None of that is any part of that, but we do have a close working relationship." [#21]
- The owner of a majority-owned professional services company stated, "Well, once again, the good old boy network, the good old boys are retiring. Now it may be more the good old girl network. Yeah, the closed network people always have personal relationships and personal relationships do have some influence good or bad, I won't be situational. And whether it's old boys or old girls or college buddies or sorority sisters. Yeah, it works the same way. It doesn't really make a big difference in terms of ethnic background or anything else, it's the associations." [#23]
- A representative of a Black American woman-owned professional services company stated, "Exposure to work available, feel it is limited to knowing someone. A lot of people look and other marketing campaigns, rather than actually marketing their business." [#AV27]
- A representative of a Black American woman-owned construction company stated, "It's all in who you know and if the people in the room already have a relationship when bidding." [#AV48]
- A representative of a Black American woman-owned construction company stated, "One problem we have is that people tend to stay in groups, and the business stays in those groups." [#AV99]
- A representative of a majority-owned goods and services company stated, "I put in bids and didn't get any. Its rougher as a small business. There are clichés and an old boy system, and I've seen contracts turnover." [#AV115]
- A representative of a Black American-owned construction company stated, "D.C. government is pretty much clique-ish." [#AV200]
- A representative of an Asian Pacific American-owned professional services company stated, "It's an elite club of prime contractors. It's hard to break through and hard to find resources the D.C. government does publish their requirements. We tried to in the past and it is very hard to get started." [#AV204]

- A representative of a Black American-owned professional services company stated, "too much paperwork, not enough vetting our capabilities, to heavy in the 'good ol boy' network." [#AV217]
- A representative of a Black American woman-owned professional services company stated, "it is very difficult the process is tailored to those who are already within the system, it is hard for newbies." [#AV221]
- A representative of a majority-owned professional services company stated, "I feel like the government in D.C. is a repeat of certain contractors." [#AV293]
- A representative of a majority-owned professional services company stated, "Very difficult to get in the organizations that are already there make it difficult - they prefers for people they have already worked with instead of trying anyone new. Compete with hundred-million-dollar companies with deep pockets and the clients will pick them over us." [#AV462]
- The Hispanic American woman owner of a goods and services company stated, "In the district they have over, nearly 30 or more clean teams throughout the district. But what I've discovered is that only a few people have those teams. I mean, all throughout the district, just one team would put me on the map. Just one. So why is it that only a few people have 10 and 11 and 12 teams? It just doesn't make sense. It's like locked down and I think because they've been there for so long and it's who they know, I don't know if they don't want to go through the changes or whatever they don't want to, I understand but it's so hard to get in because of it's just a male dominated industry, but I'm very discouraged but I'm not going to stop, but with the district, I mean, I've just lost faith." [#PT6]

**9. Resistance to use of POC- or woman-owned businesses.** Seven interviewees shared their thoughts and experience with the government, prime or subcontractors showing resistance to using a certified firm [#20, #14, #11, #22, #23, #27, #PT2]. For example:

- The owner of a WBE-certified construction company stated, "One that has been a problem for us is there.... and it's hard to say in a way because we're two white women and there is not... so there's the disability thing is there's a minority and for everything but white women in DC. You can have Black-owned, and you can have Hispanic-owned, and you can have veteran-owned, but we are a white woman-owned and that has been a problem. We get a lot of, not flack, but looked down on, because we're women and I have had the nose look, look down on the nose because I am a white woman." [#20]
- The principal of a majority-owned, CBE-certified goods and services company noted there is a belief that being a CBE means your prices will be high and doubts of your ability to handle jobs. [#14]
- The principal of a majority-owned professional services firm believes, "...nothing directly, but I do think potentially indirectly on the basis of these very tightly drawn experience requirements." [#11]
- The owner of a majority-owned professional services company noted, "No, I think there's excessive promotion of that by government." [#22]

- The owner of a majority-owned professional services company stated, “Well, once again, my perspective on this is that those tools have been used I think successfully to help get more diverse business started. But I think over time we need to sort of wean people away from that and they need to live or die on their own ability to market their own business and to compete on an equal footing.” [#23]
- The owner of a majority-owned, DVBE-certified company explained, “When we passed our laws, our service-disabled veteran laws, they didn't want to do it. They didn't want to do. And I worked for the women for a while, helping them, and they didn't want to do that either because they didn't want to cut. They think they're going to cut that pie up too much with 8(a)s and small and this and that, all that stuff. But yeah, there's definitely a barrier.” [#27]
- A respondent from a public meeting stated, "I remember when there was the... I think it was called the Office of Minority Business Commission or something that Marion Barry started. This very reason, to be able to include minorities and having some opportunities in contracting. As everyone knows, or most people here know because I see a lot of people that I know, that was overturned by a lawsuit by a white man who felt he was being discriminated against. As a result of that, then anyone seemingly then could be given contracting opportunities in the city and the direct result of that, we got even less contracts.” [#PT2]

**10. Fronts or fraud.** Five business owners and managers shared their experience with CBE/MBE/WBE/DBEs fronts or frauds [#18, #20, #22, #27, #PT2]. For example:

- The owner of a majority-owned, DVBE-certified professional services company noted, “I've heard from guys who are in larger companies, that they got into trouble when the disadvantaged business that was bidding was a thin prime and they really just didn't have any kind of delivery capacity and kind of got in trouble, not in trouble from non-compliance, in trouble from delivery, you know what I mean? [#18]
- The owner of a WBE-certified construction company explained, “I would say there's quite a bit of fraud or fronts even because especially on the woman-owned side, there's a lot of men out there who are using their wives as a front. And all she is a signer. She absolutely does nothing but spend money or has actually another job... Just need more women out there and men need to... and women out in the field because there's a lot of woman-owned businesses that are woman-owned because their husbands are running the company. So, their husbands are still out in the field, not the women and that's a problem. They need to get their selves out and actually know what they're signing their name for.” [#20]
- The owner of a majority-owned professional services company noted, “Well, they frequently are used as front or fraud.” [#22]
- The owner of a majority-owned, DVBE-certified company stated, “They don't do it. They have a small business plan that they have... When they have to do it, when they're a certain size, they're not really audited on those type things. So, they don't really do it. They're going to use so much to so many different designations of companies, but they don't do it.” [#27]
- A respondent from a public meeting stated, "For example, situations where you have a prime contractor, who then hires subcontractors, and the subcontractors are subsidiaries of



larger business. I came to you to protest, where there was a huge contract that was awarded to a 'minority business' that was a subsidiary of the multibillion-dollar real estate company, the biggest in the city. When I brought that to his attention, I was like, 'Wait a minute. How is it that this entity was even able to compete? Because they came under the guise of being a... they[had] a Black woman who was in charge of it, but it was a subsidiary of one of the largest real estate companies in the city. They then had the benefit of that company's balance sheet, all their financials, all the strength, all the expertise experience, what and so which then made it impossible for a company like my own, a small minority women owned business to even think about competing. ... Just recently, legislation has been put forth, emergency legislation was put forth by Councilmember McDuffie to curb that, and there are special things that were put in place, the DOCBD had to show that if a company was of D.C., they had to show where they were individually owned or operated or controlled primarily by D.C. based owners and things of the sort. That's been curbed a little bit, but that doesn't alleviate what has happened in the past. ... we're not talking about a tap or pat on the hand to tell them not to do it. You have to understand that these big companies are extremely savvy, they will finance, they have a whole battery of attorneys who can figure out a way for them to be able to circumvent the D.C. law and to be able to take the opportunity away from the small local businesses. Now as difficult as it is to compete because of the criteria, oftentimes you don't have the kind of credentials that these large companies have to be able to compete. But were they up to me, I think this is a heinous type of... egregious type of thing that should be punished with some type of a penalty, or even a threat of jail time, because this is illegal. This is like stealing thousands of dollars, if not millions of dollars from someone. That you just doing it with a strike of a pen or with paper, but the effect is just the same. I want it to be regarded with that kind of severity, because not only myself, but I've also talked to other companies and there are probably some here today that can attest to this. We are being robbed, and you want to know the impact? You don't need a disparity study. I can tell you the impact of all this, we're left out. It's very simple. I mean, this is not anything, this is... What I don't understand, what is so strange or unusual about it that it will take so much time and effort and energy, to look at the obvious. Many of us sitting here have you experienced the same thing, so what we need to do is come up with solutions and penalties that will stop this behavior from occurring period." [#PT2]

**11. False reporting.** Five business owners and managers shared their experiences with the "Good Faith Efforts" programs or experiences in which primes falsely reported certified subcontractor participation. Good Faith Efforts programs give prime contractors the option to demonstrate that they have made a diligent and honest effort to meet contract goals [#22, #27, #PT2, #PT4, #WT7]. For example:

- The owner of a majority-owned professional services company noted, "Well, that goes on. The extent to which it goes on, I don't know." [#22]
- The owner of a majority-owned, DVBE-certified company stated, "The one thing that you may want to put more emphasis on is, large primes have subcontracting goals that they have to meet, and they don't meet them. The federal government does not hold them to that. That's huge, I think. If these large companies would actually give a percent to small businesses, there would be a lot more work for small businesses, but they just don't do it. I

mean, they say they go out and look for small businesses, but they send out a subcontract. They have a large project going on. They'll send out these paltry projects that a small business can do, but not things that they really can't do." [#27]

- A respondent from a public meeting stated, "I've personally witnessed over the last 18 years as a CBE in this city, how they have awarded a contract to a prime, held these meetings where they've invited the public to participate, yet when the project is started, many minorities and those in specialized service like mine still are left out." [#PT2]
- The Black American male owner of a CBE- and MBE-certified company stated, "Let me give you an example of waiver. We got a waiver today about someone wants a waiver to not have a CBE in event management contract. Now, I don't know, but D.C., we get events all over town. There're large event planners, small event planners, large event companies. I don't understand how in the world A, D.C. would ask, in this town, where events and tourism and everything is one of the major industries, that we don't have a CBE that can do event management. ... We get two to three, four, waivers a day about agencies that don't want to give us business. They want to give the business all to someplace else or somebody else, and that's the problem." [#PT4]
- The CBE-certified professional services firm stated, "Our company has submitted bids to prime contractors and too often we get no acknowledgment of receipt of our proposal or any follow-up. Even calls to DLSBD have only resulted in the specialist providing a general email address or a general company number which we can find for ourselves and are not very useful." [#WT7]

**12. Other forms of discrimination.** Interviewees discussed various factors that affect entrance and advancement in the industry. For example:

- The Black American woman owner of a CBE-certified goods and services company noted there is a racial barrier. [#3]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services firm stated that the fact she is a woman of color is a barrier. [#6]
- The owner of a majority-owned professional services company that specializes in real estate services noted, "Well, I was referred to somebody who... Because my name is ..., you cannot tell necessarily my background. And they called me up and they discussed with me, and he says, 'You sound white.' And I said, 'Okay. I am.' And he says, 'Well, I'm not going to give you business because you're a white male.'" [#24]
- The owner of a majority-owned construction company simply stated, "Yes! America is a racist country." [#26]
- The owner of a majority-owned, DVBE-certified professional services company noted, "I have to say it does, but it's not because I know of specific instances of it, but I believe there's systemic racism in this country, and you just can't get away from it. Maybe if you did everything blind and they even know who they're talking to, you could, but my eyes have been open to a lot of things." [#18]

- The owner of a majority-owned professional services company noted, “There is. There is discrimination in favor of those categories, and to the detriment of people who are not in those categories.” [#22]
- The owner of a majority-owned professional services company stated, “Much less so. There were times that was much more of a barrier. I think we've gone a long way in the last decade or two to improve on that. Not that everything's perfect, but yeah, the world is not perfect anywhere, so.” [#23]
- The owner of a majority-owned professional services company that specializes in real estate services noted, “Well...because everyone talks about the minorities. And when everyone talks about minorities, it's anyone who's non-white male. If you're a white male, you're not the minority. If you're a non-white male, then you're part of the minority. But I have certainly experienced where I have not gotten the business specifically because I am a white male. Matter of fact, I even got it in writing once where I was told that I'm not getting business because I'm a white male. I'm not a somebody else.” [#24]
- The owner of a majority-owned goods and services company noted, “No, not really. The hardest thing I think the minority contractors have is you got to get in there to get the opportunity, and then that's where the biggest problem is.” [#28]
- The representative of an MBE-certified goods and services explained, “It's hard in a way in this industry to distinguish outright racism. That becomes a barrier for this business, only because it exists from either two standpoints, the incumbent is trying to hold onto their contract. So is there favoritism toward that person, that organization? And it could have some racism in it too, and when they shift it from a non-minority firm to a minority firm. So that's a difficult question to say you can outright in this industry identify outright racism, but it does exist.” [#29]
- The Black American woman owner of a professional services company explained that discrimination is, “My every day, basically. Being an immigrant, you lose your entire network of support that you could have, and then being a woman is an additional burden here...I can't even tell you where to begin, but on top of that, I'm in IT industry, which means there's not a lot of women in that industry...” [#31]
- The representative of a CBE- and DBE-certified professional services firm believes there is, “...a conscious and unconscious bias against minority and women-owned firms, that they're not adequate enough to perform the work required for the contract. [#4]
- The owner of a majority-owned, DVBE-certified professional services company noted, “I've heard from guys who are in larger companies, that they got into trouble when the disadvantaged business that was bidding was a thin prime and they really just didn't have any kind of delivery capacity and kind of got in trouble, not in trouble from non-compliance, in trouble from delivery, you know what I mean? [#18]
- The owner of a WBE-certified construction company stated, “...the good old boy network is the biggest hurdle and as far as getting in with DC Government, since it's very hard for them to eliminate bad apples on their employee department, once you get on a bad side of somebody, then they can make our life miserable and will delay projects or permitting or something onto that effect.” [#20]

- The owner of a majority-owned, DVBE-certified company stated, “You know, women-owned businesses, they have a problem getting into construction. That’s always been a problem for them. There’s a barrier for them. As far as I know a little bit about some of the other ones, it is tough on all of them. I know that you could probably say that if they’re 180 companies, probably 10 of them do all the business. There’s always discrepancies in all of these areas, all of them.” [#27]
- The Black American woman owner of a professional services company explained that English as a second language and her accent is a barrier. She noted, “For me to compose an email, just a simple email or to write a bid, or to technical writing is just a lot of work. Even to understand it, it might be double the effort than other people. And then trying to communicate with someone is my accent. The minute they identify my accent, I see things change, definitely. Even interviews, when I try some of our students to get a job, I can see that there’s a lot of discrimination based on our accent or the way we communicate.” [#31]
- A representative of a Black American-owned goods and services company stated, “Difficulties in DC for discrimination, that’s why I moved. Discrimination and a lot of thieves were coming in and pointing gun and taking tools, equipment, when police called the disappeared, it was unsafe.” [#AV450]

## I. Business Assistance Programs

Business owners and managers were asked about their views of potential race- and gender-neutral measures that might help all small businesses obtain work. Interviewees discussed various types of potential measures and, in many cases, made recommendations for specific programs and program topics.

1. Awareness of programs;
2. Technical assistance and support services;
3. On-the-job training and personnel recruitment programs;
4. Mentor/protégé relationships;
5. Joint venture relationships;
6. Financing assistance;
7. Bonding assistance;
8. Assistance in obtaining business insurance;
9. Assistance in using procurement technology;
10. Other small business start-up assistance;
11. Public agency contracting procedures and bidding opportunities;
12. Directories of potential prime contractors, subcontractors, and plan-holders;
13. Pre-bid conferences;
14. Other agency outreach;
15. Streamlining/simplification of bidding procedures;

16. Unbundling contracts;
17. Price or evaluation preferences for small businesses;
18. Small business set-asides;
19. Mandatory subcontracting minimums;
20. Small business subcontracting goals; and
21. Formal complaint/grievance procedures;

**1. Awareness of programs.** Four business owners discussed various programs and race- and gender-neutral programs they have experienced. Multiple business owners were unaware of any available programs for small business assistance [#4, #12, #AV, #PT6]. For example:

- The representative of a CBE- and DBE-certified professional services firm suggests, “Well, I think any type of programs or workshops that the agencies provide on helping firms just prepare themselves to submit the proposals, or just understand the contract requirements are beneficial. So be it in any agency that host it, I think any additional information just to make sure or all of the companies are aware of their requirements, program requirements and contractual requirements, is beneficial. I believe DSLBD hosts some programs like that, so I think that's... Any types of workshops they have definitely can be beneficial.” [#4]
- The Asian American owner of an MBE- and WBE-certified professional services firm explained, “I think what Maryland DOT is doing can be helpful. What they're doing is to have all the sub-consultants submit sub-payment report so that they can track if there's any aged invoice that is still outstanding. There are people who are there at MDOT, their responsibility or their job is to protect the subs to ensure they get paid timely.” [#12]
- A representative of a Black American-owned goods and services company stated, "D.C. is a good place to start a business because they have great resources, PTAC, great classes and webinars and are free to how to start a business." [#AV277]
- A respondent from a public meeting stated, "There are tons of training. I've been to all of them. So, I know they're out there. ... there's so many trainings that the people can't even comprehend. So, these some very serious major disconnects and issues and anything that I could do to support that awareness, I'd be happy to." [#PT6]

**2. Technical assistance and support services.** Four business owners and managers thought technical assistance and support services are helpful for small and disadvantaged businesses [#7, #8, #10, #AV]. Comments included:

- The Black American owner of a professional services firm noted that the best way to overcome this barrier would be through mentoring and technical assistance. He stated, “I mean, with the mentoring and coaching and then technical assistance, I think that that would form a sort of support structure that could help prospective businesses... if there are support systems, technical support that could assist maybe like some sort of a call center, I think that would help, you know where you could get technical assistance.” [#7]

- The Black American woman owner of a CBE- and DBE-certified construction company believes, “mentorship, workshops, education and being able to access the resources, educating on how people can access the resources to do those things.” [#8]
- The Black American woman owner of a VBE- and DVBE-certified professional services company believes procurement technology could be a barrier if, “there's not someone available to provide technical assistance...You can't just put systems out there and say, "Hey, use this." [#10]
- A representative of a majority-owned construction company stated, "We just don't do government work. It is very hard to deal with the District in terms of the red tape and out of date systems that they have in place." [#AV88]

**3. On-the-job training and personnel recruitment programs.** Business owners and managers thought on-the-job training programs or programs aimed to help recruit or lower the cost of personnel are helpful for small and disadvantaged businesses. [#2, #5, #7, #16, #29]. For example:

- The Black American male owner of a CBE-certified construction company feels DC should offer more construction training opportunities outside of traditional trainings such as foreman, superintendent, and project managers. [#2]
- The Black American male owner of a construction company says that finding labor is not the barrier. The barrier is the cost of labor. He noted, “labor is very, very expensive. Labor is pretty much one of the most expensive business expenses for a business owner. So yeah, if you don't have access to capital to scale up your operations for you to be able to employ and maintain good talent, you can't compete. You can't do what you want to do out here.” [#5]
- The Black American male owner of a professional services firm who uses search engines to find representatives suggest a low cost or free service for employers. He noted, “Some of those search engines are quite pricey, in order to use. So, I think one way to help, that could be either something that's free or low-cost service fee or low-cost service would go a long way.” [#7]
- The representative of a majority-owned professional services SDVOB company believes on the job training would be helpful to overcome this barrier. [#16]
- The representative of an MBE-certified owned goods and services stated, “I mean, quit paying people to stay home.” [#29]

**4. Mentor/protégé relationships.** Nine business owners and managers thought mentor/protégé relationships are helpful for small and disadvantaged businesses or participate in unofficial mentoring relationships with other firms [#5, #1, #6, #2, #23, #AV]. For example:

- The Black American owner of a construction company believe access to capital and a mentor protégé program would be helpful to overcome the barrier in gaining experience to be competitive. He stated, “Yeah, absolutely. Because you know the... Absolutely, but the mentor protégé program, it's a program and you have to have two parties involved and one party has to be willing to bring aboard another. That's easier said than done. Everything boils back down to, if I had access to capital, the DC Government probably won't even be

doing this diversity study because I would've already been contracting with them. So yeah, so it's a lot of layers and they all boils back down to we don't have the ability to scale up, to get the experience to create generational wealth. It's just going around in circles. 'Well, you got to do this, you got to do that, you know?' [#5]

- The Black American woman owner of a construction company noted, "We desperately need a mentor protégé program in Washington, DC. And quite frankly, it needs to be a requirement of those companies that have come from other jurisdictions and have grown and utilized our regulations to their benefit without even consideration of anyone in this town. It's unconscionable, but you know, they sleep at night, I don't know." [#1]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company stated, "So if we can get a more varied ... development folks that we can go to, or mentors that we could have, that would be awesome." [#6]
- The Black American owner of a CBE-certified construction company suggested that DC offer a mentor protégé program through the Department of General Services. [#2]
- The owner of a majority-owned professional services company believes, "If you have somebody with experience and background in doing similar activities, if they can share that with you and help walk you through the process a couple times then yeah, that can greatly facilitate things." [#23]
- A representative of a woman-owned construction company stated, "Knowing the right people to talk to and all the hoops you have to jump through." [#AV102]
- A representative of a Black American-owned professional services company stated, "I could use a mentor or guidelines or a video on how to work with the D.C. government that would be great." [#AV167]
- A representative of a Black American woman-owned professional services company stated, "I would like to know how to get in the marketplace. You have these certifications and open for business and getting an actual contract is hard to do. There should be mentors out there to help." [#AV225]
- A representative of a Black American woman-owned construction company stated, "I haven't had any experience with it because I haven't pursued it because of a lack of mentorship and coaching that would allow me to apply for and secure contracts with the federal and state governments." [#AV481]

**5. Joint venture relationships.** Eighteen business owners and managers shared their thoughts on joint venture relationships and whether they are helpful for small and disadvantaged businesses [#1, #4, #5, #6, #7, #8, #10, #16, #22, #23, #27, #32, #36, #38, #3, #14, #15, #20]. For example:

- The Black American woman owner of a VBE- and DVBE-certified professional services company believes the District should vet companies that have a proven track record and require larger companies into a "forced marriage" to ensure businesses such as hers are included on projects. [#10]

- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company believes a method to overcome this barrier would be by, “Mandating some partnerships and collaborations, multi-award contracts.” [#6]
- The Asian American owner of a construction company stated, “Teaming agreements, understanding of companies, knowing that they have the capacity to do it. And then also teaming agreements to team up with a larger company.” [#38]
- The owner of a majority-owned professional services company stated, “It can be ...what that does is it puts a lot more onus on the contract administrators to understand the business that they're contracting and how the pieces integrate. If you have a prime contractor, the contract administrators don't have to be as technically involved and understand the integration side of it. Frankly, I think we'd be better off if we had more enlightened technical contract officers. But yeah, I don't think government pays enough to keep good technical people that long.” [#23]
- The owner of a WBE-certified construction company noted, “No, because it becomes very confusing and when you do a joint venture then somebody will want to a joint check and that becomes a paperwork nightmare on the office side. We don't like to do that. We've been asked to do that and it's just like, no, it's just too much of a hassle.” [#20]

**6. Financing assistance.** Business owners and managers thought financing assistance can be helpful for small and disadvantaged businesses. For example:

- The Black American woman owner of a construction company suggested having a better understanding of your business would help. She noted, “Well, I think it has to do with having a broader understanding of the components of the industry.” She went on to say that “I don't think a lot of companies are business ready. How about that? They technically know their craft, and they technically can knock that work out of the park every day, all day. But the business side of doing the business, escapes them.” [#1]
- The Black American owner of a CBE-certified construction company feels companies should understand their business and build up performance to become credit worthy. [#2]
- The Black American woman owner of a professional services company expressed, “I just would like if small businesses could get loans as readily as we can get student loans. It would be great if the opportunity was out there to be able to establish a business loan and that in the same way we can take out a student loan.” [#9]
- The representative of a majority-owned professional services firm stated, “...I would continue to expand the ones we already have, make them bigger, involve more people, maybe come up with some financial aid type environments, so that they can go after larger contracts and not have to go to the commercial banking world.” [#16]
- The Black American owner of a construction company believes the government should do more to assist businesses. He suggests, “Putting programs in place for disadvantaged businesses, meaning the government can't classify you as disadvantaged or treat you otherwise. Disadvantaged means advantaged. So black businesses failing means America is failing. So, anybody should have the chance and opportunity to succeed. So, it's just like, and the government should be behind all of their businesses succeeding. ... For example, some



of the government agencies, they actually have programs that can actually help some of the contractors with bidding, but they require you to spend the money for some of these expensive programs and then they'll reimburse you, but let's be realistic here. We have access to capital issues with robbing Peter to pay Paul so it's kind of hard to take \$3,000 to \$5,000 put into software and wait for you to pay us back. The business has to keep going on and then these bills and expenses does not stop. So, just having real resources that can really assist with us being able to properly put together a bid package to have a significant chance of winning." [#5]

- The Black American woman owner of a CBE- and DBE-certified construction company stated, "I think that maybe more minority and women-owned targeted initiatives and programs that would help a business to have the access to the capital..." [#8]
- The Black American woman owner of a VBE- and DVBE-certified professional services company believes there should be a fund for businesses involved in, "...the multimillion dollar projects that need to get done in the city..." She believes the City could provide more technical assistance regarding loan preparation especially in regard to reviewing loan applications before they are submitted. She stated, "...no one literally reviews the application before and says, "Oh, that looks good. Oh, that looks good. Oh, that looks good. Or you might want to change this, or this is some good language that you should use." [#10]
- The representative of a majority-owned, SDVOB-certified professional services company believes government backed credit programs would be helpful. He explained, "...what we could do is have some of the backing, if you will, come from the agency that's awarding the contract, it would make it easier for companies like ours to win the work." [#16]
- The owner of a WBE-, MBE-, and CBE-certified construction company stated, "it would be having an expectation and relationship between the projects and the banks and the providers in having the community actually support and say, this is a company that we rely on and having conversations that go across the board, like with agencies working with banks to support the companies that they know or that have proven themselves." [#30]
- The Asian American owner of a construction company explained, "The only effective method to overcome that barrier is having banks all loosen their criteria to give loans to small businesses." [#38]
- The CBE-certified professional services firm stated, "We need tax breaks. Large businesses get large tax breaks. Meanwhile, small businesses, making pennies compared to what they spend to build up a business when they start out, are paying taxes like a normal job holder on their Schedule Cs. Small businesses making less than \$150k, before it's even worth it for them to register as an S-Corp (which then triggers some minor tax breaks), should not have to pay any tax or minimal tax." [#WT6]

**7. Bonding assistance.** Two business owners and managers thought bonding assistance can be helpful for small and disadvantaged businesses [#8, #14]. For example:

- The Black American woman owner of a CBE- and DBE-certified construction company stated, "I think that there should be an educational component also to bonding and how exactly that works. While I think that it is important for companies to be able to receive bonding, I do think that that barrier is put in place for a very valid and viable reason. And so

just really helping a contractor like myself to understand the reasoning that that is in place but providing some sort of education on how you can increase your bonding, the little things that you can do along the way to be in a position to have and increase bonding over time.” [#8]

- The principal of a majority-owned, CBE-certified manufacturing company believes that a government backed bonding program would help overcome this barrier. [#14]

**8. Assistance in obtaining business insurance.** Two business owners and managers thought assistance in obtaining business insurance can be helpful for small and disadvantaged businesses [#5, #24]. For example:

- The Black American owner of a construction company believes programs should be put in place to offset the costs of insurance. He stated, “Well, we know for sure that insurance is expensive. So once again, it's going to boil back down to access to capital, or at least having programs in place that can assist the business owners to scale up to acquiring the proper insurance they need to do what they need to do.” [#5]
- The owner of a majority-owned professional services company that specializes in real estate services believes, “...an easy reform would be to simplify the actual policies, get rid of all these wonderful exclusions. Instead of having a 200-page policy, policies should be a couple of pages. Either you're covered in all these situations or you're not. And if that means the premiums go up, so be it.” [#24]

**9. Assistance in using procurement technology.** Seven business owners and managers thought assistance in using emerging technology such as online bidding or online registration with a public agency can be helpful for small and disadvantaged businesses [#19, #22, #AV]. For example:

- The representative of an Asian American-owned goods and services firm stated, “I'm not aware of what's out there. And to be frank, when I go online, I generally find the systems to be hard to navigate.” [#19]
- The owner of a majority-owned professional services company noted, “That can be a real pain because when an agency comes up with some flashy new technology to be used in selecting contractors, more often than not they'll screw it up badly so that it becomes very difficult to use.” [#22]
- A representative of a majority-owned professional services company stated, “There can be difficulties. District of Columbia has become very tech savvy and much of work has been moved a web portal base system, and so sometimes and those portals are not streamlined, 16 different places to go, and have different passwords.” [#AV47]
- A representative of a Black American woman-owned goods and services company stated, “Just trying to figure out how to work with D.C. government. I went online and it is hard to find those types of resources. I did go online but never got contacted back.” [#AV365]
- A representative of a Black American-owned goods and services company stated, “D.C. must improve the accessibility to where to go for the bids.” [#AV235]

- A representative of a majority-owned professional services company stated, "The D.C.R portal is not user friendly." [#AV313]
- A representative of a woman-owned construction company stated, "The web site is very hard to use. The new system is hard to connect business license and your reports. Ease of use is lacking." [#AV328]

**10. Other small business start-up assistance.** Business owners and managers shared thoughts on other small business start-up assistance programs. Five owners agreed that start-up assistance is helpful [#7, #AV, #PT2, #PT6]. For example:

- To overcome this barrier, the Black American male owner of a professional services firm believes, "If there is a coach, so to speak, or a business coach or a mentor that aligns with the types of projects or the types of bidding systems that you want to get into, and that could be like a one source. Even if that person or that organization cannot resolve all your problems, at least they can point you in various directions that you need to go. If you need help with technical support or bidding, it can pass you along to someone that can help you in that regard. If you need help with identifying vendors' list or how to get on them, they have those resources, like if a resource center that could point you in the right direction for the various issues that you have to deal with. ... I think by allocating additional resources towards educating small businesses on the procedures of how to establish a business, how to get into the database to be selected or considered for providing whatever goods of services that they're in. I'm sure that there are departments and funds allocated to that, but if it could be more accessible and easier to navigate." [#7]
- A representative of a woman-owned professional services company stated, "There used to be a time when there was difficulty getting paid, for a small business six months is a difficulty... I think there needs to be better education for LLC small business owners around the Business Franchise Tax, UBT, registering for the account with the correct EIN, and not running it through their Social Security Number." [#AV64]
- A respondent from a public meeting stated, "do you all have... or some of the resources that you all listed before, do they have training courses for this type of contract or joining your group? For someone who's brand new to the marketing, or the market of contracting and procurement, is there some sort of training or classes that you all would trust or recommend? Or is it just for someone who just has a business and is able to meet the criteria?" [#PT2]
- The owner of a goods and services company stated, "what I would like to see happen, me myself have been CBE certified. This is my second year, and I haven't been able to obtain a contract. I would like to see about having workshops to assist the small business owners. I have always tried to help other startups and small business owners and helping them with the process of how to get their business license and get certified in other organizations. So, if someone could assist me in that area, then I can assist the other small business owners that I assist as well. The community where I serve is very underserved and it will definitely, if someone will be able to assist me, it would open up more job opportunities in that area." [#PT6]

- The Hispanic American woman owner of a goods and services company stated, “There's a lot of red tape. When you get in with the government district, you got to go through this and go through that. They need something like for small businesses to help them get in from the beginning, how you going to know what they can do. They tell you don't have the experience. Well, how are you going to know.” [#PT6]

**11. Public agency contracting procedures and bidding opportunities.** Twenty-three business owners and managers provided their thoughts on information from public agencies contracting procedures and bidding opportunities, noting its accessibility online. Others were unaware of how to access that information, and thought the information is helpful for small and disadvantaged businesses [#4, #6, #9, #14, #31, #33, #38, #AV, #PT1]. For example:

- The representative of a CBE- and DBE-certified professional services firm believed that training would be helpful for newer businesses to understand the RFP process. She stated, “Well, I would say for newer businesses, or ones that haven't been around, it would probably be helpful to host some workshops just on how to respond to an RFP, just to remind people what all they need to fill out. Even on, I guess, on the larger scale projects, I hear people saying that this person didn't do this correctly or didn't address this question. So just having workshops to remind people what they have to respond to, how they should respond, may be helpful in helping a business be able to compete.” [#4]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company believes a measure to overcome this barrier would be to have, “One place to go for the information to be sent out.” She would like to see, “Notifications. Publicizing the information so that we can get it. Maybe once we sign up for the certifications, maybe we're put into a bracket then, and then that information is sent out to us, as opposed to us having to hunt it down, because it's very difficult.” [#6]
- The Black American woman owner of a professional services company expressed, “I know that there's probably a database out there of contracts I can bid on, but it just seems like it's overwhelming, the information out there. I just need to know where to start.” [#9]
- The principal of a majority-owned, CBE-certified manufacturing company noted that a single aggregated database that lists all opportunities would be the best method to overcome this barrier. [#14]
- The Black American woman owner of a professional services company noted, “I know there are a lot of events, but my experience is, or the previous owner's experience is he was trying to reach out to the government contracts so many times, and we spend a lot of money trying to get those things, but I think the reason that he gave up the companies because of that too. He was not able to secure any job. And the effort that we put in for that is more than what it deserved, especially if you don't get it.” [#31]
- The owner of a majority-owned goods and services company stated there is, “Not enough of them.” [#33]
- The Asian American owner of a construction company feels, “More programs which kind of define what is expected in response to an RFP by different agencies.” [#38]

- A representative of a majority-owned professional services company stated, "We have problems getting correct information from the government in a timely fashion." [#AV2]
- A representative of a Subcontinent Asian American-owned goods and services company stated, "[We are] unable to get hold of the award management team to submit a bid--by the time we get them it is already done and over with. would like someone to get back with us regarding RFPs." [#AV112]
- A representative of a Black American-owned goods and services company stated, "Do not always we know what contract are available - or proper procedures on how to apply." [#AV63]
- A representative of a Black American-owned professional services company stated, "We have tried, but nobody has called us, even when you call them you don't get any answer of any follow up. I don't know how to submit a bid for the D.C. government, because we do not get any follow up." [#AV117]
- A representative of a majority-owned professional services company stated, "We have had an easy time working with D.C. Some of the forms are difficult and complicated when questions you need to get answered. But by and large it has been an easy environment to operate in." [#AV121]
- A representative of a majority-owned professional services company stated, "My thoughts are as a small consultant is the challenge is getting an audience with decision makers. We are held more to sub-contracting. Anything to get networking is greatly appreciated." [#AV157]
- A representative of a Subcontinent Asian American woman-owned professional services company stated, "We don't know how D.C. government works, or what is the process, or how to get started. We find it difficult and intimidating." [#AV184]
- A representative of a woman-owned professional services company stated, "We would love to work and would love to apply but it is very hard to talk to someone there. They don't respond to either phone calls or emails. I tried for days and days then I just stopped." [#AV304]
- A representative of a majority-owned construction company stated, "It is hard to get a hold of D.C.RA. Very hard to reach some people like for instance if one person does a particular job, and they are not there. There is no one else to help. You have to wait until that person returns." [#AV391]
- A representative of a Black American-owned construction company stated, "trying to get UD.C. & convention center hard to reach correct decision maker. Need leads." [#AV400]
- A representative of an Asian Pacific American-owned professional services company stated, "It's hard to break through and hard to find resources the D.C. government does publish their requirements. We tried to in the past and it is very hard to get started." [#AV204]
- A representative of a woman-owned professional services company stated, "We're not even aware of the bidding process, it would be nice to have a mailing list." [#AV460]
- A representative of a Black American woman-owned goods and services company stated, "They should make it more accessible. It is difficult to find what work is available and

where it is available. It should be centralized. This would make easier for smaller companies.” [#AV426]

- A representative of a majority-owned professional services company stated, "Basically getting the information out of DC OCTO (Office of chief technology officer). Frustrating at times. A great area. We are one of the top cyber security firms in the country." [#AV469]
- A representative of a Black American woman-owned construction company stated, "We do not get feedback when we submit bids." [#AV540]
- A Black American respondent from a public meeting stated, "We're going to need to make sure that they're also, that this group plays a role in arbiter between the district and the black business community so that there's always a flow of information between them, right? Doesn't help if a great opportunity comes, but it's buried on the website." [#PT1]

## **12. Directories of potential prime contractors, subcontractors, and plan-holders.**

Twenty business owners and managers thought a hard copy or electronic directories of potential primes, subcontractors, and plan-holders would be helpful for small and disadvantaged businesses. Some firms did not know how to access that information [#1, #4, #5, #6, #7, #10, #12, #14, #15, #16, #17, #19, #22, #28, #28, #32, #33, #38, #WT6, #WT9]. For example:

- The Asian American owner of an MBE- and WBE-certified professional services firm explained, "I think if D.C. government can host or organize more matchmaking events or something, like meet the primes, yeah, just to give us more platform and opportunities to meet the big players, to hear from them, what they're looking for, in which area they're seeking to bringing on new players." [#12]
- The Black American owner of a construction company believes the government should play a vital role in overcoming this barrier. He stated that, "...having the government agencies lean on the primes to get participation from smaller firms to assist with bringing them on board into the contracting space. So not just going with the flow as usual, but saying, 'You know what? We got this opportunity for you, but this is what we need you to do. We need you to bring others on, bring others into the American fold,' so yeah, that will help." [#5]
- The Black American owner of a professional services firm believes, "I think it kind of goes to what I was suggesting about having some sort of a resource, will be able to provide information on the potential, other vendors that one could partner with on jobs and kind of a little network of their subcontractors where they could get like a message board or where they could exchange information." [#7]
- The owner of a majority-owned goods and services company stated finding about primes is difficult because he, "...does not know where to go." [#33]
- The representative of an Asian American-owned goods and services firm noted, "...a kind of meet and greet kind of dating game type thing, which is similar to what I said a few minutes ago. That sort of thing, I think, would be great. Just get people in a room together, let them talk, meet, that sort of thing." [#19]
- The CBE-certified professional services firm stated, "We need to network with large businesses to make them aware of our offerings and position ourselves for subcontracts, but DC events typically draw only HR type people from larger agencies and firms. These

people are not the ones making the decisions on partnering and purchasing. We need to meet with decision makers/ project managers in our case (we sell consulting services) and procurement folks in the case of people selling goods. DC Gov needs to facilitate this so that small business owners - who are trying to do EVERYTHING (network, accounting, outreach, delivery, business development) on their own time 24/7 and on their own dime on a shoestring budget can actually get some REAL leads out of the events - so that it's not just a feel good event and waste of their precious time. A CBE Community website would be very helpful. Where we can 'meet' with other CBEs and buy each other's services." [#WT6]

- Written testimony submitted during a public meeting stated, "Our company has submitted bids to prime contractors and too often we get no acknowledgement of receipt of our proposal, or any follow up. Even calls to DLSBD has only resulted in the specialist providing a general email address or a general company number which we can find for ourselves and not very useful." [#WT9]

**13. Pre-bid conferences.** Business owners and managers discussed whether pre-bid conferences where subs and primes meet are helpful for small and disadvantaged businesses to network and develop relationships with project managers and primes [#4, #8, #13, #23, #28, #1, #19, #20, #32, #AV]. For example:

- The Black American woman representative of a CBE- and DBE-certified professional services firm noted that pre-bid meetings were beneficial because it allowed for the company to market themselves to primes. She reasoned that since, "We are a subconsultant in more cases than not. So, we need to know who's interested in proposing on these projects. So, pre-proposal meetings help us to see who is looking to prime so we could reach out to them to be considered as a subconsultant. [#4].
- The Black American woman owner of a CBE- and DBE-certified construction company noted, "I think it's just preparing the contractor for making sure that that is the right job for them. I think any detail that can be outlined is important because it just helps the business to know whether that's the right fit for them." [#8]
- The principal of a majority-owned professional services firm stated pre-bid meetings are useful, "For two reasons. The two main reasons we find it useful is we get clarity on the scope, if there's any questions or anything like that, or something that may not be obvious from the RFQ or RFP that is clarified at that point. Secondly, we also use those meetings to see who else was in attendance." [#13]
- The owner of a majority-owned professional services company believes, "They can be, yeah. It never hurts to listen into a pre-bid meeting, even if you don't ask any questions." [#23]
- The owner of a majority-owned goods and services company noted, "Yes. You're limiting a lot of the competition, because you get a lot of people that don't have a clue what you're doing, and they shouldn't be in the room anyway." [#28]
- The Black American woman owner of a construction company feels pre-bid meetings are not useful for her. She stated, "It is the procedure, because a lot of people are under the perception. I'm going to go to the pre-bid, and this is a perfect opportunity when the stuff that really matters has already been given away at that point in time." [#1]

- The representative of an Asian American-owned goods and services firm stated, “No. I think they're meant to be, but no.” [#19]
- The owner of a WBE-certified construction company stated, “Sometimes!” [#20]
- The Black American owner of an MBE-certified goods and services firm stated, “Yes and no. Yes, it's good to be out there, see what's going on. One time, they had a bus and they drove us to the different job sites that needed to be addressed. No, because when the projects were too big for us, it just ended up being a waste of time.” [#32]
- A representative of a Black American-owned construction company stated, “Mostly, the biggest thing is not being available to attend the bid meeting.” [#AV144]
- A representative of a Subcontinent Asian American-owned professional services company stated, “We would like more exposure and meetings to learn about opportunities, like quarterly meetings. Anything that gives us opportunities.” [#AV170]

**14. Other agency outreach.** Three business owners and managers thought other agency outreach could be helpful for small and disadvantaged businesses. Many shared their experiences with DC Government’s outreach efforts [#12, #AV, #WT6]. For example:

- The Asian American woman owner of an MBE- and WBE-certified professional services firm explained, “I think what helps will be having more networking and matchmaking events so that we, the DBE, MBE, WBEs and DBEs can see what the prime firms or what government agencies are looking for and fill in the niche. Also, it helps to have all the DBEs, WBEs and MBEs and VBEs to build relationship and connection between each other. If there are SBE contracts set aside, then we can team and collaborate and grow together.” [#12]
- A representative of a Black American woman-owned professional services company stated, “I know resources are available, make more accessible... More information via mail, to inform of what opportunities are out there: conferences, meetings, programs in the District.” [#AV220]
- The CBE-certified professional services firm stated, “We need to network with large businesses to make them aware of our offerings and position ourselves for subcontracts, but DC events typically draw only HR type people from larger agencies and firms. These people are not the ones making the decisions on partnering and purchasing. We need to meet with decision makers/ project managers in our case (we sell consulting services) and procurement folks in the case of people selling goods. DC Gov needs to facilitate this so that small business owners - who are trying to do EVERYTHING (network, accounting, outreach, delivery, business development) on their own time 24/7 and on their own dime on a shoestring budget can actually get some REAL leads out of the events - so that it's not just a feel-good event and waste of their precious time. A CBE Community website would be very helpful. Where we can 'meet' with other CBEs and buy each other's services.” [#WT6]



**15. Streamlining/simplification of bidding procedures.** Nineteen business owners and managers thought streamlining/simplification of bidding procedures would be helpful for small and disadvantaged businesses [#2, #4, #5, #6, #7, #13, #14, #15, #16, #18, #19, #29, #32, #33, #36, #38, #39, #40, #AV]. For example:

- The owner of a WBE-certified construction company stated, “It’s just going to depend on what exactly they’re looking at. Sometimes it makes things easier, sometimes it can be harder” [#20]
- The owner of a majority-owned professional services company stated, “I have not found the bidding process in general to be difficult. I have found it to be defective.” [#22]
- The principal of a majority-owned, CBE-certified manufacturing company believes a streamlined approval process by the customer would help. [#14]
- A representative of a Black American woman-owned professional services company stated, “Barriers include the complex bidding process, the time frame from bidding to learning of an award and the payment process.” [#AV95]

**16. Unbundling contracts.** Seven business owners and managers shared their thoughts on breaking up large contracts into smaller pieces [#30, #32, #5, #6, #36, #AV]. For example:

- The majority woman owner of a WBE-, MBE-, and CBE-certified construction company noted, “Our biggest barrier is having the purchasers of our services understand what it means to purchase our work, whether it’s private sector in being appreciative of a finishing trade and what that means. I think more specifically relative to local government is having the procurement officers and the agencies that are needing our services as I previously mentioned, putting together opportunities that are size appropriate and that are not just tied into massive capital expenditures.” [#30]
- The Black American male owner of an MBE-certified goods and services firm noted that the government should categorize contracts differently. He noted, “I think they should have a category of contracts and most business things so that they have like a \$10,000 or less category. Frequently in government contracts, you have to put all the money up, all the expenses up upfront before you can get paid. And so, if we’re looking at a project, let’s say, at half million dollars and I’m going to have to lay out expenses of \$200,000, \$300,000 to get the project done, that’s almost insurmountable for me so I don’t even want to look at that project. But if it’s \$10,000, \$5,000, \$15,000, we can figure it out. So, if they make smaller size projects.” [#32]
- The Black American owner of a construction company believes breaking up the size of contracts can overcome this barrier. He believes small business could build capacity by doing so. He supported this by stating, “Giving them opportunities on a smaller scale so they could build their capacity.” [#5]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company feels multi award contracts are a solution. She stated, “I think multi-award would do it, because then we could take a piece of the pie. Or mandating that the larger ones have to work, collaborate. But I think, again, multi-award would be the best

option, because then we'd get an opportunity, and it wouldn't be predicated on the larger small business saying, 'We'll work with whomever,' because we'd be in the pool." [#6]

- The Asian American owner of an MBE- and DBE-certified professional services firm explained, "Allowing firms to bid on particular portion of a contract: what they feel comfortable. Let's say they have a large job. They can only bid on the survey part. We don't have to bid on the design part. Government, if they split out in six sections... 'We need survey, we need design data...' then we can bid independently on the survey part instead of trying to get on someone's team." [#36]
- A representative of a Black American woman-owned goods and services company stated, "Absolutely. As a matter of fact, I got two notices on solicitations that we summited to the District. The notifications we got today were cancelled. We have been waiting two years and followed up and got no responses. They have cancelled the solicitation. I think for the most part I said a mouthful, like breaking the contracts up so more companies will have work. The District needs to know small businesses do have the ability to do the work, and we need to be given the opportunity." [#AV190]
- A representative of a woman-owned construction company stated, "The barriers exist as a small business. Most small businesses cannot serve as a prime for financial reasons. It would be better if the packages were broken up to allow small businesses to compete for prime contracts." [#AV536]

**17. Price or evaluation preferences for small businesses.** Twenty-three business owners and managers shared their thoughts on price or evaluation preferences for small and local businesses [#4, #8, #10, #11, #13, #14, #15, #16, #18, #19, #27, #28, #32, #33, #36, #38, #39, #40, #AV]. For example:

- The owner of a majority-owned professional services company stated, "The only thing that should matter is the quality of the work." [#22]
- The owner of a majority-owned professional services company noted, "Evaluation preferences to me, the very phrase just suggests that you're moving away economic decisions. As an economist in training that bugs me. Yeah, I understand that we may want to facilitate smaller business or minority business or something, but in the long run, those businesses need to be able to compete on a parallel basis. And those preferences shouldn't play a major role if you want to help a firm get to the point where it can survive on its own." [#23]
- The representative of a majority-owned SDVOB-certified professional services company provided an example of a department of Defense program that put together that had a small business preference as well as, "...preferences for minority owned companies, women owned companies and veteran owned companies. And it's been a very successful program. It's not very big in size, but it has opened the door for some smaller businesses like us to be able to get, at least, a foot in the door and start on building out a larger practice." [#16]
- A representative of a woman-owned construction company stated, "Hard to be competitive because of the pricing. So many on contract. If there were more women owned business, we try and look for them. We tend to see more 8A, minority or veterans/disabled vets." [#AV202]

- A representative of a Black American woman-owned goods and services company stated, "Lately not easy to bid for a contract being a small business. Larger qualified companies are able to bid higher and it is hard to compete with those rates." [#AV242]
- A representative of a woman-owned goods and services company stated, "Many times they want the low bid /low price, and we are rarely have the low price." [#AV265]
- A representative of a Black American woman-owned goods and services company stated, "In the past bid we were very positioned to be received, and less qualified company got the contract, and that was disappointing to see. The less qualified people are getting contracts then the more qualified. That the work should be awarded to a more diverse company." [#AV403]
- A representative of a majority-owned goods and services company stated, "Our company's ability to be competitive with the pricing terms we get from vendors/suppliers compared to our competition. Prioritizing companies that are geared towards women and minority owned businesses is beneficial." [#AV522]

**18. Small business set-asides.** Twenty-eight business owners and managers thought small business set-asides are helpful for small and disadvantaged businesses [#2, #4, #5, #6, #7, #8, #10, #11, #12, #13, #14, #15, #16, #18, #19, #22, #23, #27, #28, #32, #33, #36, #38, #39, #40, #AV, #PT1, #WT6]. For example:

- The owner of a majority-owned professional services company stated, "Well, the big barrier of course is minority set-asides and various other set-asides, women owned business, that sort of stuff. Since I'm white and not a woman, there's a whole area of business that I wouldn't get into, wouldn't be able to get into." [#22]
- The Black American owner of an MBE-certified goods and services firm noted, "I think what you could do is find a way to reach out to your registered businesses in certain disciplines. And instead of just putting out what the standard bid format say, "Okay, there's a hundred companies in this category, but you, 10 small businesses, you, 10 small minority women-owned businesses, out of you, 10, one of you guys is going to get it. Now, all of a sudden, instead of thinking I have to fight against the whole world, I know there's only 10 other companies there, I'm more motivated to go out and put in a bid. Or you can change the number. Maybe it's not 10. Maybe it's five. Maybe it's three. Maybe it's like going back to the thing with fixing the sidewalks. Maybe it's 20 companies with 10 projects and the winner gets the first pick. So now it's one out of every two of those companies knows they're going to get some work and not have it so that the big guy picks up the rest, but let's make sure that we get these small companies out to do this work. So, they make it happen." [#32]
- The owner of a majority-owned professional services company noted, "...but one of the things I found very helpful early in my career were government agencies that really focused more on the competitive side and would hire small firms to do some of their business and let you establish yourself a little bit." [#23]
- The representative of a CBE- and DBE-certified professional services firm noted, "I think measures like more set asides for various certifications, just ensure maybe the... I have not seen many veteran-owned set asides, or if it's SBE, veteran-owned, or women-owned. I've

just seen more SBE, so I don't know if there is any specific delineation that has a set aside for anything outside of small business under the CBE.” [#4]

- The Black American owner of a CBE-certified construction company suggested that DC create a set aside based on bonding as opposed to companies that have previous capacity. [#2]
- A representative of a majority-owned goods and services company stated, "None, other than set aside. Where you can only bid if you are a minority." [#AV491]
- A Black American respondent from a public meeting stated, "Looking at the books because of the piece of legislation that, of course, when Marion Barry was mayor put in place with regards to black business set asides, right? So really looking at what are the legalities around that today because that legislation was put on the books, but we know with subsequent mayors, there have been legislative actions that have rolled that back. So because we do have the legal component that is looking at this as well, I just want to raise up that a recommendation, be really analyze what are the options from a legal government perspective around that piece of legislation that can allow and empower the D.C. government to implement set asides for black businesses in line with equalizing the playing field based on reparations and particularly people of African slave descent from the cross Atlantic slave trade." [#PT1]
- The CBE-certified professional services firm stated, "DC Gov needs to have more set asides for CBEs, even for consulting services. It is hard to survive if we depend only on subcontracts. We see such opportunities in hands-on trades (plumbing etc.) and procurement (selling paper and computers), but not for consulting." [#WT6]

**19. Mandatory subcontracting minimums.** Business owners and managers shared their thoughts on mandatory subcontracting minimums. Many perceived mandatory subcontracting minimums as helpful for small and disadvantaged businesses, while others noted that industry specific requirements may be necessary [#2, #4, #5, #6, #7, #8, #10, #11, #12, #13, #14, #15, #16#18, #19, #27, #28, #32, #33, #36, #38, #39, #1, #2, #20, #22, #23, #40, #AV]. For example:

- The Hispanic American owner of a construction company expressed that local requirements are barriers. He noted, "...stipulating on the whole CBE requirement, especially when you are needing of a special skillset, you need to be more realistic. Or the District or individuals who are in that department within the district, they need to be more realistic in the sense of like, hey, you want these companies to reach X percent, again, that's fine. But how about we start paying them more? How about you start telling the contractor, 'Hey, we don't care if the project is going to of cost us an additional \$200,000, \$300,000, as long as you're paying these individuals what they deserve in order for them to be X, Y, Z.' That's the problem. [#15]
- The Black American woman owner of a CBE- and DBE-certified construction company noted, "I think mandatory percentage of the contract that would be set aside for these certifications, as well as regulations within the contract to ensure that a CBE is getting the work and also getting paid for the work." [#8]

- The Black American owner of a construction company believes, “I won't say it's a barrier. It is getting us to the table so it's very important, but it falls way short. If you don't have nothing else behind it, far as you don't have access to capital, what good is this minority certification? You're just going to have to sit.” [#5]
- The principal of a majority-owned professional services firm explained, “Yes and no. I think they're good to have because like I said, they push the market, and we typically are able to provide that in a robust way. It's not itself a challenge, but I think there are just for some disciplines in the AE world, there are just too few choices in the marketplace.” [#11]
- The owner of a majority-owned, SDVOSB- and DVBE-certified professional services company noted, “Yes, because that was my big contract was SDVOSB, I'm an SDVOSB. I have the [inaudible] you need and therefore win-win. It was because of that minimum, then I got an award.” [#18]
- The owner of a majority-owned DVBE-certified company noted it would be helpful but, “No one does it.” [#27]
- The Black American woman owner of a construction company when asked about mandatory subcontracting minimums expressed, “It outrages me, that we always speak of the minimum as the ceiling. It's unbelievable to me. Everyone knows 35%, and so I'm sure they hate when I come in the room, because I'm like, "That's the floor, right?" They're like, "Oh, God." Yeah, stop saying 35%. The only way you should be saying 35% is saying exceed it, because you can.” [#1]
- The owner of a WBE-certified construction company stated, “It could, again, it's going to be a case by case because of the weird niche that we're in.” [#20]
- The owner of a majority-owned professional services company stated, “They are usually a scam. They're a way to put a minority nominally in charge, then get somebody who's not a minority to actually do the work.” [#22]
- The owner of a majority-owned professional services company believes, “I think that they actually impede some medium size firms and while they may provide some opportunities for the small firms, it really limits the profitability of what they can achieve in the process.” [#23]
- A representative of a Black American-owned construction company stated, “I think the government needs to be better in terms of looking at small businesses in general. The government looks at general contractors for projects they always mandate to D.C. They should subcontract work to minority companies.” [#AV321]

**20. Small business subcontracting goals.** Twenty-two business owners and managers thought small business subcontracting goals are helpful for small and disadvantaged businesses [#1, #2, #4, #5, #6, #8, #10, #11, #12, #14, #15, #16, #18, #19, #23, #27, #28, #32, #36, #38, #39, #40]. For example:

- The Black American owner of a CBE-certified construction company suggested there should be tiers to subcontracting requirements because there are challenges hitting contracting goals. [#2]

- The Black American owner of a construction company believes additional categories would help subcontracting minimum requirements, “And they need to have a new category because they need to talk about micro businesses and disadvantaged businesses because they are lumping us in these categories is not doing us any justice when you start breaking down the data.” [#5]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company believes methods should be put in place to allow for “new” small businesses to be afforded contracting opportunities. She explained, “So maybe mandating that they have to use ... maybe there's a pool of subs that have not gotten a contract, they're new to the game, and maybe you have to select one from there. And then once you're out of that pool, you're on your own, maybe you have to elevate. So, us baby-babies are put into a pool, and then once we get that kind of mentorship, are pulled out, then now you're on your own. You've gotten your opportunity to get, kind of getting mentored, or get into the game, and to get your first past performance.” [#6]

**21. Formal complaint/grievance procedures.** Thirteen business owners and managers felt formal complaint and grievance procedures are helpful for small and disadvantaged businesses. Most firms stressed the need for confidentiality in these procedures [#4, #5, #6, #7, #8, #11, #13, #15, #16, #20, #23, #24, #28]. For example:

- The Black American owner of a construction company believes that the government should play a role in overcoming this barrier. He states that, “Being able to have a liaison with the government to report any type of uncomfortable situations where we're actually performing and providing a quality service, but we're not being treated fairly, and it can have detrimental and damaging and effects on our business existence and our growth. So, yeah, having the government aware of that, having the liaison for us to be able to go to the government for them to say, ‘Wait a minute, we cannot have this,’ if you know what I mean, some type of oversight.” [#5]
- The representative of a CBE- and DBE-certified professional services firm noted that lodging a complaint could become a barrier because, “many feel if you make a complaint, it could hurt you in business later. [#4]
- The owner of a WBE-certified construction company noted, “Yes, it's difficult to file a lien in DC. So, if you don't get paid, it's pretty much close to impossible to file a lien for the work, that type of work that we do, especially since your AIA contract. By the time you get paid, it's 60 days out and the follow up is difficult.” [#20]
- The owner of a majority-owned professional services company stated, “Well, for a small business, if you have to get into a grievance procedure, you might as well pack it up and go home. Yeah, I think all efforts should be made by all parties to avoid grievance procedures and for smaller firms, if that means a little bit less stringent application of some of the dotting of Is and crossing of Ts, sometimes maybe that's not unreasonable. But grievance procedures don't really help many people in the long run.” [#23]
- The owner of a majority-owned professional services company that specializes in real estate services stated, “They suck, for the simple answer. So, we have not been able to evict a tenant in years, even though we have tenants who are delinquent by tens of thousands of

dollars. Most of that's COVID, because before COVID, we didn't have problems, but in DC and Maryland, DC and Maryland are very tenant-friendly, so it takes three to six months to evict the tenant even in the best of times, versus Virginia, you can have a tenant out in 30 days. I mean, it takes nothing." [#24]

- The Black American owner of a professional services firm suggested, "Maybe having access to be able to report such contractors and in such incidents so that maybe the government or whoever's sponsoring the project could remediate... Just having the knowledge of it, how to go about it and possibly having some sort of a legal support as well, like a resource center for legal issues where you could call and again, you could be directed on who to contact to help better, and resources online that you could be able to help with your situation." [#7]
- The owner of a majority-owned goods and services company noted, "I do it all the time. The only issue I realized once you follow a route that's like this, what's going to happen is somebody's going to try to... They're going to hold that against you in a future competition, because you've got a reputation typically." [#28]
- The Black American woman owner of an MBE-, SBE-, and SDVOSB-certified professional services company would like to see grievance procedures posted. [#6]
- The Hispanic American owner of a construction company offered, "I think actually maybe to have a website or a specific entity to where you can become anonymous, and you can actually present your facts without actually having to show your email address or what company you work for." [#15]
- The Black American woman owner of a CBE- and DBE-certified construction company believes, "An agency or someplace where reporting can be done or communication can be had, regarding that." [#8]

## J. Race- and Gender-based Measures

Business owners and representatives shared their experience with DC Government's certification, POC- and woman-owned business programs, and small business programs and provided recommendations for making it more inclusive. For example:

1. Experience with DC Government's programs; and
2. Recommendations about race- and gender-based programs.

**1. Experience with DC Government's programs.** Twenty-one business owners and representatives shared their experiences with DC Government's programs [#1, #8, #14, #19, #24, #35, #38, #AV, #PT2, #WT2, #WT3, #WT6] For example:

- The Black American woman owner of construction company stated, "The City needs find a way of making sure that the companies that are getting certified are legit, that they're more than a shell company, that they're a true legitimate company." [#1]
- The Black American woman owner of a CBE- and DBE-certified construction company expressed, "I've been a CBE since I started my company, it was the first certification that I obtained. I don't feel that it has necessarily gotten me the majority of the work that I have gotten. I can't really attribute much of anything that I've done to my CBE status." [#8]

- The principal of a majority-owned, CBE-certified goods and services company noted his experience has been, “relatively positive”. [#14]
- The representative of an Asian American-owned goods and services firm stated, “They need to be far simpler. I think that the programs need to actually be designed to help build capacity and ongoing business operations for the small company. It's not just about throwing money at small companies to give them work, but to help them actually thrive. And I think that the programs are often set up by good-meaning lawmakers. But they don't have an understanding of how the market works or how projects happen in a way that enables larger contractors to actually meaningfully engage with small subs that need a lot of help. And I don't know what the full answer is, but that's a problem in the system.” [#19]
- The owner of a majority-owned professional services company that specializes in real estate services noted, “Well, it was an uphill battle, and I did not believe that for the time I could invest in it that I would get a reasonable return on it.” [#24]
- The representative of a DBE-, MBE-, and WBE-certified goods and services firm stated, “I think it's very restrictive. I think it limits the district to, I guess what you could say is low end services and products, because it pretty much, to me, it pretty much bases most of the award evaluations on lowest price.” [#35]
- The Asian American owner of a construction company noted, “It's been phenomenal. I think it's a great program. I just think it needs to be tweaked in certain areas. As I said, the CBE needs to be points and all that needs to be assessed at a subcontractor level in terms of discounted points. Also think that compliance is different with CBE versus MDOT in Maryland, MDOT specifically sends a form to you separate from the general contractor to complete and not the other way around in D.C. Everything goes through the general contractor. So, I like that aspect where the minority department of Maryland, they reach out to the minority themselves or the MDOT participant. And I think that's something really, really good. So there's no middleman in between and no points of no opportunities to change or force the hands of subs.” [#38]
- A representative of a Black American-owned professional services company stated, “D.C. is discriminatory, they are very insular in contract awarding, and the process is biased, they are punitive, funding is not guaranteed, no increments, if you win a contract, comes in increments, no guarantees that is not fair business environment.” [#AV23]
- A representative of a woman-owned construction company stated, “The agency is not empowered enough to help smaller and local businesses.” [#AV69]
- A representative of a Black American-owned goods and services company stated, “D.C. is very (small business) friendly.” [#AV81]
- A representative of a majority-owned professional services company stated, “We find working in D.C. very ponderous and painful. Nothing else to say that can be put in writing.” [#AV90]
- A representative of a Hispanic American-owned construction company stated, “A lot of D.C. projects are expecting 50% of CBE (certified business enterprise) participation which unfortunately to become a CBE you need an office in Washington D.C.” [#AV145]



- A representative of a majority-owned professional services company stated, "I think when we looked into working with D.C. based public schools, we ran into an issue that we had to be a D.C. based firm. Our address had to be in the District of Columbia as our business location." [#AV147]
- A representative of a majority-owned professional services company stated, "The certified business system is getting better, but national firms are treated better than local firms, and they get to tap into national resources." [#AV154]
- A representative of an Asian Pacific American-owned professional services company stated, "It is very difficult to get contracts with the government. They need to remove the restriction of the CBEs." [#AV176]
- A representative of a majority-owned professional services company stated, "Because we are not MBE because D.C. has such strict requirements, and we don't meet the MBE part." [#AV339]
- A representative of a majority-owned professional services company stated, "We used to be a CBE in the District, but they changed the rules, and it makes it harder to work with the government." [#AV405]
- A respondent from a public meeting stated, "here's I think the most, oh, I can't even think of the word for it, it's almost unconscionable is that I still have to produce a report because I'm on a D.C. supply schedule and I get no dollars. It's unconscionable. And then they tell me I'm default if I don't produce a report, but I never got any money. So, it's quite confusing. ... I signed up, I'm on the D.C. supply schedule. And when I made calls about opportunities, I was told if you get on the schedule that you're automatically in, you'll get the contracts, da, da, da. Well, that didn't happen. And the response I got was from DSLBD that the offices are not using the D.C. supply schedule correctly. That's a problem. If I'm a certified vendor, now that I've gone through that process, and they're not even looking at that list, what is the point? ... the message that you're getting from the office of contracting and procurement is once you do this, then they're going to be calling you. They'll be contacting you, you'll in position, but that is not true." [#PT6]
- Written testimony submitted to the study team stated, "Small business in wards seven have continue to be overlooked when opportunities exist for small businesses. We need to take a look at med management and holding the agencies responsible for their actions. The DSLDE Certification program should be revamped I order to include all District based business not a selected group." [#WT2]
- The Black American owner of a professional services company stated, "From many professionals we know, the DC Office of Contraction decent address issues of CBE's when there is a challenge to an award. The result is less CBE engagement and contracting. The feeling is that the awards are targeted and terries no enforcement of the CBE codes by DSLBD." [#WT3]
- The CBE-certified professional services firm stated, "We have been a DC CBE for close to 2 years now. It has been a much better experience than when we were a certified small business in Virginia. Why? Because DC actually gives points for CBE participation in their

RFPs, whereas VA merely 'encourages' it and easily excuses non-compliance. So, that part works well." [#WT6]

**2. Recommendations about race- and gender-based programs.** Interviewees provided other suggestions to DC Government about how to improve their certification process and programs for certified firms. For example:

- The Black American woman representative of a CBE-, and DBE-certified professional services firm stated that DC could be more involved in promoting local businesses (CBEs). She stated, "Well, I think the District of Columbia could be more earnest in their desire to build homegrown DC-based firms, whether they are minority or not. If they are originated in the district and have shown a strong history in the area, there should be some sort of an investment in those firms that want to do good and maintain their business here. I think that even though the agencies put forth what they consider an earnest effort to encourage minority firms to team together or, excuse me, CBE firms to team together and go after projects, we are still seeing significant evidence that there's a preference for a national firm... the district has an enormous budget. So, I would say more focus needs to be placed on how to utilize the resources to support all of the certifications or classifications underneath the CBE certification, making sure that there's funding allocated or resource for each of those areas, since they're there. Otherwise, it doesn't make sense just to have them. So, if there's any specific ways in which... And then making firms aware of the opportunities. I know that in previous years they had the green book, but it would behoove them to have at least two workshops a year, and maybe at the start of the fiscal year and then midway through, to help local firms figure out where they can find opportunities." [#4]
- The representative of a DBE-, MBE-, and WBE-certified goods and services firm stated, "I would say do more of best value. And I would say the federal government, I don't know if they don't have this or not, but obviously, there's a quota attached to the CBE...So I think that perhaps maybe open it up a little bit for more participation would certainly help. I mean, you're still competing, but this notion that it has to be a CBE. I mean, MBE, DBE, okay. But the CBE specifically and this lowest price technically acceptable, I think the district is doing itself a huge disservice because I know that the work that's being done in the district and I know who's doing it." [#35]
- The Black American owner of a construction company believes, "...access to capital, policy initiatives. Yeah. Just access to capital and policymaker makers language in these requirements so that's pretty much where it starts." [#5]
- The representative of an Asian American-owned goods and services firm stated, "Well, I think that the one recommendation I would have, and it would take some work, but is that there needs to an understanding of the existing marketplace of ... I was just going to say certified small businesses of all those different categories we've mentioned. What their skills are and to marry it up with the work that's being done. What ends happening is that there are these kind of threshold goals that are set for projects. We're going to hit 50% CBE or 60% CBE. And there's no correlation between how much of that work on that project can actually be done by CBE firms and what's in the marketplace." [#19]

- The owner of a WBE-certified construction company stated, “What would be more helpful is to make the woman-owned at least on the woman-owned side not just there needs to be something more for the construction end. Most of your woman-owned opportunities are real estate, beauty salons. What most people would classify as girl jobs and nothing that's related to our business, our type of business. So, if you're plumbing or electrical or any type of construction, there is not anything specifically for the construction side that's helpful.” [#20]
- The principal of a majority-owned professional services firm believes DC should incorporate some of Maryland’s programs because, “they seem to be the most helpful in ensuring that MBE and WBE firms get work because at least for the work that we pursue, it seems to me that there's maybe, I don't know if it's more of a direct emphasis, but a greater focus on MBE, WBE, et cetera, versus lumping them in with small business... I think ideally there needs to be a much better kind of data-based approach to setting goals. Like what is the state of the market? What capacity and disciplines are actually available with what credentials and to tune goals, particularly to whatever is real... Because right now across the board, it seems that the goal setting is removed from what the marketplace can provide.” [#11]
- A representative of a Hispanic American-owned construction company stated, "We are interested in working with the government. We are a small outfit; we would like to start with small contracts." [#AV56]
- A representative of an Asian Pacific American woman-owned professional services company stated, "We have never been able get D.C. contracts. When trying to work with the D.C. government they prefer firms that are headquartered in D.C., and we are just outside of D.C. .... Since the pandemic the market has tightened up. we would like see help stimulating development and some of that set aside for small business." [#AV61]
- A representative of a majority-owned construction company stated, "No because I don't the first step to working with the government. I'd like to know how to start working with D.C. government." [#AV70]
- A representative of a Black American-owned goods and services company stated, "As a CBE we want to see more contracts being available to us." [#AV92]
- A representative of a Black American-owned construction company stated, "Opportunities for minority-owned businesses aren't there. We need more transparent, fair opportunities to grow our businesses." [#AV114]
- The Black American male owner of a CBE- and MBE-certified company stated, "I'll tell you about another problem with the district, is these waivers. I mean, I get 10 waivers a day? I mean, there's no businesses in the District of Columbia, that are in this metropolitan area? Well, I don't know how to word this, because again you say there's really not... Every state doesn't have an MBE program. I don't know how you work because D.C. has a CBE program. I mean, maybe that's 80% of them are white." [#PT2]
- A Black American respondent from a public meeting stated, "A question for the group. As you know, the state governments are basically patterned after the federal government, and on the federal level, each agency has what you might call an MBE office or some entity of a

small business agency to represent the interests of small businesses. I wanted the group to consider, perhaps, personnel in each D.C. agency that is knowledgeable about small business engagement and the outcome of this disparity study, so that they can help guide the directors and the decision-makers in the divisions, and their preparation of developing contracts, and the guidelines that are important to make sure compliance is maintained. The federal government does that, and I think they do it very well. I think the city would be served well if they adopt that same type of content for small business.” [#PT4]

- The Black American male owner of a CBE- and MBE-certified company stated, “About 90% of my businesses is in Maryland and other places. I don't really, I got about 10% of my business inside D.C. So yes, it's important to look at D.C., but let's look at vice versa, because Maryland also allows me to do business there as an MBE, even though D.C. doesn't have an MBE program, and I'm able to get business through the MBE program at Maryland and vice versa. Maryland does not have the same opportunity to do business as an MBE in D.C., because we don't have a race program. So, they're not able to become CBEs, and participate in the program. ... we're not collecting data. I don't know how many CBEs are actually minority-, black-, women-owned or nothing. They don't give us that data. So, we just know they all are CBEs, I think.” [#PT4]
- A respondent from a public meeting stated, “There are tons of training. I've been to all of them. So, I know they're out there. I've gone through the CBE process, which took months. And then I've gone through the D.C. supply schedule process, which took months. And there's still nothing. So, it's like a carrot on stick. Like, okay, now do this and now do that. And now do this. And then I emailed every single agency on multiple occasions and there's still nothing. So, it's an arduous process, that leads nowhere. And I'm not sure where the disconnect is.” [#PT6]
- Written testimony submitted during a public meeting stated, “There are no women-owned business preferences in DC ... It is critical that the group examine not just whether CBEs are awarded contracts but whether the CBE has and utilizes District residents to work on the project. We often find that the CBE has a mailbox in the District by all of the people who work on the project are Maryland or Virginia residents which completely defeats the purpose and spirit of creating employment and contracting opportunities for DC based companies that provide jobs to DC residents. ... Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. DC needs an actual DBE set aside such as the city of Chicago and other cities that truly promote minority business.” [#WT9]

## K. Other Insights and Recommendations

Interviewees shared other insights or recommendations. For example:

- The Asian American woman owner of a professional services IT firm explained, “I think the people should give chance to the new companies to see how they're performing, how they're working. Then only... You cannot judge people just looking for the RFP the whole year, you have the whole year to see their performance, at least give them a chance.” [#17]

- The owner of a majority-owned professional services company stated, “...another barrier, is malice or dishonesty, and then racial preference. As you know in DC, there's a hierarchy of three groups. There's black, there's other minorities, and there's white people. If the contract can be given to a black person, that's where it goes. If it can't go to a black person, it goes to a Korean or Hispanic or somebody else. If you can't find the person to do that, then finally you go to a white person. That's a major problem.” [#22]
- The owner of a majority-owned professional services company that specializes in real estate services stated, “So I wouldn't say there's necessarily a question, but I can give you a closing argument, so to speak, here, is that in the limited experiences that I have with DC, I find that in order to be successful in winning public contracts in DC, one of two situations needs to occur. Either that business needs to fit a very specific niche for a, what you would call, minority type business based upon that specific RFP, or two, has a very good it's not what you know, but who you know, knowing who the people are involved in having that relationship with the people are that are involved in order to be able to get that contract. If you don't either know the people involved and have a good relationship, or you don't have that particular niche with the ‘minority’ that you need to have for that particular RFP, the odds of getting that job are slim to none.” [#24]
- The representative of a CBE- and DBE-certified professional services firm believes, “I think there should be some greater attention paid to OCP, and their oversights of DDOT and various agencies. They need to ensure that the people working in OCP, they hire the right people who are familiar with doing work in the various agencies that they're overseeing, so that there is a level of understanding about how to select the right companies.” [#4]
- The Black American owner of a construction company feels the City should, “Allow real concrete opportunities for up-and-coming entrepreneurs who want to be a part of the American dream. The government agencies, they hold all the keys to making things happen.” [#5]
- The Black American woman owner of a CBE- and DBE-certified construction company expressed, “DC has the potential to be an example of a city and a government that really encourages and empowers its local small businesses to grow and to achieve success, but they need to, I think, enhance and curtail their systems that are truly targeted towards the benefit and the success of the small businesses. But I do think that as being someone who's experienced working in other cities and seeing other peers that work in other cities, I think that DC is definitely a pioneer in terms of empowering its small businesses, but just needs to work on a few things to make it more successful.” [#8]
- The representative of a majority-owned professional services firm stated, “Continue to improve and continue to look for new and innovative ways to educate, and let people know about what the requirements are. And therefore, you'll get a larger number of responses, and it'll open up additional options that then the district can take advantage of. I think that also by doing that, if it'll make it more competitive and when it's more competitive, the price will go down. And so, it will save the district money that they can then spend on other programs.” [#16]
- The Black American owner of a CBE-certified goods and services firm noted, “The biggest thing that I have found helpful that DC is starting to do, and occasionally it is a little overkill,

but the communication of them letting us know hey, your license is about to expire, you've got six months. Or hey, this is, somebody looked at this information on your tax affidavit. Or just being informed and the reminders to keep you certified. Because your CBE is what, two years, something like that. So, when it's time to renew, that's not even on your mind, you know what I mean, if you're not keeping up with it. So, you get that little email that says hey, it's time for you to get your paperwork together, or hey, you need to make sure this gets done. Or hey, get that done. They've gotten really good with that, and I think somebody was listening to one of these types of surveys. So that would be my recommendation, just to keep up the communication with the small businesses. Especially the CBEs, so that we can stay in the loop." [#39]

- A representative of a majority-owned professional services company stated, "D.C. should reevaluate rent control laws they should all be removed, or all properties be under the rent control laws." [#AV105]
- A Black American respondent from a public meeting stated, "there is a disparity. You can't look past our history and not say there's not a disparity. At one point in time, we were 70% of the population. We were driving the development. We had and made those historic communities thrive. Now today, the city has experienced tremendous amount of growth, but that hasn't been circulated in the communities, and people can say, 'Hey, but these guys don't have the capacity. So, we'll have to get an exception.' Capacity happens when there's opportunity for growth when there's opportunity for consistent revenues. If our Black businesses are not given consistent opportunity for revenues, how do you expect them to expand their capacity? Whether it's savvy use of technology, whether it's savvy organizational structures, they can't do it. They don't have the size; they don't have the size of revenue to do it. So, we can't sit here and say, 'Hey, yes, we kind of neglected the group. And then we came up with tax advantage things to do and other kinds of programs to do. But lo and behold, they really didn't have the capacity to do it.' Well, that's what happens to a community that's neglected. It loses the capacity to serve itself. So, I think we have an obligation to figure out how we can make amends for that, because 70% population, historic communities that were thriving, that are now in rubble or transitioned without us having a say. We are the epicenter of how black culture gets supported or not. So, we've got folks calling from New York. We've got folks calling from all of Chicago like, 'How do y'all let that happen?' Right? And that's the problem, no one person let that happen, but nobody stopped it. Nobody who had the authority said, 'Whoa, wait a minute. This just doesn't feel right.' Why would you betray the black people and the sacrifices they have made and the trauma that they have experienced and the spirit of Black Lives Matter? Why would you dishonor it? Why would you dishonor John Lewis who stood there with the mayor as a symbol of black power, and you don't even bother to set it aside for black vendors? How dare you! But who is the how dare you? Is it the mayor? Is it the system? It's the system, but who's responsible for changing the system? This disparity study can change the system, and it doesn't have to throw anybody under the bus to do it. The data is the data. This didn't happen on the mayor's watch. It's been happening for quite some time. From the beginning, the constitution of the US had never expected us to survive. And not only did we survive, but we also thrived. And so now, we've got to figure out how to dismantle white dominant culture and thinking in everything that we do, so that we can continue to survive and thrive. And we really, I can't tell you how important this disparity study is in that game. We don't

see the disparity study that you're doing as just some little, small thing that's going to make a small difference, it's a complete generation game changer, and that's why you see the passion from these gentlemen who have lived the trauma, who have lived the neglect for 30 and 40 years. ... The Community Reinvestment Act with the financials, right? So, they get credit for putting money into communities, but nobody is testing, nobody is keeping track of the displacement that that investment causes. Because remember what I said, the community gets neglected for decades, it loses the capacity to self-sustain and then all of a sudden, the government wants to come in or whomever wants to come in and fix it. And so, they do these tax advantage. And what happens is the property turns over to the developers because our capacity has been oppressed and we cannot fulfill. So now, real estate goes up and now we are displaced from our own communities. ... the cost of displacement. Is the loss of generational wealth... 28% of black people live in poverty in D.C., 28%. That 10% of the business in D.C. are owned by blacks. 90% are owned by whites. The unemployment rate among blacks is 12.2% and 2% among whites. The impact of business, because that's who's hiring these people, the whites, if we don't have the 10% of the business, we can't hire people. If you look at the statistics, the data in the census bureau, 95% of all black businesses have no employees, zero employees, 95%. That's why I'm saying the impact of all of this, of not having a business economy in the black community. What we have in the black community is a poverty welfare economy." [#PT1]

- A respondent from a public meeting stated, "If you look on the council's website, cool. 12.4% unemployment in D.C. for Blacks and 2% for Whites. 90% of all businesses in the District of Columbia are owned by Whites, and only 10% of are Black. 28% of all Blacks live in poverty. This disparity study and I'll talk a little bit more about thoughts on this when we get to the testimony part. But it's very important that this study and us in the community be involved, because we've hoping that this disparity study will have a very, tremendous impact on closing down those numbers that I just mentioned. ... You don't have 10% of the businesses in a city that 43% are Black, but the only 10% of the businesses, they own. You don't have 28% poverty are those Blacks. You just don't hear 12% unemployment for Blacks, and two percent for Whites, something's wrong there." [#PT2]
- A respondent from a public meeting stated, "I think there's a level of an importance about having that data extracted at the level of a ward. Because one of the things that City has been pushing for the last several years is that, in wards that have a high degree of unemployment is pushed for entrepreneurship. What we also say that the local small business generally hire a local. So, if the goal is to address a multifaceted problem here that the City's experienced, and it seems to me, it would be beneficial to drill down, to get that data that's segregated so that you can be able to determine what the impact is on those communities that are high risk of unemployment and under employment. So, I would think that I would solely suggest that that would be something that you might want to consider because the City has been pushing that initiative." [#PT3]
- The woman owner of a construction company stated, "Construction itself has its own barriers. I've been in construction a while and it already has its innate barriers. There's wage theft that goes on, what I call the underground economy, the cash goes under the table, the deals are made in the field, pass through CBE, pass throughs, those CBES, I'm going to use the word so-called independent contractor that get on that job sites that have no licensing or workers comp and then there's also kickbacks that go on. So, how again can

we investigate if we've got to be the lowest bid, how can we level that playing field when we have these obstacles and these barriers?" [#PT5]

- A respondent from a public meeting stated, "This is my second year as a CBE specified small business owner in Ward Seven D.C. and nothing, nothing. I have to take a part-time job to be able to pay my bills. And I do you go through all the trainings like today, this is my second one just today. So yeah, I don't know what's going on. And that's what it is. I mean, I can't provide for myself through my company and, and how would I hire locals? I mean, within my community. So that is something I have to say. It is an issue. We don't know where the problem is." [#PT6]

## L. Focus Group Discussions.

The study team conducted two focus groups to discuss business barriers, insight to the procurement process, and recommendations for the District and other public agencies. Part L includes the following information:

1. Business barriers;
2. Experiences with local agencies;
3. Experience with the CBE program;
4. Procurement insights; and
5. Recommendations.

**1. Business barriers.** Focus group participants discussed the various barrier they and other businesses in the local marketplace face.

**Business size.** Focus group participants shared their thoughts on the effect of the size of a business on its success in the marketplace.

- A focus group participant stated, "I'll just take a stab at it. We're very small, we're two people. And so, we've been like that for the past three years, and we have grown significantly. So, I would have to say for me, the number has not had an impact. However, I do know that if I want to build capacity and really get to where I want to, that whether I'm hiring people on or using more consultants, it may more relate to how fast or how far I can grow." [FG1#2]
- A focus group participant stated, "Yes, I do think size matters, because when you don't have all of the resources to help you extend and grow into other agencies, it becomes a problem. But we definitely need resources and maybe that's financial resources too, to help us acquire those people to help us grow." [FG1#8]
- A focus group participant stated, "I agree ..., size does matter. Even though we have people to accommodate most of our customers, there are still areas that we could use the additional assistance, the additional help. And it would make us a lot more successful if we had that. But we restricted by access to capital, that is the biggest issue. However, during the pandemic, we had to be extremely strategic about what we did. And fortunately, we



were blessed to acquire some technology that made us relatively successful during the pandemic. But generally speaking, I do believe size matters.” [FG1#1]

- A focus group participant stated, “Yes. I do think size matters, but I would also add that it really depends on what you do. What is the nature of the service being offered? If it's a personal service, then size really doesn't strike me as being a crucial factor. Because the service is being acquired for you, not for a product. On the other hand, if what you're doing is you have an enterprise which provides products or an activity that that is personnel intensive, that is people intensive, then certainly size matters in the context of personnel. But I don't believe size is determinative of success. It really is the function of what you do.” [FG1#2]
- A focus group participant stated, “I think when it comes to size, you're talking about two dimensions, one would be revenue, and the second one would be the number of employees. And those two factors when combined, determine your portfolio, your products and services that you're able to offer.” [FG1#4]
- A focus group participant stated, “I was going to say that I think directly in relationship to size and capacity, one of the challenges that a lot of small business have is understanding the relationship between what size your business is, what capacity your business is, and what opportunities are actually available to you and what opportunities you should be trying to take advantage of.” [FG2#9]
- A focus group participant stated, “I think where the government could be helpful because one of the things that we struggle with is solicitations come out but from a capacity standpoint, we don't have the resources to respond to some of those solicitations. You get a solicitation as 150 pages and you know your competition is going to submit 200 pages in response. It automatically takes you out. It automatically puts you at a disadvantage. And so how does one play in that scenario so that you can introduce yourself to those players because it seems like the way these solicitations are written, it's written to exclude smaller firms who are capable but they don't have the bandwidth of the resources to respond. And then the other thing that maybe they could do is maybe enforce or suggest a mentor/mentee relationship to then give the smaller firms the opportunity to participate in some of these projects where then they can get the explosion. They can then learn from these mentees help to put those things in place so then they can play on their own. So that's probably something that I think would be very useful.” [FG2#8]

**Access to capital.** Focus group participants shared their thoughts on the effect the access to capital has to businesses in the local marketplace.

- A focus group participant stated, “...when I listen to a lot of small businesses, they all say that they don't have access to capital and there isn't any. But there is, it's just making sure that you know the right resources, partnering yourself with the right people, and making sure that there's, I would say, access to transparent communication around how to get that and what programs match those small businesses.” [FG1#6]
- A focus group participant stated, “...it is still extremely difficult for us to get financing so that we could expand what we're doing. And I've explained to my team that at this rate, we are going to continue to have to bootstrap what we're doing. And I think I could speak for

many of my brothers and sisters who are in business. It's a thing of bootstrapping. We have to do it on our own. And I don't think that's fair." [FG1#1]

- A focus group participant stated, "I have yet to see a bank that will establish a relationship with me, even though I do have a bank of which most people know I'm not happy with. But at any rate, it's important for us as small business owners to have access, but real access, like real decision makers to help us obtain that financing. And then also, you see a lot of these grants that are coming out, whether it's from the Goldman Sachs or whomever, but they're really targeting companies under \$750,000. But what about our size? Who's helping us? So where do we go? So those are some of the challenges that I have when we talk about access to capital." [FG1#8]
- A focus group participant stated, "Access to capital has had something of a history with me. I began practice as a small professional services firm with my first wife. And access to capital meant having a financing mechanism that would essentially allow me to run the business while to balance the revenue side of what our work was with the debt side, or the cost side, if you will. And so what is access the capital? That is a line of credit. And in order to achieve that, I had to create or make, or establish a personal relationship with the local bank, and that meant one of the local bankers. And it took about a year to do that, but eventually it did. What was required, frankly, was two things. One, were my wife and I are willing to guarantee the borrowing. Seems to be a lot of background noise. But the second thing was that the banker had to actually understand what we were doing, and believe in the integrity of the way we did it, both professionally and economically. It took a while for that to happen, but it did happen." [FG1#1]
- A focus group participant stated, "...a company that's trying to start out, just can't make it without the capital to finance construction for the first 30, 60, or 90 days. So, access to capital is the whole key for subcontractors. They either can get it and they'll make it. If they can't get it, they won't last very long." [FG2#9]
- A focus group participant stated, "If you're going into construction services, government contracting, what have you, you got to have that 60, 90-day cushion until you get paid. And so, you need to have your financial house in order in that sense and have access to lines of credit or micro loans or what have you. I don't know. But that's a challenge for some." [FG2#4]

**Relationships and networking.** Focus group participants discussed the importance of building relationships with other businesses and networking.

- A focus group participant stated, "Yes, relationships are essential. And in our field, in the multifamily field and the development field, relationship with local banks extremely important, but their relationship most importantly with the city is essential, especially in a city like DC. And so, formulating a relationship with your council members, formulating a relationship with your ANC members and communities and community leaders go a long way." [FG2#11]
- A focus group participant stated, "Relationships are very critical. Having worked in government before Montgomery County and economic development and understand those businesses that work strategically with procurement, the minority business offices, what

have you, are very important knowing your council members, all of that comes into play. It does help. It takes time, obviously, but people like to do business with people that they know in a sense, and that type of thing.” [FG2#4]

- A focus group participant stated, “I agree with everything everyone said. I think relationships are very key component to the success of any of our businesses, not just relationships that we may personally have, but also the relationship with our brand, right? And so, some of the challenges that we have as small businesses is how do we establish our brand and how do we establish relationships when those relationships didn’t formally come from our preexisting relationships.” [FG2#9]
- A focus group participant stated, “So when you talk about relationships, my relationships have always been to do the right thing, get back to the community, give to my painters, make sure my painters are paid well. And other competitions they take them to Alaska to go fishing. They take them hunting. They take them anywhere they want to go and spend all this money. And a lot of that has kept me down and it still does to this day because I don’t participate in it.” [FG2#6]
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**Race/ethnicity or gender.** Focus group participants discussed the effect of race, ethnicity, and gender on the success of businesses in the local marketplace.

- A focus group participant stated, “This whole issue of race, especially, especially in the DMV area, where historically you have a high significant number of people of color. I have to go back to the system of which we live in, that whole issue around systemic racism. You know it’s there, but you can’t put your finger on it. You know it exists all around us, but you don’t necessarily see it in your face. We go back to access to capital, if an opportunity is presented to you, and it makes sense on paper for anyone, any practical logical person can see it makes sense. But for some reason, you can’t access it. You know what that is. And if it happens on a consistent basis, you know what it is, but you can’t put your finger on. And I think everyone here understands that. No one calls me the N word in my face. No one tells me that I can’t have something because of my color. No one does that. But it happens in the C-suite. It happens when we’re not at the table. We all know that.” [FG1#1]
- A focus group participant stated, “I would say, and venture out to be very vulnerable, to say, I think regardless business, it’s just been a systemic issue and it’s been a wave of the world. Do I think it’ll be fixed tomorrow? No. I think there’s a lot of, particularly now in this space of DEI where there’s a wave of conversations that present an opportunity for folks to listen and become more aware and become vulnerable.” [FG1#6]
- A focus group participant stated, “I think that the businesses in this group are CBEs. And there’s a general perception that we’ve found that district and federal agencies feel that the

CBEs often do not have the capacity to perform. And of course, that has racial overtones as well. So that's a barrier." [FG1#4]

- A focus group participant stated, "I will tell you that women that are in businesses that are male dominated, whether it's construction, utilities, et cetera, clearly, I've heard from them that they certainly feel that there is a barrier. Again, it's probably a much bigger story, but they do feel internally in DC that there is a barrier, and it's very difficult for them to win or secure contracts, even if it's just getting a piece of something." [FG1#3]
- A focus group participant stated, "Sometimes when you're a CBE, you're looked at as against. It's like, okay, we have to do business with the CBE, but then when you get in the game, the rules changes and there's just no consistency in the rules when you're a CBE." [FG1#5]

## **2. Experiences with local agencies.** Focus group participants discussed their experiences working with local public agencies.

- A focus group participant stated, "Regarding doing business with the city. As everyone knows, if there's a general contractor who has an agreement with the city, any issues between the subcontractor and the general contractor are between those two parties. My experience has been, and Robert, I think you know this very well, that when there are issues between those two parties, the general contractor and the subcontractor, there's not much support in making a case for the subcontractor out there in the community, or with the DC Government, the government place all the onus on the subcontractor. There's lip service given to subcontractors that they will receive some support. They might get a hearing session to vent, but there's no concrete means of trying to resolve the issue between the general contractor and the subcontractor." [FG1#1]
- A focus group participant stated, "I would say that one of the things that we struggle with is having within the construction industry, having the agencies make the packages for projects small enough, so that growing companies can compete." [FG2#7]
- A focus group participant stated, "Yeah, for me, it's about bonding capacity to be able to go after, again...how they package the deals. There are things that I could do solo by myself, but because they require bonding of anything over a hundred thousand and bonding is a problem for me because my bonding capacity and aggregate are the same." [FG2#2]
- A focus group participant stated, "Our experience has been, it just takes time. Takes a long time to be able to contract with the district. We were subs to primes who were contracting with the district for 10 years before we really were able to have any type of prime opportunities or any type of opportunities for us to be able to do business directly with the district. And then once we were, we were put into a very small box and said, "Okay, this is what your capacity is." [FG2#9]
- A focus group participant stated, "Mentor, mentee, protege. I agree with what MK was saying. I know in Montgomery County, we had a lot of mentor, mentee, protege programs in place. It was very helpful. I think it's important that the DC Government also put some pressure on some of the bigger GCs, a lot more pressure to sub out or work with smaller companies, maybe in procurement, they could maybe unbundle some of the procurement opportunities." [FG2#4]

- A focus group participant stated, “And so outside of having these relationships with contractors that may give us introductions, it’s very hard for us to make inroads on government jobs because the way these solicitations are written, they’re written with us as a second thought. And so even when I get a solicitation, that’s directly related to architecture engineering, it reads like a GC.” [FG2#1]
- A focus group participant stated, “One of the burdens for DC Government for us is the changeover. No one’s stable in their particular job title anymore. Whatever that job description might be, you might be there for months and then the changes. And you’ve got a new director, you’ve got a new person that’s taking over their position. And it’s just that influx of coming and going, and not having a stable workforce in that particular position. That’s one of the burdens that I see.” [FG1#12]
- A focus group participant stated, “And for the district, one of the things I think we could possibly do a little bit better, we put a lot of information out there publicly through emails and things like that. We do not have a lot of a good procurement onboarding system...I think we’ve gotten in this age where we put a lot of resources, but the accessibility to really engage in transparent dialogue on what that actual process looks like, is not as engaging from a public perspective. So, I would say, maybe if they looked at some benchmarks and best practices. I know some of the municipalities of Virginia do it, and some of the municipalities in Maryland, and some of the intergovernmental agencies have a very thorough and robust keyword, engaging procurement on boarding process that really engages the small business community. ” [FG1#6]
- A focus group participant stated, “Listen, let me look at the positive side of it. I found the agencies that had independent procurement abilities, seemed to have always put a smile on my face. There was apparently less bureaucracy. The specifications for what they needed were quite clear, and they seem to be easier to work with. Now, those that go through Office of Contract and Procurement can be just a little bit more challenging. For some of the construction jobs, there seems to be an attempt to bundle a lot of what is needed. And it makes it difficult for the participation of a smaller businesses.” [FG1#1]
- A focus group participant stated, “I think one of the challenges to doing business with the district is hearkened by an earlier comment about the absence of stability in the workforce. But that absence of stability really devolves into an interpretation of the way the job is to be done, and how the regulations that are being utilized are interpreted. That may be one of the biggest problems of local government. And the district government is no exception.” [FG1#2]
- A focus group participant stated, “...talking about how relative to the pay issue, for example, how can we get folks like ourselves in front of the city employees that are responsible for passing these invoices across their desk and talking to them so that they recognize the impact of their slow walking or not doing their job as efficiently as possible?” [FG2#7]

**3. Experience with the CBE program.** Focus group participants discussed their experiences with the District’s CBE program.

- A focus group participant stated, “Okay. I think one of the things that really worked well was the Small Business Reserve Program, whereby there are contracts set aside for certain

amount for small businesses. And I think that's one of the programs that really, really worked well and gave the small business a foothold to gain leverage in the marketplace." [FG1#12]

- A focus group participant stated, "...The Green Book. People that are stationed in Maryland or in some counties, and they see the green book and they see that this in DC and they think that's the best thing since sliced bread. And they don't have something that transparent or visible in their ran municipality. So I would say for a positive side, we do, do a very good job with innovation, communication, and transparency as a whole of what we offer to our CBEs, compared to some of our neighbors." [FG1#6]
- A focus group participant stated, "The DSLBD office gives us so much education and information, and they're great at that. I love them for that. My email inbox is always full with training programs and information that they want to share. Now, on the other side, and I alluded to this earlier, CBE dispute resolution, CBE dispute resolution. Now, by definition, I'm not sure if the DSLBD office is in the position to help us in that area. Maybe that's not their mission. I would like for it to be. We need help. I know many of my brothers and sisters can't afford three or four or \$500 an hour for an attorney, to help them to resolve something that could have been dealt with on the city level." [FG1#1]
- A focus group participant stated, " We found out that there's a need for greater outreach through CBEs that are in wards seven and eight. And also, a need for greater outreach to Hispanic-owned CBEs. I think that black-owned CBEs are doing quite well in terms of accessing opportunities and resources. But For CBEs that in those wards, those underserved areas of wards seven and eight, and also the Hispanic-owned CBEs, there should be more targeted outreach." [FG1#4]
- A focus group participant stated, " I've had good experience with the CBE program in that identify and people know I'm here. I think one of the major concerns I have is just trying to have a facility in the city, and then understanding what that cost adds to pricing. So we're a facility in the district, I need 25,000 square feet of workspace. In the district, you pay twice as much as you would in Maryland. So then I had an office in the district and a shop in Maryland and they're like, "Oh, but you need..." I'm like, "I can't bid a project and have a warehouse in the district. I would lose every single contract." So I think they just have some things they need to look at of business as a whole and not, again, try to put us in a box." [FG2#2]
- A focus group participant stated, "...skeptical about is the fact that you have this agency, you have CBEs which does not mean small, right? A CBE is just located in the district. So there's a lot of touting of all of the numbers of CBEs and the amount of money that's going to CBEs. But if you break it out, 80% of the funding is going to the large contractors and a bunch of small cost subcontractors. The issue that I've run into is that the agency itself will very aggressively inform you that they're not advocates, that they just do the licensing...So I would really appreciate the district within the context of this disparity observations to make that agency more robust and one that can actually advocate for and be a proponent for issues that we're addressing right here to the powers that be, rather than just being a place that they get to create a bunch of statistics that are thrown out at us about how great the district's in doing in supporting small businesses, because CBE is not small necessarily." [FG2#7]

- A focus group participant stated, "...being a CBE has doubled my business, which is all good. All right? There's a positive side of it. The other things that happen with CBEs, they allow contractors to come in town and get their CBEs that really aren't CBEs. The process has been, hopefully, being corrected, but there's quite a few CBEs that are not CBEs in town. So it makes the playing field a little bit harder." [FG2#6]
- A focus group participant stated, "I think CBE has come a long way from where it was and how it's structured initially, but there's enormous amount of work that needs to be done to really make it a robust agency and really depreciate the difference between a small business minority and people of color that need the opportunity to do business in the city.." [FG2#11]

**Race-, ethnicity-, or gender-based programs.** Focus group participants discussed the benefits and potential disadvantages to race-, ethnicity-, and gender-based programs.

- A focus group participant stated, "If we look throughout the nation as is exemplified by the federal government, they have a DBE and an MBE program. This was done because of the need. District government is no different from the need that's needed throughout the country. We look at best practices. Let's look at our neighbor, Maryland. I'm an MBE there, as well as a DBE through the Department of Transportation. And they are very thorough about making sure that we get business. I'm sure all of us had the experience of talking to a prime contractor." [FG1#1]
- A focus group participant stated, "One of the things also, I think there has to be an accountability for how those percentages set aside, 35% or whatever the goal might be. I think we have to look or delve deeper into how those actual percentages are accomplished." [FG1#12]
- A focus group participant stated, "I think it would be a really cool analysis if you have a 35%, but somehow the district amends the contract up. Seems like that 35% should rise up with an amendment to the contract. So it should be 35%, 35% of the amendments, 35%. If it's amended five times, you get 35% of the amendment as it moves forward. Because you can be stuck at the 35% on the initial contract. That contract may go from \$10 to \$50, but you still stuck at 35% of the \$10." [FG1#5]
- A focus group participant stated, "I think if it's going to be MBE that it can't just be a title. It has to mean something. So if they're just going to put it out there just so they can check a box saying, "Oh yeah, we got a WBE on our project," and that's as far as it goes, it's useless." [FG2#2]
- A focus group participant stated, "I think the answer is simply yes. I think it's critical. I mean, if you just look at it even statistically in terms of who is disadvantaged in America, I think there's obviously, as we have talked about for the past hour and a half, there's a lot of obstacles that we have to overcome that other people don't have to overcome, as it relates to banking, et cetera, financing, which is critical to making a business work and grow." [FG2#3]
- A focus group participant stated, "I have an uneasiness with having the program revert back to a race-based program. The reason the CBE program came into an existence in the beginning, really its foundings were in the early '90s, was because the original program was

race based. I think Mr. Bob would have some insight into this. But in the current legal framework within which the courts assess these programs, to make it revert back to race based is going to be inviting a major challenge. And it could very well be that the program would fall based on judicial scrutiny. So I would counsel against doing that. The CBE program actually works if it's run well, it actually serves the purpose.” [FG1#2]

- A focus group participant stated, “I also previously in a previous career, I worked for Baltimore City government in their MBE office and they had race-based goals and did pretty well. I think when I first started my first year there, we spent maybe \$44 million with MBE firms. And by my fourth year, we were at 105 million with MBE firms, but it was through an executive order from the mayor that he wanted to put that 35% MBE goal on all public funding. So it worked for Baltimore City. I know in the federal space, it's working for DDOT. As a matter of fact, for the DBE program, we've exceeded our goal by 41% this year, which is interestingly enough, a caveat for us. But for the two programs, I've worked at a local government level in the federal space, it did tremendous wonders for DBE firms and MBE firms and also gave them real opportunities.” [PFG2#6]
- A focus group participant stated, “Well, your program can be challenged from a legal perspective. There's always the legal gray area where... In the purpose of the program of course, is to level the playing field. And when we talk about leveling playing field, we're not talking at the subcontracting level, we're talking about at the prime contractor level. So the drawback is, there could be backlash from the legal front. But then there are other drawbacks as well, because you have instances where the prime contractor, they have certain ways of doing things. In my experience, we've had DBEs and MBE firms forced off of a job. They were substituted. I had one firm; they were accused of quality control issues when they demanded payment. And we sent an inspector out and found out that there wasn't any quality control issues. So for our office, sometimes now we've become mediators in the process. So that's extra work for me that I really don't feel like doing, but we're advocating for the businesses, but sometimes there's that gray area.” [PFG2#6]

**4. Procurement insights.** Focus group participants, many of whom have experience working in public procurement and contracting, shared their insights on the procurement process and the challenges it may present to small, POC-, and woman-owned businesses.

**Factors considered by public agencies when awarding contracts.** Focus group participants discussed the factors considered when making contract awards.

- A focus group participant stated, “At the library, what we generally do is we examine the requirement first to see if it's suitable for open market or set aside. And what we do based on that, we go to the DSLBD website and we search for vendors for whatever that commodity is. And if we find a certain number of vendors, I say more than three, at least, we'll set it aside. But sometimes with the library, some of our services are unique because it is a library.” [PFG2#2]
- A focus group participant stated, “And I think it's through some type of competition where we put our bids and then we just review to see who can provide the services? At what cost? And do they have capacity? Because of course, we are a very large system with 119 schools plus our central offices.” [PFG2#7]



- A focus group participant stated, "...we follow the PPRA (Procurement Practice Reform Act) as far as the procurement process goes. The factors that influence how we select a business are in line with the PPRA. So we have to follow the regulations that are set out and established by the DC Government. We also do additional outreach to make sure that we are capitalizing on both local businesses and businesses who have subject matter expertise because some of our projects are large and depending on the needs of the project, some of our scopes are specialized. So we may have to do a little bit more outreach that involves more than what the legislation would require us to do, but we do follow the legislation." [PFG2#5]
- A focus group participant stated, "I just wanted to add business size is important because that ties into capacity...you have to make certain that the company is able to perform what's needed for any type of building, any type of work. So business size ties into with capacity and again, experience and key personnel." [PFG2#3]
- A focus group participant stated, "I came from the corporate side and relationships are paramount and I think that's where a lot of minority and women-owned businesses fall short. You got to be out there, that's where the information is. How you network through can get you a lot of the things that we're talking about. Can get you the capital, can get you the connections that you need to go through the process." [PFG2#4]
- A focus group participant stated, "So for us relationship is everything. And I say that in respect that we have a lot of emergency work that have to be done...So in looking internally at who our contractors are, we need the contractor that we know can do the work, that we know their capacity, that we know can carry their payroll, that we know can wait to get paid because we had to immediately have them to mobilize at that very second to clear 295. So relationships is for us, it's a key." [PFG2#6]
- A focus group participant stated, "But when you talk about relationships, you talk about internal and external relationships. Internal, meaning the relationships with the vendors, with the contracting staff at an agency. When you talk about small businesses, because of the procurement process, we go to the DSLBD website. And we look at the businesses that are there for the NIGP codes or commodity codes that we need and we'll go from there. But there are some businesses, obviously, if it's an open market type of situation that are not on there, so relationships matter. And it also involves the different factors here, not just relationships, but access to capital, size, relationships, skill set, capacity, key personnel, they all influence also. But when you talk about external relationships, that's when it's the subcontractors trying to get a seat at the table with the general contractors, which is another dynamic. And is it probably a challenge for them if you speak to the subcontractors? That would also influence whether or not they get work in the district." [PFG2#5]
- A focus group participant stated, "Relationships are definitely important because yes, we definitely need to know what your company does, but how to network and how to build those relationships, I believe our small businesses are challenged in that area." [PFG2#3]
- A focus group participant stated, "It does not internally, that may be more of an external situation that happens between prime and subcontractors on the business side. But internally, because of the rules and requirements on how we're supposed to assess

procurements, at least in Department of General Services, that is not a factor at all.” [PFG2#5]

- A focus group participant stated, “But race is not really a factor at the library. We look for qualifications skill sets for construction, but for our smaller projects, it's more skill sets because we have a lot of programming, community type programming and programs that we have to put on. So it's more skill sets and relationships.” [PFG2#2]
- A focus group participant stated, “Speaking to the factor skillset, what we do is highly technical.. So if we could do things to bolster the skill sets, I know those skill sets are out there. I think if we could do some things with some of the local universities and training centers to prep them up, to prepare and then encourage our vendors to work with these individuals.” [PFG2#4]
- A focus group participant stated, “So we're the infrastructure agency for the district. And our contracting ranges from 50,000 to 500 million. So basically because we are a road rate construction agency, we definitely have to look at capacity. We have to look at capacity. Now that's not to say that we don't consider minority or small businesses, because we have a couple of SBEC in the district that have 22 million contracts in roadway. But definitely for us, we definitely have to look at capacity.” [PFG2#6]
- A focus group participant stated, “So we definitely have to take a look at experience and level of expertise. Of course, the business size is important, as well as key personnel because that key personnel, I think that ties back into experience. So we want to make certain that your key personnel has experience to actually perform the scope that's listed on the contract.” [PFG2#3]
- A focus group participant stated, “Capital is hard to come by. I think minority businesses, it gets even more difficult if we go into a recession because then there's less capital and it's at a higher interest rate. So yeah, definitely so.” [PFG2#4]
- A focus group participant stated, “What I have found speaking with businesses during the pandemic is relationships was more of a challenge of, I'll give you an example. When you look at suppliers, suppliers in the construction industry, part of what they do to market their carpeting or their paint is they go to the prime contractors and they show off their products. Because they could not, no longer go and show off their project, they had to figure out ways virtually to be able to connect with prime contractors. So I think relationships and internal relationships too, trying to reach government workers with the downsizing and the work from home, that may have impacted relationships. And I suspect access to capital was really a big issue for many folks and having to downsize because of it. And I also think that race, ethnicity, and gender probably externally was a factor as well, but internally because of government processes, I don't think we saw that internally. But externally I'm pretty certain they probably felt it.” [PFG2#5]

**Challenges faced by small, POC- or woman-owned businesses.** Focus group participants noted the challenges unique to POC- or woman-owned businesses with regard to the public procurement process.

- A focus group participant stated, “But I think one of the challenges for us is that SBE minority firms don't always necessarily have the, I guess, paperwork in order, because we

do have smaller opportunities. I've had pre-bid meetings for \$1 million contracts and nobody showed up. Or we awarded a contract to a vendor who was not registered with our office of contracting and procurement.” [PFG2#6]

- A focus group participant stated, “...specialized skills, specialized experience. With Department of Human Services, as you can imagine, the majority of what we procure are services to support the homeless throughout the district. And a lot of that falls under the realm of case management, whether it be case management to help them get to transitional, permanent housing, job training and things of that nature. And so what we do is what we call a request for qualifications. And what I've found throughout my years here is that they're mostly non-profits who do this work. And so non-profits, they're not eligible to qualify as CBEs. So we run into a bit of an issue there.” [PFG2#1]
- A focus group participant stated, “One of the challenges that I realized that small businesses faced and barriers was technology. The government, we had to pivot and we did. And I can tell you for me, one of my agency much like DSLBD, my team part of my programming is DBE certification. And so we had a manual process prior to COVID and we transitioned to a web-based process because my team had to be able to work remotely. Even in transitioning to the web-based process, I believe I sent out five communications to our entire DBE staff. We did the website and we sent instructions and training and all that kind of stuff. We also had to take our invoicing system online. And then for DC Government, we transitioned to Microsoft Teams. So a lot of our meetings was virtual. We had a lot of small companies that didn't have access to Zoom or didn't have accounts and things like that...So for me, some of the technological aspects was a challenge and a barrier for small businesses because, whether it was being able to fund or finance technology or even determine what type of technology was needed, that transition to a remote environment was a little challenging.” [PFG2#6]
- A focus group participant stated, “We have a number of, I prefer to say, seasoned businesses that are very hesitant to adapt the technology and to really understand the technology.” [PFG2#3]
- A focus group participant stated, “I think there is definitely a need for greater education of the procurement system. And I'm going to say... And this may not be the most popular response, but I also think that there's been a lack of professionalism in my experience. And when I say that, I mean that sometimes I find that CBEs are not as responsive as I need them to be. And when they are responsive, they're not totally fulfilling the requirement to provide an accurate response. And in many cases, I've had to have hard line conversations with CBEs that have shown an interest in our requirements because they felt like, because I'm a CBE I'm supposed to get the work. And in those cases, I found it becomes entitlement, and that becomes a barrier. So that you still have to show me that you're qualified to do the job.” [PFG2#1]
- A focus group participant stated, “I was just going to say that a lot of the CBEs that we've interacted with, they may have the technical capacity, but they do not have the knowledge or staff to respond to the procurements in the manner in which describes their skill sets. So a lot of times what ends up happening is they fully are capable, but they're incapable of responding to the procurement in the way that would allow them to compete. If that makes sense.” [PFG2#9]

- A focus group participant stated, “I find that the CBE companies have problems responding to request for proposals or RFP, where you do have to describe your qualifications and skill sets. Oftentimes I've been told or received calls that say, "Well, why can't we just submit a price?" But you have to respond to the technical requirements as well. So they get a little annoyed at times to say, we're trying to discriminate or something like that. And that's not the case. It's just that, especially for construction projects, you have to know their skill sets and it's not just about the price. So they need some education in how to write proposals and respond to proposals.” [PFG2#2]
- A focus group participant stated, “There are challenges... and the reason being would be because... And I think it's hard to just say it's DC, but even just across the board, the DMV area, there are stereotypes, there are false perceptions about small businesses. There are false perceptions about minority businesses, false perceptions about women businesses. A perfect example is a DC based business that I worked with that was an IT company. They were competing in various competitions to get funding for their software and for their apps that they were creating. They had to work 20 times as harder than a non-minority business to get that opportunity.” [PFG2#3]
- A focus group participant stated, “Just recently, I have been working with the American Subcontracting Association for construction, the DC chapter. And they've been focusing a lot on minority and women-based businesses, both locally and across the United States, but really focusing on locally. And the conversation that we've had are exactly what Patricia said. Definitely the stereotypes and false perceptions and how that manifests itself from what they were sharing with me is relationships. It's harder to get those relationships with the different prime contractors.” [PFG2#5]
- A focus group participant stated, “...because I've personally worked with several minority and women-owned firms that had the capacity and had the capital, but they were unable to even get a seat at the table. And it wasn't until they hired a non-minority to be the face of the company that their businesses start to flourish. And they were able to get more opportunities because unfortunately, they could not get into spaces where the non-minority person could.” [PFG2#6]

**Implementation of the CBE program.** Focus group participants, many of whom have past experience working with business assistance programs, share their thoughts on the implementation of the CBE program.

**Barriers to implementation.** Focus group participants discussed barriers to implementing the CBE program.

- A focus group participant stated, “Well, actually three major challenges. One of them could potentially be with the CBE legislation, the way that it is written. Sometimes when you are looking at cost efficiencies and cost savings, you don't realize them by utilizing CBEs with the preference points. At times, their procurements may end up being higher, but because of the legislation, you're choosing them because you want to comply with the local requirements that may not be the most cost effective thing for the district to do. A second thing would be the technical expertise of the work being done. Sometimes having a local business, a lot of them are very qualified, their work is very competent. But you do have

some that are not, and that could compromise the products, the undeliverable. And then a third thing would be the amount of effort that for some of the seasoned...some of the seasoned CBEs, the amount of work and effort that you have to put in to help them sometimes is a little bit of a challenge for the limited resources in staffing that the government has." [PFG2#5]

- A focus group participant stated, "...cost, given that CBEs can add on a certain amount of percentage of their cost. And with schools, they have a very limited budget, so they're always complaining about the cost. The other thing is of getting the items, because most of the time, these are goods versus services to them in a timely fashion. Schools complain about not being able to, say use Amazon, which can pretty much give you overnight. But we have to go with a CBE that they have to wait a little longer when they have an immediate need. So I would say cost and the timeliness of delivery. Very few cases do we get, and in my experience, working with the school is the quality. So very few do complain about the quality. But I know from my experience with working in the school, there was some issues of the quality of their items versus someplace else." [PFG2#7]
- A focus group participant stated, "Yeah, the availability is critical, particularly when you are in a technical space. Because again, sometimes it's out there, a lot of times it's not. And I think a lot of CBE or LSDBEs, they struggle to figuring out what their niche is exactly where they might fit in into working with a prime on one of our contracts and A&E. But again, this always harks back to expertise, skill set and capacity, which is what we started talking about in the very beginning." [PFG2#4]
- A focus group participant stated, "What I've seen over the years is that, when I'm looking at their CBE profile and I'll see that they mention a particular trade or they mention a particular service or product. But when I reach out to that CBE and begin to ask questions and drill down, I'm actually finding out that they really don't have whatever I'm looking for, that X. They don't provide that product or that service. And it's just whatever they do provide is very peripheral. So availability also relates to the information that's in that CBE profile. So that cost additional time, additional money, because it doesn't say... And I know that there's certain guidelines that DSLBD has to follow, but that really limits the actual availability of a CBE for an opportunity." [PFG2#3]
- A focus group participant stated, "I think, as far as the district tools that are available, it's really the DSLBD database. It's really working with DSLBD to send out e-blast to CBEs to try and get the CBEs to respond to different things and to be aware of different things. But the heart of it really is what Patricia was saying, which is really picking up the phone and calling to really find out. Pre-proposal, pre-conferences are helpful in knowing what CBEs are there, so that you can actually look at the population and start having dialogues with them ahead of time. But it really is the grind work that the agencies do. Not only do you vet them beforehand, have meetings with them to find out who is there, the relationships matter so that you can see who's worked with you before and who's done quality works so that you can really look forward to seeing that. And also doing the checks after you see who is responded to the bid or the proposal, actually doing the "reference checks" where you're looking at them in more detail. And that's the way you can do it. But up front, there really aren't that many tools...because the DSLBD database is a self-selection process. So they can

construct airplanes and operate open heart surgery, and you don't know what they really do unless you pick the phone up and call them" [PFG2#5]

**Success of program.** Focus group participants discussed the relative success or failure of the CBE program.

- A focus group participant stated, "Yes and no. On the prime level, yes it is. Definitely the legislation does truly help small businesses because of the preference points and the way our procurement process is structured around the CBE program. Yes, it does. Externally, when it comes to opportunities on the subcontracting level, I think that's where the biggest barrier is because of the relationships, because of the access to capital and all the different things that we've already spoken about. I think it's more of a challenge on the subcontracting level than on the prime level, but I still think that some contractors would still feel that they haven't gotten the opportunity with DC Government, even on a prime level." [PFG2#5]
- A focus group participant stated, "Yes and no. On the prime level, yes it is. Definitely the legislation does truly help small businesses because of the preference points and the way our procurement process is structured around the CBE program. Yes, it does. Externally, when it comes to opportunities on the subcontracting level, I think that's where the biggest barrier is because of the relationships, because of the access to capital and all the different things that we've already spoken about. I think it's more of a challenge on the subcontracting level than on the prime level, but I still think that some contractors would still feel that they haven't gotten the opportunity with DC Government, even on a prime level." [PFG2#5]
- A focus group participant stated, "I believe the CBE program gives them an opportunity to open the door, but I don't think they have enough information and knowledge that we spoke of before to actually walk through the door and be effective. And I think that's a much broader discussion, but I would say yes and no. And definitely I know within our division, we actively make certain that yes, that the CBEs are at the table, but it becomes very challenging because of the number of factors that we talked about earlier." [PFG2#3]
- A focus group participant stated, "Just off the top of my head, I would say what has worked well is having the set aside program. I think the set aside program has worked well in benefiting CBEs definitely. And the one kind that comes to my mind is the cost impact of that CPE program. Sometimes is not advantageous to the district because the preference points include the cost escalation that they can have, where if you chose somebody who was not a CBE, there could have been some soft cost savings procurement wise and financially for the district in some instances. And also about the potential quality of work of some of the CBEs, if you were able to choose those who were not CBEs, the quality of work in some instances might not have been compromised." [PFG2#5]
- A focus group participant stated, "I think it's very clear cut and yes, you pay more, but you achieve other policy objectives. I would argue the thing that does not work well is the communication and coordination between DSLBD and OCP. I actually think that this is the weakest part of the CBE program is there's both internal and external confusion as to the roles of each of those agencies, these are the CBEs. And frankly, it also extends into us as the

program agency. We are unable oftentimes to tell a CBE who to go to for assistance between those two agencies.” [PFG2#8]

- A focus group participant stated, “I see the things that have worked really well, definitely agree with the set aside programs. It would be great if there were more programs that were specifically for black and women-owned businesses. I see that there are minority businesses that are getting an opportunity, but there're non-black businesses, which does for me personally gives a concern. And one of the things that I see that works very well too, is that holding the agencies accountable in a greater level. I've seen that over my time at DSLBD, and I think that is working much more effectively now. The things that I see that's not working well, it goes back to the NIGP codes. Who really owns the NIGP codes and helping the business to understand and selecting those NIGP codes. And that goes back to an earlier comment I made before about expertise and what does the business really, really do? I think that's the thing that does not work well. And then also again, for black and women-owned businesses.” [PFG2#3]
- A focus group participant stated, “I think for me, what works well is, recently I've started to coordinate more with DSLBD because of what Ben just shared, the lack of coordination between inner agencies to ensure that a CBE community have as much information or access to information that they need. There were certain aspects that I didn't know were available to me as a representative of the agency. I learned about PTAP, I learned that DSLBD will help with access to capital. That's not something that we do at DDOT, but they would help with bonding or there was training and education. I learned that DCRA has a whole small business center where they do a lot of training and education where they're doing how to do business with the government, how to make sure you have clean hands and things like that. So, I would agree with Ben, there's not a lot of agency coordination to help to sustain our CBE community and really to equip them with the tools that they need to be successful in the process.” [PFG2#6]

**5. Recommendations.** Focus group participants shared their recommendations and insights for the District and other public agencies to consider.

- A focus group participant stated, “So I don't know if there's an independent person that's not within the procurement system, that's not within the district. Someone that's independent of procurement and independent of political asylum on that or assignment, to a point for like an advocacy office. I can't remember if we had that or not.” [FG1#6]
- A focus group participant stated, “...we need an independent body, independent of the city council, independent of the agency, and definitely independent of the mayor to help us resolve these issues. Quite often, we run to DSLBD. ...So we need to get away from the politics and have an independent body, perhaps under the Attorney General's office to help us with these resolutions.” [FG1#1]
- A focus group participant stated, “Actually being interested in knowing what our challenges are and learning from it and structuring the programs to address those.” [FG2#7]
- A focus group participant stated, “I think the agency like DSLBD should definitely invest more, get more resources to invest in the local agencies that I referenced in the chat. SBDC, LEDC, Latino Economic Development Center, Life Asset, Wacif, all of these are small

business technical assistance entities that work with the startup business and have a sense of business, more so than DSLBD as a government agency, in my opinion.” [FG2#4]

- A focus group participant stated, “I think that having a better or a more robust outreach such as having a quarterly follow up with all of its small businesses, right?” [FG2#9]
- A focus group participant stated, “I’d like the city to also keep focusing also on other industries. I know we’re talking a lot about construction here, but food services, food operations, a lot of retail related to restaurant and food operations, a huge need for commercial kitchens. It’s a huge industry, the food industry and hospitality here in DC, major employer also in the area.” [FG2#4]
- A focus group participant stated, “Because the DSLBD database is there, and it has a lot of helpful information in it, the contact information and things like that, it would be helpful to expand on that to really make sure that we have bonding capacity. I know it might be in there for some of them, but to really have more information about bonding capacity and have a way to be able to truly vet the commodity codes that are in there so that you know when you actually select.” [PFG2#5]
- A focus group participant stated, “I think it would be great if we had some sort of DC Government internal evaluation system that can be shared across agencies. Because there are times that we may have a vendor that has performed very badly, but they’re still getting opportunities to perform even worse for another agency. So having like an internal government wide evaluation system and, or kind of like a grading system that we can share with agencies would be very helpful.” [PFG2#3]
- A focus group participant stated, “I think what would be really helpful is literally a DC Government contracting one-on-one course. I think what would be extremely beneficial is having, for those businesses, especially black and women-owned businesses that are very new to government contracting, even some sort of initial pilot program. Because this is what I’ve seen over the years is that we do have our CBE requirements and our SBE requirements, and by law, we have to meet those goals. But what are we doing to really create a pool of DC small businesses that are going to be successful over the long term?” [PFG2#3]
- A focus group participant stated, “I don’t know if this exists at DSLBD or not, but after they get their certification, there’s some type of program that they’re in, where they get continuing education courses that may be required for them to maintain their certification. And it would be contracting, it would be invoicing. All of the things that could be potential concerns for them.” [PFG2#5]
- A focus group participant stated, “I think having a pilot program across the district for small businesses to have opportunities to get their first contract with the district. Because oftentimes, you hear from CBEs and that are minority or women-owned businesses that they can’t get their first contract. And I think having a citywide pilot program that is agencies that do construction or agencies like OCP or the Department of Energy or whatever. For those businesses to get their first small contract so they can start doing business with the district would be a helpful program.” [PFG2#10]



- A focus group participant stated, "...local agencies, especially DSLBD and OCP have to get on the same page." [PFG2#9]
- A focus group participant stated, "I think it's a little bit of a challenge here in the district because we don't track by those designations. So we don't really know who they are. So the first step would be is to identify who these businesses are, and then try and develop programs as a district to help them. Because our hands are kind of tied in agencies because the legislation doesn't back us or give us any provisions to be able to account for that." [PFG2#5]

# APPENDIX E.

## Availability Analysis Approach

BBC-Pantera-Tiber used a *custom census* approach to analyze the availability of Washington, D.C.-area businesses for construction; professional services; and non-professional services, and goods and supplies prime contracts and subcontracts the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) awarded.

Appendix E expands on the information presented in Chapter 6 to further describe:

- A. Availability Data;
- B. Availability Survey Instrument;
- C. Survey Execution; and
- D. Additional Considerations.

### A. Availability Data

BBC-Pantera-Tiber partnered with Davis Research to conduct surveys with more than 1,000 businesses throughout the *relevant geographic market area* (RGMA), which we identified as Washington, D.C. and the seven surrounding counties or equivalents: Montgomery and Prince George's Counties in Maryland; Fairfax and Arlington Counties in Virginia; and the cities of Fairfax, Alexandria, and Falls Church in Virginia. Davis Research surveyed local businesses that the study team identified as doing work in fields closely related to the types of contracts and procurements DC Government, Events DC, and UDC awarded between October 1, 2016 and September 30, 2020 (i.e., *the study period*).

We began the survey process by determining the work specializations, or *subindustries*, relevant to each contract and procurement and identifying 8-digit Dun & Bradstreet (D&B) work specialization codes that best corresponded to those subindustries. We then compiled information about local businesses D&B listed as having their primary lines of business within those work specialization codes. Figure E-1 lists 8-digit work specialization codes within construction; professional services; and non-professional services, goods, and supplies most related to the contract dollars DC Government, Events DC, and UDC awarded during the study period, which we studied as part of the availability analysis. The subindustries in which we grouped those work specializations codes are presented as headings in Figure E-1.

As part of the survey, the study team attempted to contact 9,135 local businesses that perform work relevant to DC Government, Events DC, and UDC's contracting and procurement. The study team was able to successfully contact 1,675 of those businesses, 1,134 of which completed availability surveys. The objective of BBC-Pantera-Tiber's availability approach was not to collect information about each and every business operating in the RGMA. Instead, it was to collect information from a large, unbiased subset of local businesses that appropriately represents the entire relevant business population. That approach allowed us to estimate the availability of person of color (POC)- and woman-owned businesses for DC Government, Events DC, and UDC work in an accurate, statistically valid manner.

**Figure E-1.**  
**Subindustries included in the availability analysis**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Construction</b>			
<b>Building construction</b>		<b>Highway, street, and bridge construction (continued)</b>	
15420100	Commercial and office building contractors	16229901	Bridge construction
15420101	Commercial and office building, new construction	16220000	Bridge, tunnel, and elevated highway construction
15420103	Commercial and office buildings, renovation and repair	16110202	Concrete construction: roads, highways, sidewalks, etc.
15429903	Institutional building construction	16119901	General contractor, highway and street construction
15419909	Renovation, remodeling and repairs: industrial buildings	16110000	Highway and street construction
15420406	School building construction	16119902	Highway and street maintenance
15420400	Specialized public building contractors	16110204	Highway and street paving contractor
<b>Developers and operative builders</b>		17910000	Structural steel erection
15319901	Condominium developers	16110200	Surfacing and paving
15319902	Cooperative apartment developers	<b>Insulation, drywall, masonry, and weatherproofing</b>	
65529902	Land subdividers and developers, residential	17420100	Plaster and drywall work
15310000	Operative builders	17420000	Plastering, drywall, and insulation
15319903	Speculative builder, multi-family dwellings	17419907	Stone masonry
15319905	Townhouse developers	17990209	Waterproofing
<b>Electrical equipment and supplies</b>		<b>Landscape services</b>	
39930100	Electric signs	07829903	Landscape contractors
50630000	Electrical apparatus and equipment	<b>Other construction services</b>	
38220000	Environmental controls	17719903	Flooring contractor
36740306	Solar cells	<b>Painting, striping, and marking</b>	
<b>Electrical work</b>		17210200	Commercial painting
17310403	Fire detection and burglar alarm systems specialization	17210303	Pavement marking contractor
17319903	General electrical contractor	<b>Plumbing and HVAC</b>	
<b>Excavation, drilling, wrecking, and demolition</b>		17110401	Mechanical contractor
17959902	Demolition, buildings and other structures	17110000	Plumbing, heating, air-conditioning
17940000	Excavation work	17110403	Solar energy contractor
17950000	Wrecking and demolition work	17110404	Ventilation and duct work contractor
<b>Highway, street, and bridge construction</b>		50750000	Warm air heating and air conditioning
17710301	Blacktop (asphalt) work		

**Figure E-1.**  
**Subindustries included in the availability analysis (continued)**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Construction (continued)</b>			
<b>Remediation and cleaning</b>		<b>Trucking, hauling, and storage</b>	
17990502	Cleaning new buildings after construction	42140000	Local trucking with storage
17990800	Decontamination services	73899944	Relocation service
49590302	Environmental cleanup services		
87449904	Environmental remediation	<b>Water, sewer, and utility lines</b>	
<b>Residential building construction</b>		16239906	Underground utilities contractor
15220101	Apartment building construction	16230000	Water, sewer, and utility lines
15220107	Multi-family dwellings, new construction	<b>Windows and doors</b>	
15220201	Remodeling, multi-family dwellings	17510201	Garage door, installation or erection
<b>Roofing</b>		34420402	Garage doors, overhead: Metal
17610100	Roofing and gutter work		
17610000	Roofing, siding, and sheetmetal work		
<b>Professional services</b>			
<b>Advertising, marketing and public relations</b>		<b>Engineering</b>	
73119901	Advertising consultant	87110400	Construction and civil engineering
73890301	Convention and show services	87119909	Professional engineer
87439903	Public relations and publicity	<b>Environmental services</b>	
<b>Business services and consulting</b>		87489904	Energy conservation consultant
87429905	Management information systems consultant	89990703	Natural resource preservation service
<b>Construction management</b>		87110101	Pollution control engineering
87419902	Construction management	<b>Finance and accounting</b>	
87420402	Construction project management consultant	87210000	Accounting, auditing, and bookkeeping
<b>Engineering</b>		<b>Human resources and job training services</b>	
87120100	Architectural engineering	87420201	Compensation and benefits planning consultant
87110402	Civil engineering	73639905	Medical help service

**Figure E-1.**  
**Subindustries included in the availability analysis (continued)**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Professional services (continued)</b>		<b>Medical consulting (continued)</b>	
<b>Human resources and job training services (continued)</b>		<b>Real estate management</b>	
87420204	Personnel management consultant	80710103	Blood analysis laboratory
73610100	Placement agencies	80710104	Pathological laboratory
73630103	Temporary help service	80710100	Testing laboratories
<b>IT and data services</b>		<b>Transportation planning services</b>	
73790100	Computer related maintenance services	87420410	Transportation consultant
73740000	Data processing and preparation	87480200	Urban planning and consulting services
73730200	Systems integration services		
<b>Medical consulting</b>			
87420404	Hospital and health services consultant		
89991003	Psychological consultant		
80710102	Biological laboratory		
<b>Non-professional services, goods, and supplies</b>			
<b>Cleaning and janitorial services</b>		<b>Office equipment</b>	
73490104	Janitorial service, contract basis	59991401	Business machines and equipment
<b>Communications equipment</b>		50440200	Copying equipment
50650200	Communication equipment	50440000	Office equipment
36619908	Fiber optics communications equipment	50440207	Photocopy machines
36630100	Radio broadcasting and communications equipment	<b>Office supplies</b>	
59990600	Telephone and communication equipment	59439902	Office forms and supplies
50990500	Video and audio equipment	51129907	Office supplies, nec
<b>Dining services</b>		51120000	Stationery and office supplies
58129906	Contract food services	<b>Other services</b>	
<b>Facilities management</b>		75210200	Indoor parking services
87440000	Facilities support services	75210202	Parking garage
<b>Furniture</b>		<b>Pest control</b>	
57129904	Office furniture	73420000	Disinfecting and pest control services
<b>Industrial equipment and machinery</b>		73420200	Pest control services
50840000	Industrial machinery and equipment	<b>Printing, copying, and mailing</b>	
50850000	Industrial supplies	27590000	Commercial printing, nec
		73319904	Mailing service

**Figure E-1.**  
**Subindustries included in the availability analysis (continued)**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Non-professional services, goods, and supplies (continued)</b>			
<b>Security guard services</b>		<b>Uniforms and apparel</b>	
73810202	Fingerprint service	72180203	Industrial uniform supply
73810104	Protective services, guard	72130204	Uniform supply
73810105	Security guard service	56990102	Uniforms
<b>Security systems</b>		56990100	Uniforms and work clothing
59990100	Alarm and safety equipment stores	51360603	Uniforms, men's and boys'
59990101	Alarm signal systems	23260100	Work uniforms
50630501	Alarm systems, nec	<b>Vehicle repair services</b>	
73829901	Burglar alarm maintenance and monitoring	75490100	Automotive maintenance services
50630500	Electric alarms and signaling equipment	75389902	General truck repair
36690100	Emergency alarms	75320000	Top and body repair and paint shops
36690102	Fire alarm apparatus, electric	<b>Waste and recycling services</b>	
36690103	Fire detection systems, electric	49530201	Garbage: collecting, destroying, and processing
36990502	Security control equipment and systems	49530200	Refuse collection and disposal services
50659903	Security control equipment and systems	49530203	Rubbish collection and disposal
<b>Transit services</b>			
41110101	Bus line operations		
41110100	Bus transportation		
47299901	Carpool/vanpool arrangement		
41110000	Local and suburban transit		
41190000	Local passenger transportation, nec		
41190100	Local rental transportation		
41199906	Vanpool operation		

## B. Availability Survey Instrument

BBC-Pantera-Tiber created an availability survey instrument to collect information from relevant businesses located in the RGMA. As an example, the survey instrument the study team used with construction businesses is presented at the end of Appendix E. We modified the construction survey instrument slightly for use with businesses working in professional services to reflect terms more commonly used in that industry.<sup>1</sup>

**1. Survey structure.** The availability survey included 14 sections, and Davis Research attempted to cover all sections with each business the firm successfully contacted.

**a. Identification of purpose.** The surveys began by identifying DC Government as the survey sponsor and describing the purpose of the study. (e.g., “As part of the 2022 DC Government Disparity Study, which BBC-Pantera-Tiber is leading, we are conducting a survey to develop a list of companies interested in providing construction-related services to local government organizations in Washington, D.C. or that have provided such services in the past.”)

**b. Verification of correct business name.** The surveyor verified he or she had reached the correct business. If the business was not correct, surveyors asked if the respondent knew how to contact the correct business. Davis Research then followed up with the correct business based on the new contact information (see areas “X” and “Y” of the availability survey instrument).

**c. Verification of for-profit status.** The surveyor asked whether the organization was a for-profit business as opposed to a government or nonprofit organization (Question A2). Surveyors continued the survey with only those businesses that responded “yes” to that question.

**d. Confirmation of main lines of business.** Businesses confirmed their main lines of business according to D&B (Question A3a). If D&B’s work specialization codes were incorrect, businesses described their main lines of business (Questions A3b). Businesses were also asked to identify the other types of work they perform beyond their main lines of business (Question A3c). BBC-Pantera-Tiber subsequently coded information on main lines of business and additional types of work into appropriate 8-digit D&B work specialization codes and subindustries.

**e. Locations and affiliations.** The surveyor asked business owners or managers if their businesses had other locations (Question A4) and if their businesses were subsidiaries or affiliates of other businesses (Questions A5 through A8).

**f. Past bids or work.** The surveyor asked about bids and work on past contracts and procurements in connection with both prime contracts and subcontracts (Questions B1 and B2).

**g. Interest in future work.** The surveyor asked businesses about their interest in future work with government organizations in Washington, D.C (Questions B3 and B4).

**h. Geographic area.** The surveyor asked businesses whether they could serve customers in Washington, D.C. specifically (Question C1).

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<sup>1</sup> We also developed e-mail versions of the survey instruments for participants who preferred to complete the survey online.

**i. Year of establishment.** The surveyor asked businesses to indicate their years of establishment (Question D1).

**j. Capacity.** The surveyor asked businesses about the values of the largest prime contracts and subcontracts they have the ability to perform. (Question D2).

**k. Ownership.** The surveyor asked whether businesses were at least 51 percent owned and controlled by POCs or women (Questions E1 and E2). If businesses indicated they were POC-owned, they were also asked about the race/ethnicity of the business' owner(s) (Question E3). The study team confirmed that information through several other data sources, including:

- DC Government, Events DC, and UDC vendor data;
- DC Government's Certified Business Enterprise (CBE) Certification Directory; and
- Information from other available certification directories and business lists.

**l. Business revenue.** The surveyor asked questions about businesses' size in terms of their revenues. For businesses with multiple locations, the surveyor also asked questions about their revenues across all locations (Questions F1 and F2).

**m. Potential barriers in the marketplace.** The surveyor asked an open-ended question concerning working with DC Government and other local government agencies as well as general insights about conditions in the local marketplace (Question G1). In addition, the survey included a question asking whether respondents would be willing to participate in a follow-up interview about conditions in the local marketplace (Question G2).

**n. Contact information.** The survey concluded with questions about the participant's name, position, and contact information with the organization (Questions H1 through H3).

## C. Survey Execution

Davis Research conducted all availability surveys in 2021 and 2022. The firm made multiple attempts at different times of the day and on different days of the week to successfully reach each business. The firm attempted to survey the owner, manager, or other officer of each business who could provide accurate responses to survey questions.

**1. Businesses the study team successfully contacted.** Figure E-2 presents the disposition of the 9,135 businesses the study team attempted to contact for availability surveys.

**a. Non-working or wrong phone numbers.** Some of the business listings BBC-Pantera-Tiber purchased from D&B and Davis Research attempted to contact were:

- Duplicate phone numbers (69 listings);
- Non-working phone numbers (1,292 listings); or
- Wrong numbers for the desired businesses (486 listings).



Some non-working phone numbers and wrong numbers resulted from businesses going out of business or changing their names and phone numbers between the time D&B listed them and the time the study team attempted to contact them. For those businesses, BBC-Pantera-Tiber conducted additional research to find different working phone numbers so Davis Research could attempt to reach them. The number of duplicate phone numbers, non-working numbers, and wrong numbers reflect those efforts.

**b. Working phone numbers.** As shown in Figure E-2, there were 7,288 businesses with working phone numbers Davis Research attempted to contact. They were unsuccessful in contacting many of those businesses for various reasons:

- The firm could not reach anyone after multiple attempts for 4,858 businesses.
- The firm could not reach a responsible staff member after multiple attempts for 735 businesses.
- The firm could not conduct the availability survey due to language barriers for 20 businesses.

Thus, Davis Research was able to successfully contact 1,675 businesses.

**Figure E-2.**  
**Disposition of attempts to contact businesses for availability surveys**

Source:  
BBC-Pantera-Tiber availability analysis.

	Number of Establishments
Beginning list	9,135
Less duplicate phone numbers	69
Less non-working phone numbers	1,292
Less wrong number/business	486
Unique business listings with working phone numbers	7,288
Less no answer	4,858
Less could not reach responsible staff member	735
Less language barrier	20
<b>Establishments successfully contacted</b>	<b>1,675</b>

**2. Businesses included in the availability database.** Figure E-3 presents the disposition of the 1,675 business establishments Davis Research successfully contacted and how that number resulted in the 909 businesses BBC-Pantera-Tiber included in the availability database and considered potentially available for DC Government, Events DC, and UDC work.

**a. Businesses not interested in discussing availability for DC Government, Events DC, and UDC work.** Of the 1,675 businesses the study team successfully contacted, 460 were not interested in discussing their availability for DC Government, Events DC, and UDC work. In addition, BBC-Pantera-Tiber sent e-mail surveys upon request but did not receive completed surveys from 81 businesses. In total, 1,134 businesses completed availability surveys.

**b. Businesses available for DC Government, Events DC, and UDC work.** BBC-Pantera-Tiber deemed only a portion of the businesses that completed availability surveys as potentially available for the prime contracts and subcontracts DC Government, Events DC, and UDC

awarded during the study period. The study team excluded many of the businesses that completed surveys from the availability database for various reasons:

- We excluded 18 businesses that indicated they were not for-profit businesses.
- We excluded 24 businesses that reported their main lines of business were outside of the study scope.
- We excluded 165 businesses that reported they were not interested in opportunities with DC Government, UDC, Events DC, or other government organizations.
- Eighteen businesses actually represented different locations of the same businesses. Prior to analyzing results, we combined responses from multiple locations of the same business into a single data record according to several rules:
  - If any locations reported bidding or working on a contract or procurement within a particular subindustry, we considered the business to have bid or worked on a contract or procurement in that subindustry.
  - We combined the different roles of work (i.e., prime contractor or subcontractor) locations of the same business reported into a single response. For example, if one location reported it works as a prime contractor and another location reported it works as a subcontractor, then we considered the business as available for both prime contracts and subcontracts.
  - We considered the largest contract any location of the same business reported being able to perform as the business’s capacity (i.e., the largest contract for which the business could be considered available).

After those exclusions, we compiled a database of 909 businesses we considered potentially available for DC Government, UDC, and Events DC work.

**Figure E-3.  
Disposition of  
successfully  
contacted business  
establishments**

Source:  
BBC-Pantera-Tiber availability  
analysis.

	Number of Establishments
Establishments successfully contacted	1,675
Less establishments not interested in discussing availability for work	460
Less unreturned fax/online surveys	81
Establishments that completed surveys	1,134
Less not a for-profit business	18
Less line of work outside of study scope	24
Less no interest in future work	165
Less multiple establishments	18
<b>Establishments potentially available for entity work</b>	<b>909</b>

## D. Additional Considerations

BBC-Pantera-Tiber made additional considerations related to its approach to measuring availability to ensure estimates of the availability of businesses for DC Government, Events DC, and UDC work were accurate and appropriate.

**1. Providing representative estimates of business availability.** The purpose of the availability analysis was to provide precise and representative estimates of the percentage of DC Government, Events DC, and UDC contract and procurement dollars POC- and woman-owned businesses are ready, willing, and able to perform. The availability analysis did not provide a comprehensive listing of every business that could be available for DC Government, Events DC, and UDC work and should not be used in that way.

**2. Using a custom census approach to measuring availability.** Some guidance around measuring availability recommends dividing the number of POC- and woman-owned businesses in an organization's certification directory by the total number of businesses in the marketplace (for example, as reported in United States Census data). As another option, organizations could use a list of prequalified businesses or a bidders list to estimate the availability of POC- and woman-owned businesses for its prime contracts and subcontracts. BBC-Pantera-Tiber rejected such approaches when measuring the availability of businesses for DC Government, Events DC, and UDC work, because dividing a simple count of certified businesses by some total number of businesses does not account for business characteristics crucial to estimating availability accurately. The methodology we used takes a *custom census* approach to measuring availability and adds several layers of refinement to a simple counting approach. For example, the availability surveys the study team conducted provided data on qualifications, business capacity, and interest in DC Government, Events DC, and UDC work for each business, which resulted in a more detailed and precise analysis.

**3. Selection of specific subindustries.** Defining subindustries based on specific work specialization codes (e.g., D&B industry codes) is a standard step in analyzing businesses in an economic sector. Business data are often organized according to such codes. As with any such research, there are limitations to assigning businesses to specific D&B work specialization codes. Specifically, some industry codes are imprecise and overlap with other business specialties. Some businesses span several types of work, even at a very detailed level of specificity. That overlap can make classifying businesses into single main lines of business difficult and imprecise. In addition, when the study team asked business owners and managers to identify their main lines of business, they often gave broad answers. For those and other reasons, we collapsed work specialization codes into broader subindustries to more accurately classify businesses in the availability database.

**4. Response reliability.** Business owners and managers were asked questions that may be difficult to answer, including questions about their revenues. For that reason, the study team collected corresponding D&B information for their establishments and asked respondents to confirm that information or provide more accurate estimates. Further, respondents were not typically asked to give absolute figures for difficult questions such as revenue and capacity but were asked to answer such question in terms of ranges of dollar figures. Where possible, BBC-Pantera-Tiber verified survey responses by comparing data from the availability surveys to information from other sources such as vendor information we collected from DC Government, Events DC, and UDC. For example, certification databases include data on the race/ethnicity and gender of the owners of certified businesses. In addition, DC Government, Events DC, and UDC reviewed contract and vendor data we collected and compiled as part of study analyses and provided feedback regarding its accuracy.

# DRAFT Availability Survey Instrument [Construction]

Hello. My name is [interviewer name] from Davis Research. We are calling on behalf of the District of Columbia Government, including various District agencies, such as the Department of General Services, the District Department of Transportation, and the Department of Housing and Community Development.

This is not a sales call. As part of the 2022 DC Government Disparity Study, which BBC-Pantera-Tiber is leading, we are conducting a survey to develop a list of companies interested in providing construction-related services to local government organizations in Washington, D.C. or that have provided such services in the past. The survey is designed only to gather information and will have no impact on present or future work opportunities with DC Government. The survey should take between 10 and 15 minutes to complete.

**Who can I speak with to confirm information about your firm's characteristics and interest in working with local government organizations?**

*[AFTER REACHING AN APPROPRIATELY SENIOR STAFF MEMBER, THE INTERVIEWER SHOULD RE-INTRODUCE THE PURPOSE OF THE SURVEY AND BEGIN WITH QUESTIONS]*

*[IF ASKED, THE INFORMATION DEVELOPED IN THESE SURVEYS WILL ADD TO EXISTING DATA ON COMPANIES INTERESTED IN WORKING WITH LOCAL GOVERNMENT ORGANIZATIONS OR THAT HAVE DONE SO IN THE PAST]*

**X1. I have a few basic questions about your company and the type of work you do. Can you confirm this is [firm name]?**

1=RIGHT COMPANY – **SKIP TO A2**

2=NOT RIGHT COMPANY

99=REFUSE TO GIVE INFORMATION – **TERMINATE**

**Y1. What is the name of this company?**

1=VERBATIM

**Y2. Is [new firm name] associated with [old firm name] in any way?**

1=Yes, same owner doing business under a different name – **SKIP TO Y4**

2=Yes, can give information about named company

3=Company bought/sold/changed ownership

98=No, does not have information – **TERMINATE**

99=Refused to give information – **TERMINATE**

**Y3. Can you give me the new address for [new firm name]?**

*[NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT]:*

. STREET ADDRESS

. CITY

. STATE

. ZIP

1=VERBATIM

**Y4. Do you work for [new firm name]?**

1=YES

2=NO – **TERMINATE**

**A2. Let me confirm [firm name/new firm name] is a for-profit business, as opposed to a non-profit organization, a foundation, or government office. Is that correct?**

1=Yes, a for-profit business

2=No, other – **TERMINATE**

**A3a. Let me also confirm what kind of business this is. The information we have from Dun & Bradstreet indicates your main line of business is [SIC Code description]. Is that correct?**

*[NOTE TO INTERVIEWER – IF ASKED, DUN & BRADSTREET OR D&B, IS A COMPANY THAT COMPILES INFORMATION ON BUSINESSES THROUGHOUT THE COUNTRY]*

1=Yes – **SKIP TO A3c**

2=No

98=(DON'T KNOW)

99=(REFUSED)

**A3b. What would you say is the main line of business at [firm name/new firm name]?**

*[NOTE TO INTERVIEWER – IF RESPONDENT INDICATES FIRM'S MAIN LINE OF BUSINESS IS "GENERAL CONSTRUCTION" OR GENERAL CONTRACTOR," PROBE TO FIND OUT MORE INFORMATION.]*

1=VERBATIM

**A3c. What other types of work, if any, does your business perform?**

[ENTER VERBATIM RESPONSE]

1=VERBATIM

97=(NONE)

**A4. Is this the sole location for your business, or do you have offices in other locations?**

1=Sole location – **SKIP TO A7**

2=Have other locations

98=(DON'T KNOW)

99=(REFUSED)

**A5. Is this location the headquarters for your business, or is your business headquartered at another location?**

1=Headquartered here – **SKIP TO A7**

2=Headquartered at another location

98=(DON'T KNOW)

99=(REFUSED)

**A6. What is the city and state of your business' headquarters?**

*(ENTER VERBATIM CITY, ST)*

1=VERBATIM

**A7. Is your company a subsidiary or affiliate of another firm?**

1=Independent – **SKIP TO B1**

2=Subsidiary or affiliate of another firm

98=(DON'T KNOW) – **SKIP TO B1**

99=(REFUSED) – **SKIP TO B1**

**A8. What is the name of your parent company?**

1=VERBATIM

98=(DON'T KNOW)

99=(REFUSED)

**B1. Next, I have a few questions about your company's role in doing work or providing materials related to construction, maintenance, or design. During the past five years, has your company submitted a bid or received an award—for either the public or private sector—for any part of a contract as either a prime contractor or subcontractor?**

*[NOTE TO INTERVIEWER – THIS INCLUDES PUBLIC OR PRIVATE SECTOR WORK]*

1=Yes

2=No – **SKIP TO B3**

98=(DON'T KNOW) – **SKIP TO B3**

99=(REFUSED) – **SKIP TO B3**

**B2. Were those bids or awards to work as a prime contractor, a subcontractor, a trucker/hauler, a supplier, or any other roles?**

*[MULTIPUNCH]*

1=Prime contractor

2=Subcontractor

3=Trucker/hauler

4=Supplier (or manufacturer)

5= Other - SPECIFY \_\_\_\_\_

98=(DON'T KNOW)

99=(REFUSED)

**B3. Please think about future construction, maintenance, or design-related work as you answer the following few questions. Is your company *interested* in working with local government organizations in Washington, D.C. as a prime contractor?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**B4. Is your company *interested* in working with local government organizations in Washington D.C. as a subcontractor, trucker/hauler, or supplier?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**C1. Now I want to ask you about the geographic areas your company serves. Is your company able to do work or serve customers in Washington, D.C.?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**D1. In what year was your firm established?**

1=NUMERIC (1600-2021)

9998 = (DON'T KNOW)

9999 = (REFUSED)

**D2. What is the largest prime contract or subcontract your company is able to perform? This includes contracts in either the public sector or private sector.**

*[NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY]*

1=\$100,000 or less

2=More than \$100,000 to \$250,000

3=More than \$250,000 to \$500,000

4=More than \$500,000 to \$1 million

5=More than \$1 million to \$2 million

6=More than \$2 million to \$5 million

7=More than \$5 million to \$10 million

8=More than \$10 million to \$20 million

9=More than \$20 million to \$50 million

10=More than \$50 million to \$100 million

11= More than \$100 million to \$200 million

12=\$200 million or greater

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)



**E1. My next questions are about the ownership of the company. A company is defined as woman-owned if more than half—that is, 51 percent or more—of the ownership and control is by women. By this definition, is [*firm name / new firm name*] a woman-owned business?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**E2. A company is defined as minority-owned if more than half—that is, 51 percent or more—of the ownership and control is by Asian, Black, Hispanic, or Native American individuals. By this definition, is [*firm name / new firm name*] a minority-owned business?**

1=Yes

2=No – **SKIP TO F1**

98=(DON'T KNOW) – **SKIP TO F1**

99=(REFUSED) – **SKIP TO F1**

**E3. Would you say that the minority group ownership of your company is mostly Black American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, or Native American?**

1=Black American

2=Asian Pacific American (persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia(Kampuchea),Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race)

4=Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)

5=Subcontinent Asian American (persons whose Origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka)

6=(OTHER - SPECIFY) \_\_\_\_\_

98=(DON'T KNOW)

99=(REFUSED)

**F1. Dun & Bradstreet lists the average annual gross revenue of your company, including all your locations, to be [dollar amount]. Is that an accurate estimate for your company's average annual gross revenue over the last three years?**

1=Yes – **SKIP TO G1a**

2=No

98=(DON'T KNOW) – **SKIP TO G1a**

99=(REFUSED) – **SKIP TO G1a**

**F2. Roughly, what was the average annual gross revenue of your company, including all of your locations, over the last three years? Would you say . . .**

*[READ LIST]*

1=Less than \$1 Million

6=\$16.6 Million - \$19.5 Million

2=\$1.1 Million - \$6 Million

7=\$19.6 Million - \$22 Million

3=\$6.1 Million - \$8 Million

8=\$22.1 Million - \$26.29 Million

4=\$8.1 Million - \$12 Million

9=\$26.3 Million or more

5=\$12.1 Million - \$16.5 Million

98= (DON'T KNOW)

99= (REFUSED)

**G1a. We're interested in whether your company has experienced barriers or difficulties related to working with, or attempting to work with, DC government or other local government organizations. Do you have any thoughts to share?**

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97=(NOTHING/NONE/NO COMMENTS)

98=(DON'T KNOW)

99=(REFUSED)

**G1b. Do you have any additional thoughts to share regarding general marketplace conditions in Washington, D.C., starting or expanding a business in your industry, or obtaining work?**

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97=(NOTHING/NONE/NO COMMENTS)

98=(DON'T KNOW)

99=(REFUSED)

**G2. Would you be willing to participate in a follow-up interview about any of those topics?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**H1. Just a few last questions. What is your name?**

1=VERBATIM

**H2. What is your position at [*firm name / new firm name*]?**

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

9=(OTHER - SPECIFY) \_\_\_\_\_

99=(REFUSED)

**H3. At what email address can you be reached?**

1= VERBATIM

**Thank you very much for your participation. If you have any questions or concerns, please contact Ben Mindes, Director of Interagency Initiatives, Office of the Deputy Mayor for Planning and Economic Development for the District of Columbia at 202-297-7548.**

**If you have any questions for the Disparity Study project team or wish to submit written testimony regarding your insights or experiences related to working in the local marketplace, please email [DCDisparityStudy@bbcresearch.com](mailto:DCDisparityStudy@bbcresearch.com).**

# APPENDIX F.

## Disparity Analysis Results Tables

As part of the disparity analysis, BBC-Pantera-Tiber compared the actual participation, or *utilization*, of person of color- (POC-) and woman-owned businesses in construction; professional services; non-professional services, goods, and supplies prime contracts and subcontracts the Government of the District of Columbia (DC Government), Events DC, and the University of the District of Columbia (UDC) awarded between October 1, 2016 through June 30, 2020 (the *study period*) with the percentage of contract dollars one might expect the organizations to award to those businesses based on their *availability* for that work.<sup>1</sup> Appendix F presents detailed results from the disparity analysis for relevant business groups and various sets of contracts and procurements DC Government, Events DC, and UDC awarded during the study period.

### A. Format and Information

Each table in Appendix F presents disparity analysis results for a different set of contracts or procurements. For example, Figure F-1 presents disparity analysis results for all DC Government contracts and procurements BBC-Pantera-Tiber included in the study, considered together. Figure F-1 presents information about each relevant business group in separate rows:

- “All businesses” in row (1) pertains to information about all businesses regardless of the race/ethnicity and gender of their owners.
- Row (2) presents results for all POC- and woman-owned businesses considered together, regardless of whether they were certified business enterprises (CBEs).
- Row (3) presents results for woman-owned businesses, regardless of whether they were CBEs.
- Row (4) presents results for POC-owned businesses, regardless of whether they were CBEs.
- Rows (5) through (9) present results for businesses of each relevant racial/ethnic group—Asian American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, Native American-owned businesses, and POC-owned businesses of unknown race/ethnicity—regardless of whether they were CBEs.
- Rows (10) through (17) present utilization analysis results for businesses of each relevant racial/ethnic and gender group that were CBEs.<sup>2</sup>

The format and organization of Figure F-1 is identical to that of all disparity analysis tables in Appendix F.

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<sup>1</sup> As is standard in disparity studies, “woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

<sup>2</sup> Businesses owned by white men can also be CBEs, but the disparity study focuses specifically on outcomes for POC- and woman-owned businesses.

**1. Utilization analysis results.** Each results table includes the same columns of information:

- Row (1) of column (a) presents the total prime contracts and subcontracts (*contract elements*) BBC-Pantera-Tiber analyzed as part of the contract set. As shown in row (1) of column (a) of Figure F-1, we analyzed 15,999 contract elements DC Government awarded during the study period. The rest of the values presented in column (a) present the number of contract elements in which businesses of each group participated. For example, as shown in row (5) of column (a), Asian American-owned businesses participated in 1,650 prime contracts and subcontracts DC Government awarded during the study period.
- Column (b) presents the dollars (in thousands) associated with the set of contract elements. As shown in row (1) of column (b) of Figure F-1, there were approximately \$7.8 billion associated with the relevant contract elements DC Government awarded during the study period. The value presented in column (b) for each individual business group represents the dollars the organization awarded to businesses of that particular group on the set of contract elements. For example, as shown in row (5) of column (b), DC Government, awarded approximately \$372 million worth of prime contracts and subcontracts to Asian American-owned businesses during the study period.
- Column (c) presents the dollars (in thousands) associated with the set of contract elements after adjusting those dollars for businesses we identified as POC-owned but for which specific race/ethnicity information was not available. We allocated dollars DC Government awarded to POC-owned businesses of unknown race/ethnicity to each relevant racial/ethnic group proportional to the known total dollars the organization awarded to businesses of each group during the study period. As shown in row (9) of column (b), DC Government awarded \$594,000 worth of prime contracts and subcontracts to POC-owned businesses of unknown race/ethnicity during the study period, which we reallocated proportionally to each relevant POC group.
- Column (d) presents the participation of each business group as a percentage of total dollars associated with the set of contract elements. We calculated each percentage in column (d) by dividing the dollars going to businesses of a particular group in column (c) by the total dollars associated with the set of contract elements shown in row (1) of column (c), and then expressing the result as a percentage. For example, for Asian American-owned businesses, the study team divided \$372 million by \$7.8 billion and multiplied by 100 for a result of 4.8 percent, as shown in row (5) of column (d).

**2. Availability results.** Column (e) of Figure F-1 presents the availability of businesses of each relevant group for all contract elements we analyzed as part of the contract set. Availability estimates, which are presented as percentages of the total contracting dollars associated with the set of contract elements, serve as benchmarks against which to compare the actual participation, or utilization, of businesses of specific groups for specific sets of contracts. For example, as shown in row (5) of column (e), the availability of Asian American-owned businesses for relevant DC Government work is 11.5 percent. That is, one might expect the organization to award 11.5 percent of its contract and procurement dollars to Asian American-owned businesses based on their availability for that work.

**3. Disparity indices.** BBC-Pantera-Tiber calculated a disparity index for businesses of each relevant racial/ethnic and gender group. Column (f) of Figure F-1 presents the disparity index for businesses of each group. For example, as presented in row (5) of column (f), the disparity index for Asian American-owned businesses was 41.7, indicating that DC Government actually awarded approximately \$0.42 for every dollar one might expect the organization to award to Asian American-owned businesses based on their availability for relevant prime contracts and subcontracts. For disparity indices exceeding 200, we reported an index of “200+.” When there was no participation or availability for businesses of a particular group for a particular set of contracts or procurements, we reported a disparity index of “100,” indicating *parity*.

## **B. Index and Tables**

The table of contents on the next page presents the different sets of contracts and procurements for which BBC-Pantera-Tiber analyzed disparity analysis results. The heading of each table in Appendix F provides a description of the subset of contracts or procurements BBC-Pantera-Tiber analyzed for that particular table.

Figure F-1.

Table	Organization	Characteristics				Statistical outliers
		Time period	Contract area	Contract role	Contract size	
F-1	DC Government	10/01/16 - 09/30/20	All industries	Prime contracts and subcontracts	N/A	N/A
F-2	DC Government	<b>10/01/16 - 09/30/18</b>	All industries	Prime contracts and subcontracts	N/A	N/A
F-3	DC Government	<b>10/01/18 - 09/30/20</b>	All industries	Prime contracts and subcontracts	N/A	N/A
F-4	DC Government	10/01/16 - 09/30/20	<b>Construction</b>	Prime contracts and subcontracts	N/A	N/A
F-5	DC Government	10/01/16 - 09/30/20	<b>Professional services</b>	Prime contracts and subcontracts	N/A	N/A
F-6	DC Government	10/01/16 - 09/30/20	<b>Other goods and services</b>	Prime contracts and subcontracts	N/A	N/A
F-7	DC Government	10/01/16 - 09/30/20	All industries	<b>Prime contracts</b>	N/A	N/A
F-8	DC Government	10/01/16 - 09/30/20	All industries	<b>Subcontracts</b>	N/A	N/A
F-9	DC Government	10/01/16 - 09/30/20	All industries	<b>Prime contracts</b>	<b>\$250,000 or greater</b>	N/A
F-10	DC Government	10/01/16 - 09/30/20	All industries	<b>Prime contracts</b>	<b>Less than \$250,000</b>	N/A
F-11	Events DC	10/01/16 - 09/30/20	All industries	Prime contracts and subcontracts	N/A	N/A
F-12	University of DC	10/01/16 - 09/30/20	All industries	Prime contracts and subcontracts	N/A	N/A
F-13	DC Government	10/01/16 - 09/30/20	All industries	Prime contracts and subcontracts	N/A	Adjusted
F-14	DC Government	10/01/16 - 09/30/20	<b>Construction</b>	Prime contracts and subcontracts	N/A	Adjusted
F-15	DC Government	10/01/16 - 09/30/20	<b>Professional services</b>	Prime contracts and subcontracts	N/A	Adjusted
F-16	DC Government	10/01/16 - 09/30/20	<b>Other goods and services</b>	Prime contracts and subcontracts	N/A	Adjusted
F-17	DC Government	10/01/16 - 09/30/20	All industries	<b>Prime contracts</b>	N/A	Adjusted
F-18	DC Government	10/01/16 - 09/30/20	All industries	<b>Subcontracts</b>	N/A	Adjusted

**Figure F-1.**

**Organization: DC Government**

**Time period: 10/01/2016 - 09/30/2020**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	15,999	\$7,767,470	\$7,767,470			
(2) POC- and woman-owned businesses	9,704	\$2,875,249	\$2,875,249	37.0	41.4	89.3
(3) White woman-owned	1,043	\$348,117	\$348,117	4.5	4.6	98.3
(4) POC-owned	8,661	\$2,527,132	\$2,527,132	32.5	36.9	88.2
(5) Asian American-owned	1,650	\$372,111	\$372,198	4.8	11.5	41.7
(6) Black American-owned	6,356	\$1,253,233	\$1,253,528	16.1	18.9	85.6
(7) Hispanic American-owned	605	\$891,154	\$891,363	11.5	5.3	200+
(8) Native American-owned	45	\$10,040	\$10,043	0.1	1.3	10.3
(9) Unknown POC-owned	5	\$594				
(10) POC- and woman-owned CBE	9,394	\$2,590,539	\$2,590,539	33.4		
(11) White woman-owned CBE	960	\$191,338	\$191,338	2.5		
(12) POC-owned CBE	8,434	\$2,399,201	\$2,399,201	30.9		
(13) Asian American-owned CBE	1,551	\$315,213	\$315,291	4.1		
(14) Black American-owned CBE	6,258	\$1,212,021	\$1,212,322	15.6		
(15) Hispanic American-owned CBE	582	\$868,109	\$868,324	11.2		
(16) Native American-owned CBE	38	\$3,264	\$3,264	0.0		
(17) Unknown POC-owned CBE	5	\$594				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.



Figure F-2.

Organization: DC Government

Time period: 10/01/2016 - 09/30/2018

Contract area: All industries

Contract role: Prime contracts and subcontracts

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	8,048	\$4,550,597	\$4,550,597			
(2) POC- and woman-owned businesses	4,817	\$1,572,844	\$1,572,844	34.6	43.9	78.7
(3) White woman-owned	480	\$202,230	\$202,230	4.4	4.9	89.9
(4) POC-owned	4,337	\$1,370,614	\$1,370,614	30.1	39.0	77.3
(5) Asian American-owned	839	\$226,660	\$226,709	5.0	11.7	42.6
(6) Black American-owned	3,178	\$738,386	\$738,544	16.2	20.3	79.9
(7) Hispanic American-owned	290	\$395,956	\$396,040	8.7	5.4	160.1
(8) Native American-owned	27	\$9,319	\$9,321	0.2	1.5	13.6
(9) Unknown POC-owned	3	\$294				
(10) POC- and woman-owned CBE	4,653	\$1,407,408	\$1,407,408	30.9		
(11) White woman-owned CBE	435	\$122,891	\$122,891	2.7		
(12) POC-owned CBE	4,218	\$1,284,518	\$1,284,518	28.2		
(13) Asian American-owned CBE	787	\$181,627	\$181,669	4.0		
(14) Black American-owned CBE	3,128	\$715,436	\$715,600	15.7		
(15) Hispanic American-owned CBE	278	\$384,518	\$384,606	8.5		
(16) Native American-owned CBE	22	\$2,642	\$2,642	0.1		
(17) Unknown POC-owned CBE	3	\$294				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-3.**  
**Organization: DC Government**  
**Time period: 10/01/2018 - 09/30/2020**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	7,951	\$3,216,873	\$3,216,873			
(2) POC- and woman-owned businesses	4,887	\$1,302,404	\$1,302,404	40.5	37.9	106.7
(3) White woman-owned	563	\$145,886	\$145,886	4.5	4.0	113.0
(4) POC-owned	4,324	\$1,156,518	\$1,156,518	36.0	33.9	106.0
(5) Asian American-owned	811	\$145,451	\$145,488	4.5	11.2	40.4
(6) Black American-owned	3,178	\$514,848	\$514,982	16.0	16.8	95.4
(7) Hispanic American-owned	315	\$495,198	\$495,327	15.4	5.1	200+
(8) Native American-owned	18	\$721	\$721	0.0	0.9	2.5
(9) Unknown POC-owned	2	\$300				
(10) POC- and woman-owned CBE	4,741	\$1,183,131	\$1,183,131	36.8		
(11) White woman-owned CBE	525	\$68,447	\$68,447	2.1		
(12) POC-owned CBE	4,216	\$1,114,683	\$1,114,683	34.7		
(13) Asian American-owned CBE	764	\$133,585	\$133,621	4.2		
(14) Black American-owned CBE	3,130	\$496,585	\$496,719	15.4		
(15) Hispanic American-owned CBE	304	\$483,591	\$483,721	15.0		
(16) Native American-owned CBE	16	\$622	\$622	0.0		
(17) Unknown POC-owned CBE	2	\$300				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-4.**  
**Organization: DC Government**  
**Time period: 10/01/2016 - 09/30/2020**  
**Contract area: Construction**  
**Contract role: Prime contracts and subcontracts**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	3,381	\$4,106,726	\$4,106,726			
(2) POC- and woman-owned businesses	2,205	\$1,536,879	\$1,536,879	37.4	34.4	108.8
(3) White woman-owned	108	\$30,785	\$30,785	0.7	0.8	90.2
(4) POC-owned	2,097	\$1,506,093	\$1,506,093	36.7	33.6	109.2
(5) Asian American-owned	223	\$137,215	\$137,215	3.3	13.0	25.7
(6) Black American-owned	1,451	\$507,842	\$507,842	12.4	13.4	92.2
(7) Hispanic American-owned	384	\$856,224	\$856,224	20.8	5.8	200+
(8) Native American-owned	39	\$4,812	\$4,812	0.1	1.4	8.5
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	2,168	\$1,490,772	\$1,490,772	36.3		
(11) White woman-owned CBE	100	\$28,448	\$28,448	0.7		
(12) POC-owned CBE	2,068	\$1,462,324	\$1,462,324	35.6		
(13) Asian American-owned CBE	219	\$125,384	\$125,384	3.1		
(14) Black American-owned CBE	1,444	\$500,363	\$500,363	12.2		
(15) Hispanic American-owned CBE	367	\$833,312	\$833,312	20.3		
(16) Native American-owned CBE	38	\$3,264	\$3,264	0.1		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-5.**  
**Organization: DC Government**  
**Time period: 10/01/2016 - 09/30/2020**  
**Contract area: Professional services**  
**Contract role: Prime contracts and subcontracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	7,176	\$2,442,583	\$2,442,583			
(2) POC- and woman-owned businesses	3,953	\$950,236	\$950,236	38.9	49.7	78.3
(3) White woman-owned	711	\$182,462	\$182,462	7.5	8.3	90.4
(4) POC-owned	3,242	\$767,775	\$767,775	31.4	41.4	75.9
(5) Asian American-owned	1,049	\$231,266	\$231,445	9.5	10.4	91.3
(6) Black American-owned	2,022	\$512,110	\$512,507	21.0	23.5	89.3
(7) Hispanic American-owned	160	\$18,576	\$18,590	0.8	5.9	13.0
(8) Native American-owned	6	\$5,228	\$5,232	0.2	1.7	12.8
(9) Unknown POC-owned	5	\$594				
(10) POC- and woman-owned CBE	3,760	\$843,182	\$843,182	34.5		
(11) White woman-owned CBE	660	\$155,424	\$155,424	6.4		
(12) POC-owned CBE	3,100	\$687,758	\$687,758	28.2		
(13) Asian American-owned CBE	962	\$186,245	\$186,406	7.6		
(14) Black American-owned CBE	1,977	\$482,415	\$482,832	19.8		
(15) Hispanic American-owned CBE	156	\$18,503	\$18,519	0.8		
(16) Native American-owned CBE	0	\$0	\$0	0.0		
(17) Unknown POC-owned CBE	5	\$594				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-6.**

**Organization: DC Government**

**Time period: 10/01/2016 - 09/30/2020**

**Contract area: Non-professional services, goods, and supplies**

**Contract role: Prime contracts and subcontracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	5,442	\$1,218,161	\$1,218,161			
(2) POC- and woman-owned businesses	3,546	\$388,134	\$388,134	31.9	48.6	65.6
(3) White woman-owned	224	\$134,870	\$134,870	11.1	9.7	114.2
(4) POC-owned	3,322	\$253,264	\$253,264	20.8	38.9	53.5
(5) Asian American-owned	378	\$3,630	\$3,630	0.3	8.6	3.5
(6) Black American-owned	2,883	\$233,281	\$233,281	19.2	27.9	68.7
(7) Hispanic American-owned	61	\$16,354	\$16,354	1.3	2.4	56.7
(8) Native American-owned	0	\$0	\$0	0.0	0.0	0.0
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	3,466	\$256,586	\$256,586	21.1		
(11) White woman-owned CBE	200	\$7,466	\$7,466	0.6		
(12) POC-owned CBE	3,266	\$249,120	\$249,120	20.5		
(13) Asian American-owned CBE	370	\$3,583	\$3,583	0.3		
(14) Black American-owned CBE	2,837	\$229,243	\$229,243	18.8		
(15) Hispanic American-owned CBE	59	\$16,294	\$16,294	1.3		
(16) Native American-owned CBE	0	\$0	\$0	0.0		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-7.**

**Organization: DC Government**

**Time period: 10/01/2016 - 09/30/2020**

**Contract area: All industries**

**Contract role: Prime contracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	15,122	\$7,204,149	\$7,204,149			
(2) POC- and woman-owned businesses	9,363	\$2,693,656	\$2,693,656	37.4	40.5	92.4
(3) White woman-owned	991	\$336,020	\$336,020	4.7	4.5	104.0
(4) POC-owned	8,372	\$2,357,636	\$2,357,636	32.7	36.0	90.9
(5) Asian American-owned	1,576	\$331,096	\$331,180	4.6	11.9	38.6
(6) Black American-owned	6,197	\$1,171,895	\$1,172,191	16.3	17.9	90.8
(7) Hispanic American-owned	554	\$847,346	\$847,560	11.8	5.0	200+
(8) Native American-owned	40	\$6,704	\$6,706	0.1	1.1	8.2
(9) Unknown POC-owned	5	\$594				
(10) POC- and woman-owned CBE	9,102	\$2,436,574	\$2,436,574	33.8		
(11) White woman-owned CBE	919	\$180,533	\$180,533	2.5		
(12) POC-owned CBE	8,183	\$2,256,041	\$2,256,041	31.3		
(13) Asian American-owned CBE	1,494	\$280,001	\$280,075	3.9		
(14) Black American-owned CBE	6,105	\$1,135,003	\$1,135,302	15.8		
(15) Hispanic American-owned CBE	544	\$838,267	\$838,488	11.6		
(16) Native American-owned CBE	35	\$2,175	\$2,176	0.0		
(17) Unknown POC-owned CBE	5	\$594				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-8.**  
**Organization: DC Government**  
**Time period: 10/01/2016 - 09/30/2020**  
**Contract area: All industries**  
**Contract role: Subcontracts**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	877	\$563,321	\$563,321			
(2) POC- and woman-owned businesses	341	\$181,593	\$181,593	32.2	53.7	60.0
(3) White woman-owned	52	\$12,097	\$12,097	2.1	5.5	38.9
(4) POC-owned	289	\$169,496	\$169,496	30.1	48.2	62.5
(5) Asian American-owned	74	\$41,014	\$41,014	7.3	6.0	120.6
(6) Black American-owned	159	\$81,338	\$81,338	14.4	30.9	46.7
(7) Hispanic American-owned	51	\$43,807	\$43,807	7.8	8.3	93.8
(8) Native American-owned	5	\$3,336	\$3,336	0.6	2.9	20.2
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	292	\$153,966	\$153,966	27.3		
(11) White woman-owned CBE	41	\$10,806	\$10,806	1.9		
(12) POC-owned CBE	251	\$143,160	\$143,160	25.4		
(13) Asian American-owned CBE	57	\$35,211	\$35,211	6.3		
(14) Black American-owned CBE	153	\$77,019	\$77,019	13.7		
(15) Hispanic American-owned CBE	38	\$29,842	\$29,842	5.3		
(16) Native American-owned CBE	3	\$1,088	\$1,088	0.2		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-9.

Organization: DC Government

Time period: 10/01/2016 - 09/30/2020

Contract area: All industries

Contract role: Prime contracts

Prime contracts worth \$250,000 or greater

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	2,374	\$6,762,479	\$6,762,479			
(2) POC- and woman-owned businesses	1,298	\$2,410,032	\$2,410,032	35.6	39.4	90.5
(3) White woman-owned	127	\$296,029	\$296,029	4.4	4.1	106.0
(4) POC-owned	1,171	\$2,114,003	\$2,114,003	31.3	35.2	88.7
(5) Asian American-owned	233	\$289,668	\$289,668	4.3	11.9	35.9
(6) Black American-owned	745	\$988,473	\$988,473	14.6	17.3	84.7
(7) Hispanic American-owned	191	\$830,572	\$830,572	12.3	4.9	200+
(8) Native American-owned	2	\$5,291	\$5,291	0.1	1.1	7.0
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	1,218	\$2,161,437	\$2,161,437	32.0		
(11) White woman-owned CBE	100	\$142,927	\$142,927	2.1		
(12) POC-owned CBE	1,118	\$2,018,510	\$2,018,510	29.8		
(13) Asian American-owned CBE	202	\$241,160	\$241,160	3.6		
(14) Black American-owned CBE	728	\$954,742	\$954,742	14.1		
(15) Hispanic American-owned CBE	187	\$821,626	\$821,626	12.1		
(16) Native American-owned CBE	1	\$983	\$983	0.0		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.



Figure F-10.

Organization: DC Government  
 Time period: 10/01/2016 - 09/30/2020  
 Contract area: All industries  
 Contract role: Prime contracts

Prime contracts worth less than \$250,000

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	12,748	\$441,670	\$441,670			
(2) POC- and woman-owned businesses	8,065	\$283,624	\$283,624	64.2	57.4	111.9
(3) White woman-owned	864	\$39,991	\$39,991	9.1	9.9	91.7
(4) POC-owned	7,201	\$243,633	\$243,633	55.2	47.5	116.1
(5) Asian American-owned	1,343	\$41,429	\$41,530	9.4	11.6	81.1
(6) Black American-owned	5,452	\$183,423	\$183,871	41.6	28.0	148.9
(7) Hispanic American-owned	363	\$16,775	\$16,816	3.8	6.6	57.8
(8) Native American-owned	38	\$1,413	\$1,416	0.3	1.4	23.4
(9) Unknown POC-owned	5	\$594				
(10) POC- and woman-owned CBE	7,884	\$275,136	\$275,136	62.3		
(11) White woman-owned CBE	819	\$37,606	\$37,606	8.5		
(12) POC-owned CBE	7,065	\$237,531	\$237,531	53.8		
(13) Asian American-owned CBE	1,292	\$38,841	\$38,939	8.8		
(14) Black American-owned CBE	5,377	\$180,261	\$180,713	40.9		
(15) Hispanic American-owned CBE	357	\$16,642	\$16,683	3.8		
(16) Native American-owned CBE	34	\$1,193	\$1,196	0.3		
(17) Unknown POC-owned CBE	5	\$594				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

**Figure F-11.**

**Organization: Events DC**

**Time period: 10/01/2016 - 09/30/2020**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Estimated total dollars (thousands)*</b>	<b>(d) Utilization percentage</b>	<b>(e) Availability percentage</b>	<b>(f) Disparity index</b>
(1) All businesses	286	\$187,790	\$187,790			
(2) POC- and woman-owned businesses	112	\$36,686	\$36,686	19.5	41.8	46.8
(3) White woman-owned	24	\$5,887	\$5,887	3.1	5.7	54.9
(4) POC-owned	88	\$30,799	\$30,799	16.4	36.1	45.5
(5) Asian American-owned	13	\$2,241	\$2,241	1.2	11.5	10.4
(6) Black American-owned	67	\$26,112	\$26,112	13.9	18.6	74.9
(7) Hispanic American-owned	8	\$2,446	\$2,446	1.3	4.6	28.5
(8) Native American-owned	0	\$0	\$0	0.0	1.4	0.0
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	96	\$32,033	\$32,033	17.1		
(11) White woman-owned CBE	19	\$3,987	\$3,987	2.1		
(12) POC-owned CBE	77	\$28,046	\$28,046	14.9		
(13) Asian American-owned CBE	11	\$2,209	\$2,209	1.2		
(14) Black American-owned CBE	62	\$24,627	\$24,627	13.1		
(15) Hispanic American-owned CBE	4	\$1,210	\$1,210	0.6		
(16) Native American-owned CBE	0	\$0	\$0	0.0		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-12.

Organization: Univerisity of DC

Time period: 10/01/2016 - 09/30/2020

Contract area: All industries

Contract role: Prime contracts and subcontracts

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Utilization percentage	(e) Availability percentage	(f) Disparity index
(1) All businesses	1,118	\$84,973	\$84,973			
(2) POC- and woman-owned businesses	629	\$58,366	\$58,366	68.7	59.9	114.7
(3) White woman-owned	26	\$789	\$789	0.9	8.3	11.1
(4) POC-owned	603	\$57,577	\$57,577	67.8	51.6	131.4
(5) Asian American-owned	59	\$23,739	\$23,739	27.9	13.1	200+
(6) Black American-owned	528	\$31,353	\$31,353	36.9	30.1	122.4
(7) Hispanic American-owned	16	\$2,485	\$2,485	2.9	7.1	41.4
(8) Native American-owned	0	\$0	\$0	0.0	1.3	0.0
(9) Unknown POC-owned	0	\$0				
(10) POC- and woman-owned CBE	294	\$53,537	\$53,537	63.0		
(11) White woman-owned CBE	10	\$196	\$196	0.2		
(12) POC-owned CBE	284	\$53,341	\$53,341	62.8		
(13) Asian American-owned CBE	51	\$23,018	\$23,018	27.1		
(14) Black American-owned CBE	218	\$27,845	\$27,845	32.8		
(15) Hispanic American-owned CBE	15	\$2,478	\$2,478	2.9		
(16) Native American-owned CBE	0	\$0	\$0	0.0		
(17) Unknown POC-owned CBE	0	\$0				

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses and unknown POC-owned certified businesses were allocated to POC and POC certified business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-13.

Organization: DC Government

Time period: 10/01/2016 - 09/30/2020

Contract area: All industries

Contract role: Prime contracts and subcontracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	15,999	\$7,767,470	\$7,767,470	\$7,767,470			
(2) POC- and woman-owned businesses	9,704	\$2,875,249	\$2,875,249	\$1,975,722	25.4	41.4	61.4
(3) White woman-owned	1,043	\$348,117	\$348,117	\$221,691	2.9	4.6	62.6
(4) POC-owned	8,661	\$2,527,132	\$2,527,132	\$1,754,031	22.6	36.9	61.2
(5) Asian American-owned	1,650	\$372,111	\$372,198	\$372,232	4.8	11.5	41.7
(6) Black American-owned	6,356	\$1,253,233	\$1,253,528	\$1,123,175	14.5	18.9	76.7
(7) Hispanic American-owned	605	\$891,154	\$891,363	\$248,582	3.2	5.3	60.7
(8) Native American-owned	45	\$10,040	\$10,043	\$10,043	0.1	1.3	10.3
(9) Unknown POC-owned	5	\$594					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-14.

Organization: DC Government  
 Time period: 10/01/2016 - 09/30/2020  
 Contract area: Construction  
 Contract role: Prime contracts and subcontracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	3,381	\$4,106,726	\$4,106,726	\$4,106,726			
(2) POC- and woman-owned businesses	2,205	\$1,536,879	\$1,536,879	\$763,332	18.6	34.4	54.0
(3) White woman-owned	108	\$30,785	\$30,785	\$30,821	0.8	0.8	90.3
(4) POC-owned	2,097	\$1,506,093	\$1,506,093	\$732,512	17.8	33.6	53.1
(5) Asian American-owned	223	\$137,215	\$137,215	\$137,215	3.3	13.0	25.7
(6) Black American-owned	1,451	\$507,842	\$507,842	\$377,151	9.2	13.4	68.4
(7) Hispanic American-owned	384	\$856,224	\$856,224	\$213,333	5.2	5.8	89.8
(8) Native American-owned	39	\$4,812	\$4,812	\$4,812	0.1	1.4	8.5
(9) Unknown POC-owned	0	\$0					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-15.

Organization: DC Government

Time period: 10/01/2016 - 09/30/2020

Contract area: Professional services

Contract role: Prime contracts and subcontracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	7,176	\$2,442,583	\$2,442,583	\$2,442,583			
(2) POC- and woman-owned businesses	3,953	\$950,236	\$950,236	\$919,883	37.7	49.7	75.8
(3) White woman-owned	711	\$182,462	\$182,462	\$151,862	6.2	8.3	75.2
(4) POC-owned	3,242	\$767,775	\$767,775	\$768,021	31.4	41.4	75.9
(5) Asian American-owned	1,049	\$231,266	\$231,445	\$231,445	9.5	10.4	91.3
(6) Black American-owned	2,022	\$512,110	\$512,507	\$512,644	21.0	23.5	89.3
(7) Hispanic American-owned	160	\$18,576	\$18,590	\$18,699	0.8	5.9	13.0
(8) Native American-owned	6	\$5,228	\$5,232	\$5,232	0.2	1.7	12.8
(9) Unknown POC-owned	5	\$594					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-16.

Organization: DC Government

Time period: 10/01/2016 - 09/30/2020

Contract area: Non-professional services, goods, and supplies

Contract role: Prime contracts and subcontracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	5,442	\$1,218,161	\$1,218,161	\$1,218,161			
(2) POC- and woman-owned businesses	3,546	\$388,134	\$388,134	\$292,507	24.0	48.6	49.4
(3) White woman-owned	224	\$134,870	\$134,870	\$39,008	3.2	9.7	33.0
(4) POC-owned	3,322	\$253,264	\$253,264	\$253,499	20.8	38.9	53.5
(5) Asian American-owned	378	\$3,630	\$3,630	\$3,663	0.3	8.6	3.5
(6) Black American-owned	2,883	\$233,281	\$233,281	\$233,482	19.2	27.9	68.7
(7) Hispanic American-owned	61	\$16,354	\$16,354	\$16,354	1.3	2.4	56.7
(8) Native American-owned	0	\$0	\$0	\$0	0.0	0.0	0.0
(9) Unknown POC-owned	0	\$0					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.

Figure F-17.

Organization: DC Government  
 Time period: 10/01/2016 - 09/30/2020  
 Contract area: All industries  
 Contract role: Prime contracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	15,122	\$7,204,149	\$7,204,149	\$7,204,149			
(2) POC- and woman-owned businesses	9,363	\$2,693,656	\$2,693,656	\$1,799,932	25.0	40.5	61.7
(3) White woman-owned	991	\$336,020	\$336,020	\$209,594	2.9	4.5	64.9
(4) POC-owned	8,372	\$2,357,636	\$2,357,636	\$1,590,337	22.1	36.0	61.3
(5) Asian American-owned	1,576	\$331,096	\$331,180	\$331,213	4.6	11.9	38.6
(6) Black American-owned	6,197	\$1,171,895	\$1,172,191	\$1,041,882	14.5	17.9	80.7
(7) Hispanic American-owned	554	\$847,346	\$847,560	\$210,537	2.9	5.0	58.0
(8) Native American-owned	40	\$6,704	\$6,706	\$6,706	0.1	1.1	8.2
(9) Unknown POC-owned	5	\$594					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.



Figure F-18.

Organization: DC Government  
 Time period: 10/01/2016 - 09/30/2020  
 Contract area: All industries  
 Contract role: Subcontracts

Adjusted for statistical outliers

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Estimated total dollars (thousands)*	(d) Adjusted total dollars (thousands)	(e) Utilization percentage	(f) Availability percentage	(g) Disparity index
(1) All businesses	877	\$563,321	\$563,321	\$563,321			
(2) POC- and woman-owned businesses	341	\$181,593	\$181,593	\$175,791	31.2	53.7	58.1
(3) White woman-owned	52	\$12,097	\$12,097	\$12,097	2.1	5.5	38.9
(4) POC-owned	289	\$169,496	\$169,496	\$163,694	29.1	48.2	60.3
(5) Asian American-owned	74	\$41,014	\$41,014	\$41,014	7.3	6.0	120.6
(6) Black American-owned	159	\$81,338	\$81,338	\$81,294	14.4	30.9	46.7
(7) Hispanic American-owned	51	\$43,807	\$43,807	\$38,049	6.8	8.3	81.5
(8) Native American-owned	5	\$3,336	\$3,336	\$3,336	0.6	2.9	20.2
(9) Unknown POC-owned	0	\$0					

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*Unknown POC-owned businesses were allocated to POC business subgroups proportional to the known total dollars of those groups. For example, if total dollars of Black American-owned businesses (column b, row 6) accounted for 25 percent of total POC-owned business dollars (column b, row 4), then 25 percent of column b, row 9 would be added to column b, row 6 and the sum would be shown in column c, row 6.

Source: BBC-Pantera-Tiber.