



Athens-Clarke County Unified Government

2023 Disparity Study

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Disparity Study

AUGUST 4, 2023

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MGT Consulting Project Team

MGT is a Tampa-based research and management consulting firm exclusively working in the public sector. Since 1990, MGT has conducted over 230 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this Study includes some of the most experienced and accomplished social science experts in the field of disparity studies:

Mr. Andres Bernal, Vice President/Project Executive/Disparity Study Methodology/Legal Research
Ms. Vernetta Mitchell, Project Director/Qualitative Research/Subcontractor Manager
Ms. Corlisha Mitchell, Senior Consultant/Policy Research
Dr. Fred Seamon, Executive Vice President/Qualitative Research
Mr. Walter Benitez, Consultant/Data Collection Manager
Ms. Haita Toure, Consultant/Qualitative Research

Subconsultants

Small Planet Works focuses on diversity and disparity study initiative, strategic planning, program management, and process re-engineering. Small Planet Works conducted in-depth interviews with area businesses and professional organizations.

SkyBase7 specializes in providing in-depth marketing and disparity studies to a diverse range of clients including local and national government agencies, healthcare and medical organizations, consumer goods and services, and business in the retail and B-2-B sectors. SkyBase7 conducted the custom census and vendor surveys.

AFJ Consulting is a marketing research consultancy focused on helping clients achieve their consumer engagement and/or sales goals. AFJ Consulting researched and development a directory of professional organizations in the Athens-Clarke County marketplace.

Acknowledgements

We wish to express special appreciation to Mr. David Boyd, Ms. Jessica Beri, and Mr. Toro Holt with Athens-Clarke County for their leadership, guidance, and assistance in conducting this study.



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1 Introduction

1.1 Introduction

The Athens-Clarke County Unified Government (Athens-Clarke County or ACCGov) retained MGT of America Consulting, LLC (MGT) to conduct its first Disparity Study. The goal of the Disparity Study is to determine if there are any disparities between the utilization of minority or women business enterprises (M/WBEs) compared to the availability of M/WBEs in the marketplace who are ready, willing, and able to perform work, whether such disparities are consistent with the existence of discrimination, and whether there is quantitative or qualitative evidence of discrimination in the private markets in which Athens-Clarke County conducts business. MGT examined the statistical data using the following business categories:

- ♦ Construction
- ♦ Architecture and Engineering
- ♦ Professional Services
- ♦ Other Services
- ♦ Goods

Chapter Sections	
♦ ♦ ♦	
1.1	Introduction
1.2	Study Team
1.3	Overview of Study Approach
1.4	Report Organization
1.5	Glossary of Terms

Athens-Clarke County is a consolidated city-county government that encompasses the City of Athens and Clarke County in northeast Georgia and is located almost 70 miles outside of Atlanta, GA. Athens-Clarke County has a population of 127,315 according to the 2020 U.S. Census and is home to the University of Georgia and Augusta University. In addition to its college town culture, Athens-Clarke County is also home to pharmaceutical manufacturing and biotechnology companies, including RWDC Industries, Boehringer-Ingelheim, and Janssen Pharmaceuticals.

1.2 Study Team

The MGT team who conducted Athens-Clarke County's Disparity Study is the most experienced and skilled team in the disparity study business. MGT staff have extensive social science research experience and experience in all aspects of disparity research. The experience of our team enables us to navigate the challenges, obstacles, and volatility associated with conducting a thorough Disparity Study, which can derail even the most well-planned and executed study.

1.2.1 MGT Project Key Staff

MGT Consulting is a Tampa-based research and management consulting firm. Since 1990, MGT has conducted over 230 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this study include:

Mr. Andres Bernal, Vice President, Disparity Services

Mr. Bernal was responsible for developing, refining, and executing MGT's methodology and quality standards for conducting disparity studies. Mr. Bernal is an expert in quantitative research for diversity, equity, inclusion, and disparity studies with over 15 years of experience. He spearheads the collection of data, manages all levels of utilization and availability analyses, manage all levels of the various private sector analyses, and implement new methodologies that incorporate the latest disparity study legal court cases. He is well-practiced in conducting all aspects of disparity study research and has played a major role in collecting developing, refining, and executing MGT's methodology and quality standards for MGT's conducting disparity studies. He has extensive experience in the collection and analysis of large complex data and applying various statistical and mathematical computations to reach reliable and valid conclusions that are used to shape disparity study findings and recommendations. Mr. Bernal has a law degree and an impressive background in economic theories, including Microeconomic Theory, Macroeconomic Theory, Econometrics, Urban Economics, Experimental Economics, Human and Labor Resource Economics, and Regression Analysis.

Vernetta Mitchell, Director, Disparity Services

Ms. Mitchell is an expert in minority business program development and has developed and managed small, minority, and women business programs for local government entities and private sector companies for over 23 years. Prior to re-joining MGT, she worked closely with us as a subcontractor under her firm "Mitchell Consulting Group" for some of our disparity studies. Ms. Mitchell held the position of MWBE Program Director for the City of Charlotte, where she redesigned the City's certification, outreach, and goal-setting processes. Ms. Mitchell has participated in more than 30 disparity studies as a team leader or project director. She has extensive experience in project management, project scheduling, qualitative research and analysis, analytical reporting, meeting facilitation, and public relations. Ms. Mitchell's experience in construction procurement, goods, and services procurement, and program administration is a critical asset in qualitative data collection, interpretation of procurement policies and procedures, and program expansion or improvement recommendations.

1.3 Overview of Study Approach

Athens-Clarke County's study includes procurement activity from July 1, 2017 – June 30, 2021. The objectives of this study were:

- ♦ Determine whether Athens-Clarke County, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts in Construction, Architecture and Engineering, Professional Services, Other Services, and Goods to M/WBEs.
- ♦ Determine if a legally justified need exists for the establishment of minority and women business inclusion program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.

The Study analyzed contracting opportunities in these procurement categories to identify with particularity whether a statistical disparity exists. A statistical disparity demonstrates whether Athens-Clarke County is a passive participant in private sector discrimination and/or lingering effects of past discrimination exist that give rise to a compelling governmental interest for Athens-Clarke County.

The work plan consisted of, but was not limited to, the following major tasks:

- ♦ Establish data parameters and finalize the work plan.
- ♦ Conduct a legal review.
- ♦ Review Athens-Clarke County's policies, procedures, and programs.
- ♦ Conduct public engagement meetings.
- ♦ Determine Athens-Clarke County's geographic and product markets.
- ♦ Conduct market area and utilization analyses.
- ♦ Determine the availability of qualified firms.
- ♦ Analyze prime and subcontractor utilization and availability for disparity.
- ♦ Analyze disparities in the private sector.
- ♦ Conduct a survey of business owners.
- ♦ Collect and analyze anecdotal information.
- ♦ Prepare and present draft and final reports for the study.

RESEARCH QUESTIONS

These research questions are embedded in relevant chapters throughout this report.

1. Is there factual predicate evidence to support a race- and gender-conscious M/WBE program for Athens-Clarke County?
2. How does case law inform the research methodology for Athens-Clarke County's disparity study?
3. Are there disparities between the availability and utilization of M/WBE primes and subcontractors?
4. If so, what is the cause of the disparity? Is there other evidence that supports and/or explains why there is disparity?
5. Does Athens-Clarke County passively engage in private sector discrimination?
6. Are there statistically significant disparities in the utilization of M/WBEs by primes on projects where there are no MWBE goals?
7. Is there qualitative/anecdotal evidence of disparate treatment of M/WBE subcontractors by prime contractors?

1.4 Report Organization

In addition to this introductory chapter, the Athens-Clarke County's Disparity Study report consists of:

CHAPTER 2	LEGAL FRAMEWORK Chapter 2 presents the legal framework and an overview of the controlling legal precedents that impact remedial procurement programs with a particular concentration on the United States Court of Appeals for the Eleventh Circuit.
CHAPTER 3	REVIEW OF POLICIES, PROCEDURES, AND PROGRAMS Chapter 3 provides MGT's analysis of Athens-Clarke County's race- and gender-neutral and race- and gender-conscious policies, procedures, and programs.
CHAPTER 4	MARKET AREA, PRODUCT MARKET, AND AVAILABILITY ANALYSES Chapter 4 presents the methodology used to determine Athens-Clarke County's relevant market area and the analyses of availability estimate within the by Athens-Clarke County market area.
CHAPTER 5	UTILIZATION AND DISPARITY ANALYSES Chapter 5 presents the procurement of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods procurement in Athens-Clarke County's product markets and the disparity between the availability and utilization of M/WBEs by Athens-Clarke County.
CHAPTER 6	PRIVATE SECTOR ANALYSIS Chapter 6 provides an analysis of the disparities present in the private sector and the effect on M/WBEs. This private sector analysis demonstrates why Athens-Clarke County's race and gender-conscious programs and goals are necessary to ensure it does not become a passive participant in private sector discrimination.
CHAPTER 7	ANECDOTAL ANALYSIS Chapter 7 contains an analysis of anecdotal data collected from the survey of business owners, one-on-one interviews, and public meetings.
CHAPTER 8	FINDINGS, COMMENDATIONS AND RECOMMENDATIONS Chapter 8 provides a summary of the findings, commendations, and recommendations based on the analyses presented in this study.
APPENDICES	The appendices contain additional analyses and supporting documentation and data.

MGT recommends reading the Disparity Study in its entirety to understand the basis for the findings and conclusions presented in **Chapter 8, Findings, Commendations and Recommendations**.

1.5 Glossary of Terms

This glossary contains definitions of common terms and acronyms used throughout Athens-Clarke County's Disparity Study. Additional and more detailed definitions can be found in various chapters of the report.

Anecdotal	A personal account of experiences of businesses doing business with or attempting to do business with Athens-Clarke County was collected through surveys, interviews, and public hearings.
Aspirational Goal	A benchmark percentage of spending by an agency with a particular group over a period of time. The aspirational goal is typically an annual goal.
Anecdotal Database	A compiled list of utilized firms, registered vendors, and certification lists developed from several different sources, including Dun & Bradstreet. This list was used to develop the pool of available firms to participate in the anecdotal activities.
Awards	Awards reflect anticipated dollar amounts a prime contractor or vendor is scheduled to receive upon completion of a contract.
Combined Statistical Area	Combined Statistical Area (CSA) are geographic entities defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics.
Contract	All types of Athens-Clarke County agreements, including direct payments and purchase orders, for the procurement of goods and services.
Custom Census	A custom census involves using Dun & Bradstreet as a source of business availability. A short survey is conducted on a random sample of firms supplied by Dun & Bradstreet, requesting specific information, i.e., ethnic and gender status, and willingness to work on Athens-Clarke County projects.
DBE	An acronym for a Disadvantaged Business Enterprise. A DBE is a for-profit business which is at least 51% owned and controlled by one or more socially or economically disadvantaged individuals, whose personal net worth does not exceed the US Department of Transportation's current threshold.
Direct Payment	Payment made to prime contractors or vendors without the development of a contract.
Disparity Index/ Disparity Ratio	The ratio of the percentage of utilization and the percentage of availability for a particular demographic group times 100. Disparities were calculated for primes and subcontractors for each of the business categories.
Disparity Study	A study that reviews and analyzes the utilization and availability of disadvantaged, minority- and women-owned businesses in a particular market

	area to determine if disparity exists in the awarding of contracts to minority and women business enterprises by a public entity.
Expenditures	Expenditures are payments made by Athens-Clarke County to primes and payments made by primes to subcontractors.
Good Faith Efforts	Documented evidence of the primes' efforts to meet established project goals to contract with M/WBE firms.
Intermediate Scrutiny	The second level of federal judicial review determines whether certain governmental policies are constitutional. Less demanding than "strict scrutiny."
Lowest Responsible, Responsive Bidder	An entity that provides the lowest price, has responded to the needs of the requestor, and has not violated statutory requirements for vendor eligibility.
M/WBE	An acronym for a minority- or woman-owned business enterprise. A M/WBE is a business that is at least 51% owned and operated by one or more individuals who are African American, Asian American, Hispanic American, Native American, or Nonminority Women.
Master Utilization Database	A database that maintains firms who have conducted business on Athens-Clarke County projects and were paid by Athens-Clarke County for goods and services.
MBE	An acronym for a minority-owned business enterprise. An MBE is a business that is at least 51% owned and operated by one or more individuals who are African American, Asian American, Hispanic American, or Native American.
Non-M/WBE	An acronym for firms not identified as minority- or women-owned.
Passive Discrimination	The act of perpetuating discrimination by awarding contracts to firms that discriminate against minority and women-owned firms.
Prima Facie	Evidence that is legally sufficient to establish a fact or a case unless disproved or rebutted.
Prime	The contractor or vendor to whom a purchase order or contract is issued by Athens-Clarke County.
Private Sector	The for-profit part of the national economy that is not under direct government control.
Procurement Category	The type of service or good provided under a contract awarded. The categories analyzed are Construction, Architecture and Engineering, Professional Services, Goods, and Other Services.
Project Goals	Goals placed on an individual project or contract, as opposed to aspirational goals placed on overall agency spending.

Public Sector	The non-profit part of the economy that is controlled by the government.
PUMS	An acronym for Public Use Microdata Sample. PUMS contains records for a sample of housing units with information on the characteristics of each unit and each person in it. PUMS files are available from the American Community Survey (ACS) and the Decennial Census.
Purchase Order	A commercial document and the official offer issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services.
Regression Analysis	A technique for modeling and analyzing several variables when the focus is on the relationship between a dependent variable and one or more independent variables. More specifically, regression analysis helps one understand how the typical value of the dependent variable changes when any one of the independent variables is varied, while the other independent variables are held constant. For this study, a multivariate regression analysis was used to examine the influence of an owner's race and gender on gross revenues reported by firms participating in a survey of vendors administered during the study.
Relevant Geographic Market	The geographical area where the firms that have been awarded the majority of Athens-Clarke County contract dollars are located.
Sole Source	The contracting or purchasing of goods or services, without bidding, when performance or price competition for a product is not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration
Statistically Significant	The likelihood that a result or relationship is caused by something other than mere random chance. Statistical hypothesis testing is traditionally employed to determine if a result is statistically significant or not. This provides a "p-value" representing the probability that random chance could explain the result. In general, a 5% or lower p-value is considered to be statistically significant.
Strict Scrutiny	The highest level of federal judicial review to determine whether certain governmental policies are constitutional. Applies to race-conscious programs.
Subcontractor	A vendor or contractor providing goods or services to a prime contractor or vendor under contract with Athens-Clarke County.
Utilization	Examines the expenditures and awards made to primes and subcontractors in Athens-Clarke County's geographic market area for each procurement category. The utilization data is presented as the dollars spent or awarded and the percentage of the total dollars by racial, ethnic, and gender classification.
WBE	An acronym for a women-owned business enterprise. A WBE is a business that is at least 51% owned and operated by one or more nonminority women.

2 Legal Review

2.1 Introduction

This chapter provides a legal background for the Disparity Study and a context for the statistical analysis and anecdotal data that are its components. The material that follows does not constitute legal advice to the Unified Government of Athens-Clarke County (Athens-Clarke County or ACCGov) on minority and women business enterprise (M/WBE) programs, affirmative action, or any other matter. Instead, it provides a context for the statistical and anecdotal analysis that appears in subsequent chapters of this report. It is the customary MGT chapter for the Eleventh Circuit and the state of Georgia on this subject-matter, reviewed for recent cases at the time of publishing this chapter.

The Supreme Court decisions in *Richmond v. J. A. Croson Co. (Croson)*,¹ and *Adarand v. Peña (Adarand III)*² established and applied the legal framework that governs race- and gender-conscious procurement programs. These cases held that strict scrutiny should be the standard by which race-conscious governmental programs should be reviewed, including programs of federal, state, and local governments. In particular, the courts held that to survive a constitutional challenge under a strict scrutiny standard, a *race*-conscious governmental procurement program must be (1) justified by a compelling governmental interest in remedying identified discrimination in the marketplace; and (2) narrowly tailored to remedy that discrimination.

Decisions of the Eleventh Circuit offer the most directly binding authority to ACCGov. Other circuit court cases outside of the Eleventh Circuit offer persuasive authority where the Eleventh Circuit does not directly address all aspects of a legally defensible M/WBE program. This review also addresses the most pertinent cases outside of the Eleventh Circuit.

2.2 Scrutiny Standards for Race- and Gender-Specific Programs

2.2.1 Strict Scrutiny - *Richmond v. J. A. Croson Co.* as Applied to State and Local Governments

Justice O'Connor in *Croson* established the framework for testing the validity of race-based programs in state and local governments. In 1983, the Richmond City Council (Council) adopted a Minority Business Utilization Plan (the Plan). In adopting the Plan, the Council relied on information that showed that there was, "no direct evidence of race discrimination on the part of the city" in its contracting activities

¹ *Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989). It should be noted that as it relates to this analysis, *Croson* refers to the Court's opinion delivered by Justice O'Connor in Parts I, III-B, and IV. Parts II, III-A, and V were plurality opinions delivered by Justice O'Connor.

² *Adarand Constructors v. Peña*, 515 U.S. 200 (1995).

and no “evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.”³

The Plan required the city’s prime contractors to subcontract at least 30 percent of the dollar amount of each contract to one or more minority-owned business enterprises (MBEs). The Plan did not establish any geographic limits for eligibility. Therefore, an otherwise qualified MBE from anywhere in the United States could benefit from the 30 percent set-aside.

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the City of Richmond, alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. After a considerable record of litigation and appeals, the Fourth Circuit Court of Appeals struck down the Richmond Plan, and the Supreme Court affirmed this decision.⁴ The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for MBE programs, which means that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to achieve its objectives. This standard requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.⁵

2.2.2 Intermediate Scrutiny

The Supreme Court has not addressed the specific issue of a gender-based classification in the context of a woman-owned business enterprise (WBE) program. *Croson* was limited to the review of an MBE program. In evaluating gender-based classifications, the Court has used what some call “intermediate scrutiny,” a less stringent standard of review than the “strict scrutiny” applied to race-based classifications. Intermediate scrutiny requires that classifying persons based on sex “must carry the burden of showing an exceedingly persuasive justification for the classification.”⁶

In the intermediate level of scrutiny, some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. In *Coral Construction Company v. King County* 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 502 U.S. 1033 (1992),⁷ the Ninth Circuit Court of Appeals noted that, “The mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny.”⁸

Although the United States Supreme Court has not ruled directly on the type of scrutiny it would use for a Women-Owned Business Enterprise (WBE) program, the lower federal courts have applied the “intermediate” scrutiny level of review rather than the strict scrutiny applicable to race-conscious

³ *Croson*, 488 U.S. at 480.

⁴ *Id.* at 511.

⁵ *Id.* at 488.

⁶ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). See also *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981); *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 273 (1979).

⁷ 961 F.2d 910 (9th Cir. 1991), *cert. denied*, 502 U.S. 1033 (1992).

⁸ *Coral Construction v. King County*, 941 F.2d at 932.

programs.⁹ However, the Ninth Circuit has ruled that a gender-based remedial program is subject to intermediate scrutiny “supported by an ‘exceedingly persuasive justification’ and substantially related to the achievement of that underlying objective.”¹⁰ In *Engineering Contractors Assoc. of South Florida v. Metropolitan Dade County*, the Eleventh Circuit Court of Appeals recognized that the U.S. Supreme Court’s decision in *United States v. Virginia*, 518 U.S. 515 (1996) may have “signaled” a heightened level of scrutiny by stating that a governmental agency must demonstrate an “exceedingly persuasive justification” for that action. However, the court concluded that, unless and until the United States Supreme Court indicated otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender-conscious program may be upheld as long as it is substantially related to an important governmental objective.¹¹

2.3 Strict Scrutiny Analysis

Although Justice O’Connor in *Croson* did not specifically define the methodology used to establish the evidentiary basis required by strict scrutiny, the Court outlined governing principles. Lower courts have expanded the Supreme Court’s *Croson* guidelines and have applied or distinguished these principles when asked to decide the constitutionality of state, county, and city programs to enhance opportunities for minorities and women.

2.3.1 Compelling Governmental Interest

Croson identified two necessary factors for establishing racial discrimination sufficiently to demonstrate a compelling governmental interest in establishing an MBE program. First, there needs to be identified discrimination in the relevant market.¹² Second, “the governmental actor enacting the set-aside program must have somehow perpetuated the discrimination to be remedied by the program,”¹³ either actively or at least passively with “the infusion of tax dollars into a discriminatory industry.”¹⁴

2.3.1.1 Statistical Evidence

The Court in *Croson* indicated that the proper statistical evaluation would compare the percentage of qualified MBEs in the relevant market with the percentage of total municipal construction dollars awarded to them.¹⁵ In *Croson*, Justice O’Connor recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of state construction dollars

⁹ See, e.g., *Concrete Works II*, 321 F.3d 950 (10th Cir. 2003); *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991); *Philadelphia*, 91 F.3d 586 (3^d Cir. 1996); *Engineering Contractors Association of South Florida, Inc., et. al. v. Metropolitan Dade County, et. al.*, (“*Engineering Contractors*”), 122 F.3d 895 (11th Cir. 1997).

¹⁰ *AGC v. California*, 713 F.3d 1187, 1195 (9th Cir. 2013). *United States v. Virginia Military Institute*, 518 U.S. 515 (1996); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982); *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987); *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987).

¹¹ *Engineering Contractors*, 122 F.3d at 908 (11th Cir. 1997).

¹² *Croson*, 488 U.S. at 492, 509-10.

¹³ *Coral Const. Co. v. King County*, 941 F.2d 910, 916 (9th Cir. 1991).

¹⁴ *Id.* at 922.

¹⁵ *Croson*, 488 U.S. at 501-02.

actually awarded to M/WBEs to demonstrate discrimination in the local construction industry.¹⁶ To meet this more precise requirement, courts including in the Ninth Circuit, have accepted the use of a disparity index.¹⁷

2.3.1.2 Availability

M/WBEs are deemed to be “available” if they are ready, willing, and able to perform. In determining availability of M/WBEs, the approach utilized to assess the universe of available firms should neither be too overinclusive nor underinclusive. The “Custom Census” approach for identifying the pool of available firms has been favorably approved by several courts. In *Northern Contracting*, the plaintiff attempted to argue that IDOT miscalculated the number of DBEs by using a custom census instead of a count of the number of DBEs registered and prequalified by IDOT. The Seventh Circuit upheld the broader custom census count of DBEs, concluding that it reflected an attempt by IDOT to arrive at more accurate numbers than what would be possible through a use of the registered vendors list.¹⁸

2.3.1.3 Relevant Market Area

Another issue in availability analysis is the definition of the relevant market area. Specifically, the question is whether the relevant market area should be defined as the area from which a specific percentage of purchases are made, the area in which a specific percentage of qualified, willing, and able contractors may be located, or the area determined by a fixed geopolitical boundary. To be narrowly tailored, a minority preference program must establish utilization goals that bear a close relationship to minority firms’ availability in a particular market. In *Croson* for example, one of the constitutional shortcomings that the court identified in the Richmond program was the city’s use of the proportion of minorities in the local population to establish the 30 percent quota.¹⁹ The court explained that this numerical goal “rest[ed] upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population.”²⁰ The Ninth Circuit Court of Appeals clarified in *Coral Construction* that a DBE (or MBE) program must limit its geographical scope to the boundaries of the enacting jurisdiction.²¹

The Supreme Court has not specifically established how the relevant market area should be defined, but some circuit courts have done so, including the Tenth Circuit in *Concrete Works II*.²² In that case, a non-M/WBE construction company argued that, under *Croson*, Denver’s affirmative action program could only rely on data from within the City and County of Denver—not from the larger six-county Denver Metropolitan Statistical Area (MSA). The Tenth Circuit disagreed, holding “[t]he relevant area in which to measure discrimination, then, is the local construction market, but that is not necessarily confined by

¹⁶ *Id.* at 503-04.

¹⁷ *AGC v. Caltrans*, 713 F.3d 1187, 1196 (9th Cir. 2013). See also, *H.B. Rowe, Inc. v. Tippet*, 615 F.3d 233, 243-44 (4th Cir. 2010); *Engineering Contractors*, 122 F.3d at 914; *Concrete Works IV*, 321 F.3d at 962-67.

¹⁸ *N. Contracting, Inc. v. Illinois*, 473 F.3d 715, 723 (7th Cir. 2007).

¹⁹ *Croson*, 488 U.S. at 729-730.

²⁰ *Western States Paving*, 407 F.3d at 995.

²¹ *Coral Construction*, 941 F.2d at 925.

²² *Concrete Works of Colorado, Inc. v. City and Cnty. of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994).

jurisdictional boundaries.”²³ The court further stated that “[i]t is important that the pertinent data closely relate to the jurisdictional area of the municipality whose program we scrutinize, but here Denver’s contracting activity, insofar as construction work is concerned, is closely related to the Denver MSA.”²⁴ Because more than 80 percent of Denver Department of Public Works construction and design contracts were awarded to firms located within the Denver MSA, the Tenth Circuit held that the appropriate market area was the Denver MSA, not the City and County of Denver alone.²⁵ Accordingly, data from the Denver MSA was “adequately particularized for strict scrutiny purposes.”²⁶

2.3.1.4 Ability

Another availability consideration is whether the firms being considered are able to perform a particular service. Those who challenge affirmative action often question whether M/WBE firms have the “capacity” to perform specific services. In *H.B. Rowe, Inc. v. Tippet*, from the Fourth Circuit, the court noted that capacity does not have the same force for relatively small subcontracts. In addition, the study for NCDOT contained a regression analysis indicating that “African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience.”²⁷

In *Concrete Works IV*, the court noted that “MWBE construction firms are generally smaller and less experienced because of discrimination....Additionally, we do not read *Croson* to require disparity studies that measure whether construction firms are able to perform a particular contract.”²⁸

2.3.1.5 Disparity Index

In the *Rowe* decision, the plaintiff noted that there was no substantial disparity when the percentage of subcontractors was used compared to their availability. However, the Fourth Circuit stated that “[t]he State pointed to evidence that prime contractors used minority businesses for low-value work in order to comply with the Department’s goals.”²⁹ Along these lines, the Fourth Circuit noted that the average subcontract awarded to nonminority male subcontractors was more than double the size of subcontracts won by MBE subcontractors.³⁰

The Eleventh Circuit has stated that, “The utility of disparity indices or similar measures to examine the utilization of minorities or women in a particular industry has been recognized by a number of federal circuit courts.”³¹

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 247 (4th Cir. 2010).

²⁸ *Concrete Works IV*, 321 F.3d 950, 981, 983 (10th Cir. 2003).

²⁹ *H.B. Rowe, Inc. v. Tippet*, 615 F.3d at 243-244.

³⁰ *Id.* at 245.

³¹ *Engineering Contractors Ass’n of South Florida, Inc.*, 122 F.3d at 914.

2.3.1.6 Statistical Significance in Disparity Studies

While courts have indicated that anecdotal evidence may suffice without statistical evidence, no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate professional standards.³² In *Rowe*, the court noted that the NCDOT study focused on disparity ratios lower than 80 percent and conducted t-tests of statistical significance.³³

The Eleventh Circuit has addressed the role of statistical significance in assessing levels of disparity in public contracting. Generally, disparity indices of 80 percent or higher—indicating close to full participation—are not considered significant.³⁴ The court referenced the Equal Employment Opportunity Commission’s disparate impact guidelines, which establish the 80 percent test as the threshold for determining a *prima facie* case of discrimination.³⁵ According to the Eleventh Circuit, no circuit that has explicitly endorsed using disparity indices has held that an index of 80 percent or greater is probative of discrimination, but they have held that indices below 80 percent indicate “significant disparities.”³⁶

In support of the use of standard deviation analyses to test the statistical significance of disparity indices, the Eleventh Circuit observed that “[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance.”³⁷ With standard deviation analyses, the reviewer can determine whether the disparities are substantial or statistically significant, lending further statistical support to a finding of discrimination. On the other hand, if such analyses can account for the apparent disparity, the study will have little if any weight as evidence of discrimination.

Further, the interpretations of the studies must not assume discrimination has caused the disparities, but must account for alternative explanations of the statistical patterns.³⁸ The Third and Fifth Circuits have also indicated that statistics about prime contracting disparity have little, if any, weight when the eventual M/WBE program offers its remedies solely to subcontractors.³⁹ In *Engineering Contractors*, there was a separate analysis of prime contracting and subcontracting.⁴⁰

³² *Contractors Ass’n v. City of Philadelphia*, 91 F.3d 586, 603 (3d Cir. 1996).

³³ *H.B. Rowe, Inc. v. Tippet*, 615 F.3d at 245.

³⁴ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914.

³⁵ *Id.* at 914, citing 29 C.F.R. § 1607.4D (concerning the disparate impact guidelines and threshold used in employment cases).

³⁶ *Id.* at 914, citing *Contrs. Ass’n of E. Pennsylvania, Inc.*, 6 F.3d at 1005 (crediting disparity index of 4 percent) and *Concrete Works II*, 36 F.3d at 1524 (crediting disparity indices ranging from 0 percent to 3.8 percent).

³⁷ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 914 quoting *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1556 n.16 (11th Cir. 1994) (quoting *Waisome v. Port Authority*, 948 F.2d 1370, 1376 (2nd Cir. 1991)).

³⁸ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d at 922.

³⁹ *Contrs. Ass’n of E. Pennsylvania, Inc.*, 91 F.3d at 599 (3rd Cir.); *W.H. Schott Constr. Co.*, 199 F.3d at 218 (5th Cir.)

⁴⁰ *Eng’g Contrs. Ass’n of S. Florida, Inc.*, 122 F.3d 895, 920.

2.3.2 Burden of Proof

The *Croson* decision imposes the original burden of proof upon the government to demonstrate that a challenged program is supported by documented evidence of past discrimination or current discrimination. The plaintiff then has the burden to prove that the program is unconstitutional through various methods, such as the flawed methodology used by the government to show that past or present discrimination exists, the race-neutral reasons for the disparity, or the existence of controverting data.⁴¹

In *Western States Paving*, the constitutionality of the requirement that contractors use race- and gender- based criteria when awarding sub-contracts was challenged both “on its face” and “as applied.” A program can be constitutional “on its face” when it is unconstitutional in all circumstances of its application. The court in *Western States Paving* found that the federal DBE regulations and their authorizing statute in TEA-21 were constitutional, and therefore, the federal DBE program is constitutional “on its face.” For example, as the court held in *Western States Paving*, the U.S. Congress could find that discrimination exists across the country and therefore, there is a compelling need for the program. The court also found that the federal DBE regulations were narrowly tailored for the national contracting industry.

On the other hand, a program can be constitutional “on its face” but unconstitutional “as applied” in a particular case. For example, while discrimination exists across the country, it may not exist in the jurisdiction that has the race- and gender-based case.

The Ninth Circuit Court of Appeals in *Western States Paving* held that the state of Washington failed to prove that there was adequate evidence of discrimination within the state’s contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored. The Ninth Circuit in *Western States* established a two-prong test: (1) the agency must establish the presence of discrimination in its own transportation industry, and (2) the affirmative action program must be “limited to those groups that have actually suffered discrimination.”⁴² The Court discussed several ways in which the state’s evidence was insufficient:

- ♦ The state had not conducted a valid statistical study to establish the existence of discrimination in the highway contracting industry;
- ♦ The Washington State Department of Transportation’s (WSDOT) calculation of the capacity of DBEs to do work was flawed because it failed to account for the effects of past race-conscious programs on current DBE participation;
- ♦ The disparity between DBE participation on contracts with and without affirmative action components did not provide any evidence of discrimination;

⁴¹ See, e.g., *Concrete Works of Colo. v. City & County of Denver*, 321 F.3d 950, 959 (10th Cir. 2003), citing *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 277-78 (1986) (“The ultimate burden remains with the [plaintiff] to demonstrate the unconstitutionality of an affirmative-action program”).

⁴² *Western States Paving*, 407 F.3d at 997-99. This two-prong test was re-affirmed in *AGC v. Caltrans*, 713 F.3d 1187, 1196 (9th Cir. 2013).

- ♦ A small disparity between the proportion of DBE firms in the state and the percentage of funds awarded to DBEs in race-neutral contracts (2.7% in the case of WSDOT) was entitled to little weight as evidence of discrimination because it did not account for other factors that may affect the relative capacity of DBEs to undertake contracting work;
- ♦ This small statistical disparity was not enough, standing alone, to demonstrate the existence of discrimination. To demonstrate discrimination, a larger disparity would be required;
- ♦ WSDOT did not present any anecdotal evidence of discrimination; and
- ♦ The affidavits required by 49 CFR 26.67(a), in which DBEs certify that they are socially and economically disadvantaged, did not constitute evidence of the presence of discrimination.

Consequently, the court found that the WSDOT DBE program was unconstitutional “as applied.”⁴³

The *Western States Paving* case noted that, although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, “it does require serious, good faith consideration of workable race-neutral alternatives.” *Grutter v. Bollinger*, 539 U.S. 306, 339, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003), also see *Adarand III*, 515 U.S. at 237-38 (when undertaking narrow tailoring analysis), courts must inquire “whether there was any consideration of the use of race-neutral means to increase minority business participation in government contracting” (internal quotation marks omitted).

TEA-21 DBE regulations place a preference on the use of race-neutral means, including informational and instructional programs targeted toward all small businesses, to achieve a government’s DBE utilization goal. The regulations require a state to “meet the maximum feasible portion of [its] overall goal by using race-neutral means.” 49 C.F.R. § 26.51(a). Only when race-neutral efforts prove inadequate do the regulations authorize a state to resort to race-conscious measures to achieve the remainder of its DBE utilization goal. *Western States Paving* recognized “[w]e therefore are dealing here with [regulations] that emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized.”⁴⁴ However, the Ninth Circuit in *Western States Paving* and *AGC v. Caltrans* held that states are not required “to independently meet this aspect of narrow tailoring...”⁴⁵ That is, states are not required to first actually implement race-neutral programs and evaluate their success prior to implementing race-conscious programs. States must consider race-neutral programs without implementing them.

Western States Paving also emphasizes the need for flexibility to show narrow tailoring in the DBE program. The court noted that a quota system is the hallmark of an inflexible affirmative action program. The court quoted *Grutter*, stating that “[w]hile [q]uotas impose a fixed number or percentage which must be attained, or which cannot be exceeded, a permissible goal requires only a good-faith effort to come within a range demarcated by the goal itself.”⁴⁶ The court recognized that the TEA-21 DBE regulations explicitly prohibit the use of quotas.⁴⁷ Moreover, where race-conscious contracting

⁴³ *Id.* at 993 (citing *United States v. Paradise*, 480 U.S. 149 (1987)).

⁴⁴ *Id.* at 994 (citing *Adarand VII*, 228 F.3d at 1179).

⁴⁵ *AGC v. Caltrans*, No. 11-16228, at 23; *Western States Paving*, 407 F.3d at 995, 997-98.

⁴⁶ 539 U.S. 306.

⁴⁷ 49 C.F.R. § 26.43(a).

goals are used, prime contractors can meet that goal either by subcontracting the requisite amount of work to DBEs or by demonstrating good faith efforts to do so.⁴⁸ A recipient of federal funds, likewise, cannot be penalized by the federal government for failing to attain its DBE utilization goal as long as it undertakes good faith compliance efforts.⁴⁹ TEA-21 therefore provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.⁵⁰

With regard to burden of proof, the Eleventh Circuit stated that once the proponent of affirmative action, introduces its statistical proof as evidence of its remedial purpose, thereby supplying the [district] court with the means for determining that [it] had a firm basis for concluding that remedial action was appropriate, it is incumbent upon the nonminority [employees] to prove their case; they continue to bear the ultimate burden of persuading the [district] court that the [public employer's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently "narrowly tailored."⁵¹

2.3.3 Staleness of Data and Time Period of Study

A few cases have addressed the issue of the quantity and currentness of the data required to satisfy strict scrutiny. There is no clear guidance from the district courts about how many years should be studied, although there is cautionary language in cases about relying on small data samples.⁵² Concerning the age of data, the court in *Rothe* ruled that the data relied on in the disparity studies was not stale with regard to reenacting a federal program in 2006. While agencies should rely on the most current available data, other circuit courts have "relied on studies containing data more than five years old when conducting compelling interest analyses."⁵³

2.3.4 Passive Participation to Discrimination

In *Croson*, Justice O'Connor stated, "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."⁵⁴ *Croson* provided that the government "can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment."⁵⁵ The government agency's active or passive participation in discriminatory practices in the marketplace may show a compelling interest. Defining

⁴⁸ *Id.* § 26.53(a).

⁴⁹ *Id.* § 26.47(a).

⁵⁰ *Grutter v. Bollinger*, 539 U.S. 982 (2003). See also *Sherbrooke Turf, Inc.*, 345 F.3d at 972 ("the [TEA-21] DBE program has substantial flexibility").

⁵¹ *Eng'g Contrs. Ass'n of S. Florida, Inc.*, 122 F.3d 895, 916 (quoting *Howard v. McLucas*, 871 F.2d 1000, 1007 (11th Cir.1989)).

⁵² See, e.g., *Associated Gen. Contrs. of Am. v. City of Columbus*, 936 F.Supp. 1363, 1393 (S.D. Ohio 1996) (*rev'd on other grounds*, 172 F.3d 411).

⁵³ *Rothe Dev. Corp. v. DOD*, 545 F.3d 1023, 1038 (Fed. Cir. 2008) (citing district court discussion of staleness in *W. States Paving Co. v. Wash. State DOT*, 407 F.3d 983 (9th Cir. 2005) and *Sherbrooke Turf, Inc. v. Minn. DOT*, 345 F.3d 964 (8th Cir. 2003)).

⁵⁴ *Coral Cons Co.*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492) (emphasis added).

⁵⁵ *Croson*, 488 U.S. at 492; see generally Ian Ayres and Fredrick E. Vars, *When Does Private Discrimination Justify Public Affirmative Action?* 98 *Colum. L. Rev.* 1577 (1998).

passive participation, *Croson* stated, “Thus, 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.”⁵⁶

Relying on this language in *Croson*, several local agencies have increased their emphasis on evidence of discrimination in the private sector. This strategy has not always succeeded. Evidence of private discrimination presented in litigation was found inadequate in the Philadelphia and Miami-Dade County cases.⁵⁷ The Third Circuit stated, in discussing low MBE participation in a local contractors association in the City of Philadelphia, “racial discrimination can justify a race-based remedy only if the City has somehow participated in or supported that discrimination.”⁵⁸ Nevertheless, in *Concrete Works IV*, the Tenth Circuit upheld the relevance of data from the private marketplace to establish a factual predicate for M/WBE programs.⁵⁹ The courts mainly seek to ensure that M/WBE programs are based on active or passive discrimination findings in the government contracting marketplace and not simply attempts to remedy general societal discrimination⁶⁰.

Courts also seek to find a causal connection between a statistical disparity and actual underlying discrimination. In *Engineering Contractors*, one component of the factual predicate was a study comparing entry rates into the construction business for M/WBEs and non-M/WBEs.⁶¹ The analysis provided statistically significant evidence that minorities and women entered the construction business at rates lower than expected, given their numerical presence in the population and human and financial capital variables. The study argued that those disparities persisting after applying appropriate statistical controls were most likely the result of current and past discrimination. Even so, the Eleventh Circuit criticized this study for reliance on general census data and the lack of particularized evidence of active or passive discrimination by Miami-Dade County, holding that the district court was entitled to find that the evidence did not show compelling justification for an M/WBE program.⁶²

The Seventh Circuit has perhaps set a higher bar for connecting private discrimination with government action. In the Cook County case, the trial court extensively considered evidence that prime contractors did not solicit M/WBEs as subcontractors and considered carefully whether this evidence on solicitation served as sufficient evidence of discrimination, or whether instead, it was necessary to provide further evidence that there was discrimination in hiring M/WBE subcontractors.⁶³ The Seventh Circuit held that this evidence was largely irrelevant.⁶⁴ Beyond being anecdotal and partial, evidence that contractors failed to solicit M/WBEs on Cook County contracts was not the same as evidence that M/WBEs were denied the opportunity to bid.⁶⁵ Furthermore, such activities on the part of contractors did not

⁵⁶ *Croson*, 488 U.S. at 492.

⁵⁷ *Contractors Ass’n*, 91 F.3d at 602; *Engineering Contrs. Ass’n v. Metropolitan Dade County*, 122 F.3d 895, 910-11 (11th Cir. 1997).

⁵⁸ *Contractors Ass’n*, 91 F.3d at 602; see also *Webster v. Fulton County*, 51 F. Supp. 2d 1354 (N.D. Ga. 1999).

⁵⁹ *Concrete Works IV*, 321 F.3d at 969.

⁶⁰ *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

⁶¹ *Engineering Contrs. Ass’n v. Metropolitan Dade County*, 122 F.3d at 921-22.

⁶² *Id.* at 922.

⁶³ *Builders Ass’n of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087 (N.D. Ill. 2000).

⁶⁴ *Builders Ass’n of Greater Chicago v. County of Cook*, 256 F.3d 642, 645 (7th Cir. 2001).

⁶⁵ *Id.*

necessarily implicate the County as being a passive participant in such discrimination as might exist because there was no evidence the County knew about it.⁶⁶

2.3.5 Anecdotal Evidence

Justice O'Connor in *Croson* discussed the relevance of anecdotal evidence, stating "[E]vidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."⁶⁷

There was evidence from a telephone survey, interviews, and focus groups in *Rowe*. The Fourth Circuit favorably cited survey evidence of a good old boys' network excluding MBEs from work, double standards in qualifications, primes viewing MBEs as less qualified, dropping MBEs after contract award, and the firms changing their behavior when not required to use MBEs. This material was affirmed in interviews and focus groups. The Fourth Circuit also concluded that "[t]he surveys in the 2004 study exposed an informal, racially exclusive network that systematically disadvantaged minority subcontractors."⁶⁸

The plaintiff argued that this data was not verified, to which the Fourth Circuit responded, "a fact finder could very well conclude that anecdotal evidence need not—and indeed cannot—be confirmed because it 'is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions.'"⁶⁹ The Fourth Circuit also commented favorably on the NCDOT study survey oversampling MBEs as long as the sample was random.

In *Associated General Contractors of California, Inc. v. Coalition for Economic Equity (AGCC II)*, the Ninth Circuit discussed the specificity of anecdotal evidence required by *Croson*.⁷⁰ Seeking a preliminary injunction, the contractors contended that the evidence presented by San Francisco lacked the specificity needed for an earlier appeal in that case and by *Croson*.⁷¹ The court held that the City's findings were based on substantially more evidence than the anecdotes in the two prior cases and were "clearly based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as significant statistical disparities in the award of contracts."⁷²

The court also ruled that the City was under no burden to identify every instance of discriminatory practices or policies.⁷³ Reiterating the City's perspective, the court stated that the City "must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each instance that the legislative body ha[d] relied upon in support

⁶⁶ *Id.*

⁶⁷ *Croson*, 488 U.S. at 509.

⁶⁸ *H.B. Rowe*, 615 F.3d at 251.

⁶⁹ *Id.* at 249 (quoting *Concrete Works*, 321 F.3d at 989).

⁷⁰ *AGCC II*, 950 F.2d 1401, 1414-15 (9th Cir. 1991).

⁷¹ *Id.* at 1415-1416.

⁷² *Id.* at 1416. This evidence came from 10 public hearings and "numerous written submissions from the public." *Id.* at 1414.

⁷³ *Id.* at 1416 n.11.

of its decision that affirmative action is necessary.”⁷⁴ Not only have courts found that a municipality does not have to identify all the discriminatory practices impeding M/WBE utilization specifically, but the Tenth Circuit in *Concrete Works IV* also held that anecdotal evidence collected by a municipality does not have to be verified. “There is no merit to [the plaintiff’s] argument that the witnesses’ accounts must be verified to provide support for Denver’s burden. Anecdotal evidence is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions....Denver was not required to present corroborating evidence and [the plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”⁷⁵

2.4 Narrowly Tailoring

Many courts have held that even if a compelling interest for the M/WBE program can be found, the program can still be found not to be narrowly tailored.⁷⁶ The Fourth Circuit has laid out the following factors in determining whether or not a program was narrowly tailored:

(1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties.⁷⁷

In *H.B. Rowe*, the Fourth Circuit added to this list “overinclusiveness,” defined as the “tendency to benefit particular minority groups that have not been shown to have suffered invidious discrimination.”⁷⁸

The Ninth Circuit in *Western States Paving* agreed with the *Sherbrooke* and *Gross Seed* cases that it is necessary to undertake an as applied inquiry into whether a government’s DBE program is narrowly tailored. The *Western States Paving* court stated that even when discrimination is present within a state, a remedial program is only narrowly tailored if its application is limited to those minority groups that have actually suffered discrimination. In *Croson*, for example, one of the rationales upon which the Supreme Court relied to invalidate the city’s quota system was the program’s expansive definition of “[m]inority group members,” which encompassed “[c]itizens of the United States who are Blacks, Spanish-speaking, Orientals, Indians, Eskimos and Aleuts.”⁷⁹ The Court admonished that the random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggested that perhaps the city’s purpose was not in fact to remedy past discrimination.

⁷⁴ *Id.* at 1416.

⁷⁵ *Concrete Works IV*, 321 F.3d 950, 989 (10th Cir. 2003).

⁷⁶ *Contractors Ass’n v. City of Philadelphia*, 91 F.3d at 605; *Engineering Contrs.*, 122 F.3d at 926-29; *Virdi v. Dekalb County Sch. Dist.*, 135 F. App’x 262 (11th Cir. 2005).

⁷⁷ *H.B. Rowe*, 615 F.3d at 252 (quoting *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 344 (4th Cir. 2001)).

⁷⁸ *H.B. Rowe*, 615 F.3d at 252 (quoting *Alexander v. Estep*, 95 F.3d 312, 316 (4th Cir. 1996)).

⁷⁹ 488 U.S. at 478, 109 S.Ct. 706 (second alteration in original).

The Ninth Circuit Court of Appeals noted that it had previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination. In *Monterey Mechanical Co. v. Wilson*, 125 F.3d at 704, the Ninth Circuit relied upon *Croson* to invalidate a California statute that required prime contractors on public projects to subcontract 15 percent of the work to minority-owned businesses and 5 percent to woman-owned businesses. The statute defined the term “minority” to include Blacks, Hispanics, Native Americans, Pacific-Asians, Asian-Indians, and over two-dozen subgroups.⁸⁰ The court concluded that the statute was not narrowly tailored because it provided race-based preferences to “groups highly unlikely to have been discriminated against in the California construction industry”.⁸¹ The overly inclusive designation of benefited minority groups was a “red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.”⁸² The court also cited *Builders Ass’n of Greater Chicago v. County of Cook*, 256 F.3d 642, 647 (7th Cir.2001), holding that an ordinance that established minimum levels of minority participation in county construction contracts was not narrowly tailored because it afforded preferences to a “laundry list” of minorities, not all of whom had suffered discrimination; *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 737 (6th Cir. 2000), invalidating a state statute that set aside 5 percent of state construction contracts for “Blacks, American Indians, Hispanics, and Orientals” because “[b]y lumping together [these] groups, ... the [program] may well provide preference where there has been no discrimination, and may not provide relief to groups where discrimination might have been proven;” *O’Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C.Cir.1992) “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 [a minority set-aside] program” (internal quotation marks omitted). In contrast, the Caltrans DBE program litigated in *AGC v. Caltrans* had excluded Hispanic-owned firms from race-based preferences based on inadequate factual predicate evidence for the Hispanic ethnic category.⁸³

Accordingly, each of the principal minority groups benefiting from the state’s DBE program must have suffered discrimination within the state. If that is not the case, then the DBE program provides minorities who have not encountered discriminatory barriers with an unconstitutional competitive advantage at the expense of both non-minorities and any minority groups that have actually been targeted for discrimination.”

The Eleventh Circuit in particular has identified the following elements of narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief, including the availability of waiver provisions; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties.⁸⁴

⁸⁰ *Id.* at 714, 109 S.Ct. 706.

⁸¹ *Ib.*

⁸² *Ib.*

⁸³ *AGC v. Caltrans*, No. 11-16228, at 4.

⁸⁴ *Eng’g. Contr. of S. Florida, Inc.* 122 F.3d at 928.

2.4.1 Race-Neutral Alternatives

Concerning race-neutral alternatives, Justice O'Connor in *Croson* concluded that a governmental entity should also evaluate the use of race-neutral means to increase minority business participation in contracting or purchasing activities. In *Rowe*, the Fourth Circuit noted that NCDOT had a Small Business Enterprise program and had undertaken all the race-neutral methods suggested by the DOT DBE program regulations. The court pointed out that the plaintiff had identified “no viable race-neutral alternatives that North Carolina has *failed* to consider and adopt”⁸⁵ (emphasis in the original). The Court further noted that disparities persisted despite NCDOT employing these race-neutral initiatives.

2.4.2 Duration of the Remedy

The Western States Paving Court noted that a narrowly tailored remedial program must also include adequate durational limitations. The Court noted that TEA-21 comports with this requirement because it is subject to periodic reauthorization by Congress. The debates concerning reauthorization ensure that Congress regularly evaluates whether a compelling interest continues to justify TEA-21's minority preference program. Other cases have noted that time limitations are required for DBE/MBE/WBE programs (states may terminate their programs if they meet their annual overall goal through race-neutral means for two consecutive years).⁸⁶

2.4.3 Relationship of Goals to Availability

Narrow tailoring under the *Croson* standard requires that remedial goals be in line with measured availability. Setting percentages arbitrarily has played a vital part in finding programs unconstitutional, as evident with what the City of Richmond did in *Croson*. Setting goal percentages need to be based on statistical studies.⁸⁷

In *H.B. Rowe*, the Fourth Circuit found that NCDOT participation goals were related to percentage MBE availability. First, the NCDOT goals were set project by project. Second, NCDOT generates a report detailing the type of work likely to be subcontracted. Third, the NCDOT goal-setting committee checks its database for availability. Finally, the Fourth Circuit noted that 10 percent of the NCDOT projects had a zero M/WBE goal.⁸⁸

Regarding goals, the Eleventh Circuit stated that, “we do not agree with the district court that it was “irrational” for the County to set a goal of 19% HBE participation when Hispanics make up more than 22% of the relevant contracting pool in every SIC category, and more than 30% for SIC 15. We see nothing impermissible about setting numerical goals at something less than absolute parity. Stated

⁸⁵ *H.B. Rowe*, 615 F.3d at 252.

⁸⁶ See, e.g., *Sherbrooke and Gross Seed*, 345 F.3d 964 (2003).

⁸⁷ *Contractors Ass’n v. City of Philadelphia*, 91 F.3d at 607 (“The district court also found significant that the ... Ordinance offered only one reference point for the percentages selected for the various set-asides -- the percentages of minorities and women in the general population”). See also *Builders Ass’n of Greater Chicago*, 256 F.3d at 647.

⁸⁸ *H.B. Rowe*, 615 F.3d at 253.

somewhat differently, a local government need not choose between a program that aims at parity and no program at all.”⁸⁹

2.4.4 Flexibility

Western States Paving also emphasizes the need for flexibility to show narrow tailoring in the DBE program. The court noted that a quota system is the hallmark of an inflexible affirmative action program. The court quoted *Grutter*, stating that “[w]hile [q]uotas impose a fixed number or percentage which must be attained, or which cannot be exceeded, a permissible goal requires only a good-faith effort to come within a range demarcated by the goal itself.”⁹⁰ The court recognized that the TEA-21 DBE regulations explicitly prohibit the use of quotas.⁹¹ Moreover, where race-conscious contracting goals are used, prime contractors can meet that goal either by subcontracting the requisite amount of work to DBEs or by demonstrating good faith efforts to do so.⁹² A recipient of federal funds, likewise, cannot be penalized by the federal government for failing to attain its DBE utilization goal as long as it undertakes good faith compliance efforts.⁹³ TEA-21 therefore provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*.⁹⁴

2.4.5 Burden on Third Parties

Narrow tailoring also requires minimizing the burden of the program on third parties’ waivers. Good faith compliance is a tool that serves the purpose of reducing the burden on third parties.⁹⁵ The plaintiff in *Rowe* argued that the solicitation requirements were burdensome and that it was forced to subcontract out work that could be self-performed. The Fourth Circuit noted that the solicitation requirements could be met with existing staff, and the M/WBE program did not require subcontracting out work that could be self-performed.⁹⁶

2.4.6 Over-inclusion

Finally, narrow tailoring involves limiting the number and type of program beneficiaries. As noted above, there has to be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program. In essence, there must be sufficient statistical evidence of discrimination to include a particular minority group in the remedial program. In *Croson*, the Court noted that “[i]f a 30% set-aside was “narrowly tailored” to compensate black contractors for past discrimination, one may legitimately ask why they are forced to share this “remedial

⁸⁹ *Eng’g. Contr. of S. Florida, Inc.* 122 F.3d at 927.

⁹⁰ 539 U.S. 306.

⁹¹ 49 C.F.R. § 26.43(a).

⁹² *Id.* § 26.53(a).

⁹³ *Id.* § 26.47(a).

⁹⁴ *Grutter v. Bollinger*, 539 U.S. 982 (2003). See also *Sherbrooke Turf, Inc.*, 345 F.3d at 972 (“the [TEA-21] DBE program has substantial flexibility”).

⁹⁵ 49 C.F.R. § 26.53.

⁹⁶ *H.B. Rowe*, 615 F.3d at 254.

relief" with an Aleut citizen who moves to Richmond tomorrow? The gross over inclusiveness of Richmond's racial preference strongly impugns the city's claim of remedial motivation".⁹⁷

Additionally, as noted above in *Rowe*, there has to be evidence of discrimination to justify a group-based remedy, and over-inclusion of uninjured individuals or groups can endanger the entire program. The statistical evidence that was evaluated by the court to determine if the Statute's definition of minorities was determined to be overinclusive by including groups for which the 2004 disparity study did not establish sufficient evidence of discrimination. Although, the statute in question limited relief to "those racial or ethnicity classifications . . . 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,"⁹⁸ lumping all minority groups together may provide preference for groups where no discrimination was found.

2.5 Conclusions

As summarized earlier, when governments develop and implement a contracting program sensitive to race and gender, they must understand the case law developed in the federal courts. These cases establish specific requirements that must be addressed so that such programs can withstand judicial review for constitutionality and prove to be just and fair. Given current trends in applying the law, local governments must engage in specific fact-finding processes to compile a thorough, accurate, and specific evidentiary foundation to determine whether there is, in fact, discrimination sufficient to justify an affirmative action plan. Further, state and local governments must continue to update this information and revise their programs accordingly.

In creating and implementing a race- or gender-conscious contracting program, it is necessary to understand how the courts have interpreted the constitutional requirements. To satisfy strict scrutiny, agencies must provide a compelling interest for a race- or gender-conscious program. While gender-conscious programs are subject to intermediate scrutiny in practice, there has not been a significant difference in the judicial review of race-conscious versus gender-conscious contracting programs.

The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race- and gender-conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys, and other methods of anecdotal data collection.

If a factual predicate is found for race- and gender-conscious efforts, the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding

⁹⁷ *Croson*, 488 U.S. at 506.

⁹⁸ N.C. Gen. Stat. § 136-28.4(c)(2).

the random inclusion of groups into the program. Working with these criteria, the federal courts have consistently ruled that the federal DBE regulations are narrowly tailored.

While the Supreme Court has yet to return to this exact area of law to sort out some of the conflicts, the Eleventh Circuit has provided some guidance on core standards. Ultimately, MBE and WBE programs can withstand challenges if state and local governments comply with the requirements outlined by the courts.

3 Review of Policies, Procedures, and Programs

3.1 Introduction

Contracting goods and services is an essential function in meeting the needs of the Unified Government of Athens-Clarke County (Athens-Clarke County or ACCGov) departments and the constituents it serves. **Chapter 3** examines Athens-Clarke County's procurement and contracting policies, procedures, and programs to ensure that all interested parties have the opportunity to participate in ACCGov's procurement and contracting. In addition, this chapter examines efforts undertaken by Athens-Clarke County to increase equity and inclusion within purchasing and contracting.

Chapter Sections

- 3.1 Introduction
- 3.2 Methodology and Definitions
- 3.3 Procurement Environment and Structure
- 3.4 Source Selection
- 3.5 Business Diversity and Inclusion
- 3.6 Conclusions

Chapter 3 includes an overview of Athens-Clarke County's procurement process and examines the routine application of policies and procedures and the impact on suppliers seeking opportunities or doing business with ACCGov. MGT's review of policies and procedures is presented in six sections. Section 2 describes the methodology used to conduct the review of Athens-Clarke County's procurement policies, procedures, and programs. The remaining sections summarize procurement policies, procedures, programs, and the structure and environment in which procurement and contracting occur. The review and examination of policies in this chapter is intended to provide the foundation for the analysis of utilization and availability in **Chapter 5** and the findings and recommendations in **Chapter 8**.

3.2 Methodology and Definitions

This section summarizes the steps undertaken to review ACCGov's procurement policies utilizing a methodology refined over the course of over 250 disparity studies. MGT's review included developing an understanding of Athens-Clarke County's organizational structure and procurement roles and responsibilities of various departments. The policy review was conducted with the complete cooperation of ACCGov staff who provided data, information, and assistance to MGT throughout the policy review. To conduct the policy review and to prepare this chapter, MGT's approach included collecting and reviewing procurement-related source documents. Procurement policies and practices were also reviewed and discussed with staff to better understand procurement practices and their impact on departments and suppliers doing business or seeking to do business with Athens-Clarke County. However, an overall assessment of the impact of these policies and procedures can only be made in conjunction with the statistical and anecdotal evidence contained in **Chapters 5, 7, and 8** of this report. The review of policies and procedures included the following major steps:

- ◆ Finalizing the scope and parameters of the policy review.
- ◆ Collecting, reviewing, and summarizing ACCGov's contracting and procurement policies.

- ♦ Collecting, reviewing, and summarizing policies, procedures, and related information and data pertaining to ACCGov's business inclusion efforts.
- ♦ Collecting and reviewing supplemental information and data pertinent to the policy review.
- ♦ Reviewing applicable federal, state, and city regulations and laws pertaining to procurement.
- ♦ Conducting discussions with staff to review and discuss procurement policies and roles and responsibilities in ACCGov's procurement process.
- ♦ Navigating the ACCGov's website and department websites to help inform areas of inquiry and to identify information and resources available to businesses seeking opportunities with ACCGov.
- ♦ Analyzing data and information gathered throughout the policy review to develop key findings and recommendations.
- ♦ Preparing the policy review chapter for inclusion in the Unified Government of Athens-Clarke County 2022 Disparity Study Report.

Interviews and meetings were initially held with Athens-Clarke County staff in April 2022 and continued until May 2022. During this period, meetings were held with staff in the Capital Projects Department, Economic Development Department, Finance Department, Public Utilities Department, Purchasing Division, Special Purpose Local Option Sales Tax (SPLOST) Division, and Transportation & Public Works Department. Due to COVID restrictions, all meetings were conducted virtually. As needed, follow-up contacts were made to obtain additional information and insights.

MGT collected and reviewed a variety of source documents and information pertaining to the policy review. Major source documents and other information collected and reviewed are itemized in **Table 3-1**.

TABLE 3-1. DOCUMENTS REVIEWED DURING POLICY AND PROCEDURES REVIEW

INDEX	DESCRIPTION
Procurement Related Documents	
1.	Official Code of Georgia Annotated Title 36 Local Government
2.	Unified Government of Athens-Clarke County Code of Ordinances <ul style="list-style-type: none"> - Purchasing Ordinance Section 1-7-4 Duties of Purchasing Division Administrator - Purchasing Ordinance Section 1-7-5 Committee on Standards and Specifications - Purchasing Ordinance Section 1-7-12 Sole-source Purchases - Purchasing Ordinance Section 1-7-13 Award of Contracts - Purchasing Ordinance Section 1-7-14 Competitive Quotations for Bids Over \$50,000.00 - Purchasing Ordinance Section 1-7-15 Competitive Quotations Under \$49,999.99 - Purchasing Ordinance Section 1-7-17 Purchases of Less Than \$1,000 - Purchasing Ordinance Section 1-7-18 Selection of Professional Services - Purchasing Ordinance Section 1-7-23 Emergency Purchases - Purchasing Ordinance Section 1-7-27 Local Buying Preference - Purchasing Ordinance Section 1-7-31 Public Construction Projects Governed by O.C.G.A § 36-91-1 et seq - Licenses and Business Regulations Section 6-21-6 Unified Government Contracting

INDEX	DESCRIPTION
3.	Unified Government of Athens-Clarke County Solicitations <ul style="list-style-type: none"> - BID #00852 Mobile Data Terminal (MDT) Laptops and Tablets - BID #00864 Musco Lighting System Installation - BID #00888 Replace Vehicular Guardrails - BID #01015 FY17 Sidewalk Gap Project – Phase IV, TPW # 6270-D SPLOST 2011 - Project #12 - RFP #00808 On-Call Airport Architecture and Engineering Services - RFP #00961 Janitorial Services for Information Technology Building - RFP #00979 Performance and Learning Management System - RFP #01024 Pest Control Services - RFP #01038 Pre-Construction and Construction Management @ Risk Services for Costa Building Renovations - RFQ #20-005 Management Software for Animal Shelter - RFQP #01049 Telecommunication Consulting/Design Services Broadband Community Enhancement Project (SPLOST 2020 Program Project #22)
4.	Unified Government of Athens-Clarke County SPLOST and TSPLOST Documents <ul style="list-style-type: none"> - FY 21 Report on Projects Funded with SPLOST and TSPLOST Revenues - Proposed SPLOST 2020 Implementation Schedule and Tasks - SPLOST 2020 Expenditure Summary - SPLOST Project Phase and Process Charts - TSPLOST 2023 Program – Proposed Program Goals, Project Selection Criteria, Implementation Schedule, and Advisory Committee Charge
5.	Unified Government of Athens-Clarke County Minority Business Enterprise Policy, 7/3/2006 Revision
6.	Unified Government of Athens-Clarke County Purchasing Procedure Manual (Eden Edition), 8/23/2021 Revision
7.	Unified Government of Athens-Clarke County Vendor Registration Form
	Other Related Documents
8.	Unified Government of Athens-Clarke County 2018 Comprehensive Plan
9.	Unified Government of Athens-Clarke County FY 2022 Annual Operating & Capital Budget
10.	Unified Government of Athens-Clarke County Innovation Ecosystem Needs Assessment Report

3.2.1 Definitions

The section which follows includes selected definitions from the Unified Government of Athens-Clarke County Purchasing Procedure Manual (Purchasing Procedure Manual)⁹⁹. The definitions helped to provide context for the procurement and contracting policies reviewed by MGT.

Bid Bond – An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid or else the surety will pay a specific amount.

Competitive Quotation – An informal procedure used when the estimated value of a good or service is between \$1,000 and \$49,999.99. This procedure requires that competitive written quotes be solicited from a minimum number of eligible vendors before a contract is awarded.

Competitive Sealed Bid – A formal process used when the estimated value of the good or service is \$50,000 or greater. On the date and time bids are due to the Purchasing Office, sealed bids are opened

⁹⁹ Unified Government of Athens-Clarke County Purchasing Procedure Manual (Eden Edition), 8/23/2021 Revision.

and read aloud in a public meeting. After evaluating the bids received, a contract is awarded to the lowest responsible, responsive bidder.

Competitive Sealed Proposal – A formal process used when it is not practicable nor advantageous to use the competitive sealed bid procedure. On the date and time bids are due to the Purchasing Office, only the names of offerors are available and at the opening date and time. Upon completion of an evaluation process, a contract is negotiated with the offeror that provides the most advantageous offer. Unlike the sealed bid, the resulting contract is based on best value and not solely on price.

Emergency Purchase – An expedited purchase that is necessary to alleviate a situation in which there is a threat to the health, safety, and welfare of the citizens and for which time does not permit a competitive source selection procedure. Under such conditions, departments are required to submit a justification to exempt the competitive source selection requirement. Upon approval by the Purchasing Administrator, the purchase will be expedited.

Invitation to Bid (ITB) – An invitation to bid is issued for purchases of goods and services with an estimated value of \$50,000 or greater and includes specifications and all contractual terms and conditions applicable to the purchase.

Minority Business Enterprise (MBE) Firm – A business, which is at least 51% owned, controlled, and operated on a daily basis by one or more persons who are part of one of the following groups:

- ♦ "Black American" who includes persons having origins in any of the Black racial groups of Africa.
- ♦ "Hispanic American" who includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.
- ♦ "Native American" who includes persons who are American Indian, Eskimos, Aleuts or native Hawaiians.
- ♦ "Asian Pacific American" who includes persons whose origins are from Japan, China, Taiwan, Korea, Viet Nam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas.
- ♦ "Asian Indian American" who includes persons whose origins are from India, Pakistan, and Bangladesh.

Non-competitive Source Selection – Method in which a written bid or price quotation is solicited for a good or service from one eligible vendor. The non-competitive source selection method is informal and is permitted in those instances where a public agency, by regulation or ordinance, has determined that the administrative time and expense necessary to conduct a competitive source selection procedure is greater than the benefit derived. For Athens-Clarke County, purchases of goods and services with an estimated value of less than \$1,000 can be purchased via the non-competitive source selection method.

Payment Bond – A bond which assures payments, as required by law, to all persons supplying labor or material for the completion of work under the contract. Also referred to as a labor and material bond.

Performance Bond – A bond, executed subsequent to award by a successful bidder, to protect the buyer from loss due to the bidder’s inability to complete the contract as agreed; secures the fulfillment of all contract requirements.

Professional Services – Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance.

Public Works Construction¹⁰⁰ – Any construction project with a value of \$100,000 or greater that builds, alters, repairs, improves, or demolishes any public structure or building or other public improvement of any kind to any public real property other than those projects cover by Chapter 4 of Title 32 “Roadway Construction”. Roadway construction projects are specifically excluded from the provisions of Title 36. This definition also excludes routine maintenance, operation or repairs of public property.

Request for Proposal (RFP) – A request to submit a proposal or offer is issued for purchases of goods and services with an estimated value of \$50,000 or greater and includes a scope of service and all contractual terms and conditions applicable to the purchase.

Responsible Bidder – A bidder possessing the capability to fully perform the contract requirements. This capability is expressed in terms of experience, technical knowledge, facilities, licenses, equipment, and credit required to perform the work.

Responsive Bidder – Vendor who has submitted a bid which conforms in all material respects to the requirements stated in the invitation to bid.

Small Purchases – Any supply, material, or contractual service which has an estimated cost less than \$1,000.

Sole Source – A sole source is a vendor who is the only singularly available vendor capable of providing a particular good or service. All sole source vendor requests must be justified in writing and documented in the contract file. The Purchasing Administrator must authorize and approve all sole source purchases.

- ♦ Sole Brand – Similar to a sole source in that the sole brand is the only brand singularly available. A sole brand does not eliminate a competitive source selection requirement as a brand may be available from multiple sources of supply.
- ♦ Proprietary Purchase – A product is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is determined that bids may be obtained from different franchises, every attempt should be made to solicit prices on a competitive basis.

¹⁰⁰ Official Code of Georgia Annotated (O.C.G.A.) Title 36 “Local Government”

Using Agency – Any department, division, agency, bureau, commission, board, authority, or other unit of the Athens-Clarke County government using goods and services to carry out the duties and responsibilities of such functions and for which financial appropriations have been made by the governing authority.

3.3 Procurement Environment and Structure

The procurement and contracting of goods and services by public agencies, such as Athens-Clarke County, is governed by local, state, and/or federal regulations. ACCGov’s authority to engage in purchasing and contracting activities resides in the Purchasing Ordinance, Title 1 General Government, Chapter 1-7 and the Official Code of Georgia Annotated (O.C.G.A). ACCGov and its departments must adhere to the O.C.G.A in the procurements of goods and services in which both state and local funds are used, whereas, the Federal Acquisition Regulations (FAR) serve as guidance for procurements involving any use of federal funds. The Athens Clarke County Purchasing Procedure Manual, recently revised on August 23, 2021¹⁰¹, provides additional policies and procedures for all agencies, departments, boards, and commissions that expend public funds. According to Athens Clarke County, the purpose of this manual is to:

- ♦ “Set forth policies and procedures for an effective, fiscally responsible centralized purchasing program that assures the public that the procedures for the acquisition of goods and services are carried out in a competitive manner that is fair, impartial, administratively efficient and accessible to all qualified vendors”
- ♦ “Maximize the purchasing value of public funds to the greatest extent possible so that departments and agencies can better serve the citizens of Athens-Clarke County, Georgia”
- ♦ “Provide guidance to and establish responsibility for all employees engaged in the procurement process”¹⁰²

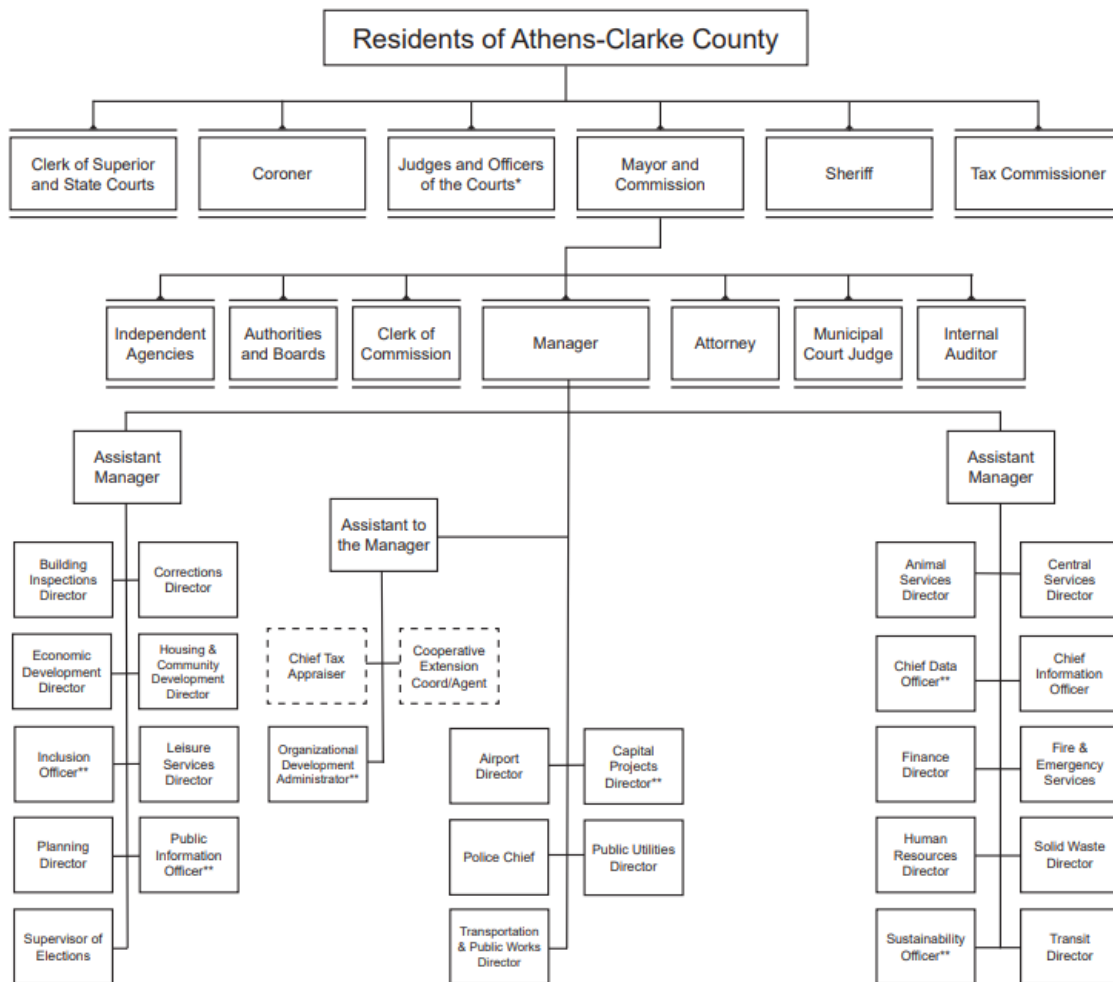
Exhibit 3-1 depicts the Athens-Clarke County’s organizational structure. The organizational units shown in **Exhibit 3-1** purchase a variety of goods and services for internal use and provide essential services to the residents of ACCGov. To operate efficiently and effectively, ACCGov requires collaboration and coordination between various departments. Within this context, the organization units shown in **Exhibit 3-1** frequently engage in procurement and at varying levels. Each department and agency must comply with procurement policies, seek advice from the Purchasing Administrator in the acquisition of goods or services, and ensure all documents related to the procurement process are stored with the Purchasing Division¹⁰³. **Exhibit 3-2** shows the organizational structure of the Purchasing Division, which is housed within the Department of Finance.

¹⁰¹ This revision includes minor updates to federal terminology; however, no major policy changes have been made since April 1, 2007.

¹⁰² Purchasing Procedure Manual (Eden Edition), 2021.

¹⁰³ v. sup

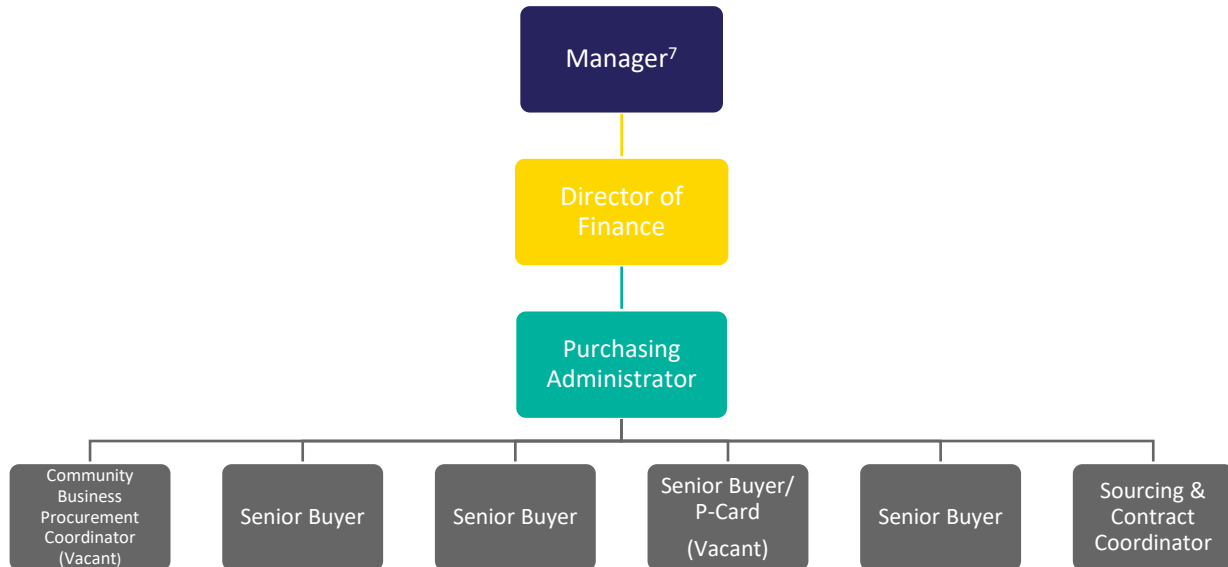
EXHIBIT 3-1.
UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY ORGANIZATION CHART



* Excludes Municipal Court Judge, who is appointed by the Mayor & Commission.
 ** Divisions of the Manager's Office
 - - - - Appointed by others

Source: ACC from A to Z, A Guide to the Athens-Clarke County Unified Government and Community Services, January 2022.

EXHIBIT 3-2.
UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY PURCHASING DIVISION ORGANIZATION CHART



Source: Purchasing Division, 2022.

The Purchasing Division is responsible for the acquisition and procurement of goods and services according to established policies and procedures for advertisement, solicitation, and approval. The Division coordinates the centralized procurement activities of Athens-Clarke County and is committed to purchasing quality goods and services at the best possible value¹⁰⁴. The Division also maintains documentation of all procurement activities according to relevant laws.

According to the Athens-Clarke County Charter Section 4-102 (8), the Manager is the government's purchasing agent. Based on delegated authority¹⁰⁵, the Division and its activities are led by the Purchasing Administrator, who provides supervision of purchasing activities and processes. The Division is also staffed by four (4) Senior Buyers, one (1) Sourcing & Contract Coordinator, and one (1) Community Business Procurement Coordinator. Senior Buyer responsibilities include acting as a liaison between departments and vendors, coordinating the bid and contract award processes, and processing purchase orders on behalf of Athens-Clarke County departments. The Sourcing & Contracting Coordinator serves as a backup to the Purchasing Administrator and supervises Senior Buyers, analyzes buying patterns, establishes and negotiates ACCGov-specific sourcing contracts, and reviews the economic advantages of pre-established sourcing contracts. The Community Business Procurement Coordinator is dedicated to increasing the awareness and understanding of the government's procurement processes by diverse businesses. Despite current vacancies, the Division continues to maintain a fiscally responsible purchasing program.

¹⁰⁴ Purchasing Division website, 2022.

¹⁰⁵ Athens-Clarke County, Georgia, Code of Ordinances, §1-7-3

MGT's review of governing laws and related source documents in **Table 3-1** concluded that the Purchasing Division's policies are appropriately aligned with Athens-Clarke County's Purchasing Ordinance, Title 1 General Government, Chapter 1-7 and the Official Code of Georgia Annotated. In reviewing the Purchasing Division's policies, particular attention was paid to the following areas:

- ◆ Competitive Sealed Bidding
- ◆ Competitively Sealed Proposals
- ◆ Construction Delivery Methods
- ◆ Competitive Quotations
- ◆ Contract Requirements
- ◆ Emergency Purchases
- ◆ Small Purchases

From MGT's experience, the above policies can either inhibit or facilitate supplier participation depending on their execution. Based on discussions with Capital Projects, Purchasing, Public Utilities, and Public Works staff, MGT determined the extent to which the above policies are aligned with procurement processes described in the Purchasing Procedures Manual. In addition, MGT also sought to determine the extent to which the policies are referenced in the solicitations in **Table 3-3**.

Discussions with Athens-Clarke County staff provided insight into how purchasing processes are operationalized and how ACCGov departments and suppliers are affected. Such activities require coordination and collaboration among using agencies and the Purchasing Division. It was apparent throughout the discussions with staff that ensuring policies are routinely followed is paramount to delivering products and services to the residents of Athens-Clarke County. **Table 3-2** provides a snapshot of contract sign-off authority on purchases and required advertising and source selection methods.

TABLE 3-2. SOLICITATION METHODS AND CONTRACT AWARD AUTHORITY

Level	Estimated Cost of Good or Service	Advertising Method	Source Selection Method	Contract Award Authority
1	Less than \$1,000	Informal	Written quotation from one vendor	Purchasing Administrator
2	Between \$1,000 to \$49,999	Formal	Competitive quotations: written quotation from at least 3 vendors	Purchasing Administrator
3	Between \$50,000 to \$99,999	Formal	Competitive sealed bid or proposal	Purchasing Administrator
4	Between \$100,000 to \$199,999	Formal	Competitive sealed bid or proposal	Athens-Clarke County Manager
5	\$200,000 and above	Formal	Competitive sealed bid or proposal	Mayor & Commission

Source: Created by MGT 2022, adapted from Purchasing Procedure Manual, 2021.

According to staff, sourcing processes are routinely followed, with a few exceptions. Federal, state, and county regulations and laws pertaining to the procurement process are embedded within the purchasing policies. For example, source selection policies tend to be clearly delineated.

MGT reviewed solicitation documents shown in **Table 3-3**. Examining bid solicitation documents was important because solicitations are the starting point in the procurement process for procurement opportunities with Athens-Clarke County. Examining solicitation documents was also important in determining whether solicitation documents adhere to the policies and procedures reviewed by MGT. The documentation review included determining whether there were minority/woman-owned business enterprise (M/WBE) participation requirements and if participation forms were included in solicitation packets. MGT made note of the nondiscrimination language in the solicitations. **Based on MGT's review, the solicitation documents in Table 3-3, the documents were uniformly organized and appropriately referenced governing laws and policies.**

TABLE 3-3.
UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY SOLICITATION DOCUMENTS

Solicitation	Type
Janitorial Services for Information Technology Building	RFP
Management Software for Animal Shelter	RFQ
Mobile Data Terminal (MDT) Laptops and Tablets	IFB
Musco Lighting System Installation	IFB
On-Call Airport Architecture/Engineering Services	RFP
Performance and Learning Management System	RFP
Pest Control Services	RFP
Pre-Construction and Construction Management @ Risk Services for Costa Building Renovations	RFP
Replace Vehicular Guardrails	IFB
Sidewalk Gap Project	IFB
Telecommunication Consulting/Design Services Broadband Community Enhancement Project	RFPP

Source: Created by MGT, 2022.

The solicitations in **Table 3-3** do not include other sourcing methods, such as emergency or sole source purchases, which are discussed later in the chapter.

3.4 Source Selection

MGT's policy review was narrowly focused on policies and practices which have a more direct impact on procurement opportunities. To evaluate the impact of policies on Athens-Clarke County and the impact on suppliers, meetings with staff in the Capital Projects Department, Public Utilities Department, Purchasing Division, and Transportation & Public Works Department were very important. MGT also reviewed the policy-related documents and information listed in **Table 3-1** with a major focus on policies related to source selection including competitive sealed bidding, professional services, competitively sealed proposals, construction-related source selection, small purchases, and emergency purchases. In its review, MGT paid specific attention to M/WBE participation since the underlying premise for Athens-Clarke County's Disparity Study is identifying efforts undertaken by ACCGov to avoid discrimination of

M/WBE firms in procurement and contracting. As such, how procurement policies are operationalized and executed to facilitate M/WBE participation was important to the policy review.

MGT's experience has shown that efficient and effective procurement processes are largely dependent upon well-defined and consistently followed policies for advertisement, solicitation, vendor evaluation/selection, contract negotiation and approval, and the expertise of knowledgeable and skilled staff. Based upon MGT's discussions, staff have lengthy tenure with Athens-Clarke County government or other public entities and appear to be very knowledgeable about procurement processes. From staff's perspective Athens-Clarke County's procurement is intended to:

- ◆ Ensure open competition;
- ◆ Provide equitable treatment of all vendors seeking to do business with ACCGov;
- ◆ Maintain a responsive and responsible centralized procurement system; and
- ◆ Procure the goods, services, and construction required by ACCGov in a cost-effective manner.

3.4.1 Construction

Construction is an important area to review because construction and construction-related services typically provide the greatest spend and most subcontracting opportunities for small, minority, and women-owned businesses. These opportunities grant small businesses and M/WBEs the opportunity to gain simultaneous experience on multiple projects without enduring the rigors of submitting a proposal. A partnership with a prime contractor also enables the firm to focus on technical work, rather than administrative tasks associated with managing the contract. This area may also result in growing the capacity of M/WBEs. Athens-Clarke County uses two optional tax collection programs to generate revenue for capital and transportation-related construction projects: SPLOST and TSPLOST.

3.4.1.1 Special Purpose Local-Option Sales Tax (SPLOST)

Georgia legislators enacted the Special Purpose Local-Option Sales Tax (SPLOST) Law in 1985, enabling counties to impose a county tax of 1 percent on items subject to state sales tax for the purposes of funding capital projects¹⁰⁶. Counties are prohibited from using SPLOST funds to pay for governmental expenses, such as salaries or benefits. On November 5, 2019, Athens-Clarke County voters approved the SPLOST 2020 Referendum encompassing 37 projects¹⁰⁷. Tax collections began April 2020¹⁰⁸ and will continue until required revenue approved by voters is collected.

Athens-Clarke County follows a standard procedure to identify and select projects to include in the SPLOST program prior to a SPLOST Referendum. The process is collaborative and includes the feedback of Athens-Clarke residents, Citizens Advisory Committee (CAC), Cities of Bogart and Winterville¹⁰⁹, and

¹⁰⁶ O.C.G.A. § 48-8-111

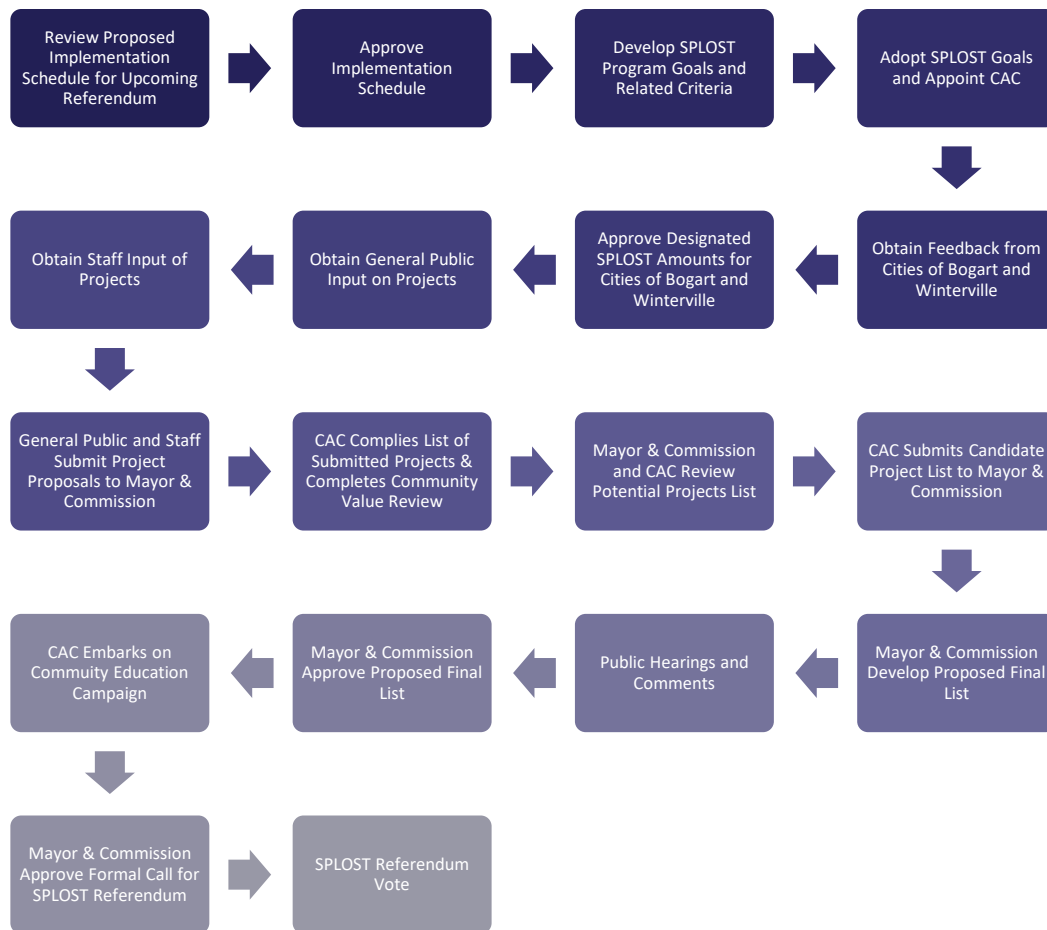
¹⁰⁷ Athens-Clarke County SPLOST 2020 Website, 2022.

¹⁰⁸ Athens-Clarke County SPLOST 2020 Website, 2022.

¹⁰⁹ O.C.G.A. § 48-8-111

Athens-Clarke County staff. The Mayor and Commission provide final approval of projects after thorough review. The detailed process is displayed in **Exhibit 3-4**.

EXHIBIT 3-3.
SPLOST PROGRAM IMPLEMENTATION PROCEDURE



Source: Created by MGT, 2022.

Once a SPLOST Referendum passes, Athens-Clarke County begins project execution. Athens-Clarke County uses a hybrid method to administer the SPLOST Program, which includes the Capital Projects Director and a third-party vendor selected through a formal competitive negotiation process. The Capital Projects Director provides oversight of the program and seeks to bring uniformity to other capital delivery processes. The third-party vendor is primarily responsible for project management services. Each project is bid in accordance with OCGA and Athens-Clarke County Purchasing Ordinances.

3.4.1.2 Transportation Special Purpose Local Option Sales Tax (TSPLOST)

O.C.G.A 48-8-261(c) provides authority for counties to impose a one percent sales tax for transportation projects in the form of a Transportation Special Purpose Local Option Sales Tax. Revenue generated from TSPLOST may only be used for the following types of projects:

- ♦ Transportation purposes: including roads, bridges, public transit, rails, airports, buses, and all accompanying infrastructure and services necessary to provide access to such facilities.
- ♦ Roads, streets, sidewalks, bicycle paths, and bridge purposes such as:
 - acquisition of rights of way;
 - construction;
 - renovation and improvement, including resurfacing;
 - relocation of utilities;
 - improvement of surface-water drainage; and/or
 - patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for their preservation.
- ♦ Stormwater and drainage capital outlay projects, in conjunction with transportation projects ¹¹⁰.

On November 7, 2017, the TSPLOST 2018 Referendum was approved by Athens-Clarke County voters to fund 19 projects related to transportation purposes¹¹¹. The referendum development follows a process similar to **Exhibit 3-4**, by which multiple Athens-Clarke County stakeholders engage in an iterative process to identify projects included within the program. The Mayor and Commission approved the funding allocation and scheduling of the local improvement projects in December 2017¹¹². Collections for TSPLOST 2018 are anticipated to be completed by late 2022¹¹³. The Mayor and Commission review and approve planning, design, and construction of the TSPLOST projects on an ongoing basis.

In reviewing policies and procedures for competitive source selection, design-build-bid contracting, and SPLOST and TSPLOST program management the following was noted:

- ♦ Bid bond, payment bond, and performance bond requirements imposed by Athens-Clarke County are subject to local¹¹⁴ and state¹¹⁵ regulations. O.C.G.A. requires a bid bond¹¹⁶, performance bond¹¹⁷, and payment bond¹¹⁸ for all construction contracts with a contract value of \$100,000 or greater, whereas ACCGov Purchasing Ordinance grants authority to require such bonds on contracts less than \$100,000. Based on staff comments, it was noted that bond requirements may inhibit small businesses, including M/WBEs, from performing as prime contractors. For contracts less than \$100,000,

¹¹⁰ O.C.G.A. § 48-8-260(4)

¹¹¹ Athens-Clarke County TSPLOST Website, 2022.

¹¹² Athens-Clarke County TSPLOST Website, 2022.

¹¹³ Athens-Clarke County TSPLOST Website, 2022.

¹¹⁴ Athens-Clarke County, Georgia, Code of Ordinances, §1-7-24

¹¹⁵ O.C.G.A. §§ 36-91

¹¹⁶ O.C.G.A. §§ 36-91-50

¹¹⁷ O.C.G.A. §§ 36-91-70

¹¹⁸ O.C.G.A. §§ 36-91-90

ACCGov may accept an alternative to bonds. Firms with difficulty meeting bond requirements would benefit from bonding education and technical assistance.

- ♦ The design-bid-build is the traditional delivery method used by Athens-Clarke County. Under this method, ACCGov hires a design professional using the request for proposal procedure to design the project. After design completion and acceptance, ACCGov then solicits competitive sealed bids for the construction stage of the project. The construction contract would then be awarded to the lowest responsible, responsive bidder.
- ♦ Overall, the construction-related policies reviewed by MGT do not create unnecessary barriers to M/WBEs' participation in construction contracts. Whether competitive sealed bid construction contract or construction management contract, construction projects have the potential to benefit M/WBEs as prime and subcontractors. However, based on staff comments, there are opportunities to strengthen participation by:
 - creating a user-friendly directory of M/WBE firms: this public list would be available to staff and bidders seeking to do business with Athens-Clarke County;
 - facilitating greater awareness regarding opportunities: publicize an annual procurement forecast of anticipated competitive solicitations, including goods and services host-matchmaking events, and co-facilitate workshops with regional partners on topics such as working with government entities, proposal development tips, and bonding and technical assistance;
 - requiring prime contractors to meet project-specific M/WBE goals based on the scope of work and availability of firms or provide good faith effort documentation; and
 - establishing penalties for not reaching committed M/WBE goals or continuing good faith effort to meet the M/WBE goals throughout the contract term.
- ♦ In many of the disparity studies conducted by MGT, prompt payment to subcontractors on construction projects has been a reoccurring issue. The anecdotal research conducted by MGT later in the study will determine whether this is an issue for subcontractors on Athens-Clarke County's construction projects. If this is an issue, it will be important for ACCGov to alleviate the practice of primes not promptly paying subcontractors.

3.4.2 Competitive Sealed Bidding

Competitive sealed bidding is a formal process that applies to any supply, material, or contractual service that exceeds \$49,999¹¹⁹ and is procured by Invitation for Bid (IFB). MGT reviewed four IFBs as shown in **Table 3-3**, all of which were similarly formatted and organized. The competitive sealed bidding process is summarized into 13 steps:

1. Identify the goods or services to be procured that is valued at \$50,000 or more.

¹¹⁹ Athens-Clarke County, Georgia, Code of Ordinances, §1-7-14

2. Draft specifications/scope of work and submit Request for Formal Sealed Solicitation to Purchasing.
3. Establish the procurement schedule and draft bid document for review by Risk Management and using agency.
4. Using agency approves procurement schedule and solicitation document.
5. Advertise the opportunity on the Georgia Procurement Registry.
6. Issue the invitation for bids and provide public notice.
7. Conduct pre-bid conferences, if applicable.
8. Submittal of bids.
9. Receipt of bids.
10. Opening of bids.
11. Evaluation of bids.
12. Bid recommendation form submitted for Purchasing Administrator's approval if less than \$100,000, Manager's approval if \$100,000 or more but less than \$200,000, or added as agenda item for Mayor & Commission approval if \$200,000 or more.
13. Contract awarded and purchase order issued.

MGT's key conclusions and observations are as follows:

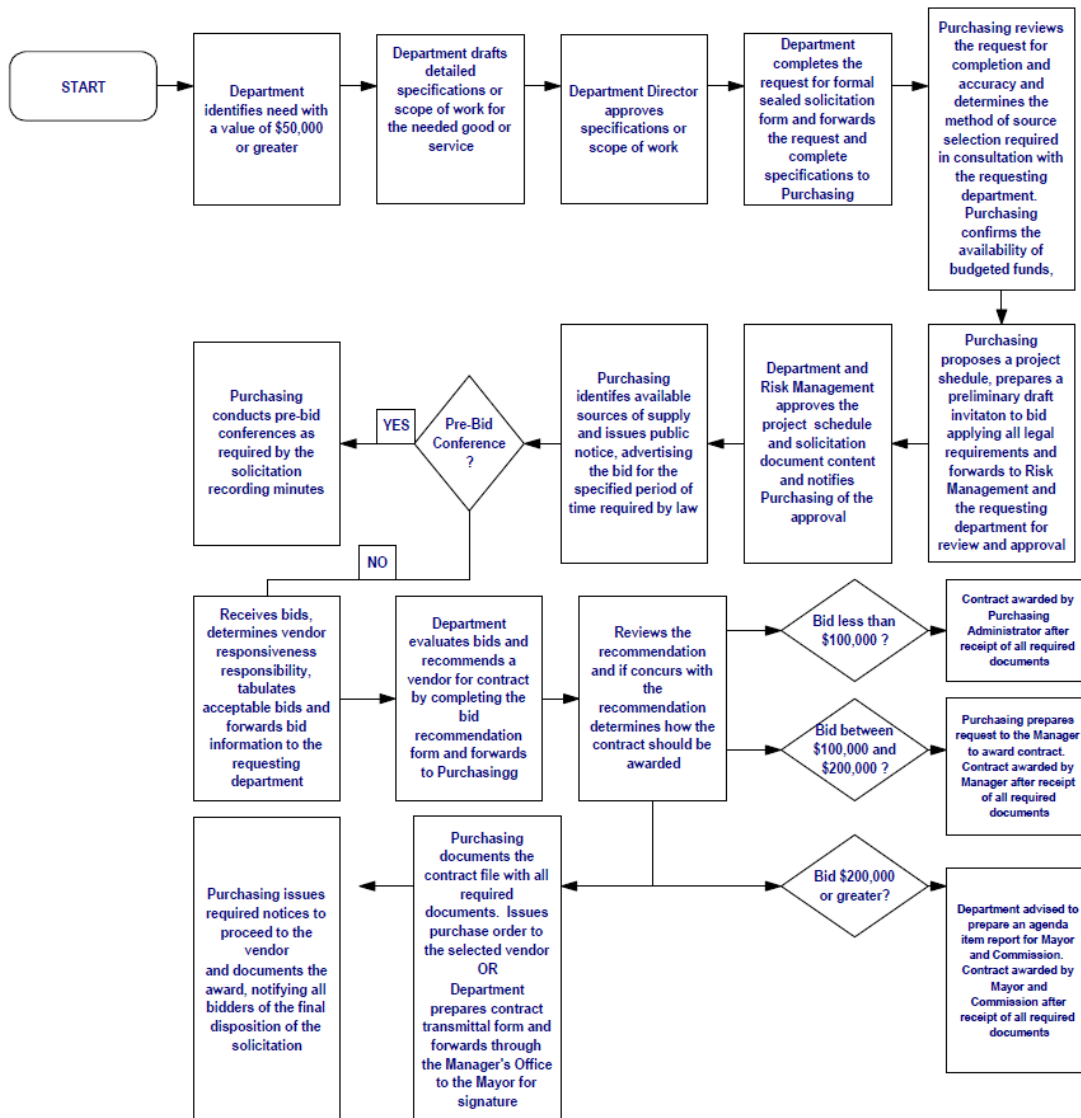
- ◆ **Policies related to competitively sealed bidding are clearly articulated and documented.**
- ◆ Collaboration and coordination between the Purchasing Division and the using agency is critical to ensuring accuracy and clarity regarding bid components and specifications.
- ◆ IFBs are awarded to the lowest responsive and responsible bidder. There may be an opportunity to increase M/WBE participation by allowing M/WBEs to have a higher price when competing for bids which would recognize that the cost of doing business for M/WBE firms is typically higher compared to non-M/WBE firms. Price preferences can act as a means of supporting and growing the local diverse economy. For example, a firm who meets the established criteria (e.g., small, local, or M/WBE) could be given the opportunity to match the lowest responsive and responsible bid of a firm not meeting the established criteria, if within a certain percentage (e.g., 5%).
- ◆ COVID-19 has resulted in adjustments and pivots, which may continue post-COVID-19.

3.4.3 Competitively Sealed Proposals

Competitively sealed proposals are used to procure goods or services with an estimated value of \$50,000 or greater. According to Athens-Clarke County § 1-7-18, the objective of competitively sealed proposals is to award a contract based on the best-qualified proposal and negotiation of reasonable and

fair compensation for services. The sealed proposal is used primarily when specifications cannot be objectively prepared or when procuring professional services for which price is not the primary consideration. Proposal evaluation criteria and each criterion weight are developed by the using agency and in conjunction with the Purchasing Division. MGT reviewed five RFPs in previous **Table 3-3** that were similarly formatted and organized. The process of competitively sealed solicitations is outlined in **Exhibit 3-5**.

EXHIBIT 3-5.
COMPETITIVELY SEALED SOLICITATION PROCESS



Source: Purchasing Procedure Manual, 2021.

3.4.3.1 Professional Services

According to Purchasing Ordinance 1-7-18, professional services “may be required on a project basis, for specific activities or for certain durations of time. Procurement of these services shall be the primary responsibility of the user agency with the assistance of the purchasing division administrator.” Professional services contracts shall be awarded to the best qualified proposal based on the evaluation of the proposals and negotiation of reasonable and fair compensation for services. However, Purchasing Ordinance 1-7-3 specifies that services provided by specific licensed professionals are not required to be subjected to competitive bidding pursuant to State law. Such professionals include practitioners of law, medicine, podiatry, dentistry, optometry, psychology, veterinary medicine, physiotherapy, public accounting and civil, mechanical, hydraulic or electrical engineering, architecture, or professional consultations.

MGT’s key observations include the following:

- ◆ **Policies for competitively sealed proposals for goods, non-professional services, and professional services are clearly spelled out. Based on MGT’s review, key provisions inherent in the policies do not limit or inhibit MBE participation.**
- ◆ Although there is an existing MBE policy that encourages MBE participation, staff are not widely aware of this policy.
- ◆ The manner in which the pre-solicitation phase is executed in terms of development and approval of the requisition, establishing evaluation criteria, and proposal evaluation team is an important step and opportunity to educate staff on the MBE policy.
- ◆ Establishing project-specific M/WBE goals based on the scope of work and availability of firms and incentivizing vendors to meet and/or exceed such goals through proposal evaluation points may be a viable strategy for increasing M/WBE participation on competitively sealed proposals. Sub-contracting goals require prime contractors or suppliers to make a good faith effort to locate M/WBE firms and utilize them as sub-contractors.

3.4.3.2 Competitive Quotations

Competitive quotations are required on any supply, material or contractual service valued between \$1,000 and \$49,999¹²⁰. The informal competitive quote procedure permits the solicitation of written quotes from at least three or more vendors via email, fax, or internet and does not require formal public notice. This process enables using agencies to identify and obtain quotes directly from three eligible vendors. The Department Director or their designee approves the purchase and sends the requisition to the Purchasing Division. The Purchasing Division has final review of the requisition by verifying the accuracy of quote submissions and the eligibility of vendor.

In review of this process, MGT noted that although the MBE policy requires at least one MBE to be solicited for goods or services between \$1,000 and \$49,999, there are questions whether the policy is routinely enforced or monitored. Few staff were aware of the MBE policy and advised that they had no

¹²⁰ Athens-Clarke County, Georgia, Code of Ordinances, §1-7-15

way of knowing if a firm was an MBE unless the solicited firm disclosed this information to them. Contracts funded by the state and federal governments have contract compliance and reporting stipulations for subcontractor participation. Prime contractors were responsible for submitting this information to ACCGov. It is essential to collect this information on all contracts regardless of funding source to track performance measures and evaluate progress toward achieving diversity and inclusion in procurement. MGT's experience has also shown that the absence of such measures and clear mandates can sometimes limit access and participation of minority and women-owned businesses.

3.4.3.3 Small Purchases

Small purchases are defined in Purchasing Ordinance § 1-7-17 as any supply, materials or contractual service which has an estimated cost of less than \$1,000.00. Each such purchase shall be authorized by the head of the using agency. The purchase may be made from any approved vendor recommended by the using agency or, in the absence of such recommendation, from any approved vendor selected by the Purchasing Division Administrator. According to some staff, small purchase practices may result in "habit buying" due to the convenience of using firms who are already familiar with ACCGov's needs and established as vendors. Habit buying is a practice that creates a significant disadvantage to M/WBEs who may otherwise be able to deliver the requested product or service if given the opportunity. A bidder rotation system could serve as an alternative to habit buying by providing an orderly and efficient method of equitably awarding purchases among M/WBEs in procurement categories where there are identified disparities.

3.4.3.4 Emergency Purchases

Athens-Clarke County Code §1-7-23 provides for emergency purchases of supplies, materials, equipment and contractual services without competitively sealed bidding or competitive negotiation. The conditions that warrant emergency purchases typically include the following:

- ◆ Threat to the safety, health, and welfare of the citizens of Athens-Clarke County
- ◆ Undue delay in the delivery of essential services¹²¹

Per the Emergency Purchase Procedure, written justification that an emergency exists must be provided and include the following:

- ◆ A detailed description of the goods or services formalized as specifications or scope of work
- ◆ Explanation of the emergency requiring the good or service
- ◆ Identification of available vendors to supply the emergency good or service (if only one vendor is identified, justification must be provided stating why other vendors are not practical)¹²²

The Purchasing Manual also provides guidance on emergency situations that take place after normal business hours. Department directors are given purchasing authority of up to \$10,000 to alleviate an

¹²¹ Athens-Clarke County, Georgia, Code of Ordinances, §1-7-23

¹²² Purchasing Procedure Manual (Eden Edition), 2021.

emergency. Purchases exceeding this amount must first be approved by the Manager's Office to proceed. All emergency purchases must be reported to the Purchasing Division the following business day. The Purchasing Administrator reserves the right to approve or not approve emergency purchases. In such instances that an emergency purchase is not approved, the using agency must cancel the procurement. During COVID-19, emergency purchases were frequent, and staff commented on the flexibility to leverage this particular policy.

MGT's review concluded that the policies for the source selection methods described above provide ample guidance and are also embedded in the solicitations in Table 3-3. Overall, MGT found source selection policies and procedures to be comprehensive and helpful in guiding the procurement process.

3.5 Business Diversity and Inclusion

In 1994, the Minority Business Enterprise Program was implemented to identify, certify, and encourage MBE firms to participate in every aspect of ACCGov's procurement activity¹²³. The program principles promote joint ventures in which MBE firms are meaningful and contributing participants, encourage prime vendors to partner with MBE firms as subcontractors or suppliers, and allow fair competition to ensure the best value is received for products and services.

The MBE Program has five key objectives:

1. Direct the development of government procurement activities to provide for MBE participation as contractors, subcontractors, and suppliers.
2. Identify and eliminate whenever possible barriers that prevent full participation of MBEs.
3. Conduct an MBE outreach and referral program.
4. Assist the Department of Human and Economic Development with the provision of technical assistance and training programs for MBE and small businesses.
5. Monitor the progress of this program and make annual reports to the Mayor and Commission and the Manager on the results of the program.

3.5.1.1 Policy Statement

It is the policy of the Athens-Clarke County that no person or business shall be excluded from participation, denied the benefits of, or otherwise discriminated against in relation to the award and performance of any contract or subcontract on the grounds of race, color, creed, national origin, age, or sex¹²⁴.

¹²³ Purchasing Procedure Manual (Eden Edition), 2021.

¹²⁴ Athens-Clarke County Minority Business Enterprise Policy, 7/3/2006 Revision.

3.5.1.2 Program Certification

The MBE program is designed to “benefit firms legitimately owned and operated by minorities”¹²⁵. Firms may self-identify as an MBE upon registering as a vendor with Athens-Clarke County. In accordance with the MBE Policy, ACCGov will require proof of certification to authenticate MBE status. Athens-Clarke County recognizes MBE certification from several agencies, including U.S. Department of Transportation (U.S. DOT), the Small Business Administration (SBA), State of Georgia, Georgia Minority Supplier Development Council, or other certifying local governments. The purpose of self-certification is to identify MBEs for the purpose of soliciting price quotations, sealed bids, or request for proposals. MBE firms are responsible for providing updated information regarding changes that may impact program eligibility.

3.5.1.3 Program Responsibilities

The Manager of Athens-Clarke County has the general responsibility for implementing the MBE policy and the Finance Director and the Purchasing Administrator, under the direction of the Manager, are responsible for the day-to-day development, management, and implementation of the MBE Program.

Per Mayor and Commission directive and with the direction and input from the Attorney’s Office and Inclusion Office, the Procurement Division created the Community Business Procurement Coordinator role to aid in executing program objectives. Jointly, the Purchasing Administrator and Community Business Procurement Coordinator, are responsible for the following:

- ◆ Coordinating with officials of Federal and State agencies, local minority business development organizations, and other minority contractor associations in the furtherance of efforts to encourage MBE participation.
- ◆ Serving as a liaison officer with MBE associations, business development centers, and trade organizations.
- ◆ Maintaining statistical information about Athens-Clarke County procurement activities; holding seminars or workshops periodically to acquaint the MBE Community with appropriate procurement and contracting information.
- ◆ Preparing and distributing printed materials containing detailed instructions and procedures for bidding; making special efforts to publicize and advertise bid opportunities via MBE-oriented media.
- ◆ Identifying potential contracts for MBE participation consistent with federal guidelines.
- ◆ To the extent economically, legally, and logistically possible, dividing large contracts into smaller components to facilitate MBE participation.
- ◆ Waiving bid bond requirements whenever uniformly possible to increase participation. Performance and/or payment bonds may be required to meet contract needs.
- ◆ Providing quarterly program reports to the Manager.

¹²⁵ Athens-Clarke County Minority Business Enterprise Policy, 7/3/2006 Revision.

- ◆ Reporting annually to the Mayor and Commission about the operations of the MBE Program.

At the time of this review, the Community Business Procurement Coordinator position is among one of the Purchasing Division's vacancies. The Purchasing Division has faced various challenges in fulfilling this role due to the Public Health Emergency associated with COVID-19. Recognizing the importance of the MBE Program, Athens-Clarke County actively seeks ways to fulfill the position and execute program objectives.

3.6 Conclusions

MGT's policy review focused on procurement policies, procedures, and practices to increase participation of MBEs. MGT's review shows that Athens-Clarke County has detailed policies and procedures that govern all aspects of procurement. Based on MGT's review, policy source documents provide ample guidance to department end users and suppliers seeking procurement opportunities. MGT's policy review did not uncover any inherent or built-in barriers that intentionally restrain or constrain suppliers from participating in procurement opportunities. ACCGov has policies in place to facilitate opportunities for MBEs to engage in procurement and contracting activities. Several opportunities exist to further enhance the M/WBE Program and potentially expand the program, as feasible, based on Study results. These opportunities include the use of various methods to achieve increased participation by M/WBE firms through vendor rotation, establishing subcontractor project goals and aspirational MWBE goals, and using enhanced data tracking and public outreach.

In summary, the review conducted by MGT underscores the importance of recognizing that increasing equity and inclusion contracting opportunities must be an organization-wide responsibility and not solely the responsibility of the Purchasing Division. The extent to which Athens-Clarke County increases the participation of M/WBEs will be determined by the results of county-wide efforts and departments working collaboratively to increase awareness, interest, and participation in ACCGov contracting and procurement. As such, the following should be considered to realize the ACCGov's goal of increasing equity and inclusion opportunities:

- ◆ **Opportunity Creation:** Provide adequate staffing and technological resources to operationalize all components of the MBE Program Policy and monitor M/WBE growth and development through key performance metrics.
- ◆ **Building Capacity:** Execute intentional, coordinated efforts between ACCGov departments and regional partners to strengthen the operational capacity of M/WBEs to perform as prime and subcontractors.
- ◆ **Diversity Compliance:** Ensure the mechanisms and staffing resources are in place to increase the participation of M/WBEs through consistent and effective compliance. Compliance should be measured throughout the entire source-to-pay cycle including project-specific goal setting, bid evaluation, and contractor performance monitoring.

To fully execute on the above in a deliberate and impactful manner, consideration of the following may be helpful:

- ◆ Ensuring that the Purchasing Division is adequately staffed and resourced

- ♦ Mandating that ACCGov departments make progress toward meeting annual M/WBE goals and that departments provide documentation of their efforts to meet goals
- ♦ Determining whether unconscious bias training or related training be mandated for staff who directly impact the participation of M/WBEs in ACCGov contracts
- ♦ Utilizing techniques, such as bidder rotation, bid evaluation, or price preference/match, to facilitate opportunities for M/WBE firms to compete as prime contractors or subcontractors

4 Market Area, Product Market, and Availability Analyses

4.1 Introduction

This chapter presents the results of MGT Consulting's (MGT) analyses of the overall market, relevant geographic market area, product market, and estimates of availability analyses. The data and specific procurement categories analyzed were Construction, Architecture and Engineering, Professional Services, Other Services, and Goods.

Chapter Sections	
4.1	Introduction
4.2	Data Collection and Management
4.3	Market Area Analysis
4.4	Availability Analysis

The relevant geographic market area is essential to establishing the universe of available vendors that will be considered in identification of any disparate treatment of assorted classifications of firms. Availability is a measure of the numbers and proportions of vendors willing and able to work with Athens-Clarke County. The product market details the total spending during the study period by the type of purchases. The product market analysis details spending by the specific NAICS codes associated with payment transactions analyzed for the study. The product market analysis will also assist Athens-Clarke County with assessing targeted outreach and engagement of M/WBE firms based on the purchases with greater spending. The NAICS codes in the product market align with the NAICS codes with the M/WBE availability estimates.

4.2 Data Collection and Management

MGT staff compiled and reconciled electronic data provided by Athens-Clarke County to develop a master dataset of prime and subcontractor contract data into a Master Utilization Database to support the needs of the Study. MGT utilized Athens-Clarke County's financial data as the source of prime data and a portion of the subcontractor data that was combined with the subcontractor data collected via a survey of the primes. Based on a common contract ID across both data sets, MGT merged the subcontractor data with the prime data to create the Master Utilization Database.

4.2.1 Study Period

The preliminary market area analysis is based on payment transactions for July 1, 2017 – June 30, 2021.

4.2.2 Procurement Categories and Exclusions

MGT analyzed the procurement categories competitively bid by Athens-Clarke County, encompassing five sectors: Construction, Architecture and Engineering, Professional Services, Other Services, and Goods. These procurement categories are defined as:

- ♦ **Construction:** Services provided for the construction, renovation, rehabilitation, repair, alteration, improvement, demolition, and excavation of physical structures, excluding the performance of routine maintenance.

- ♦ **Architecture & Engineering:** A class of services specifically related to the preparation of plans and specifications for Construction projects.
- ♦ **Professional Services:** Services that require the provider to possess specialized skills, including the holding of advanced degrees and exercises independent judgment.
- ♦ **Other Services:** Services that do not typically require a provider to have experience in a specialized field or hold an advanced degree.
- ♦ **Goods:** This category includes all purchases of physical items, including but not limited to equipment and materials, excluding land or a permanent interest in land.

The preparation of the Master Utilization Database involved reviewing each transaction during the study period and identifying transactions that are not included in the total spend. The types of transactions that were excluded from the overall analysis were:

- ♦ Transactions outside of the study period.
- ♦ Transactions associated with non-procurement activities, for example:
 - Administrative items, such as utility payments, leases for real estate, or insurance.
 - Salary and fringe benefits, training, parking, or conference fees.
 - Reimbursements for overpayment to citizens.
 - Sponsorships, donations, and memberships to organizations.
- ♦ Transactions associated with nonprofit organizations and governmental agencies.

4.3 Analysis and Identification of Product Market

Based on the major categories and description of work on each contract, MGT assigned North American Industry Classification System (NAICS) codes to each of the payments for both primes and subcontractors. MGT assigned both NAICS code industry groups (4-digit level) and NAICS code industries (6-digit level). **Table 4-1** through **Table 4-5** show the payments and their associated weights for Construction, Architecture and Engineering, Professional Services, Other Services, and Goods. **Appendix A** shows the NAICS code industries (6-digit level) for the five procurement categories.

Table 4-1 shows that for Construction, the top five NAICS codes make up 31 percent (\$125,332,733) of the total utilization and are distributed among the industry groups 2362, 2371, 2389, and 2382.

TABLE 4-1. SUMMARY OF DOLLARS,
TOP 5 NAICS CODES,
CONSTRUCTION

NAICS CODE	NAICS CODE DESCRIPTION	AMOUNT PAID
236220	Commercial and Institutional Building Construction	\$ 68,918,000
237110	Water and Sewer Line and Related Structures Construction	\$ 23,125,560
237310	Highway, Street, and Bridge Construction	\$ 23,024,995
238990	All Other Specialty Trade Contractors	\$ 5,316,402
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$ 4,947,776

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Table 4-2 shows that for Architecture and Engineering, the top five NAICS codes make up 1 percent (\$5,290,987) of the total utilization is distributed among the industry group 5413.

TABLE 4-2. SUMMARY OF DOLLARS,
TOP 5 NAICS CODES,
ARCHITECTURE & ENGINEERING

NAICS CODE	NAICS CODE DESCRIPTION	AMOUNT PAID
541340	Drafting Services	\$ 2,514,611
541310	Architectural Services	\$ 2,282,589
541370	Surveying and Mapping (except Geophysical) Services	\$ 292,542
541360	Geophysical Surveying and Mapping Services	\$ 197,175
541320	Landscape Architectural Services	\$ 4,041

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Table 4-3 shows that for Professional Services, the top five NAICS codes make up 22 percent (\$91,110,496) of the total utilization and are distributed among the industry groups 2371, 5312, 5411, and 5413.

TABLE 4-3. SUMMARY OF DOLLARS,
TOP 5 NAICS CODES,
PROFESSIONAL SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	AMOUNT PAID
531210	Offices of Real Estate Agents and Brokers	\$ 44,869,476
541330	Engineering Services	\$ 28,036,408
624230	Emergency and Other Relief Services	\$ 10,317,636
237110	Water and Sewer Line and Related Structures Construction	\$ 4,340,234
541110	Offices of Lawyers	\$ 3,546,743

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Table 4-4 shows that for Other Services, the top five NAICS codes make up 7 percent (\$26,851,882) of the total utilization and are distributed among the industry groups 2213, 5182, 5622, 8111, and 8113.

TABLE 4-4. SUMMARY OF DOLLARS,
TOP 5 NAICS CODES,
OTHER SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	AMOUNT PAID
221310	Water Supply and Irrigation Systems	\$ 10,699,193
811111	General Automotive Repair	\$ 6,988,390
562212	Solid Waste Landfill	\$ 3,623,053
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$ 2,796,259
518210	Data Processing, Hosting, and Related Services	\$ 2,744,987

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Table 4-5 shows that for Goods, the top five NAICS codes make up 11 percent (\$44,527,775) of the total utilization and are distributed among the industry groups 4411, 4413, 4234, 4238, and 4543.

TABLE 4-5. SUMMARY OF DOLLARS,
TOP 5 NAICS CODES,
GOODS

NAICS CODE	NAICS CODE DESCRIPTION	AMOUNT PAID
441310	Automotive Parts and Accessories Stores	\$ 16,406,842
454310	Fuel Dealers	\$ 9,402,216
441110	New Car Dealers	\$ 7,737,684
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$ 6,267,256
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$ 4,713,778

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

4.4 Market Area Analysis

As prescribed by *Croson* and subsequent cases, a disparity study requires the definition of a market area to ensure that a relevant pool of vendors is considered in analyzing the availability of firms. If these boundaries are stretched too far, the universe of vendors becomes diluted with firms with no interest or history in working with the governmental entity, and thus their demographics and experiences have little relevance to actual contracting activity or policy. On the other hand, a boundary set too narrowly risks the opposite circumstance of excluding a high proportion of firms who have contracted with, or bid for work with, the governmental entity, and thus may also skew the prospective analyses of disparity. To conduct the market area analysis MGT identified the county and state of each firm that remained in the Master Utilization Database in which Athens-Clarke County awarded contracts.

4.4.1 Methodology

Based on *Croson* guidelines, Athens-Clarke County should include in its relevant market area the geographic areas in which the firms are located that identify the majority of Athens-Clarke County's purchases. MGT recommends using counties located within the Atlanta-Athens-Clarke County--Sandy Springs, GA-AL Combined Statistical Area (CSA) as the geographic unit of measurement by which the relevant market area is established. The choice of counties as the unit of measurement is based on the following: 1) the courts have accepted counties as a standard geographical unit of analysis in conducting equal employment and disparity analyses; 2) county boundaries are externally determined and, hence, are free from any researcher bias that might result from any arbitrary determinations of boundaries of geographical units of analysis; and 3) U.S. Census data and other federal and county data are routinely collected and reported using county boundaries. The following presents the methodology used to determine the overall market area and relevant market area.

Athens-Clarke County Relevant Market Area

Barrow County, GA	Jasper County, GA
Butts County, GA	Lamar County, GA
Carroll County, GA	Madison County, GA
Cherokee County, GA	Meriwether County, GA
Clarke County, GA	Morgan County, GA
Clayton County, GA	Newton County, GA
Cobb County, GA	Oconee County, GA
Coweta County, GA	Oglethorpe County, GA
Dawson County, GA	Paulding County, GA
Dekalb County, GA	Pickens County, GA
Douglas County, GA	Pike County, GA
Fayette County, GA	Rockdale County, GA
Forsyth County, GA	Spalding County, GA
Fulton County, GA	Walton County, GA
Gwinnett County, GA	
Haralson County, GA	
Henry County, GA	

♦ **Overall Market Area.** To determine the full extent of the market area in which Athens-Clarke County utilized firms, MGT staff determined the geographic locations of utilized vendors by their county jurisdictions. The overall market area presents the total dollars awarded for each procurement category included within the scope of the study. The overall market area results by procurement category are presented in **Section 4.3.2** of this chapter.

♦ **Relevant Geographic Market Area.** Once the overall market area was established, the relevant market area was determined by examining geographic areas from which the majority of its purchases are procured. Based on the results of the market area analysis conducted for each business category, the recommended relevant market area are the 31 counties within the Atlanta-Athens-Clarke County--Sandy Springs, GA-AL CSA.

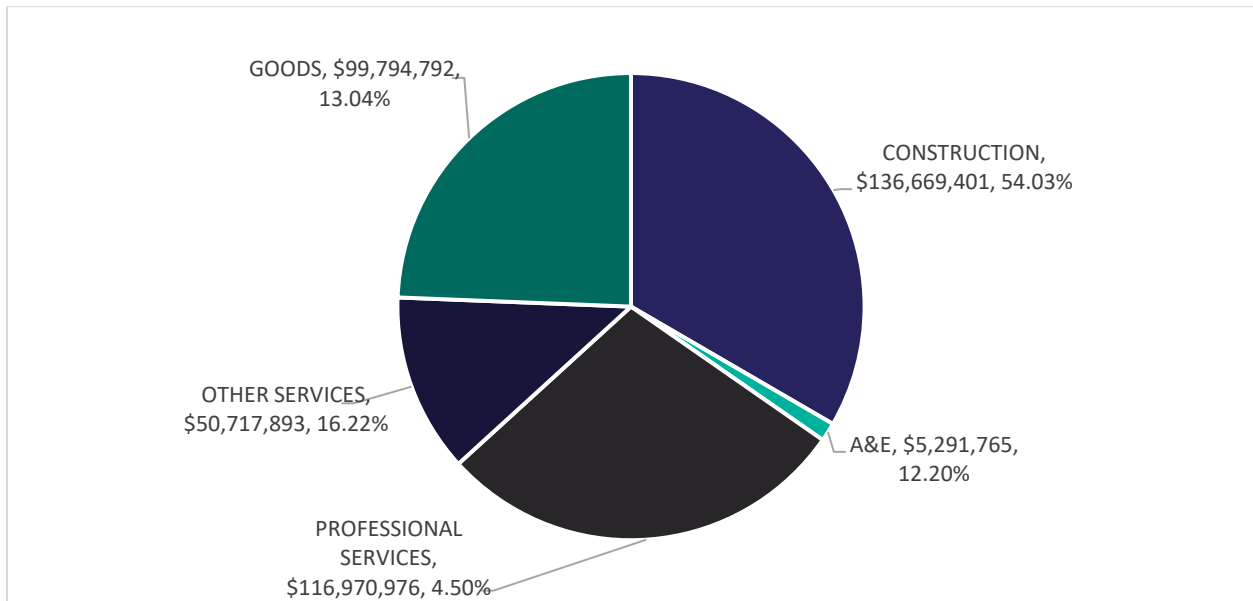
The dollars paid were summarized by county according to the location of each firm and by the services they provided to Athens-Clarke County: Construction, Architecture and Engineering, Professional Services, Other Services, and Goods. Corresponding market area analyses showing the dollars awarded by county within each procurement category are presented in **Appendix A, Market Area Analysis**.

4.4.2 Analysis and Identification and Relevant Market Area

As described in the preceding section, an overall market area was first established to account for all relevant Athens-Clarke County payments, after which more specific regions were analyzed to arrive at a relevant geographic market area to support the goals of the study.

Figure 4-1 illustrates the spending for each procurement category and the percentage of spend out of the \$409,444,826 paid to firms located within the overall market area between July 1, 2017 – June 30, 2021.

FIGURE 4-1. SUMMARY OF DOLLARS,
TOTAL CONTRACTS (PAID) BY PROCUREMENT CATEGORY,
OVERALL MARKET AREA



Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Narrowing the geographic scope, **Table 4-6** shows that firms located within the relevant geographic market area accounted for 73 percent of spend across all procurement categories. When broken down by procurement categories, firms located within the relevant market area accounted for:

- ♦ 88.5 percent of the dollars awarded in Construction;
- ♦ 45.7 percent of the dollars awarded in Architecture & Engineering;
- ♦ 70.7 percent of the dollars awarded in Professional Services; and
- ♦ 75.2 percent of the dollars awarded in Other Services.
- ♦ 56.2 percent of the dollars awarded in Goods

TABLE 4-6. SUMMARY OF DOLLARS,
TOTAL CONTRACTS (PAID) BY PROCUREMENT CATEGORY,
INSIDE AND OUTSIDE OF THE MARKET AREA

CONSTRUCTION	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 120,979,358	88.52%
Outside MARKET AREA	\$ 15,690,043	11.48%
CONSTRUCTION, TOTAL	\$ 136,669,401	100.00%
ARCHITECTURE & ENGINEERING	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 2,418,204	45.70%
Outside MARKET AREA	\$ 2,873,561	54.30%
ARCHITECTURE & ENGINEERING, TOTAL	\$ 5,291,765	100.00%
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 82,737,239	70.73%
Outside MARKET AREA	\$ 34,233,737	29.27%
PROFESSIONAL SERVICES, TOTAL	\$ 116,970,976	100.00%
GOODS	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 56,131,555	56.25%
Outside MARKET AREA	\$ 43,663,237	43.75%
GOODS, TOTAL	\$ 99,794,792	100.00%
OTHER SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 38,175,717	75.27%
Outside MARKET AREA	\$ 12,542,176	24.73%
OTHER SERVICES, TOTAL	\$ 50,717,893	100.00%
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 300,442,073	73.38%
Outside MARKET AREA	\$ 109,002,753	26.62%
ALL BUSINESS CATEGORIES, TOTAL	\$ 409,444,826	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017 – June 30, 2021.

Corresponding market area analyses showing the dollars awarded by the county for each procurement category are presented in **Appendix A**.

4.4.3 Market Area Conclusions

Based on the market area analyses of Athens-Clarke County's procurement activity, it was determined that the 31 counties in the Atlanta-Athens-Clarke County--Sandy Springs, GA-AL Combined Statistical Area should be used as the relevant geographic market area. This 31-County Market Area represents a majority of Athens-Clarke County's procurement activity, with 73.3 percent of the payments to vendors located within this relevant market area. Individually, all the categories represent a majority of Athens-Clarke County's procurement activity within the corresponding categories except Architecture &

Engineering, which equals 45.7 percent of the spend within the relevant geographic market area. Construction has the highest spending in the market area with 88.5 percent of payments. The definition of the relevant geographic market area allows for detailed examinations of contracting activity with local vendors. The following section describes the results of this availability analysis for Athens-Clarke County.

4.5 Availability Estimations

Included in the sections that follow are descriptions of the approach and methodology used by MGT to estimate availability followed by the results of the data collection and estimation process.

4.5.1 Availability Methodology

As noted in **Chapter 2**, the Supreme Court stated in *Croson* that,

“Where there is a significant statistical disparity between the number of qualified minority 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.”

Availability is defined by courts as whether a firm is **willing and able** to work with the agency in question, as a method of constructing the universe of firms that might be considered in that agency’s procurement activities. Due to the statistical limitations of deriving a vendor’s ability, MGT will concentrate on the willingness of the vendors and not adjust availability due to capacity.

- ♦ **Willing** is reasonably presumed via the vendors’ active pursuit of registration to work with any public (government) agency, which drives the scope of identification for the sources of available firms considered.
- ♦ **Able**, or capability to perform work, is more loosely defined due to two obscuring factors: (1) the scalable nature of firms, who may reasonably add capacity to handle jobs beyond previous performance, and (2) the inherent concern that discrimination may have influenced the historic or existing scale of operation of the firms within the market. Therefore, the only confining measure of “ability” used to cull the universe of available vendors is that they have some presence within the defined market area.

Thus, a reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the scope of examination is an element in the determination of disparity. Post-*Croson* case law has not prescribed a single, particular approach to deriving vendor availability, and agencies have used a variety of means to estimate pools of available vendors that have withstood legal scrutiny; however, among the array of methods utilized, what is known as a “custom census” has received favorable endorsement. A custom census is characterized as a survey of a representative sample of firms offering the procured goods and services within an organization’s relevant market area to determine an estimate of the prospective *universe* of vendors.

MGT’s data assessment and evaluation of alternative methods for measuring the number of firms and the types and classifications available to work with Athens-Clarke County confirmed that a version of a custom census of firms in the relevant market area would provide the most accurate representation of

available firms. The custom census approach used by MGT in this instance required development of representative samples of firms within each of the four procurement categories identified for the study, each of which had to cover the defined 31-county geographic boundaries of the relevant market area.

First, an intensive examination of Athens-Clarke County's procurements was required to define the appropriate characteristics of the universe of prospective vendors, in terms of the types of goods and services offered. Athens-Clarke County procurements were assigned North American Industry Classification System (NAICS) codes that Dun & Bradstreet uses to classify firms' primary lines of business. These industry selections were then used to establish weighting criteria to be used in random selections of vendors to be surveyed. Target response thresholds were established for each industry subsector to ensure a 95 percent confidence interval and +/-5 percent margin of error for findings. Second, a survey was designed and administered to sampled firms by telephone and email to (1) determine and/or validate the race, ethnicity, and gender of ownership, as well as (2) to elicit these representative firms' interest in working with Athens-Clarke County.

Results of the survey were then extrapolated to the full scale of the applicable universe to arrive at an estimation of available firms by ethnicity/gender classification and procurement category.

4.5.2 Availability Analysis

Following the methodology prescribed in the previous section, MGT derived estimates for the proportions of available firms for the racial, ethnic, and gender ownership classes and five defined procurement categories. Corresponding detailed analyses showing the availability of firms by race, ethnicity, and gender are presented in [Appendix B](#).

Table 4-7 presents availability estimates spanning all procurement categories, in aggregate. MGT observed that:

- ♦ African American firms represented 6.76 percent of available vendors;
- ♦ Asian American firms represented 0.83 percent of available vendors;
- ♦ Hispanic American firms represented 1.39 percent of available vendors;
- ♦ Native American firms represented 0.48 percent of available vendors;
- ♦ Nonminority Women firms represented 9.34 percent of available vendors; and
- ♦ M/WBE firms represented 18.80 percent of available vendors.

TABLE 4-7.
ESTIMATION OF AVAILABLE FIRMS, **ALL PROCUREMENT CATEGORIES**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	6.76%
ASIAN AMERICAN FIRMS	0.83%
HISPANIC AMERICAN FIRMS	1.39%
NATIVE AMERICAN FIRMS	0.48%
NONMINORITY WOMEN FIRMS	9.34%
TOTAL M/WBE FIRMS	18.80%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

Within the **Construction** category (Table 4-8), availability estimates are as follows:

- ♦ African American firms represented 9.68 percent of available vendors;
- ♦ Asian American firms represented 0.21 percent of available vendors;
- ♦ Hispanic American firms represented 2.66 percent of available vendors;
- ♦ Native American firms represented 0.92 percent of available vendors;
- ♦ Nonminority Women firms represented 14.58 percent of available vendors; and
- ♦ M/WBE firms represented 28.06 percent of available vendors.

TABLE 4-8.
ESTIMATION OF AVAILABLE FIRMS, **CONSTRUCTION**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	9.68%
ASIAN AMERICAN FIRMS	0.21%
HISPANIC AMERICAN FIRMS	2.66%
NATIVE AMERICAN FIRMS	0.92%
NONMINORITY WOMEN FIRMS	14.58%
TOTAL M/WBE FIRMS	28.06%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

In the **Architecture & Engineering** category, we observe the following availability proportions (Table 4-9):

- ♦ African American firms represented 5.78 percent of available vendors;
- ♦ Asian American firms represented 2.78 percent of available vendors;
- ♦ Hispanic American firms represented 1.69 percent of available vendors;
- ♦ Native American firms represented 0.00 percent of available vendors;
- ♦ Nonminority Women firms represented 13.44 percent of available vendors; and
- ♦ M/WBE firms represented 23.69 percent of available vendors.

TABLE 4-9.
ESTIMATION OF AVAILABLE FIRMS, **ARCHITECTURE & ENGINEERING**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	5.78%
ASIAN AMERICAN FIRMS	2.78%
HISPANIC AMERICAN FIRMS	1.69%
NATIVE AMERICAN FIRMS	0.00%
NONMINORITY WOMEN FIRMS	13.44%
TOTAL M/WBE FIRMS	23.69%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

In **Professional Services** (Table 4-10), availability estimates were as follows:

- ♦ African American firms represented 7.32 percent of available vendors;
- ♦ Asian American firms represented 2.07 percent of available vendors;
- ♦ Hispanic American firms represented 0.64 percent of available vendors;
- ♦ Native American firms represented 0.23 percent of available vendors;
- ♦ Nonminority Women firms represented 8.04 percent of available vendors; and
- ♦ M/WBE firms represented 18.67 percent of available vendors.

TABLE 4-10.
ESTIMATION OF AVAILABLE FIRMS, **PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	7.32%
ASIAN AMERICAN FIRMS	2.07%
HISPANIC AMERICAN FIRMS	0.64%
NATIVE AMERICAN FIRMS	0.23%
NONMINORITY WOMEN FIRMS	8.04%
TOTAL M/WBE FIRMS	18.67%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

In **Other Services (Table 4-11)**, availability estimates were as follows:

- ♦ African American firms represented 8.50 percent of available vendors;
- ♦ Asian American firms represented 1.06 percent of available vendors;
- ♦ Hispanic American firms represented 2.33 percent of available vendors;
- ♦ Native American firms represented 0.85 percent of available vendors;
- ♦ Nonminority Women firms represented 9.16 percent of available vendors; and
- ♦ M/WBE firms represented 21.90 percent of available vendors.

TABLE 4-11.
ESTIMATION OF AVAILABLE FIRMS, **OTHER SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	8.50%
ASIAN AMERICAN FIRMS	1.06%
HISPANIC AMERICAN FIRMS	2.33%
NATIVE AMERICAN FIRMS	0.85%
NONMINORITY WOMEN FIRMS	9.16%
TOTAL M/WBE FIRMS	21.90%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

Finally, in the **Goods (Table 4-12)**, availability estimates consisted of:

- ♦ African American firms represented 1.29 percent of available vendors;
- ♦ Asian American firms represented 0.01 percent of available vendors;
- ♦ Hispanic American firms represented 0.02 percent of available vendors;
- ♦ Native American firms represented 0.00 percent of available vendors;
- ♦ Nonminority Woman firms represented 3.13 percent of available vendors; and
- ♦ M/WBE firms represented 4.44 percent of available vendors.

TABLE 4-12.
ESTIMATION OF AVAILABLE FIRMS, **GOODS**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	1.29%
ASIAN AMERICAN FIRMS	0.01%
HISPANIC AMERICAN FIRMS	0.02%
NATIVE AMERICAN FIRMS	0.00%
NONMINORITY WOMEN FIRMS	3.13%
TOTAL M/WBE FIRMS	4.44%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

5 Utilization and Disparity Analyses

5.1 Introduction

This chapter presents the results of MGT’s analyses regarding **utilization** and **disparity**. Utilization data are central to defining the market area for consideration and for examining within that market area to assess assorted levels of contracting activity as the first step in the quantitative determination of disparity, while disparity is an observed statistically significant difference between the utilization of minority- and women-owned firms relative to their respective availability (as discussed in **Chapter 4**). Consistent with prior chapters, this analysis focuses on procurements in the categories of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods sectors between July 1, 2017 – June 30, 2021.

Chapter Sections	
5.1	Introduction
5.2	Utilization Analysis
5.3	Disparity Analyses and Significance Testing
5.4	Conclusions

In this chapter, MGT sought to answer the following research question: *Are there disparities between the availability and utilization of M/WBE primes and subcontractors?*

Disparity between the utilization and availability of M/WBE was determined in Athens-Clarke County spending during the study period. The details of the identified disparity are discussed further in this chapter.

If disparity is found, the second research question is as follows: *If so, what is the cause of the disparity? Is there other evidence that supports and/or explains why there is disparity?* This can be answered in **Chapter 6, Private Sector and Nongoal Analysis**, and **Chapter 7, Anecdotal Analysis**.

5.2 Utilization Analysis

The utilization analysis presents a summary of payments within the scope of the study and an initial assessment of the effectiveness of initiatives in promoting the inclusion of M/WBEs in Athens-Clarke County’s contracting and procurement activities.

The utilization analysis is based on data prepared in the Master Utilization Database, as described in the preceding sections of this chapter. The payments data included within this analysis encompass both (1) total dollars paid to primes located within the overall market area (excluding all subcontracting payments), and (2) dollars allocated to subcontractors located within the market area, independent of their respective prime contractor location. Analysis of these data is broken down by the procurement categories of Construction, Architecture and Engineering, Professional Services, Other Services, and Goods that encompass payments between July 1, 2017 – June 30, 2021.

5.2.1 Classification of Firms

Firms included in the utilization analysis have been assigned to business owner classifications according to the definitions provided below.¹²⁶

- ♦ **M/WBE Firms.** In this study, businesses classified as minority- and women-owned firms (M/WBE) are firms that are at least 51 percent owned and controlled by members of one of five groups: African Americans, Asian Americans, Hispanic Americans, Native Americans, or nonminority women. These groups were defined according to the United States (U.S.) Census Bureau as follows:
 - **African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups of Africa.
 - **Asian Americans:** U.S. citizens or lawfully admitted permanent residents who originate from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
 - **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins regardless of race.
 - **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
 - **Nonminority Woman:** U.S. citizens or lawfully admitted permanent residents who are non-Hispanic white females. Minority females were included in their respective minority categories.
 - Minority female- and male-owned firms were classified and assigned to their corresponding minority groups. For example, a Hispanic American female- or Hispanic American male-owned firm was assigned to the Hispanic American-owned firm minority group.
- ♦ **Non-M/WBE Firms.** Firms that were identified as nonminority male or majority-owned were classified as non-M/WBE firms. If there was no indication of business ownership, these firms were also classified as non-M/WBE firms.

5.2.2 Overall Utilization

Table 5-1 shows the M/WBE utilization amounted to 1.01 percent of total payments. Spending with Nonminority Women at 0.57 percent was the largest percentage of spending among the M/WBE groups, followed by Hispanic American firms at 0.39 percent. Corresponding detailed analyses showing the utilization of firms by business ownership classification are presented in **Appendix C**.

¹²⁶ Business ownership classification was based on the race, ethnicity, and gender classification of the owner during the study period.

TABLE 5-1. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL PROCUREMENT CATEGORIES	
	Dollars (\$)	Percent (%)
African Americans	\$214,440.00	0.05%
Asian American	\$0.00	0.00%
Hispanic Americans	\$1,596,377.32	0.39%
Native Americans	\$0.00	0.00%
Total MBE Firms	\$1,810,817.32	0.44%
Nonminority Women	\$2,328,939.07	0.57%
Total M/WBE Firms	\$4,139,756.39	1.01%
Non-M/WBE Firms	\$405,305,069.75	98.99%
TOTAL	\$409,444,826.14	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

5.2.3 Utilization by Procurement Category

The next series of tables shows the summary results of MGT's utilization analysis of each procurement category. Corresponding detailed analyses showing the utilization of firms by business ownership classification for each procurement category are presented in **Appendix C**.

Beginning with an examination of **Construction**, **Table 5.2** shows the utilization of M/WBE firms was 2.11 percent. Hispanic American firms represent the largest MBE classification with 1.08 percent. Comparing M/WBEs together, Hispanic Americans and Nonminority female firms are the two largest classifications. Otherwise, utilization for specific classifications was:

- ♦ 0.16 percent for African American firms;
- ♦ 0.00 percent for Asian American firms;
- ♦ 1.08 percent for Hispanic American firms;
- ♦ 0.00 percent for Native American firms;
- ♦ 0.87 percent for Nonminority female firms

TABLE 5-2. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
CONSTRUCTION

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION	
	Dollars (\$)	Percent (%)
African Americans	\$214,440.00	0.16%
Asian American	\$0.00	0.00%
Hispanic Americans	\$1,477,894.42	1.08%
Native Americans	\$0.00	0.00%
Nonminority Females	\$1,188,710.30	0.87%
Total M/WBE Firms	\$2,881,044.72	2.11%
Non-M/WBE Firms	\$133,788,356.37	97.89%
TOTAL	\$136,669,401.09	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

Table 5-3 shows there was no utilization of M/WBE firms in **Architecture & Engineering**.

TABLE 5-3. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
ARCHITECTURE & ENGINEERING

BUSINESS OWNERSHIP CLASSIFICATION	ARCHITECTURE & ENGINEERING	
	Dollars (\$)	Percent (%)
African Americans	\$0.00	0.00%
Asian American	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%
Native Americans	\$0.00	0.00%
Nonminority Women	\$0.00	0.00%
Total M/WBE Firms	\$0.00	0.00%
Non-M/WBE Firms	\$5,291,764.53	100.00%
TOTAL	\$5,291,764.53	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

Table 5-4 shows the utilization of M/WBE firms was 0.11 percent in **Professional Services**. Hispanic American and Nonminority Women firms represent the two largest categories across all M/WBEs with 0.10 percent and 0.01 percent, respectively. Individually, the M/WBE utilization was:

- ♦ 0.00 percent for African American firms;
- ♦ 0.00 percent for Asian American firms;
- ♦ 0.10 percent for Hispanic American firms;
- ♦ 0.00 percent for Native American firms;
- ♦ 0.01 percent for Nonminority female firms

TABLE 5-4. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
PROFESSIONAL SERVICES

BUSINESS OWNERSHIP CLASSIFICATION	PROFESSIONAL SERVICES	
	Dollars (\$)	Percent (%)
African Americans	\$0.00	0.00%
Asian American	\$0.00	0.00%
Hispanic Americans	\$118,482.90	0.10%
Native Americans	\$0.00	0.00%
Nonminority Women	\$8,183.74	0.01%
Total M/WBE Firms	\$126,666.64	0.11%
Non-M/WBE Firms	\$116,844,309.23	99.89%
TOTAL	\$116,970,975.87	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

Table 5-5 shows the utilization of M/WBE firms was 1.69 percent in **Other Services**. Nonminority Women firms represent the only M/WBE classification with 1.69 percent. Individually, the M/WBE utilization was:

- ◆ 0.00 percent for African American firms;
- ◆ 0.00 percent for Asian American firms;
- ◆ 0.00 percent for Hispanic American firms;
- ◆ 0.00 percent for Native American firms;
- ◆ 1.69 percent for Nonminority female firms; and

TABLE 5-5.UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
OTHER SERVICES

BUSINESS OWNERSHIP CLASSIFICATION	GOODS & SERVICES	
	Dollars (\$)	Percent (%)
African Americans	\$0.00	0.00%
Asian American	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%
Native Americans	\$0.00	0.00%
Nonminority Females	\$857,267.57	1.69%
Total M/WBE Firms	\$857,267.57	1.69%
Non-M/WBE Firms	\$49,860,625.28	98.31%
TOTAL	\$50,717,892.85	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

Table 5-6 shows the utilization of M/WBE firms was 0.28 percent in **Goods**. Nonminority Women firms represent the only M/WBE classification with 0.28 percent. Individually, the M/WBE utilization was:

- ◆ 0.00 percent for African American firms;
- ◆ 0.00 percent for Asian American firms;
- ◆ 0.00 percent for Hispanic American firms;
- ◆ 0.00 percent for Native American firms;
- ◆ 0.28 percent for Nonminority female firms;

TABLE 5-6. UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
GOODS

BUSINESS OWNERSHIP CLASSIFICATION	GOODS	
	Dollars (\$)	Percent (%)
African Americans	\$0.00	0.00%
Asian American	\$0.00	0.00%
Hispanic Americans	\$0.00	0.00%
Native Americans	\$0.00	0.00%
Nonminority Women	\$274,777.46	0.28%
Total M/WBE Firms	\$274,777.46	0.28%
Non-M/WBE Firms	\$99,520,014.34	99.72%
TOTAL	\$99,794,791.80	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

5.2.4 Utilization Conclusions

The utilization analysis shows that M/WBE firms are utilized at lower rates than their non-M/WBE counterparts. Overall, 1.01 percent of Athens-Clarke County's payments went to M/WBE firms, while 99.72 percent went to non-M/WBE firms. While M/WBE utilization is low throughout the views on utilization that have been presented in this chapter, understanding the proportion of firms willing and able to provide services to Athens-Clarke County is critical in any determination of disparity. Availability and resulting disparity ratios are presented in **Chapter 4**, which follows, to provide more definitive conclusions in this respect.

5.3 Disparity Analyses and Significance Testing

Building on our understanding of Athens-Clarke County's availability estimates (**Chapter 4**) and vendor utilization presented in the previous section of this chapter (**Section 5.2**), this information can be used to identify potential disparities in Athens-Clarke County's procurement, summarized in **Section 5.3.1**, followed by the results of these disparity calculations and associated statistical significance testing in **Section 5.3.2**.

5.3.1 Disparity Analysis Methodology

Disparity, in this context, is the analysis of the differences between the utilization of minority- and women-owned firms (**Section 5.2**) and the respective availability of those firms (as presented in **Chapter 4**). Thus, MGT calculated disparity indices to examine whether minority- and women-owned firms received a proportional share of dollars based on the respective availability of minority- and women-owned firms located in the study's defined relevant market area (as presented in **Chapter 4**).

MGT's disparity index methodology yields a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within minority- and women-owned firms can be assessed with reference to the utilization of nonminority- and male-owned firms.

The **disparity index** is a simple proportional calculation that divides utilization rates (percent of dollars awarded to firms by class) by their associated availability (percent of firms available to work, within that same class) and multiplies this value by 100. Thus, a disparity index value of zero (0.00) indicates absolutely no utilization and, therefore, absolute disparity. A disparity index of 100 indicates that

utilization is perfectly proportionate to availability, therefore indicating the absence of disparity (that is, all things being equal). Alternately, firms are considered **underutilized** if the disparity indices are less than 100, and **overutilized** if the indices are above 100.

$$\text{Disparity Index} = \frac{\%U_{m,p_i}}{\%A_{m,p_i}} \times 100$$

U_{m,p_i} = utilization of minorities- and women-owned firms_i for procurement_i

A_{m,p_i} = availability of minorities- and women-owned firms_i for procurement_i

Since there is no standardized measurement to evaluate the levels of underutilization or overutilization within a procurement context, MGT's methodology to measure disparity, if disparity is found, is based on the Equal Employment Opportunity Commission's (EEOC) "80 percent

rule."¹²⁷ In the employment discrimination framework, an employment disparity index below 80 indicates a "substantial disparity." The Supreme Court has accepted the use of the "80 percent rule" in *Connecticut v. Teal* (*Teal*), 457 U.S. 440 (1982).¹²⁸ Therefore, following a similar pattern, firms are considered substantially underutilized (substantial disparity) if the disparity indices are 80 or less.

Standard deviation tests or testing for **statistical significance**, in this context, is the analysis to determine the significance of the difference between the utilization of minority- and women-owned firms and the availability of those firms. This analysis can determine whether the disparities are substantial or statistically significant, which lends further statistical support to a finding of discrimination. The following explains MGT's methodology.

¹²⁷ Equal Employment Opportunity Commission, *Uniform Guidelines* "Adverse impact and the 'four-fifths rule.'"

¹²⁸ In *Teal* and other affirmative action cases, the terms "adverse impact" and "adverse effect" are used interchangeably to characterize values of 80 and below.

Statistical Significance Testing

$$t = \frac{u - a}{\sqrt{\frac{a * (1 - a) * \sum c_i^2}{(\sum c_i)^2}}}$$

t = the t-statistic

u = the ratio of minorities- and women-owned firms' dollars compared to total dollars

a = the ratio of M/W/DBE firms to all firms

c_i = the dollar amount.

Standard deviation measures the probability that a result is a random deviation from a predicted result, where the greater the number of standard deviations, the lower the probability the result is a random one. The accepted standard used by Courts in disparity testing has been two standard deviations. That is, if there is a result that falls within two standard deviations, then one can assume that the results are nonsignificant, or that no disparity has been confidently established.

Regarding the use of statistical significance in the disparity study context, the National Cooperative Highway Research Program Report 644¹²⁹ notes that:

- ♦ “. . . for statistical disparities to be taken as legally dispositive in the discrimination context, they should be (a) statistically significant and (b) “substantively” significant. Substantive significance is taken to mean, for example, a DBE utilization measure that is less than or equal to 80% of the corresponding DBE availability measure.”
- ♦ “In discrimination cases, the courts have usually required p-values of 5% or less to establish statistical significance in a two-sided case.”

Note that p-values are used to determine whether the differences between two populations feature legitimate differences (that would be sustained if we continued to collect more observations), or if the variation between them is simply a product of normal random variation between observations that would be washed out if more data were collected. A p-value of less than 0.05 suggests it is highly unlikely that the differences between the two groups are just driven by chance. The use of the t-test to calculate p-values for disparity indices was approved by the Fourth Circuit in *H.B. Rowe v. Tippet*, 615 F.3d 233, 244-45 (4th Cir 2010).

Thus, MGT applies two major tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective M/WBE availability, which is labeled “substantial disparity” and (2) whether the disparity index passes the t-test determination of statistical significance. In cases where one, or especially both, measures hold true, a remedy is typically deemed to be justifiable by courts, making these results critical outcomes of the subsequent analyses.

5.3.2 Disparity Analyses and Statistical Significance Testing

Included in this section are inputs and calculations of disparity indices and significance testing for each of the procurement categories and ownership classifications. Corresponding detailed analyses showing the disparity analysis of firms by race, ethnicity, and gender are presented in **Appendix C**. Analysis of disparities across all procurement categories in **Table 5-7** reveals:

- ♦ African American firms were substantially underutilized with a statistically significant disparity index of 0.77;
- ♦ Asian American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Hispanic American firms were substantially underutilized with a disparity index of 28.09;
- ♦ Native American firms were substantially underutilized with a disparity index of 0.00;

¹²⁹ Transportation Research Board of the National Academies, National Cooperative Highway Research Program Report 644, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* (2010), pages 49-50.

- ♦ Nonminority Women firms were substantially underutilized with a statistically significant disparity index of 6.09; and
- ♦ M/WBE firms were substantially underutilized with a statistically significant disparity index of 5.38.

TABLE 5-7.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
ALL PROCUREMENT CATEGORIES

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.05%	6.76%	0.77	Underutilization	***	Disparity
Asian Americans	0.00%	0.83%	0.00	Underutilization		Disparity
Hispanic Americans	0.39%	1.39%	28.09	Underutilization		Disparity
Native Americans	0.00%	0.48%	0.00	Underutilization		Disparity
Nonminority Females	0.57%	9.34%	6.09	Underutilization	***	Disparity
Total M/WBE Firms	1.01%	18.80%	5.38	Underutilization	***	Disparity
Non-M/WBE Firms	98.99%	81.20%	121.91	Overutilization	***	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

The calculation of disparity indices and significance testing for the **Construction** procurement category are depicted in **Table 5-8**. Relevant findings include:

- ♦ African American firms were substantially underutilized with a statistically significant disparity index of 1.62;
- ♦ Asian American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Hispanic American firms were substantially underutilized with a disparity index of 40.64;
- ♦ Native American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Nonminority Women firms were substantially underutilized with a statistically significant disparity index of 5.96; and
- ♦ M/WBE firms were substantially underutilized with a statistically significant disparity index of 7.51.

TABLE 5-8.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
CONSTRUCTION

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.16%	9.68%	1.62	Underutilization	***	Disparity
Asian Americans	0.00%	0.21%	0.00	Underutilization		Disparity
Hispanic Americans	1.08%	2.66%	40.64	Underutilization		Disparity
Native Americans	0.00%	0.92%	0.00	Underutilization		Disparity
Nonminority Females	0.87%	14.58%	5.96	Underutilization	***	Disparity
Total M/WBE Firms	2.11%	28.06%	7.51	Underutilization	***	Disparity
Non-M/WBE Firms	97.89%	71.94%	136.08	Overutilization	***	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Disparity indices and significance testing for **Architecture & Engineering** appear in Table 5-9. Noteworthy observations include:

- African American firms were substantially underutilized with a disparity index of 0.00;
- Asian American firms were substantially underutilized with a disparity index of 0.00;
- Hispanic American firms were substantially underutilized with a disparity index of 0.00;
- Native American firms were substantially underutilized with a disparity index of 0.00;
- Nonminority Women firms were substantially underutilized with a disparity index of 0.00; and
- M/WBE firms were substantially underutilized with a statistically significant disparity index of 0.00.

TABLE 5-9.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
ARCHITECTURE & ENGINEERING

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	5.78%	0.00	Underutilization		Disparity
Asian Americans	0.00%	2.78%	0.00	Underutilization		Disparity
Hispanic Americans	0.00%	1.69%	0.00	Underutilization		Disparity
Native Americans	0.00%	0.00%	-			
Nonminority Females	0.00%	13.44%	0.00	Underutilization		Disparity
Total M/WBE Firms	0.00%	23.69%	0.00	Underutilization	**	Disparity
Non-M/WBE Firms	100.00%	76.31%	131.04	Overutilization	**	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Disparity indices and significance testing for the **Professional Services** sector are presented in **Table 5-10**. Some findings include that:

- ♦ African American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Asian American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Hispanic American firms were substantially underutilized with a disparity index of 15.73;
- ♦ Native American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Nonminority Women firms were substantially underutilized with a disparity index of 0.08; and
- ♦ M/WBE firms were substantially underutilized with a statistically significant disparity index of 0.58.

TABLE 5-10.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
PROFESSIONAL SERVICES

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	7.32%	0.00	Underutilization		Disparity
Asian Americans	0.00%	2.07%	0.00	Underutilization		Disparity
Hispanic Americans	0.10%	0.64%	15.73	Underutilization		Disparity
Native Americans	0.00%	0.23%	0.00	Underutilization		Disparity
Nonminority Females	0.01%	8.40%	0.08	Underutilization		Disparity
Total M/WBE Firms	0.11%	18.67%	0.58	Underutilization	**	Disparity
Non-M/WBE Firms	99.89%	81.33%	122.82	Overutilization	**	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “***” indicates the disparity is significant at a 10% level or better (90% confidence). “****” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Table 5-11 presents disparity indices and significance testing for the **Other Services** sector.

- ♦ African American firms were substantially underutilized with a statistically significant disparity index of 0.00;
- ♦ Asian American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Hispanic American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Native American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Nonminority Women firms were substantially underutilized with a statistically significant disparity index of 18.45; and
- ♦ M/WBE firms were substantially underutilized with a statistically significant disparity index of 7.72.

TABLE 5-11.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
OTHER SERVICES

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	8.50%	0.00	Underutilization	**	Disparity
Asian Americans	0.00%	1.06%	0.00	Underutilization		Disparity
Hispanic Americans	0.00%	2.33%	0.00	Underutilization		Disparity
Native Americans	0.00%	0.85%	0.00	Underutilization		Disparity
Nonminority Females	1.69%	9.16%	18.45	Underutilization	**	Disparity
Total M/WBE Firms	1.69%	21.90%	7.72	Underutilization	***	Disparity
Non-M/WBE Firms	98.31%	78.10%	125.88	Overutilization	***	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Table 5-12 presents disparity indices and significance testing for the **Goods** sector.

- ♦ African American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Asian American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Hispanic American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Native American firms were substantially underutilized with a disparity index of 0.00;
- ♦ Nonminority Women firms were substantially underutilized with a disparity index of 8.79; and
- ♦ M/WBE firms were substantially underutilized with a statistically significant disparity index of 6.20.

TABLE 5-12.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
GOODS

Ethnic/Gender Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
African Americans	0.00%	1.29%	0.00	Underutilization		Disparity
Asian Americans	0.00%	0.01%	0.00	Underutilization		Disparity
Hispanic Americans	0.00%	0.02%	0.00	Underutilization		Disparity
Native Americans	0.00%	0.00%	0.00	Underutilization		Disparity
Nonminority Females	0.28%	3.13%	8.79	Underutilization		Disparity
Total M/WBE Firms	0.28%	4.44%	6.20	Underutilization	**	Disparity
Non-M/WBE Firms	99.72%	95.55%	104.37	Overutilization	**	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

5.4 Conclusions

The calculations of availability and disparity within this chapter and the preceding depiction of utilization serve as part of the evidentiary foundation for the future of any Athens-Clarke County M/WBE program. These analyses provide part of the quantitative legal justification for any current or future remedies to assist M/WBEs within the market. In tandem with the results of the qualitative and private sector analyses, these results provide the evidence necessary to infer that discrimination in the marketplace has occurred. As summarized in **Table 5-13**, disparities between utilization and availability have been observed in many procurement and M/WBE categories included within the scope of the study, both in terms of the order of magnitude (disparity indices less than or equal to 80) and statistical significance, and thus an inference of discrimination in the marketplace can be derived. Where individual race, ethnicity, and gender categories were not statistically significant alone,¹³⁰ it's important to understand that they are part of the MBE and M/WBE total categories that were overall substantial and statistically underutilized, and an inference of discrimination can be made where those categories saw substantial individual disparities.

TABLE 5-13. DISPARITY ANALYSIS SUMMARY

Procurement Category	All	Construction	Architecture & Engineering	Professional Services	Other Services	Goods
African Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Asian Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Hispanic Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Native Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Total MBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Nonminority Females	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Total M/WBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity

BOLD indicates substantial statistically significant disparity.

¹³⁰ This could be attributed to the small number of contracts awarded to these firms or the small actual number of firms in the marketplace.

6 Private Sector Analysis

6.1 Introduction

The **Legal Review** presented in **Chapter 2** explains that a government entity must have evidence of active or passive discrimination to permit the institution of a minority- and woman-owned business enterprise (M/WBE) program. Courts require a *compelling interest* analysis showing a connection between the government or agency and the public or private discrimination that may exist within their jurisdiction. This chapter focuses on the overarching question:

- ♦ ***Does evidence of discrimination in the private sector marketplace support an Athens-Clarke County M/WBE supplier diversity program to avoid becoming a passive participant in discrimination?***

Chapter Sections	
6.1	Introduction
6.2	Private Sector Disparities in SBO Census Data
6.3	Private Sector Disparities in ABS Census Data
6.4	Analysis of Race, Ethnicity, and Gender Effects on Self-Employment Rates
6.5	Access to Credit
6.6	Conclusion

Passive discrimination describes a circumstance where a public entity resides in a market with measurable discrimination in the public and private sectors but fails to take proactive actions to implement remedies. Courts have favorably looked upon private sector analyses as support to determine *compelling interest* in M/WBE programs:

- ♦ Defining passive participation, Justice O'Connor in *Croson* stated, "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."¹³¹
- ♦ In *Adarand*, the Tenth Circuit favorably cited evidence of capital market discrimination as relevant in establishing the factual predicate for the federal DBE program.¹³²
- ♦ *Concrete Works IV* found that barriers to business formation were relevant insofar as the evidence demonstrated that M/WBEs were "precluded from the outset from competing for public construction contracts."¹³³
- ♦ In *Adarand*, the courts concluded a compelling interest in a government Disadvantaged Business Enterprise (DBE) program in part on evidence of private-sector discrimination.¹³⁴
- ♦ Along related lines, a court found regression analysis of census data to be relevant evidence showing barriers to M/WBE formation.¹³⁵

¹³¹ *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989).

¹³² *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-70 (10th Cir. 2000).

¹³³ *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 977 (10th Cir. 2003).

¹³⁴ *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000).

¹³⁵ *Concrete Works IV*, 321 F.3d 950, 967-69 (10th Cir. 2003).

Thus, in many circumstances, discriminatory practices in the private marketplace may show or serve to support the *compelling interest* required by courts to support an agency's program to intervene and prevent the agency from becoming a *passive participant* in discrimination.

These court decisions support an investigation into the existence of discrimination in the private sector to determine whether or not evidence exists warranting M/WBE programs. This chapter provides evidence for whether ACCGov has a compelling interest in a M/WBE program based on discriminatory circumstances observed in the private sector. Three sources of data can help to answer the overarching research question regarding disparities in the private sector:

- ♦ **2012 Census Survey of Business Owners (SBO) and 2017 Census Annual Business Survey (ABS) data, which are used to determine:**
 - *Do marketplace disparities exist in the private sector regarding revenue within similar ACCGov procurement categories for firms owned by minorities or females?*
- ♦ **2016-2020 Census American Community Survey (ACS) Public Used Microdata Sample (PUMS) data, which is used to determine whether, even after controlling for a number of relevant factors, there are disparities between minority- and women-owned firms on the one hand, and nonminority, non-women owned firms on the other hand. Among the questions this data allows us to answer are:**
 - *Does racial, ethnic, and gender status impact individual wages even after controlling for differences among firms?*
 - *Does racial, ethnic, and gender status impact business owner earnings even after controlling for differences among firms?*
 - *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
 - *If minority and female-owned business enterprises (M/WBEs) and nonminority male-owned firms shared similar traits and marketplace "conditions" (i.e., similar "rewards" in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

Notably, the results of this private sector analysis may mirror many of the same qualitative and anecdotal results offered in **Chapter 7, Anecdotal Analysis**, regarding discrimination faced by M/WBE firms in attempting to secure work on private sector projects.

6.2 Private Sector Disparities in SBO Census Data

To answer the overarching research question regarding the existence of disparities in the private sector, as well as the specific question of whether these disparities exist in procurement categories relevant to the ACCGov contracting domain, MGT obtained and analyzed the U.S. Census Bureau's 2012 Survey of

Business Owners (SBO) data.¹³⁶ SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as states and metropolitan areas), categorized by industries defined by North American Industry Classification System (NAICS) codes, and supporting information, including firm receipts (sales),¹³⁷ firm employment size, and business ownership classification. The survey has been administered every five years since 1972 as part of the economic census.

The SBO gathers and reports data on (1) firms with paid employees, including workers on the payroll (employer firms), (2) firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (non-employer firms), as well as (3) in aggregate across employer and non-employer firms (all). MGT calculated private sector disparity indices to examine whether M/WBE firms in any of these categories received a proportionate share of firm sales based on the availability of M/WBE firms. Disparity indices were reviewed for all firms and employer firms. It should be noted that all of the disparity indices in the SBO tables are statistically significant within a **95 percent** confidence interval.

The following NAICS codes¹³⁸ were analyzed because they align with the procurement categories used for ACCGov's utilization analysis:

- ◆ NAICS Code 23, Construction
- ◆ NAICS Code 42, Wholesale Trade
- ◆ NAICS Code 54, Professional, Scientific, and Technical Services
- ◆ NAICS Code 56, Administrative and Support and Waste Management and Remediation Services
- ◆ NAICS Code 81, Other Services (Except Public Administration)

6.2.1 Results of Analysis

This private sector analysis presents disparity results based on the ACCGov geographic marketplace. The ACCGov marketplace contains the following counties in the Athens-Clarke County and Atlanta-Sandy Springs-Alpharetta metropolitan statistical areas: Clarke County, GA; Fulton County, GA; Cobb County, GA; Rockdale County, GA; Gwinnett County, GA; Stephens County, GA; DeKalb County, GA; Cherokee County, GA; Jackson County, GA; Coweta County, GA; Barrow County, GA; Fayette County, GA; Hall County, GA; Forsyth County, GA; Clayton County, GA; Oconee County, GA; Newtown County, GA; Douglas County, GA; Madison County, GA; Spalding County, GA; Morgan County, GA; Walton County, GA; Carroll County, GA; Henry County, GA; Meriwether County, GA; Troup County, GA; Oglethorpe County, GA; Lamar County, GA; Jasper County, GA; Upson County, GA; Polk County, GA; Butts County, GA; Paulding County, GA; Pickens County, GA; Dawson County, GA; Pike County, GA; Haralson County, GA; Habersham County, GA.

¹³⁶ These represent the most recent available data provided through the SBO program and were released in 2016.

¹³⁷ Sales includes total shipments, receipts, revenue, or business done by the firm.

¹³⁸ The two-digit NAICS code level was utilized as those codes are the most prevalent level across all the 2012 SBO data.

6.2.2 Athens-Clarke County Marketplace

Tables 6-1 through 6-5 show the measures of private sector disparities based on U.S. Census 2012 SBO data for the population of available firms in the ACCGov marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration).

Based on the U.S. Census 2012 SBO data analysis, overall, there remains a significant gap between the market share of M/WBE firms and their share of the ACCGov marketplace business population where data was available.

6.2.2.1 NAICS Code 23: Construction, Athens-Clarke County Marketplace

Table 6-1 shows the construction availability, sales, and disparity results (NAICS Code 23).

There was a total of 527,360 construction firms (all firms¹³⁹) in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 8.26) were substantially underutilized, accounting for 1.78 percent of all firms and 0.15 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 8.66) were substantially and significantly underutilized, accounting for 0.07 percent of all firms and 0.01 percent of sales.
- ♦ Asian American firms (disparity index of 35.25) were substantially and significantly underutilized, accounting for 0.22 percent of all firms and 0.08 percent of sales.
- ♦ Hispanic American firms (disparity index of 17.63) were substantially and significantly underutilized, accounting for 2.36 percent of all firms and 0.42 percent of sales.
- ♦ Data for nonminority female firms (disparity index of 53.68) were substantially and significantly underutilized, accounting for 2.05 percent of all firms and 1.10 percent of sales.

There were 79,298 construction employer firms¹⁴⁰ in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 31.37) were substantially and significantly underutilized, accounting for 0.25 percent of all firms and 0.08 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.10 percent of all firms and 0.00 percent of sales.
- ♦ Asian American firms (disparity index of 17.63) were substantially and significantly underutilized, accounting for 0.15 percent of all firms and 0.03 percent of sales.
- ♦ Hispanic American firms (disparity index of 27.61) were substantially and significantly underutilized, accounting for 0.73 percent of all firms and 0.20 percent of sales.

¹³⁹ All firms include firms with and without payroll at any time during 2012.

¹⁴⁰ Employer firms include firms with payroll at any time during 2012.

- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 40.26) were substantially and significantly underutilized, accounting for 2.47 percent of all firms and 1.00 percent of sales.

TABLE 6-1.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 23, CONSTRUCTION
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	527,360	201,411,985	79,298	178,581,887
Nonminority Male	493,135	197,893,044	76,360	176,255,839
African American	9,367	295,570	198	139,895
American Indian and Alaska Native	364	12,033	78	0
Asian	1,162	156,444	122	48,434
Hispanic ⁴	12,428	836,852	580	360,692
Native Hawaiian and Other Pacific Islander	85	0	0	0
Nonminority Female	10,819	2,218,042	1,960	1,777,027
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	93.51%	98.25%	96.29%	98.70%
African American	1.78%	0.15%	0.25%	0.08%
American Indian and Alaska Native	0.07%	0.01%	0.10%	0.00%
Asian	0.22%	0.08%	0.15%	0.03%
Hispanic ⁴	2.36%	0.42%	0.73%	0.20%
Native Hawaiian and Other Pacific Islander	0.02%	0.00%	0.00%	0.00%
Nonminority Female	2.05%	1.10%	2.47%	1.00%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		105.07		102.49
African American		8.26		31.37
American Indian and Alaska Native		8.66		0.00
Asian		35.25		17.63
Hispanic ⁴		17.63		27.61
Native Hawaiian and Other Pacific Islander		0.00		-
Nonminority Female		53.68		40.26

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms include employer and non-employer firms since non-employer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales include total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.2.2.2 NAICS Code 42: Wholesale Trade, Athens-Clarke County Marketplace

Table 6-2 shows wholesale trade availability, sales, and disparity results (NAICS Code 42).

There was a total of 127,885 wholesale trade firms (all firms) in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 1.64) were substantially and significantly underutilized, accounting for 1.23 percent of all firms and 0.02 percent of sales.
- ♦ American Indian and Alaska Native marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Asian American firms (disparity index of 28.72) were substantially and significantly underutilized, accounting for 1.13 percent of all firms and 0.33 percent of sales.
- ♦ Hispanic American firms (disparity index of 32.87) were substantially and significantly underutilized, accounting for 0.41 percent of all firms and 0.13 percent of sales.
- ♦ Native Hawaiian and Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 24.46) were substantially and significantly underutilized, accounting for 3.68 percent of all firms and 0.90 percent of sales.

There was a total of 64,625 wholesale trade employer firms in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 7.08) were substantially and significantly underutilized, accounting for 0.20 percent of all firms and 0.01 percent of sales.
- ♦ American Indian and Alaska Native marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Asian American firms (disparity index of 24.16) were substantially and significantly underutilized, accounting for 1.34 percent of all firms and 0.32 percent of sales.
- ♦ Hispanic American firms (disparity index of 60.80) were substantially and significantly underutilized, accounting for 0.22 percent of all firms and 0.13 percent of sales.
- ♦ Native Hawaiian and Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 32.94) were substantially and significantly underutilized, accounting for 2.64 percent of all firms and 0.87 percent of sales.

TABLE 6-2.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 42, WHOLESALE TRADE
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	127,885	1,075,142,567	64,625	1,065,659,868
Nonminority Male	119,638	1,060,326,337	61,788	1,051,411,585
African American	1,578	217,160	130	151,740
American Indian and Alaska Native	0	0	0	0
Asian	1,449	3,498,835	864	3,442,661
Hispanic ⁴	520	1,436,855	140	1,403,524
Native Hawaiian and Other Pacific Islander	0	0	0	0
Nonminority Female	4,700	9,663,380	1,703	9,250,358
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	93.55%	98.62%	95.61%	98.66%
African American	1.23%	0.02%	0.20%	0.01%
American Indian and Alaska Native	0.00%	0.00%	0.00%	0.00%
Asian	1.13%	0.33%	1.34%	0.32%
Hispanic ⁴	0.41%	0.13%	0.22%	0.13%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
Nonminority Female	3.68%	0.90%	2.64%	0.87%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		105.42		103.19
African American		1.64		7.08
American Indian and Alaska Native		-		-
Asian		28.72		24.16
Hispanic ⁴		32.87		60.80
Native Hawaiian and Other Pacific Islander		-		-
Nonminority Female		24.46		32.94

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms include employer and non-employer firms since non-employer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales include total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.2.2.3 NAICS Code 54: Professional, Scientific and Technical Services, Athens-Clarke County Marketplace

Table 6-3 shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54).

There was a total of 757,315 professional, scientific, and technical services firms (all firms) in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 13.96) were substantially and significantly underutilized, accounting for 2.25 percent of all firms and 0.31 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 26.03) were substantially and significantly underutilized, accounting for 0.06 percent of all firms and 0.02 percent of sales.
- ♦ Asian American firms (disparity index of 92.59) were underutilized, accounting for 0.77 percent of all firms and 0.71 percent of sales.
- ♦ Hispanic American firms (disparity index of 30.68) were substantially and significantly underutilized, accounting for 0.52 percent of all firms and 0.16 percent of sales.
- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 33.58) were substantially and significantly underutilized, accounting for 5.14 percent of all firms and 1.73 percent of sales.

There was a total of 165,963 professional, scientific, and technical services employer firms in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 31.83) were substantially and significantly underutilized, accounting for 0.62 percent of all firms and 0.20 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 15.30) were substantially and significantly underutilized, accounting for 0.05 percent of all firms and 0.01 percent of sales.
- ♦ Asian American firms (disparity index of 76.40) were underutilized, accounting for 0.95 percent of all firms and 0.73 percent of sales.
- ♦ Hispanic American firms (disparity index of 51.76) were substantially and significantly underutilized, accounting for 0.25 percent of all firms and 0.13 percent of sales.
- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 37.57) were substantially and significantly underutilized, accounting for 3.89 percent of all firms and 1.46 percent of sales.

TABLE 6-3.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	757,315	240,132,923	165,963	216,878,695
Nonminority Male	691,035	233,097,292	156,401	211,408,730
African American	17,068	755,270	1,037	431,331
American Indian and Alaska Native	486	40,116	87	17,389
Asian	5,833	1,712,507	1,582	1,579,448
Hispanic ⁴	3,906	379,946	408	275,957
Native Hawaiian and Other Pacific Islander	34	325	0	0
Nonminority Female	38,953	4,147,467	6,448	3,165,840
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	91.25%	97.07%	94.24%	97.48%
African American	2.25%	0.31%	0.62%	0.20%
American Indian and Alaska Native	0.06%	0.02%	0.05%	0.01%
Asian	0.77%	0.71%	0.95%	0.73%
Hispanic ⁴	0.52%	0.16%	0.25%	0.13%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
Nonminority Female	5.14%	1.73%	3.89%	1.46%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		106.38		103.44
African American		13.96		31.83
American Indian and Alaska Native		26.03		15.30
Asian		92.59		76.40
Hispanic ⁴		30.68		51.76
Native Hawaiian and Other Pacific Islander		3.01		-
Nonminority Female		33.58		37.57

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms include employer and non-employer firms since non-employer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales include total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.2.2.4 NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, Athens-Clarke County Marketplace

Table 6-4 shows the availability, sales, and disparity results for administrative, support, waste management, and remediation services (NAICS Code 56).

There were 536,161 administrative and support and waste management and remediation services firms (all firms) in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 10.41) were substantially and significantly underutilized, accounting for 4.54 percent of all firms and 0.47 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 8.15) were substantially and significantly underutilized, accounting for 0.07 percent of all firms and 0.01 percent of sales.
- ♦ Asian American firms (disparity index of 116.15) were overutilized, accounting for 0.41 percent of all firms and 0.48 percent of sales.
- ♦ Hispanic American firms (disparity index of 14.15) were substantially and significantly underutilized, accounting for 1.87 percent of all firms and 0.26 percent of sales.
- ♦ Native Hawaiian and Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 30.16) were substantially and significantly underutilized, accounting for 6.57 percent of all firms and 1.98 percent of sales.

There were 56,262 administrative and support and waste management and remediation services employer firms in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 21.93) were substantially and significantly underutilized, accounting for 1.00 percent of all firms and 0.22 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.01 percent of all firms and 0.00 percent of sales.
- ♦ Asian American firms (disparity index of 87.17) were underutilized, accounting for 0.55 percent of all firms and 0.48 percent of sales.
- ♦ Hispanic American firms (disparity index of 29.07) were substantially and significantly underutilized, accounting for 0.41 percent of all firms and 0.12 percent of sales.
- ♦ Native Hawaiian and Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 36.04) were substantially and significantly underutilized, accounting for 4.21 percent of all firms and 1.52 percent of sales.

TABLE 6-4.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION SERVICES
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	536,161	114,115,660	56,262	104,955,253
Nonminority Male	463,986	110,462,538	52,793	102,510,751
African American	24,347	539,273	563	230,334
American Indian and Alaska Native	372	6,454	4	0
Asian	2,198	543,379	307	499,227
Hispanic ⁴	10,013	301,516	229	124,184
Native Hawaiian and Other Pacific Islander	0	0	0	0
Nonminority Female	35,245	2,262,500	2,366	1,590,757
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	86.54%	96.80%	93.83%	97.67%
African American	4.54%	0.47%	1.00%	0.22%
American Indian and Alaska Native	0.07%	0.01%	0.01%	0.00%
Asian	0.41%	0.48%	0.55%	0.48%
Hispanic ⁴	1.87%	0.26%	0.41%	0.12%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
Nonminority Female	6.57%	1.98%	4.21%	1.52%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		111.86		104.09
African American		10.41		21.93
American Indian and Alaska Native		8.15		0.00
Asian		116.15		87.17
Hispanic ⁴		14.15		29.07
Native Hawaiian and Other Pacific Islander		-		-
Nonminority Female		30.16		36.04

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms include employer and non-employer firms since non-employer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales include total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.2.2.5 NAICS Code 81: Other Services (Except Public Administration), Athens-Clarke Marketplace

Table 6-5 shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81).

There were a total of 790,698 other services (except public administration) firms (all firms) in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 25.64) were substantially and significantly underutilized, accounting for 5.44 percent of all firms and 1.40 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 12.38) were substantially and significantly underutilized, accounting for 0.07 percent of all firms and 0.01 percent of sales.
- ♦ Asian American firms (disparity index of 74.96) were substantially and significantly underutilized, accounting for 1.93 percent of all firms and 1.44 percent of sales.
- ♦ Hispanic American firms (disparity index of 63.11) were substantially and significantly underutilized, accounting for 0.73 percent of all firms and 0.46 percent of sales.
- ♦ Native Hawaiian or Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 56.40) were substantially and significantly underutilized, accounting for 7.40 percent of all firms and 4.17 percent of sales.

There were 56,810 other services (except public administration) employer firms in the ACCGov marketplace in 2012.

- ♦ African American firms (disparity index of 35.44) were substantially and significantly underutilized, accounting for 0.74 percent of all firms and 0.26 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 0.00) were substantially and significantly underutilized, accounting for 0.01 percent of all firms and 0.00 percent of sales.
- ♦ Asian American firms (disparity index of 46.66) were substantially and significantly underutilized, accounting for 2.26 percent of all firms and 1.05 percent of sales.
- ♦ Hispanic American firms (disparity index of 56.11) were substantially and significantly underutilized, accounting for 0.49 percent of all firms and 0.28 percent of sales.
- ♦ Native Hawaiian or Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 56.29) were substantially and significantly underutilized, accounting for 5.24 percent of all firms and 2.95 percent of sales.

TABLE 6-5.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS ¹ (#)	ALL FIRMS, SALES ² (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	790,698	43,290,520	56,810	27,309,769
Nonminority Male	667,627	40,053,225	51,842	26,069,332
African American	43,032	604,143	420	71,550
American Indian and Alaska Native	588	3,985	8	0
Asian	15,241	625,470	1,284	288,001
Hispanic ⁴	5,737	198,220	281	75,791
Native Hawaiian and Other Pacific Islander	0	0	0	0
Nonminority Female	58,473	1,805,477	2,975	805,095
PERCENTAGE OF MARKETPLACE				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	84.44%	92.52%	91.26%	95.46%
African American	5.44%	1.40%	0.74%	0.26%
American Indian and Alaska Native	0.07%	0.01%	0.01%	0.00%
Asian	1.93%	1.44%	2.26%	1.05%
Hispanic ⁴	0.73%	0.46%	0.49%	0.28%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
Nonminority Female	7.40%	4.17%	5.24%	2.95%
DISPARITY RATIOS ³				
All Firms		100.00		100.00
Nonminority Male		109.58		104.61
African American		25.64		35.44
American Indian and Alaska Native		12.38		0.00
Asian		74.96		46.66
Hispanic ⁴		63.11		56.11
Native Hawaiian and Other Pacific Islander		-		-
Nonminority Female		56.40		56.29

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

¹Firms include employer and non-employer firms since non-employer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

²Sales include total shipments, receipts, revenue, or business done by the firm.

³Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.2.3 SBO Conclusion

The SBO analysis shows consistent underutilization of M/WBE firms relative to their availability in the marketplace. The results suggest that disparities exist in the broader private sector in which Athens-Clarke County conducts business and supports the idea that Athens-Clarke County should remedy these disparities to avoid passive participation in discrimination, irrespective of circumstances in the public sector.

Furthermore, the five procurement categories analyzed showed substantial and statistically significant disparities among defined M/WBE classes where sufficient data were available.

6.3 Private Sector Disparities in ABS Census Data

As described above, SBO data is a vital resource in helping to answer the overarching research question regarding the existence of disparities in the private sector and the specific question of whether these disparities exist in procurement categories relevant to the Athens-Clarke County contracting domain. A limitation of the SBO data is, of course, its age. In 2017, the Census Bureau replaced the SBO data with the American Business Survey (ABS). Essentially this dataset is the same as the SBO with one caveat. ABS data no longer provides information for all firms, only employer firms. This data is still valuable for determining more recent private sector disparities, but it excludes a sector usually dominated by smaller businesses that benefit from any M/WBE program.

As with the SBO data, ABS gathers and reports data on firms with paid employees, including workers on the payroll (employer firms). MGT calculated private sector disparity indices to examine whether M/WBE firms in any of these categories received a proportionate share of sales based on the availability of M/WBE firms. Disparity indices were reviewed for employer firms. It should be noted that all of the disparity indices in the ABS tables are statistically significant within a **95 percent** confidence interval. The same NAICS codes as the SBO analysis were analyzed for the ABS data and the same marketplace.

6.3.1 Results of Analysis

Tables 6-6 through 6-10 show the measures of private sector disparities based on U.S. Census 2017 ABS data for the population of available firms in the Athens-Clarke County marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration).

Based on the analysis of the U.S. Census, 2017 ABS data, overall, there remains a significant gap between the market share of M/WBE firms and their share of the Athens-Clarke County marketplace business population, where data was available.

6.3.1.1 NAICS Code 23: Construction, Athens-Clarke County Marketplace

Table 6-6 shows the construction availability, sales, and disparity results (NAICS Code 23).

There were 80,548 construction employer firms¹⁴¹ in the ACCGov marketplace in 2017.

- ♦ African American firms (disparity index of 32.89) were substantially underutilized, accounting for 0.42 percent of all firms and 0.14 percent of sales.
- ♦ American Indian and Alaska firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Asian American firms (disparity index of 36.62) were substantially and significantly underutilized, accounting for 0.31 percent of all firms and 0.11 percent of sales.
- ♦ Hispanic American firms (disparity index of 28.89) were substantially and significantly underutilized, accounting for 0.96 percent of all firms and 0.28 percent of sales.
- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 94.58) were underutilized, accounting for 1.30 percent of all firms and 1.23 percent of sales.

¹⁴¹ Employer firms include firms with payroll at any time during 2017.

TABLE 6-6.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 23, CONSTRUCTION
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	80,548	289,943,845
Nonminority Male	78,143	284,847,290
African American	337	398,988
American Indian and Alaska Native	0	0
Asian	248	326,915
Hispanic ⁴	772	802,817
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Female	1,048	3,567,835
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	97.01%	98.24%
African American	0.42%	0.14%
American Indian and Alaska Native	0.00%	0.00%
Asian	0.31%	0.11%
Hispanic ⁴	0.96%	0.28%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Female	1.30%	1.23%
DISPARITY RATIOS ³		
All Firms		100.00
Nonminority Male		101.27
African American		32.89
American Indian and Alaska Native		-
Asian		36.62
Hispanic ⁴		28.89
Native Hawaiian and Other Pacific Islander		-
Nonminority Female		94.58

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

¹ Employer firms include firms with payroll at any time during 2017.

² Sales include total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.3.1.2 NAICS Code 42: Wholesale Trade, Athens-Clarke County Marketplace

Table 6-7 shows wholesale trade availability, sales, and disparity results (NAICS Code 42).

There were 49,543 wholesale trade employer firms in the ACCGov marketplace in 2017.

- ♦ African American firms (disparity index of 25.45) were substantially and significantly underutilized, accounting for 0.19 percent of all firms and 0.05 percent of sales.
- ♦ American Indian and Alaska Native firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Asian American firms (disparity index of 34.22) were substantially and significantly underutilized, accounting for 1.70 percent of all firms and 0.58 percent of sales.
- ♦ Hispanic American firms (disparity index of 33.65) were substantially and significantly underutilized, accounting for 0.45 percent of all firms and 0.15 percent of sales.
- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 68.84) were substantially and significantly underutilized, accounting for 1.87 percent of all firms and 1.29 percent of sales.

TABLE 6-7.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 42, WHOLESALE TRADE
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	49,543	799,344,259
Nonminority Male	47,459	782,823,203
African American	93	381,805
American Indian and Alaska Native	0	0
Asian	842	4,648,915
Hispanic ⁴	224	1,216,119
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Female	925	10,274,217
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	95.79%	97.93%
African American	0.19%	0.05%
American Indian and Alaska Native	0.00%	0.00%
Asian	1.70%	0.58%
Hispanic ⁴	0.45%	0.15%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Female	1.87%	1.29%
DISPARITY RATIOS ³		
All Firms		100.00
Nonminority Male		102.23
African American		25.45
American Indian and Alaska Native		-
Asian		34.22
Hispanic ⁴		33.65
Native Hawaiian and Other Pacific Islander		-
Nonminority Female		68.84

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

¹ Employer firms include firms with payroll at any time during 2017.

² Sales include total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.3.1.3 NAICS Code 54: Professional, Scientific, and Technical Services, Athens-Clarke County Marketplace

Table 6-8 shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54).

There was a total of 144,692 professional, scientific, and technical services employer firms in the ACCGov marketplace in 2017.

- ♦ African American firms (disparity index of 46.62) were substantially and significantly underutilized, accounting for 0.93 percent of all firms and 0.43 percent of sales.
- ♦ American Indian and Alaska Native firms (disparity index of 73.95) were substantially and significantly underutilized, accounting for 0.03 percent of all firms and 0.02 percent of sales.
- ♦ Asian American firms (disparity index of 81.67) were underutilized, accounting for 1.36 percent of all firms and 1.11 percent of sales.
- ♦ Hispanic American firms (disparity index of 52.04) were substantially and significantly underutilized, accounting for 0.33 percent of all firms and 0.17 percent of sales.
- ♦ Native Hawaiian and Pacific Islander firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 46.19) were substantially and significantly underutilized, accounting for 3.51 percent of all firms and 1.62 percent of sales.

TABLE 6-8.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	144,692	207,188,511
Nonminority Male	135,774	200,223,363
African American	1,347	899,164
American Indian and Alaska Native	47	49,766
Asian	1,967	2,300,439
Hispanic ⁴	480	357,650
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Female	5,077	3,358,129
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	93.84%	96.64%
African American	0.93%	0.43%
American Indian and Alaska Native	0.03%	0.02%
Asian	1.36%	1.11%
Hispanic ⁴	0.33%	0.17%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Female	3.51%	1.62%
DISPARITY RATIOS ³		
All Firms		100.00
Nonminority Male		102.99
African American		46.62
American Indian and Alaska Native		73.95
Asian		81.67
Hispanic ⁴		52.04
Native Hawaiian and Other Pacific Islander		-
Nonminority Female		46.19

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

¹ Employer firms include firms with payroll at any time during 2017.

² Sales include total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.3.1.4 NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, Athens-Clarke County Marketplace

Table 6-9 shows the availability, sales, and disparity results for administrative and support and waste management and remediation services (NAICS Code 56).

There were 51,179 administrative and support and waste management and remediation services employer firms in the ACCGov marketplace in 2017.

- ♦ African American firms (disparity index of 45.97) were substantially and significantly underutilized, accounting for 0.87 percent of all firms and 0.40 percent of sales.
- ♦ American Indian and Alaska Native marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Asian American firms (disparity index of 94.18) were underutilized, accounting for 0.71 percent of all firms and 0.67 percent of sales.
- ♦ Hispanic American firms (disparity index of 39.19) were substantially and significantly underutilized, accounting for 0.72 percent of all firms and 0.28 percent of sales.
- ♦ Native Hawaiian and Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 60.09) were substantially and significantly underutilized, accounting for 3.06 percent of all firms and 1.84 percent of sales.

TABLE 6-9.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION
SERVICES U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	51,179	115,333,879
Nonminority Male	48,441	111,662,058
African American	445	461,013
American Indian and Alaska Native	0	0
Asian	362	768,289
Hispanic ⁴	366	323,216
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Female	1,565	2,119,303
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	94.65%	96.82%
African American	0.87%	0.40%
American Indian and Alaska Native	0.00%	0.00%
Asian	0.71%	0.67%
Hispanic ⁴	0.72%	0.28%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Female	3.06%	1.84%
DISPARITY RATIOS ³		
All Firms		100.00
Nonminority Male		102.29
African American		45.97
American Indian and Alaska Native		-
Asian		94.18
Hispanic ⁴		39.19
Native Hawaiian and Other Pacific Islander		-
Nonminority Female		60.09

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

¹ Employer firms include firms with payroll at any time during 2017.

² Sales include total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.3.1.5 NAICS Code 81: Other Services (Except Public Administration), Athens-Clarke County Marketplace

Table 6-10 shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81).

There were 50,234 other services (except public administration) employer firms in the ACCGov marketplace in 2017.

- ♦ African American firms (disparity index of 51.59) were substantially and significantly underutilized, accounting for 0.56 percent of all firms and 0.29 percent of sales.
- ♦ American Indian and Alaska Native marketplace firms (disparity index of 34.73) were substantially and significantly underutilized, accounting for 0.05 percent of all firms and 0.02 percent of sales.
- ♦ Asian American firms (disparity index of 51.02) were substantially and significantly underutilized, accounting for 3.34 percent of all firms and 1.70 percent of sales.
- ♦ Hispanic American firms (disparity index of 62.61) were substantially and significantly underutilized, accounting for 0.53 percent of all firms and 0.33 percent of sales.
- ♦ Native Hawaiian or Pacific Islander marketplace firm data was minimal and therefore did not allow for a proper analysis.
- ♦ Data for nonminority female firms (disparity index of 58.27) were substantially and significantly underutilized, accounting for 4.30 percent of all firms and 2.51 percent of sales.

TABLE 6-10.
PRIVATE SECTOR CENSUS DISPARITIES
NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	50,234	34,666,472
Nonminority Male	45,823	32,986,027
African American	281	100,038
American Indian and Alaska Native	27	6,471
Asian	1,677	590,408
Hispanic ⁴	265	114,502
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Female	2,161	869,026
PERCENTAGE OF MARKETPLACE		
All Firms	100.00%	100.00%
Nonminority Male	91.22%	95.15%
African American	0.56%	0.29%
American Indian and Alaska Native	0.05%	0.02%
Asian	3.34%	1.70%
Hispanic ⁴	0.53%	0.33%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Female	4.30%	2.51%
DISPARITY RATIOS ³		
All Firms		100.00
Nonminority Male		104.31
African American		51.59
American Indian and Alaska Native		34.73
Asian		51.02
Hispanic ⁴		62.61
Native Hawaiian and Other Pacific Islander		-
Nonminority Female		58.27

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

¹ Employer firms include firms with payroll at any time during 2017.

² Sales include total shipments, receipts, revenue, or business done by the firm.

³ Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

⁴ Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%.

Disparity results are statistically significant within a 95 percent confidence interval.

6.3.2 ABS Conclusion

Like the SBO analysis, the ABS analysis shows consistent underutilization of M/WBE firms relative to their availability in the marketplace. These results provide evidence that disparities exist in the broader private sector, thus supporting the need for Athens-Clarke County to remedy these disparities to avoid becoming passive participants in discrimination, irrespective of circumstances in the public sector.

As with the SBO results, the ABS results for each of the five procurement categories analyzed showed substantial disparity among defined M/WBE classes where sufficient data were available.

6.4 Analysis of Race, Ethnicity, and Gender Effects on Self-Employment and Earnings

This section examines further evidence regarding the overarching research question of whether business discrimination exists in the private sector and addresses three more specific questions:

1. *Does racial, ethnic, and gender status impact individual wages even after controlling for differences among firms?*
2. *Does racial, ethnic, and gender status impact business owner earnings even after controlling for differences among firms?*
3. *Are racial, ethnic, and gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
4. *If minority and female-owned business enterprises (M/WBEs) and nonminority male-owned firms shared similar traits and marketplace “conditions” (i.e., similar “rewards” in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

Answers to these questions are achieved by examining the effects of race, ethnicity, and gender, alongside controls for individual economic and demographic characteristics, on individuals’ participation in the private sector as self-employed business operators and the effects of these variables on individuals’ wages and business-owner earnings. Any negative and statistically significant effects by race, ethnicity, and gender found in the model after individual economic and demographic characteristics are controlled for would be consistent with business-related discrimination. The analysis targets five categories of private sector business activity (Construction, Architecture & Engineering, Professional Services, Goods & Services, and all categories combined) that generally align with Athens-Clarke County procurement categories defined for the study.

Adopting the methodology and variables employed by a City of Denver disparity study (see *Concrete Works v. City and County of Denver*¹⁴²), MGT used Public Use Microdata Samples (PUMS) data derived from the 2016-2020 American Community Survey (ACS) to which MGT applied appropriate regression

¹⁴² *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 967 (10th Cir. 2003).

statistics to draw conclusions. The ACS is an ongoing survey covering the same type of information collected in the decennial census. The ACS is sent to approximately 3.5 million addresses annually, including housing units in all counties within the 50 States and the District of Columbia. The PUMS file from the ACS contains records for a subsample of the full ACS. The data used for the regression analyses are the multi-year estimates combining 2016 through 2020 ACS PUMS records. The combined file contains over six million person-level records. The 2016-2020 ACS PUMS data provides a full range of population and housing information collected in the annual ACS and the decennial census.

6.4.1 Links to Business Formation and Maintenance

Economics research consistently finds group differences by race, ethnicity, and gender in business formation rates.¹⁴³ MGT knows, for instance, that most minorities and females have a lower median age than nonminority males (ACS PUMS, 2016-2020). In general, the likelihood of being self-employed increases with age (ACS PUMS, 2016-2020). An examination of these variables within the context of a disparity study seeks to control for these other important demographic and economic variables in conjunction with race, ethnicity, and gender – since they also influence group rates of business formation. Through the analyses, MGT can determine whether inequities specific to minorities and females are demonstrably present to warrant consideration of public sector remedies. Questions about marketplace dynamics affecting self-employment— or, more specifically, the odds of forming one’s own business and then excelling (i.e., generate earnings growth)— are at the heart of disparity analysis research.

6.4.2 Statistical Models and Methods

MGT employed two multivariate regression techniques to answer the research questions identified for this section: (1) logistic regression and (2) linear regression. Logistic regression is an econometric method that allows for analyzing dichotomous dependent variables. The results can then be translated into log-likelihoods that examine how likely one variable is to be true compared to another variable. Linear regression is an econometric method that helps explain the linear relationship between the dependent and independent variables – how substantially and in what direction each independent variable influences the dependent variable. This will help analyze the direct impact of being part of a specific minority or gender group on earnings.

To understand the appropriate application of these regression techniques, it is helpful to explore the variables inherent in these questions in greater detail. There are two general categories of variables employed in the regression techniques: (1) dependent variables and (2) independent variables.

- ♦ Dependent variables are the phenomena to be explained by influences such as age, race, gender, and disability status (i.e., the independent or “explanatory” variables).
- ♦ The first dependent variable is individual wages, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.

¹⁴³ See Journal of Econometrics, Vol. 61, Issue 1, devoted entirely to the econometrics of labor market discrimination and segregation.

- ♦ The second dependent variable is self-employment business earnings, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.
- ♦ The third dependent variable is the probability of self-employment status, which is a binary, categorical variable based on two possible values: 0 (not self-employed) versus 1 (self-employed). Logistic regression is appropriately used to perform an analysis in which the dependent variable is binary and categorical. This technique was employed to analyze self-employment.¹⁴⁴
- ♦ For each analysis, several specifications were conducted. The first specification looked at the impact of race, ethnicity, and gender on individuals at the national level. The second and third specifications examined whether race, ethnicity, and gender significantly impacted individuals in the Athens-Clarke County market more than at the national level. The results presented in this chapter are specific to the Athens-Clarke County marketplace. Full specification results can be found in **Appendix D**.

6.4.3 The Influences of Race, Ethnicity, and Gender on Individual Wages

To explore whether there are any measurable impacts on wages, MGT compared minority and female nonbusiness owner wages to those of nonminority males in the Athens-Clarke County marketplace when the effect of other demographic and economic characteristics was controlled. Holding all other personal characteristics constant, if minority and female wage earners cannot achieve comparable wages due to discrimination as their nonminority counterparts, then they are not able to save the necessary capital to start their businesses. MGT was able to examine the wages of individuals of similar education levels, ages, etc., to permit comparisons more purely by race, ethnicity, and gender.

First, MGT derived a set of independent variables known to predict wages, including:

- ♦ ***Race and Gender:*** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority males.
- ♦ ***Availability of Capital:*** Homeownership, home value, mortgage rate, unearned income, residual income.
- ♦ ***Marital Status.***
- ♦ ***Ability to Speak English Well.***
- ♦ ***Disability Status:*** From individuals' reports of health-related disabilities.
- ♦ ***Age and Age Squared:*** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ♦ ***Owner's Level of Education.***

¹⁴⁴ Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, used in *Concrete Works v. City and County of Denver* case. Logit, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For a complete explanation, see *Interpreting Probability Models* (T.F. Liao, Text 101 in the Sage University series).

♦ **Residing in the Athens-Clarke County Marketplace.**

MGT used 2016-2020 wages from employment for the dependent variable, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of these variables on wages for nonbusiness employees in the Athens-Clarke County marketplace. As the linear regression analysis yielded, each number in **Table 6-11** represents a percent change in earnings associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an African American is -0.386, meaning that an African American would be predicted to earn 39 percent less than a nonminority male, all other variables considered or controlled for. Complete results of linear regression outputs can be found in **Appendix D**. Specifically:

- ♦ In Construction, the negative disparity differences ranged from -11 percent for Hispanic Americans to -35 percent for Native Americans.
- ♦ In Architecture & Engineering, the negative disparity differences ranged from -15 percent for Hispanic Americans to -40 percent for nonminority females.
- ♦ In Professional Services, the negative disparity differences ranged from -26 percent for Native Americans to -43 percent for African Americans and Hispanic Americans.
- ♦ In Goods & Services, the negative disparity differences ranged from -25 percent for Native Americans to -51 percent for nonminority females.

The findings provide further positive evidence that disparities exist in the private sector of Athens-Clarke's County marketplace, compelling the continuation of remedies in the domain of the government's influence. The findings also provide affirmative evidence to the more specific questions regarding impacts on wages, demonstrating that racial, ethnic, and gender minority groups earn less wages than their nonminority male counterparts, all variables considered.

TABLE 6-11.
WAGES ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER CONTROLLING
FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

WAGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-39%***	-28%***	-18%***	-43%***	-33%***
ASIAN AMERICAN	-31%***	-22%***	-16%***	-29%***	-34%***
HISPANIC AMERICAN	-24%***	-11%***	-15%***	-43%***	-22%***
NATIVE AMERICAN	-24%***	-16%***	-27%***	-26%***	-25%***
MBE	-29%***	-19%***	-19%***	-35%***	-29%***
NONMINORITY FEMALE	-36%***	-35%***	-40%***	-35%***	-51%***
TOTAL M/WBE	-31%***	-22%***	-23%***	-35%***	-33%***

Source: PUMS data from 2016-2020 American Community Survey (Athens-Clarke marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“*” indicates a significant adverse disparity at the 15% level or better (85% confidence). “***” indicates the disparity is significant at a 10% level or better (90% confidence). “****” indicates significance at a 5% level or better (95% confidence).

The regression “elasticity” means the percent change resulting from being a member of one of the M/WBE groups.

6.4.4 The Influences of Race, Ethnicity, and Gender on Business Owner Earnings

To explore whether there are any measurable impacts on business owner earnings, MGT compared minority and female business owner earnings to those of nonminority males in the Athens-Clarke County marketplace when the effect of other demographic and economic characteristics was controlled or neutralized. Holding all other personal characteristics constant, if minority and female business owners cannot achieve comparable earnings from their businesses as similarly situated nonminorities because of discrimination, then failure rates for M/WBEs will naturally be higher, and M/WBE formation rates will be lower. MGT was able to examine the earnings of business owners of similar education levels, ages, etc., to permit comparisons more purely by race, ethnicity, and gender.

MGT utilized the same model specifications as outlined for wages in this linear regression model. MGT used the dependent variable's 2016-2020 earnings from business owners, as reported in the 5 percent PUMS data.

This analysis examined the statistical effects of the controlled variables on earnings for business owners in the Athens-Clarke County marketplace. As the linear regression analysis yielded, each number in **Table 6-12** represents a percent change in earnings associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an Asian American is -0.237, meaning that an Asian American would be predicted to earn 24 percent less than a nonminority male, all other variables considered or controlled for. Complete results of linear regression outputs can be found in **Appendix D**. Specifically:

- ◆ In Construction, the negative disparity differences ranged from -17 percent for African Americans to -28 percent for nonminority females.
- ◆ In Architecture & Engineering, the negative disparity differences ranged from 0 percent for Native Americans to -22 percent for Asian Americans.
- ◆ In Professional Services, the negative disparity differences ranged from -29 percent for Hispanic Americans and Native Americans to -31 percent for nonminority females.
- ◆ In Goods & Services, the negative disparity differences ranged from -5 percent for African Americans to -17 percent for Hispanic Americans.

As with individual wages, business owner earnings overall in the Athens-Clarke County marketplace provide consistent evidence that disparities exist in the private sector, indicating marketplace discrimination against M/WBEs when all other variables are controlled for.

TABLE 6-12.
BUSINESS EARNINGS ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER
CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS EARNINGS	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-18%***	-17%***	-19%***	-30%***	-5%***
ASIAN AMERICAN	-24%***	-22%***	-22%***	-30%***	-15%***
HISPANIC AMERICAN	-19%***	-19%***	-13%***	-29%***	-17%***
NATIVE AMERICAN	-23%***	-22%***	0%	-29%***	-10%***
MBE	-21%***	-20%***	-14%***	-30%***	-12%***
NONMINORITY FEMALE	-14%***	-28%***	-16%***	-31%***	-15%***
TOTAL M/WBE	-15%***	-22%***	-14%***	-30%***	-12%***

Source: PUMS data from 2016-2020 American Community Survey (Athens-Clarke marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence).

The regression “elasticity” means the percent change resulting from being a member of one of the M/WBE groups.

6.4.5 The Influences of Race, Ethnicity, and Gender on Self-Employment

As noted in the wages and business earnings analyses, discrimination that negatively affects the wages and entrepreneurial earnings of minorities and women will negatively affect the number of businesses formed by these groups as well. MGT used the 2016-2020 U.S. Census ACS 5 percent PUMS data to derive a set of variables known to predict employment status (self-employed/not self-employed). Logistic regression was used to calculate the probability of being self-employed (the dependent variable) based on selected socioeconomic and demographic characteristics with the potential to influence the likelihood of self-employment. The sample for the analysis was limited to labor force participants who met the following criteria:

- ♦ A resident of the Athens-Clarke County marketplace.
- ♦ Self-employed in construction, architecture & engineering, professional services, or goods and services.
- ♦ Employed full-time (more than 35 hours a week).
- ♦ Eighteen years of age or older.
- ♦ Employed in the private sector.

Next, MGT derived the following variables¹⁴⁵ hypothesized as predictors of employment status:

- ♦ **Race and Gender:** African American, Asian American, Hispanic American, Native American, nonminority woman, nonminority male.
- ♦ **Availability of Capital:** Homeownership, home value, mortgage rate, unearned income, residual income.
- ♦ **Marital Status.**
- ♦ **Ability to Speak English Well.**
- ♦ **Disability Status:** From individuals' reports of health-related disabilities.
- ♦ **Age and Age Squared:** Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ♦ **Owner's Level of Education.**
- ♦ **Number of Individuals Over the Age of 65 Living in Household.**
- ♦ **Number of Children Under the Age of 18 Living in Household.**

Table 6-13 summarizes the business ownership formation rates in the United States and the Athens-Clarke County marketplace by race, ethnicity, and gender. Additionally, it compares the differences in formation rates of M/WBEs to non-M/WBEs. As an example, African Americans in the Athens-Clarke County marketplace have a formation rate of 5.62 percent compared to 15.65 percent for their non-M/WBE counterparts. Thus, the formation rate for African Americans in the Athens-Clarke County marketplace is 64.11 percent lower than non-M/WBEs $((5.62 - 15.65)/15.65)$.

TABLE 6-13.
SELF-EMPLOYMENT FORMATION RATES

TOTALS			
	US	ATHENS-CLARKE COUNTY	DIFFERENCE FROM NON-M/WBE (ATHENS-CLARKE COUNTY)
AFRICAN AMERICAN	3.91%	5.62%	-64.11%
ASIAN AMERICAN	6.93%	11.78%	-24.74%
HISPANIC AMERICAN	8.11%	9.04%	-42.25%
NATIVE AMERICAN	7.39%	15.00%	-4.15%
MBE	5.75%	6.83%	-56.33%
WHITE FEMALES	5.48%	6.99%	-55.32%
M/WBE	5.59%	6.91%	-55.85%
NON-M/WBE	13.09%	15.65%	

¹⁴⁵ The variables used in this analysis were modeled after those incorporated in the same analysis from *Concrete Works v. City and County of Denver*.

CONSTRUCTION			
	US	ATHENS-CLARKE COUNTY	DIFFERENCE FROM NON-M/WBE (ATHENS-CLARKE COUNTY)
AFRICAN AMERICAN	15.09%	18.17%	-32.02%
ASIAN AMERICAN	16.71%	25.77%	-3.59%
HISPANIC AMERICAN	21.83%	28.67%	7.25%
NATIVE AMERICAN	17.88%	22.48%	-15.92%
MBE	16.54%	20.44%	-23.54%
WHITE FEMALES	15.46%	16.97%	-36.53%
M/WBE	16.22%	19.57%	-26.80%
NON-M/WBE	22.93%	26.74%	
A&E			
	US	ATHENS-CLARKE COUNTY	DIFFERENCE FROM NON-M/WBE (ATHENS-CLARKE COUNTY)
AFRICAN AMERICAN	6.09%	13.68%	-14.43%
ASIAN AMERICAN	9.18%	5.30%	-66.84%
HISPANIC AMERICAN	6.86%	0.00%	-100.00%
NATIVE AMERICAN	8.25%	100.00%	525.64%
MBE	7.00%	10.30%	-35.57%
WHITE FEMALES	8.40%	11.02%	-31.07%
M/WBE	7.78%	10.67%	-33.26%
NON-M/WBE	13.82%	15.98%	
PROFESSIONAL SERVICES			
	US	ATHENS-CLARKE COUNTY	DIFFERENCE FROM NON-M/WBE (ATHENS-CLARKE COUNTY)
AFRICAN AMERICAN	3.40%	5.56%	-68.08%
ASIAN AMERICAN	5.63%	7.80%	-55.23%
HISPANIC AMERICAN	7.44%	7.83%	-55.09%
NATIVE AMERICAN	4.90%	11.80%	-32.31%
MBE	4.74%	5.94%	-65.94%
WHITE FEMALES	5.12%	7.31%	-58.03%
M/WBE	4.99%	6.67%	-61.73%
NON-M/WBE	13.73%	17.43%	

GOODS & SERVICES			
	US	ATHENS-CLARKE COUNTY	DIFFERENCE FROM NON-M/WBE (ATHENS-CLARKE COUNTY)
AFRICAN AMERICAN	2.49%	3.46%	-53.46%
ASIAN AMERICAN	4.00%	5.85%	-21.32%
HISPANIC AMERICAN	7.89%	9.39%	26.34%
NATIVE AMERICAN	5.18%	4.77%	-35.81%
MBE	4.04%	4.42%	-40.61%
WHITE FEMALES	5.27%	5.30%	-28.76%
M/WBE	4.72%	4.78%	-35.65%
NON-M/WBE	6.71%	7.43%	

Source: PUMS data from 2016-2020 American Community Survey (Athens-Clarke County marketplace) and MGT Consulting Group LLC, calculations using SPSS Statistics software.

To test the impact that race, ethnicity, and gender have on self-employment rates, the logistics regression analysis examined the statistical effects of these variables on being self-employed in the Athens-Clarke County marketplace. The results in **Table 6-14** indicate the percentage difference between the probability of business ownership for a given race, ethnicity, or gender group compared to similarly situated nonminority males. For example, African Americans in the construction industry have a business formation rate of 51 percent lower than expected in a race-, ethnicity-, and gender-neutral market area. The results in the following tables present rates for the groups after variables have been controlled for, such as age and education. The results of logistic regression can be found in **Appendix D**.

TABLE 6-14.
SELF-EMPLOYMENT PERCENT DIFFERENCES CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

SELF-EMPLOYMENT PERCENT CHANGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
AFRICAN AMERICAN	-29%***	-51%***	-40%***	-70%***	-31%***
ASIAN AMERICAN	-25%***	-46%***	-44%***	-67%***	-30%***
HISPANIC AMERICAN	-33%***	-53%***	-12%***	-68%***	-77%***
NATIVE AMERICAN	79%***	171%*	-8%	-92%***	-47%***
MBE	-2%***	5%***	-26%***	-74%***	-46%***
NONMINORITY FEMALE	-39%***	-35%***	-39%***	-69%***	-35%***
TOTAL M/WBE	-9%***	-3%***	-29%***	-73%***	-44%***

Source: PUMS data from 2016-2020 American Community Survey (Athens-Clarke marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“*” indicates a significant adverse disparity at the 15% level or better (85% confidence). “***” indicates the disparity is significant at a 10% level or better (90% confidence). “****” indicates significance at a 5% level or better (95% confidence).

These findings demonstrate that minorities and women, in general, are statistically significantly less likely to own their businesses than expected based on their observable demographic characteristics,

including age, education, geographic location, industry, and trends over time. Additionally, as with wage and business earnings, these groups are at a significant disadvantage to nonminority males whether they work as wage and salary employees or as entrepreneurs. These findings are consistent with results that would be observed in a discriminatory market area.

6.4.6 Disparities in Rates of Self-Employment

The analyses of self-employment rates and 2016-2020 ACS self-employment earnings revealed general disparities, consistent with business market discrimination, between minority and nonminority self-employed individuals whose businesses were located in the Athens-Clarke County marketplace. **Table 6-15** presents the results of observed formation rates vs. expected formation rates from the logistics regression. Column A presents the observed rates as seen in **Table 6-13**. Column B is calculated using the regression results and adjusting the observed rates accordingly. For example, for an African American in professional services, the percentage difference compared to a nonminority male controlling for all other variables is 70 percent, indicating that the expected self-employment rate for an African American should be 70 percent higher than what is observed (5.56 percent) or 9.48 percent. Column C is the disparity ratio between observed rates and expected rates.

TABLE 6-15.
OBSERVED AND PREDICTED SELF-EMPLOYMENT RATES
ATHENS-CLARKE COUNTY MARKETPLACE

BUSINESS OWNERSHIP CLASSIFICATION	OBSERVED SELF-EMPLOYMENT RATES (A)	EXPECTED SELF-EMPLOYMENT RATES (B)	DISPARITY RATIO (C)
Overall			
African American Firms	5.62%	7.25%	78
Asian American Firms	11.78%	14.73%	80
Hispanic American Firms	9.04%	12.05%	75
Native American Firms	15.00%	3.13%	
MBE Firms	6.83%	8.83%	77
Nonminority Female Firms	6.99%	9.73%	72
M/WBE Firms	6.91%	7.05%	98
Construction			
African American Firms	18.17%	27.51%	66
Asian American Firms	25.77%	37.66%	68
Hispanic American Firms	28.67%	43.96%	65
Native American Firms	22.48%	36.48%	62
MBE Firms	20.44%	30.59%	67
Nonminority Female Firms	16.97%	22.93%	74
M/WBE Firms	19.57%	29.28%	67
Architecture & Engineering			
African American Firms	13.68%	19.16%	71
Asian American Firms	5.30%	7.65%	69
Hispanic American Firms	0.00%	0.00%	
Native American Firms	100.00%	100.00%	
MBE Firms	10.30%	13.60%	76
Nonminority Female Firms	11.02%	15.34%	72
M/WBE Firms	10.67%	14.28%	75
Professional Services			
African American Firms	5.56%	9.48%	59
Asian American Firms	7.80%	13.03%	60
Hispanic American Firms	7.83%	13.18%	59
Native American Firms	11.80%	22.62%	52
MBE Firms	5.94%	10.35%	57
Nonminority Female Firms	7.31%	12.36%	59
M/WBE Firms	6.67%	11.56%	58
Goods & Services			
African American Firms	3.46%	4.55%	76
Asian American Firms	5.85%	7.58%	77
Hispanic American Firms	9.39%	16.63%	56
Native American Firms	4.77%	7.00%	68
MBE Firms	4.42%	6.81%	65
Nonminority Female Firms	5.30%	7.13%	74
M/WBE Firms	4.78%	7.07%	68

Source: PUMS data from 2016-2020 American Community Survey (Athens-Clarke County marketplace) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

The findings provide evidence that for M/WBEs, discriminatory barriers exist to achieving the same level of self-employment rates as their non-M/WBE counterparts. The results further show that discriminatory marketplace factors are the cause of these differences in several instances.

6.5 Access to Credit

As noted throughout this chapter, discrimination occurs when different outcomes occur for individuals of different races, ethnicities, and gender after holding all of the personal characteristics constant. This might happen in private and public labor markets when equally productive individuals in similar jobs are paid different wages because of their race, ethnicity, or gender. In credit markets, it might occur when loan approvals differ across racial or gender groups with otherwise similar financial backgrounds. In this chapter, MGT examined whether there is evidence consistent with the presence of discrimination in the private sector against M/WBE businesses. Discrimination in the credit market against M/WBEs can significantly affect the likelihood that they will form and succeed, negatively impacting the business's size and longevity.

This section summarizes some national analyses about credit disparities and thus offers illustrative evidence of M/WBE firms' barriers to accessing credit. This information guides the results provided throughout the private-sector analysis.

6.5.1 Minority Business Development Agency

The U.S. Department of Commerce, Minority Business Development Agency published a report in January 2010 entitled, *"Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs."* Findings highlighted that access to affordable credit remains one of the main impediments to minority-owned firms' growth.

General findings show that minority-owned businesses pay higher interest rates on loans, are more likely to be denied credit, and are less likely to apply for loans because they fear their applications will be rejected.

- ◆ Among high-sales firms, 52% of nonminority firms received loans compared with 41% of minority firms.
- ◆ The average loan amount for all high-sales minority firms was \$149,000. The nonminority average was more than twice this amount at \$310,000.
- ◆ Among firms with gross receipts under \$500,000, loan denial rates for minority firms were about three times higher, at 42%, compared to those of non-minority-owned firms, at 16%.
- ◆ Among firms with gross receipts under \$500,000, 33% of minority firms did not apply for loans because of fear of rejection compared to 17% of nonminority firms.
- ◆ For all firms, minority firms paid 7.8% on average for loans compared with 6.4% for nonminority firms.

6.5.2 The Federal Reserve Small Business Credit Survey

The Small Business Credit Survey (SBCS) is a national collaboration of the 12 Reserve Banks of the Federal Reserve System¹⁴⁶. This survey has been conducted annually since 2015. Survey responses are collected from firms throughout the United States. While statistics are provided regarding how many responses are from each census region and division¹⁴⁷, the data provided online does not report race by division. The reports vary somewhat from year to year. For example, the 2016 reports include specific reports for minority and female-owned firms; and the 2018 reports included one regarding disaster-affected firms. Overall, each year's report documents that minority- and female-owned firms, particularly Black-owned firms, have less access to credit and pay more for credit than similarly situated white-owned firms. Data from four consecutive years documents the continuing challenge that minority-owned firms, particularly Black-owned firms, face regarding access to, and cost of, credit. Summary information from reports for employer firms is provided below.¹⁴⁸

6.5.2.1 SBCS 2016

Report on Minority-Owned Firms

The 2016 SBCS fielded in Q3 and Q4 2016 yielded 7,916 responses from employer firms with race/ethnicity information in 50 states and the District of Columbia.

- ◆ Black-owned firm application rates for new funding are ten percentage points higher than White-owned firms, but their approval rates are 19 percentage points lower.
- ◆ 40% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 14% of White-owned firms.
- ◆ Looking at just firms approved for at least some financing, when comparing minority- and nonminority-owned firms with good credit scores, 40% of minority-owned firms received the total amount sought compared to 68% of nonminority-owned firms.
- ◆ Black-owned firms report more credit availability challenges (58% vs. 32%) and difficulty obtaining funds for expansion (62% vs. 31%) than White-owned firms.

Report on Female-Owned Firms

- ◆ Low credit risk female-owned firms were less likely to be approved for business loans than their low credit risk male counterparts (68% compared to 78%).
- ◆ Sixty-four percent of female-owned firms reported a funding gap, receiving only some or none of the financing sought, compared to 56% of male-owned firms.

¹⁴⁶ The survey methodology provides for sample weighting to adjust for any sampling biases; race, ethnicity, and gender imputation by using statistical models to capture missing data; comparisons and adjustments to past reports; and credibility intervals to aide in survey estimates.

¹⁴⁷ Census regions and divisions are areas delineated for the purposes of statistical analysis and presentation.

¹⁴⁸ Source: Small Business Credit Survey, Federal Reserve Banks.

- ◆ Fewer female-owned firms received all of the funding sought than male-owned firms and more females received none. Among low credit risk firms, 48% of female-owned firms received all of the financing requested, compared to 57% of male-owned firms.

6.5.2.2 SBCS 2017

Report on Employer Firms

Fielded in Q3 and Q4 2017, the survey yielded 8,169 responses from small employer firms in the 50 states and the District of Columbia.

- ◆ Minority-owned firms report higher rates of financial challenges in the previous 12 months due to a lack of credit availability than White-owned firms.
 - For firms with revenues less than \$1M, Black-owned firms (58%) reported financial challenges at twice the rate of white-owned firms (32%) (Asian 42%, Hispanic 45%).
 - MGT sees the same ratio for firms with revenues at more than \$1M: Black-owned firms, 49%, and White-owned firms, 24% (Asian 38%, Hispanic 34%).
- ◆ Rates of firms receiving at least some of the financing requested: for Black-owned firms, 61%, and White-owned firms 80% (Asian 73%, Hispanic 74%).
- ◆ For low credit risk firms, 85% of nonminority-owned firms received at least some of the financing requested compared with only 75% for similarly situated minority-owned firms.
- ◆ For low credit risk firms receiving total financing, 68% of nonminority-owned firms were approved compared to only 40% of minority-owned firms.

6.5.2.3 SBCS 2018

Report on Employer Firms

There were 8,072 responses received for this survey from firms throughout the United States.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 50%; Asian, 33%; Hispanic, 41%; and White-owned firms, 28%.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 59% for Black-owned firms.
- ◆ Rates of firms receiving the total amount requested ranged from a high of 49% for White-owned firms to a low of 23% for Black-owned firms.
- ◆ 38% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 12% of White-owned firms.

6.5.2.4 SBCS 2020

Report on Minority-Owned Firms & Report on Employer Firms

The annual survey of businesses was fielded in the third and fourth quarters of 2018 and generated 6,614 responses from employer firms.

- ♦ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 51%; Asian, 36%; Hispanic, 40%; and White-owned firms, 30%.
- ♦ Rates of firms receiving at least some of the financing requested ranged from a high of 80% for White-owned firms to a low of 62% for Black-owned firms.
- ♦ Rates of firms receiving the total amount requested ranged from a high of 49% for White-owned firms to a low of 31% for Black-owned firms.
- ♦ 28% of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 13% of White-owned firms.
- ♦ On average, Black- and Hispanic-owned firm applicants received approval for smaller shares of the financing they sought than White-owned small businesses that applied for financing.
- ♦ Larger shares of Black- and Hispanic-owned firm applicants did not receive any financing they applied for—38% and 33%, respectively—compared to 20% of White-owned business applicants.
- ♦ White-owned business applicants received approval for all the financing they applied for 49%, compared to 39% of Asian-, 35% of Hispanic-, and 31% of Black-owned firm applicants.

6.6 Conclusions

Analysis of the U.S. Census 2012 SBO data, 2017 ABS data, and the PUMS 2016-2020 data demonstrate, in response to the overarching research question driving this analysis, that marketplace discrimination exists for M/WBE firms operating in the private sector within the Athens-Clarke County marketplace. Thus, based on the courts' guidance in this domain, Athens-Clarke County has a compelling interest in a M/WBE supplier diversity program.

To the more specific research questions:

- ♦ Findings from the U.S. Census 2012 SBO and 2017 ABS data indicate substantial disparities for most M/WBE firms across industry sectors resembling the procurement categories identified for this study.
- ♦ Findings from the 2016-2020 PUMS data indicate that:
 - Minority and women wages were significantly less in 2016-2020 than those of nonminority males, holding all other variables constant.

- M/WBE firms were significantly less likely than nonminority males to be self-employed.
- If they were self-employed, most M/WBE firms earned significantly less in 2016-2020 than self-employed nonminority males, holding all other variables constant.
- Analysis of observed vs. predicted self-employment rates show that marketplace discrimination impacted these rates. Further, this analysis indicates that holding all factors consistent, race, ethnicity, and gender play a role in the lower level of self-employment for M/WBEs.

A review of access to credit indicates that minorities and females tend to receive less than the requested amount of credit when they are approved than nonminority men; they are approved for credit less frequently than nonminority males, and that credit costs them more than nonminority males.

In light of these findings, credence may be given to the proposition established by Justice O'Connor in *Croson*, which suggested a government could be a passive participant in private-sector discrimination if it did not act to counter these dynamics within the domain of its influence. This evidence stands alongside the disparities observed in public sector contracting to illustrate the substantial discriminatory inequities that continue to exist in Athens-Clarke County's marketplace, underscoring its compelling interest in continuing to pursue remedies to address these gaps.

7. Anecdotal Analysis

7.1 Introduction

This chapter examines the qualitative evidence from M/WBE firms about the discriminatory obstacles they face in the study market area and their experiences working with Athens-Clarke County Unified Government (Athens-Clarke County), Athens-Clarke County's prime contractors, and the private sector. We have presented statistical findings in previous sections that are consistent with and indicative of the presence of business discrimination against minority and women-owned firms in the geographic and product markets that are relevant to Athens-Clarke County in **Chapter 4 Market Area, Product Market, and Availability**, **Chapter 5 Utilization and Disparity Analyses**, and **Chapter 6 Private Sector Analysis**. In conjunction with the quantitative data, MGT also drew inferences from the qualitative data as to the prevalence of obstacles perceived as limiting the participation of M/WBEs in Athens-Clarke County's procurements. The evidence found that M/WBE firms face business-related discrimination in the relevant marketplace at higher rates than non-M/WBEs. Additionally, the results show that M/WBE firms that were solicited for projects with M/WBE goals are seldom or never solicited for projects without goals. The relative lack of solicitation of M/WBEs in the absence of affirmative efforts by Athens-Clarke County and other public entities in the relevant market area shows that business discrimination continues to be a barrier to M/WBE business opportunities.

Chapter Sections

- 7.1 Introduction
- 7.2 Methodology
- 7.3. Demographics
- 7.4. Findings
- 7.5. Suggested Remedies from Anecdotal Participants
- 7.6. Professional Organization Interviews
- 7.7. Conclusions

Qualitative comments in this chapter detail the perceptions and opinions of individuals as they relate to discrimination in the Athens-Clarke County marketplace. The importance of these opinions depends on how much they are corroborated by others' statements and the quantitative data compiled to substantiate these perceptions. Unlike conclusions derived from other analyses in this report, the qualitative analysis does not rely solely on quantitative data. Instead, the analysis in this chapter utilizes qualitative data to describe the discriminatory context of the examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate. This analysis assesses the broad patterns among large groups of businesses based on their business ownership classification and industry.

In the successive sections, findings are generally organized around themes of discriminatory concerns expressed by vendors, with evidence divided between (1) items identified through qualitative input from qualitative research participants (interviews and open-ended comments) and (2) quantitative summaries of perceptions collected through the business surveys. In some cases, content is limited to one category of findings based on the scope of the information collected through either medium.

7.2 Methodology

The blueprint for collecting and analyzing anecdotal information for this Study was provided by the U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989) (*Croson*). In that

case, the Court held that race-conscious programs must be supported by strong documentation of discrimination, including evidentiary findings that go beyond the demographics of a community. Anecdotal information can bolster the quantitative analyses of contract expenditures to explain whether minority business creation, growth, and retention are negatively affected by discrimination. In *Croson*, the Court held that anecdotal accounts of discrimination could help establish a compelling interest for a local government to institute a race-conscious remedy. Moreover, such information can provide a local entity with a firm basis for fashioning a program that is narrowly tailored to remedy identified forms of marketplace discrimination and other barriers to M/WBE participation in contract opportunities. Further discussion regarding the basis and motivation for the collection and analysis of anecdotal data is contained in **Chapter 2, Legal Review**.

MGT used a combination of surveys, community meetings, online comments, and one-on-one interviews with businesses to collect anecdotal information that are analyzed to identify issues and concerns that were common to businesses in the market area. In addition to the anecdotal data collection from area businesses, MGT conducted interviews with area professional organizations to gather anecdotes on their perceptions on Athens-Clarke County's procurement process and discriminatory barriers faced by firms in the market area. While the collection of anecdotes from advocacy and professional development organizations is not required by the courts, such input give a third-party perspective of M/WBE issues and broadens the collection of M/WBE firms experiences doing business or attempting to do business with Athens-Clarke County.

7.2.1 Business Outreach and Engagement

MGT developed a master vendor database of firms that incorporated data sets from Athens-Clarke County's vendor list; membership lists from area professional organizations, if provided; and vendor and certification lists collected from other public agencies to establish a base for the outreach efforts. This database was created to ensure that a broad range of firms in the marketplace were notified about the qualitative data collection activities.

MGT worked with Athens-Clarke County to create an outreach and engagement plan that included various outreach methods geared to inform and encourage the business community's involvement and engagement for the anecdotal data collection activities. Outreach methods included:

- ♦ MGT and Athens-Clarke County identified area trade associations and business organizations, referred to as professional organizations for purposes of this report, whose insights would be valuable to understanding the dynamics and perceptions of the business community. The professional organizations were notified via e-mail blasts of anecdotal data collection activities and asked to encourage their members to participate.
- ♦ MGT and Athens-Clarke County distributed email blasts through the use of Athens-Clarke County's servers and Constant Contact to the business community to increase awareness and engagement of opportunities to participate in the study.

7.2.2 Sampling

MGT's sampling methodology for the in-depth interviews and business surveys was to randomly select firms from the study's Master Vendor Database. Each sample pulled included M/WBE and non-M/WBE firms in each procurement category studied in this report. To avoid contacting businesses multiple times the database was cross-referenced with previous extractions to ensure that firms did not participate in more than one anecdotal activity.

7.2.3 Vendor Survey

The vendor survey asked respondents to provide information on business ownership, demographics, and structure; work bid or performed as prime contractors with Athens-Clarke County; work bid or performed as subcontractors to Athens-Clarke County prime contractors; whether the respondent firm work, bid, or performed in the private sector (non-government); and any perceived barriers to doing business with Athens-Clarke County or its primes that the respondents believed they had experienced during the study period. The survey was administered via telephone and an online survey to a randomly selected list of firms.

Disparity study survey analyses are commonly plagued by sample size limitations, especially where the size of the minority business population is insufficient to permit a valid and representative sample. This problem is compounded when analyses are stratified further by business category. Insufficient sample size can pose problems for the statistical confidence of the results. MGT attempted to collect data in proportion to the distribution of M/WBEs and non-M/WBEs in the relevant market area. Although MGT's goal is to report data that can satisfy the 95 percent confidence level, this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when extreme due diligence has been exercised in attempting to meet the 95 percent standard. The survey of vendors questionnaire is included in this report as **Appendix D, Vendor Survey Instrument**.

The data from the survey responses were analyzed to determine the types of firms represented in the findings included in this chapter. These survey demographics are included in **Appendix E, Vendor Survey Results**.

7.2.4 Business Engagement Meeting

Area businesses and professional organizations were invited to attend a virtual community meeting to learn about the study and provide their anecdotal input on doing business with Athens-Clarke County and in the marketplace. The November 2022 community meeting began with a presentation outlining the study's objectives, work tasks, and methods by which anecdotal input can be received. Following the presentation, attendees who wanted to provide comments did so individually.

The business engagement meeting was open to the public, therefore, firms that participated in the business engagement meeting may have been randomly selected for other anecdotal activities.

7.2.5 In-Depth Interviews

The in-depth interviews were one-on-one interviews with M/WBE and non-M/WBE business owners or representatives to gather information about the firms' experiences in attempting to do and conducting business with Athens-Clarke County (both directly as a prime and/or as a subcontractor). During the interviews, we gathered demographic information such as the firm's primary line of business, ethnicity, gender, education/training background of the owner, business history, size, and gross revenues during selected calendar and/or fiscal years, and information. The in-depth interviews were structured settings in which an interviewer or facilitator used an interview guide ([Appendix F](#)) to obtain input from participants. The interviews provided more latitude for additional information gathering on issues that are unique to the respondents' experiences than the business engagement meetings or surveys. The interviewer made no attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary and appropriate. Before the interviews began, each participant attested that their responses were given freely and were true and accurate reflections of their experience with Athens-Clarke County or its prime contractors.

7.2.6 Professional Organizations Engagement

The engagement of professional organizations (trade associations and business organizations) was beneficial to the outreach efforts because their assistance extended communication efforts to inform and engage the business community in anecdotal activities. Professional organizations were asked to provide their feedback on the discriminatory barriers and/or procurement processes from the perspective of the objectives of the organization's members. In addition, professional organizations were asked to disseminate community meeting notices and encourage their members to participate in the anecdotal data collection activities.

Stakeholders were also asked to provide MGT with a copy of membership or vendor lists which were used to help build the master vendor outreach database. The organizations and associations included in these efforts are identified in [Appendix H, List of Professional Organizations](#).

7.2.7 Online Comments

MGT launched a disparity study-specific website that provided information on the study's objective, the project team, and how businesses can engage in anecdotal data collection. The website provided an option for firms to submit anecdotal comments via email for firms who were not selected for interviews, surveys, etc. Comments were accepted until outreach efforts were concluded to ensure that firms were allowed time to submit their comments.

7.3 Demographics

As mentioned, the use of a multi-pronged approach to collecting qualitative data provided a broader reach within the relevant market area. The self-reported demographic characteristics of anecdotal participants by data collection activity type are presented in the sections below.

7.3.1 Business Surveys

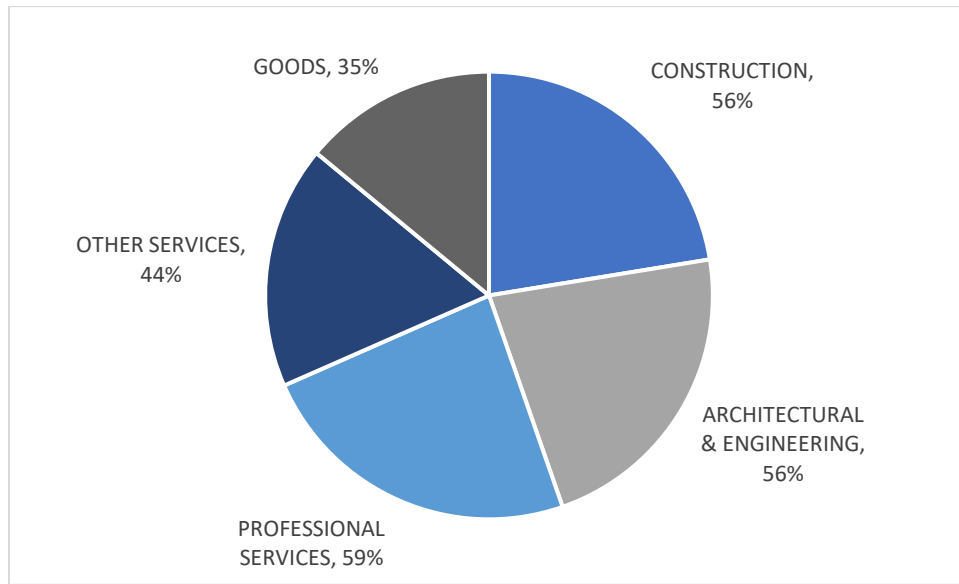
This survey collected 350 responses from firm owners and representatives in Athens-Clarke County's relevant market area. **Figure 7-1** provides the race, ethnicity, and gender of respondents. M/WBE firms accounted for 49 percent of the total respondents with African American firms representing 25 percent of those that participated, followed by Asian American firms at 3 percent, Hispanic American firms at 4 percent, Native Americans at 1 percent, and Nonminority Female firms totaling 16 percent. **Figure 7-2** shows response rates per business category.

FIGURE 7-1. ATHENS-CLARKE COUNTY
SURVEY OF VENDORS DEMOGRAPHICS:
PROPORTION OF RESPONDENTS BY M/WBE CLASS

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION	ARCHITECTURAL & ENGINEERING	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	TOTAL
AFRICAN AMERICAN	29%	22%	33%	23%	14%	25%
ASIAN AMERICAN	1%	15%	5%	0%	3%	3%
HISPANIC AMERICAN	7%	7%	6%	1%	3%	4%
NATIVE AMERICAN	3%	0%	1%	0%	0%	1%
TOTAL MBE	40%	44%	44%	24%	19%	33%
NONMINORITY WOMEN	16%	11%	15%	20%	16%	16%
TOTAL M/WBE	56%	56%	59%	44%	35%	49%

Source: Vendor Surveys, SkyBase7, 2023

FIGURE 7-2. ATHENS-CLARKE COUNTY
SURVEY OF VENDORS DEMOGRAPHICS:
PROPORTION OF RESPONDENTS BY INDUSTRY



Source: Vendor Surveys, SkyBase7, 2023

7.3.2 Business Engagement Meetings

MGT held one business engagement meeting and invited over 200 area businesses to attend. There were 27 firms that registered, and four African American firms participated.

7.3.3 In-Depth Firm Interviews

The in-depth interviews were conducted with randomly selected firms extracted from the master vendor database and located in Athens-Clarke County's relevant market area.¹⁴⁹ MGT cross referenced the list of firms for the interviews to ensure they were not previously selected for other anecdotal activities. In total, 39 firms were interviewed. The business ownership classification distribution of firms that participated in the interviews is 17 African American firms, one Hispanic American firm, four Nonminority Women, and 17 Nonminority/Non-woman-owned firms.

7.3.4 Online Comments

Submission of online comments was available via email to firms to provide their comments regarding their experiences doing business with Athens-Clarke County, its primes, or in the private marketplace. Any comments received via email were reviewed for study inclusion. There were no email submissions from firms in the relevant market area.

¹⁴⁹ See Chapter 4, Market Area, Product Market, and Availability.

7.4 Findings

The findings below reflect the opinions and perceptions of anecdotal participants characterized in the preceding demographic summary. As such, the themes are drawn from a very broad base of participants reflecting a comprehensive array of viewpoints and experiences regarding work with Athens-Clarke County or its primes.

In the successive sections, findings are generally organized around themes of concerns expressed by vendors, with evidence divided between (1) items identified through qualitative input from anecdotal research participants (interviews and open-ended comments) and (2) quantitative summaries of perceptions collected through the vendor surveys. In some cases, content is limited to one category of findings or the other based on the scope of information collected through either medium.

7.4.1 Discriminatory Barriers to Doing Business

Barriers to doing business with Athens-Clarke County, Athens-Clarke County's primes, or in the prime sector marketplace can hinder a business's ability to exist, compete, and grow. The telephone and online survey included questions regarding instances of discriminatory treatment based on minority or gender status experienced while attempting to do business. **Table 7-1** shows that in many of the categories, regardless of prime or subcontractor status, M/WBE firms experience substantially higher discriminatory treatment levels while doing business than their non-M/WBE counterparts.

Overall, indications of discriminatory treatment were reported highest by African American firms, with an overall rate of 10 percent. For specific barriers, M/WBEs reported experiencing higher levels of each discriminatory treatment, in particular:

- ◆ For M/WBE contractors in informal networks that excluded their firms from doing business, the incidence of discriminatory treatment was 318 percent higher than non-M/WBEs.
- ◆ For M/WBE contractors for prequalification requirements, the incidence of discriminatory treatment was 57 percent higher than non-M/WBEs.
- ◆ For M/WBE contractors competing with larger firms, the incidence of discriminatory treatment was 52 percent higher than non-M/WBEs.
- ◆ For M/WBE contractors in selection process/evaluation criteria, the incidence of discriminatory treatment was 39 percent higher than non-M/WBEs.

TABLE 7-1.
BARRIERS IDENTIFIED BY SURVEY RESPONDENTS
PRIME AND SUBCONTRACTOR FIRMS

BARRIER	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	TOTAL MBE	NON-MINORITY WOMEN	TOTAL M/WBE
Prequalification requirements	4%	0%	0%	0%	3%	0%	2%
Bond requirements	1%	0%	0%	0%	1%	0%	1%
Proposal/bid specifications	7%	0%	0%	0%	5%	0%	4%
Short or limited time given to prepare bid package or quote	15%	0%	0%	0%	11%	0%	7%
Restrictive contract specifications	0%	0%	0%	0%	0%	0%	0%
Selection process/evaluation criteria	6%	0%	0%	0%	4%	0%	3%
Insurance requirements (general liability, professional liability, etc.)	0%	0%	0%	0%	0%	0%	0%
Cost of bidding/proposing	0%	0%	0%	0%	0%	0%	0%
Price of supplies/materials	0%	0%	0%	0%	0%	0%	0%
Competing with large companies	21%	0%	0%	0%	15%	5%	12%
Financing	0%	0%	0%	0%	0%	0%	0%
Lack of experience	1%	0%	0%	0%	1%	0%	1%
Contract too large	0%	0%	0%	0%	0%	0%	0%
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	22%	0%	0%	0%	16%	2%	12%
Changes in the scope of work (after work began)	0%	0%	0%	0%	0%	0%	0%
Slow payment or non-payment for project work	3%	0%	0%	33%	3%	5%	4%

Source: Business Surveys, SkyBase7 & Online Surveys.

Note: Percentages are calculated based on responses within each individual race, ethnicity, or gender category.

As discussed in **Chapter 6, Private Sector Analysis**, variables such as firm age, firm financing, bonding limits, or experience are all impacted by discrimination. Regardless, if specific differences between M/WBEs and non-M/WBEs are present after holding these variables constant, the inference of discrimination is more powerful. Like the Logit model described in **Chapter 6, Private Sector Analysis**, a Logit model was utilized to control for these variables and show the impact that M/WBE status had on an individual, indicating that the barrier had a discriminatory effect on doing business. This model was

conducted as an aggregate for prime and subcontractor respondents. For the model, the firm characteristics used as control variables were the firm's age, the number of employees, the size of revenues, and the education level of the primary owner of the firm. In **Table 7-2**, a “+” indicates that M/WBEs are more likely to indicate that the barriers had a discriminatory impact on doing business than non-M/WBEs. Overall, the results show that when firm characteristics are held constant, M/WBE firms are more likely to indicate barriers such as prequalification requirements, proposal/bid specifications, selection process, competing with large companies, and informal networks impact doing business at statistically significant rates.

TABLE 7-2.
PRIME AND SUBCONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL M/WBE
Prequalification requirements	+ *
Bond requirements	
Proposal/bid specifications	+ *
Short or limited time given to prepare bid package or quote	+
Restrictive contract specifications	
Selection process/evaluation criteria	+ *
Insurance requirements (general liability, professional liability, etc.)	
Cost of bidding/proposing	
Price of supplies/materials	
Competing with large companies	+ *
Financing	
Lack of experience	
Contract too large	
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+ *
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, SkyBase7 & Online Surveys. Note: “*” indicates significance at a 5% level or better (95% confidence).

7.4.2 Prime Contracting Inclusion of M/WBEs on Projects with and without Goals

Firms that participated in the qualitative data collection who also work in the private sector as primes noted that relationships are the foundation of their success. However, M/WBE subcontractor firms were not as fortunate in developing such relationships because the private sector does not historically have M/WBE goal requirements on their contracts, which means that without goals, primes hire M/WBE subcontractors for their projects at lower rates than their non-M/WBE counterparts. In *Builders Association of Greater Chicago v. City of Chicago*, the court held that the failure of prime contractors even to solicit qualified M/WBE firms is a “market failure” that is significant evidence in helping to establish a government’s compelling interest in remedying such failures¹⁵⁰.

Survey respondents who indicated they were subcontractors or suppliers were asked how often prime contractors/vendors solicited their firm to bid on projects with M/WBE goals compared to those without M/WBE goals. The survey sought to determine if prime contractor behavior was the same when projects applied M/WBE goals versus projects without goals.

Participants overwhelmingly agreed that primes that solicit bids for public sector work were not soliciting M/WBE firms for private projects. **Table 7-3** below details survey respondents' experiences with primes when projects do not include M/WBE goals. The survey asked, “How often do prime contractors/vendors who use your firm as a subcontractor on public-sector projects with M/WBE goals solicit your firm on projects (private or public) without M/WBE goals?” For M/WBEs collectively, 21 percent indicated that they are seldom or never solicited on projects without goals. Individually, Hispanic American firms experienced the largest impact of exclusion when there were no goals (50 percent). Additionally, and 28 percent of African American firms responded that they were seldom or never used on projects without goals. Similar results were observed in each major procurement category.

TABLE 7-3.
PRIMES LACK OF SOLICITATION OF M/WBE FIRMS ON PROJECTS WITHOUT GOALS

BUSINESS OWNERSHIP CLASSIFICATION	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS	TOTAL
AFRICAN AMERICAN	57%	25%	0%	0%	28%
ASIAN AMERICAN	0%	0%	0%	0%	0%
HISPANIC AMERICAN	50%	50%	0%	0%	50%
NATIVE AMERICAN	0%	0%	0%	0%	0%
TOTAL MBE	56%	29%	0%	0%	30%
NON-MINORITY WOMEN	0%	0%	0%	0%	0%
TOTAL M/WBE	38%	29%	0%	0%	21%

Source: Business Surveys, SkyBase7 & Online Surveys.

¹⁵⁰ *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp. 2d 725, 737 (N.D. Ill. 2003).

Further evidence of “Market Failure” can be seen in **Table 7-4**. This table summarizes the firms’ experiences being released from Athens-Clarke County and non-Athens-Clarke County projects after the project has been awarded. As shown above, in **Table 7-3**, M/WBE firms are seldomly asked to participate in nongovernment projects. When M/WBEs are asked to be a part of non-Athens-Clarke County projects, the table shows, that the prevalence of M/WBEs being dropped from the project is much higher on non-Athens-Clarke County projects than on Athens-Clarke County projects. African American-owned businesses experienced being dropped from non-Athens-Clarke County projects at the highest degree, followed by Nonminority Women, Asian Americans, and Hispanic Americans.

TABLE 7-4.
M/WBE FIRMS DROPPED AFTER PROJECT AWARD

PROJECT TYPE	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMEN	TOTAL M/WBE
Athens-Clarke County Project	3%	0%	2%	0%	2%	2%
Non-Athens-Clarke County Project	17%	10%	6%	0%	11%	13%

Source: Business Surveys, SkyBase7, & Online Surveys

7.4.3 Discrimination and Disparate Treatment on Private Projects

This section examines understanding and identifying the type of discriminatory treatment encountered by M/WBEs working private projects. A trend for firms that participated in the interviews, surveys or business engagement meetings was the indication that discrimination is prevalent and happens frequently in subtle ways and even to their peer competitors in the private marketplace. **Table 7-5** shows the type of discrimination felt by those indicating they were discriminated against based on their race, ethnicity, or gender. Individually, African American firms indicated experiencing the highest levels of direct discrimination against them due to race on private projects. Additionally, all other groups indicated direct discrimination compared to nearly no indication for non-M/WBEs.

TABLE 7-5.
DISCRIMINATORY TREATMENT IDENTIFIED BY PRIMES AND SUBCONTRACTORS
PRIVATE PROJECTS

DISCRIMINATORY ACT	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMEN	TOTAL M/WBE
Exclusion from events, organizations, or business networks	14%	0%	0%	0%	0%	11%
Collusion and conspiracy by trade by competitors and suppliers	29%	0%	100%	0%	0%	44%
Double standards in performance	57%	0%	0%	0%	0%	44%
Denial of opportunity to bid	29%	0%	0%	0%	0%	22%
Unfair denial of contract award	29%	0%	50%	0%	0%	33%
Unfair contract termination	14%	0%	50%	0%	0%	22%
Predatory business practices such as price discrimination by suppliers/inspectors, bid shopping, slow payment, or non-payment	14%	0%	100%	0%	0%	33%

Source: Business Surveys, SkyBase7 & Online Surveys

7.5 Suggested Remedies from Anecdotal Participants

All anecdotal data collection included the opportunity for participants to express their ideas and recommendations for improving the procurement process or to increase M/WBE participation. A few recurring ideas and/or suggested remedies provided by participants are:

- ♦ Cultural competency awareness.
- ♦ M/WBE goals and the accountability of meeting goals is necessary in order to break barriers for M/WBE firms.
- ♦ Targeted contracts for small businesses will help grow local businesses.
- ♦ Create smaller bidding packages to encourage smaller M/WBE firms to bid.

7.6 Professional Organizations Interviews

Professional Organizations were identified as area trade associations and business organizations that have a stake in the development and growth of area businesses, including minority- and women-owned

businesses. The professional organizations that participated in the interviews provide capacity building, advocacy, and technical and/or business development to their members, which include M/WBE firms. The common themes expressed by professional organizations included:

- ♦ **Cash flow.** Slow payments from governments can severely impact firms ability to grow, it impacts their financials, and ability to complete projects.
- ♦ **Bonding capacity.** Most all public work has to be bonded. Longevity and history has a major impact on a firm's ability to bond and compete with longer standing firms.
- ♦ **Workforce.** There's a real shortage of people to work. Firms are only taking on work that they have people to work.
- ♦ **Networking/Relationships.** There is a lack of connectivity that most interfere business' ability to do business. M/WBE need avenues to build relationships.

7.7 Conclusions

Anecdotal data were collected using multiple methods and included a broad reach of diverse businesses and business industries. M/WBE firms are experiencing discrimination and discriminatory barriers. The anecdotes from this broad population of businesses can provide a footprint of policies and procedures that could meet the need of businesses in the market area.

8. Findings, Commendations, and Recommendations

8.1 Introduction

The Athens-Clarke County Unified Government engaged MGT Consulting Group (MGT) to conduct its **Disparity Study** to determine if there is a disparity between the number of viable minority- and woman-owned businesses that are ready, willing, and able to perform Construction, Architecture and Engineering, Professional Services, Other Services and Goods contracts, and the numbers of these same business types who are actually participating in these same types of contracts with Athens-Clarke County Unified Government (Athens-Clarke County).

Chapter Sections

- 8.1 Introduction
- 8.2 Findings
- 8.3. Aspirational Goal Methodology
- 8.4. Commendations and Recommendations
- 8.5. Conclusions
- 8.6. M/W/SBE Selected Practices

Within the context of studying Athens-Clarke County's procurement practices, the Study was conducted in a manner consistent with disparity study best practices, controlling local legal precedents, and constitutional law in order to properly advise the Athens-Clarke County about the legal basis for potential remedies, if necessary. MGT's methodology included a review of disparity studies' legal framework, a policy and procedures review, analyses of utilization, availability, and statistical disparity, anecdotal research, private sector analyses, findings, commendations, and recommendations.

The results of this study and the conclusions drawn are presented in detail in **Chapters 3** through **7** of this report. This chapter summarizes the evidence on the central research question: *Is there factual predicate evidence for the continuation of a race- and gender-conscious M/WBE program for Athens-Clarke County?* MGT's findings and evidence are based on fact-finding to analyze Athens-Clarke County procurement trends and practices between July 1, 2017 – June 30, 2021; evaluation of the impact of race-and gender-neutral remedial efforts; and evaluation of options for future program development. *MGT found sufficient evidence of disparity to recommend the continuation of a narrowly tailored race- and gender-based procurement program to address identified disparities.*

8.2 Findings

Finding A: Relevant Geographic Market Area (Chapter 4, Appendix B)

The relevant market area was determined by examining geographic areas from which the majority of its purchases are procured. Based on the results of the market area analysis conducted for each business category, the recommended relevant market area is the 31 counties within the Atlanta-Athens-Clarke County--Sandy Springs, GA-AL CSA. The counties included are all located in Georgia are:

Barrow County, Butts County, Carroll County, Cherokee County, Clarke County, Clayton County, Cobb County, Coweta County, Dawson County, DeKalb County, Douglas County, Fayette County, Forsyth County, Fulton County, Gwinnett County, Haralson County, Henry County, Jasper County, Lamar County, Madison County, Meriwether County, Morgan County, Newton County, Oconee

County, Oglethorpe County, Paulding County, Pickens County, Pike County, Rockdale County, Spalding County, Walton County

The relevant geographic market area makes up 73.38 percent of the spending as reflected in **Table 8-1**.

TABLE 8-1. SUMMARY OF DOLLARS,
TOTAL CONTRACTS (PAID) BY PROCUREMENT CATEGORY,
INSIDE AND OUTSIDE OF THE MARKET AREA

CONSTRUCTION	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 120,979,358	88.52%
Outside MARKET AREA	\$ 15,690,043	11.48%
CONSTRUCTION, TOTAL	\$ 136,669,401	100.00%
ARCHITECTURE & ENGINEERING	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 2,418,204	45.70%
Outside MARKET AREA	\$ 2,873,561	54.30%
ARCHITECTURE & ENGINEERING, TOTAL	\$ 5,291,765	100.00%
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 82,737,239	70.73%
Outside MARKET AREA	\$ 34,233,737	29.27%
PROFESSIONAL SERVICES, TOTAL	\$ 116,970,976	100.00%
GOODS	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 56,131,555	56.25%
Outside MARKET AREA	\$ 43,663,237	43.75%
GOODS, TOTAL	\$ 99,794,792	100.00%
OTHER SERVICES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 38,175,717	75.27%
Outside MARKET AREA	\$ 12,542,176	24.73%
OTHER SERVICES, TOTAL	\$ 50,717,893	100.00%
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside MARKET AREA</i>	\$ 300,442,073	73.38%
Outside MARKET AREA	\$ 109,002,753	26.62%
ALL BUSINESS CATEGORIES, TOTAL	\$ 409,444,826	100.00%

Finding B: M/WBE Utilization (Chapter 5, Appendix C)

In **Table 8-2** the utilization analysis shows that non-M/WBE firms are utilized at higher rates than their M/WBE counterparts. Athens-Clarke County's utilization with M/WBE firms was 1.01 percent while non-

M/WBE firms totaled 98.99 percent. The highest utilization rates among M/WBE classifications included Nonminority Women-owned firms accounting for 0.57 percent of dollars paid.¹⁵¹

TABLE 8-2.
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,
ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL PROCUREMENT CATEGORIES	
	Dollars (\$)	Percent (%)
African Americans	\$214,440.00	0.05%
Asian American	\$0.00	0.00%
Hispanic Americans	\$1,596,377.32	0.39%
Native Americans	\$0.00	0.00%
Total MBE Firms	\$1,810,817.32	0.44%
Nonminority Women	\$2,328,939.07	0.57%
Total M/WBE Firms	\$4,139,756.39	1.01%
Non-M/WBE Firms	\$405,305,069.75	98.99%
TOTAL	\$409,444,826.14	100.00%

Source: MGT developed a Master Utilization Database based on Athens-Clarke County's payments between July 1, 2017, through June 30, 2021.

Finding C: Availability Estimates (*Chapter 4, Appendix C*)

A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the examination scope is an incumbent element in the determination of disparity. Post-*Croson* case law has not prescribed a single approach to deriving firm availability, and agencies have used various means to estimate pools of available vendors that have withstood legal scrutiny.

MGT calculates availability based on a “custom census” approach. This approach is the most accurate for calculating availability at its most granular level. An in-depth explanation of this approach is provided in **Chapter 4**. Detailed availability results by business category and 4-digit NAICS code are provided in **Appendix C**. The availability estimates by procurement category are illustrated in **Table 8-3**.

¹⁵¹ Chapter 4, Product Market, Utilization, and Disparity Analyses

TABLE 8-3.
ESTIMATION OF AVAILABLE FIRMS, **ALL PROCUREMENT CATEGORIES**

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
AFRICAN AMERICAN FIRMS	6.76%
ASIAN AMERICAN FIRMS	0.83%
HISPANIC AMERICAN FIRMS	1.39%
NATIVE AMERICAN FIRMS	0.48%
NONMINORITY WOMEN FIRMS	9.34%
TOTAL M/WBE FIRMS	18.80%

Source: Custom Census Analysis.
Study Period: July 1, 2017 – June 30, 2021.

Finding D: Disparity (*Chapter 5, Appendix C*)

The full results of the disparity ratios calculated are presented in **Chapter 5**. MGT’s disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable. A disparity in utilization within the minority-owned firms can be assessed concerning the utilization of nonminority- and male-owned firms. MGT applies two significant tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective MBE availability, which is labeled “substantial disparity,” and (2) whether the disparity index passes the t-test determination of statistical significance. In cases where one, or especially both, measures hold true, a remedy is typically deemed justifiable by courts, making these results critical outcomes of the subsequent analyses.

These overall results show that among M/WBE firms there is disparity for all categories but statistical significance for M/WBEs collectively. Detailed disparity results by business category and 4-digit NAICS code are provided in **Appendix C**.

TABLE 8-4.
DISPARITY INDICES AND SIGNIFICANCE TESTING,
ALL PROCUREMENT CATEGORIES

Procurement Category	All	Construction	Architecture & Engineering	Professional Services	Other Services	Goods
African Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Asian Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Hispanic Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Native Americans	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Total MBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Nonminority Females	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity
Total M/WBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity	Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability. “*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “**” indicates the disparity is significant at a 10% level or better (90% confidence). “***” indicates significance at a 5% level or better (95% confidence). **BOLD** indicates substantial statistically significant disparity.

Finding E: Private Sector Disparities in Census SBO and ABS Data (Chapter 6)

Based on US Census 2012 SBO and 2017 ABS data, MGT attempted to answer the research question; “Do marketplace disparities exist in the private sector regarding revenue within similar City procurement categories for firms owned by minorities or females?”. Both data sets gather and report firm information for firms with paid employees, including workers on the payroll (employer firms). SBO data is the only data set that provides firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (nonemployer firms). This is an important distinction because it provides a more encompassing picture of the private sector. SBO is limited in the age of the data, but it can be supplemented with more recent ABS data. It should also be noted that all the disparity indices in the SBO tables are statistically significant within a 95 percent confidence interval.

According to the findings, the SBO and ABS data analysis show consistent underutilization of M/WBE firms relative to their availability in the marketplace. Further, each of the five procurement categories analyzed showed substantial disparity among defined M/WBE classes where sufficient data were available.

Finding F: Disparities In Individual Wages, Business Earnings, Self-Employment Rates *(Chapter 6)*

Findings from the Public Use Microdata Sample (PUMS) from 2015-2019 data indicate that minorities earn significantly fewer wages and business earnings than their nonminority male counterparts. Additionally, the findings show that minorities have significantly fewer formation rates than nonminority males. When these self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for all minorities. These findings support the conclusion that discriminatory disparities for these groups (of an adequate sample size to permit interpretation) were likely the result of differences in the marketplace due to race, gender, and ethnicity. Additionally, analysis of observed vs. predicted self-employment rates shows that there are instances that discrimination impacted these rates, and that business marketplace discrimination exists in the City market.

Finding G: Qualitative and Anecdotal Results *(Chapter 7)*

The evidence from the qualitative and anecdotal activities is consistent with and corroborates the finding of discrimination from **Chapter 4 Market Area, Product Market, and Availability Analyses**, **Chapter 5 Utilization, and Disparity Analyses**, and **Chapter 6 Private Sector and Nongoal Analysis**. Variables such as firm age, firm financing, bonding limits, or experience are all impacted by discrimination. Regardless, if specific differences between M/WBEs and non-M/WBEs are present after holding these variables constant, the inference of discrimination is more powerful. Like the Logit model described in **Chapter 6 Private Sector and Nongoal Analysis**, a Logit model was utilized to control for these variables and show the impact that M/WBE status had on an individual, indicating that the barrier had a discriminatory effect on doing business. This model was conducted on both the prime and subcontractor respondents. For the model, the firm characteristics used as control variables were the firm's age, the number of employees, the size of revenues, and the education level of the primary owner of the firm. In **Table 8-5**, a "+" indicates that M/WBEs are more likely to indicate that the barriers had a discriminatory impact on doing business than non-M/WBEs. Overall, the results show that when firm characteristics are held constant, M/WBE firms are more likely to indicate barriers such as prequalification requirements, proposal/bid specifications, selection process, competing with large companies, and informal networks impact doing business at statistically significant rates.

TABLE 8-5.
PRIME AND SUBCONTRACTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL M/WBE
Prequalification requirements	+ *
Bond requirements	
Proposal/bid specifications	+ *
Short or limited time given to prepare bid package or quote	+
Restrictive contract specifications	
Selection process/evaluation criteria	+ *
Insurance requirements (general liability, professional liability, etc.)	
Cost of bidding/proposing	
Price of supplies/materials	
Competing with large companies	+ *
Financing	
Lack of experience	
Contract too large	
Informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	+ *
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, SkyBase7 & Online Surveys. Note: "*" indicates significance at a 5% level or better (95% confidence)

8.3 Aspirational Goals Methodology

Estimates of MBE availability in the Athens-Clarke County's market area provide the starting point for citywide annual aspirational goals for contracting across all industry categories. As Athens-Clarke County continues to review its achievement toward the annual aspirational goals, it should assess whether race- and gender-based remedies are necessary for all industry categories. The proposed M/WBE aspirational goal reflected in **Table 8-6** for Construction is 13 percent, Architecture and Engineering is 12 percent, Professional Services is 9 percent, Other Services is 10 percent, and Goods is 2 percent. The overall aspirational goals are recommended at 9 percent for M/WBE firms. The proposed goals are based on a weighted average of utilization and availability. Aspirational goals are based on an accumulation of all spending within Athens-Clarke County and should not be applied rigidly to every individual procurement. Future adjustments to the agency's aspirational goals should be based on relative availability and adjusted as needed.

TABLE 8-6.
M/WBE ASPIRATIONAL GOALS

CONSTRUCTION	13%
ARCHITECTURE & ENGINEERING	12%
PROFESSIONAL SERVICES	9%
OTHER SERVICES	10%
GOODS	2%
OVERALL	9%

8.4 Commendations and Recommendations

Athens-Clarke County is commended for investing the resources to conduct this study. Most of the following commendations and recommendations are based on multiple findings and do not necessarily tie to one finding. The recommendations are presented according to race- and gender-neutral measures and race- and gender-based measures.

8.4.1 Race- and Gender-Neutral Recommendations

Establish a Small Business Enterprise (SBE) Program

Athens-Clarke County should consider establishing an SBE program, including targeting specific contracts for competition among registered SBEs. SBE programs have the advantage that they are generally not subject to constitutional challenges. Combining SBE programs and M/WBE programs has become common across agencies to expand the economic inclusion of firms in a market area. Further ideas on SBE programs are discussed in M/W/SBE Selected Practices [Section 8.6](#).

Expanded Data Collection and Management

We recommend that Athens-Clarke County expands the contract data collected in the current financial system to include commodity codes that align with the purchase order description, contact name, address, phone number, and email addresses of vendors.

- ♦ To establish M/WBE utilization and assess the attainment of aspirational M/WBE goals, Athens-Clarke County should collect data on subcontracts awarded across all industry categories.
- ♦ Create a list of certified M/WBE firms in the established relevant market area. The database of firms located in the relevant market area should be readily available to Athens-Clarke County departments and potential bidders or proposers. Athens-Clarke County should be a collection of certification lists from the state, and other municipalities in the relevant geographic market area.

Develop a Long-Term Procurement Forecast

We recommend that Athens-Clarke County develop and make available a six to 12-month procurement forecast of planned contracting opportunities in all industries, including anticipated capital improvement projects and informal procurements. A comprehensive and transparent site that provides information

on upcoming bid opportunities is one race-neutral and gender-neutral measure that will assist all firms to access information.

Develop a Formal Strategy for Business Relationships with Organizations

Athens-Clarke County should develop a formal and structured business relationship with organizations that promote M/WBE growth and development for a more comprehensive and effective outreach and technical assistance effort.

Athens-Clarke County should establish a budget to support outreach, workshops, marketing, professional development, and overall capacity building of M/WBE firms. Outreach in and engagement of the business community is critical to the success of M/WBE inclusion. Collaboration with professional organizations will allow Athens-Clarke County to extend training, workshops, and professional development opportunities that will encourage participation and increase access to services.

Adopt an Audit Clause for Contracts

An audit clause in all Athens-Clarke County contracts will require companies contracted with Athens-Clarke County to maintain contract files and data for an established period of time and require companies to provide Athens-Clarke County with any data or information requested in the execution of the company's contract. The audit clause allows Athens-Clarke County to collect any data needed in the performance of their duties such as subcontract reporting.

Establish a Business Inclusion Office

Intentional and targeted efforts to increase small, local, minority, and women business inclusion in Athens-Clarke procurements can address the disparity identified in this report. Athens-Clarke County should establish a business inclusion office with dedicated staff that will execute program management, outreach, reporting, and compliance.

8.4.2 Race- and Gender-Conscious Recommendations

Narrowly Tailored MWBE Program

Any new M/WBE Program implemented to address the findings of this study should be narrowly tailored to specifically address the identified disparity in accordance with guidance from case law regarding race-based procurement programs. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/WBE programs. Federal courts found have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored.¹⁵² The federal DBE program has the features in **Table 8-7** that contribute to this characterization as a narrowly tailored remedial procurement preference program. Athens-Clarke County should adopt these features in any new M/WBE program.

¹⁵² *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8th Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).

TABLE 8-7.
NARROWLY TAILORED M/WBE PROGRAM FEATURES

NARROWLY TAILORED GOAL-SETTING FEATURES	DBE REGULATIONS
Athens-Clarke County should not use M/WBE quotas.	49 CFR 26(43)(a)
Athens-Clarke County should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
Athens-Clarke County should meet the maximum amount of M/WBE goals through race-neutral means.	49 CFR 26(51)(a)

Source: Suggested features in a proposed narrowly tailored M/WBE program based on USDOT 49 CFR 26.

Implement Contract-Specific Subcontracting Goals

To ensure all M/WBE firms in the relevant market area are afforded contracting opportunities, project-specific subcontracting goals should be established where there is availability for specific scopes of work across all procurement categories, e.g., construction, professional services, architecture and engineering, etc., and based on the historical participation of M/WBE on identical or similar projects. Project-specific subcontract goals will assist Athens-Clarke County in addressing identified disparities found in this report.

Adopt Annual Aspirational MBE Goals

Estimates of M/WBE availability in Athens-Clarke County's market area provide the starting point for agency-wide annual aspirational goals for contracting across all industry categories. The proposed goals identified in [Section 8.3](#) are based on a weighted average of utilization and availability. Aspirational goals should not be applied rigidly to every individual procurement. Future adjustments to agency-wide aspirational goals should be based on relative availability and adjusted as needed.

Unbundle Contracts

Athens-Clarke County should simplify public procurement processes for smaller M/WBE firms, including unbundling large contracts, removing unnecessary contract specifications, writing procurement documents in plain language, routinely providing feedback to bidders and proposers, and prompt payment. Unbundling contracts will create bidding opportunities for smaller M/WBE firms to compete.

M/WBE Program Sunset

Athens-Clarke County should continue the review of the M/WBE Program to determine if an evidentiary basis to continue every five years and that it should be continued only if there is strong evidence that discrimination continues to disadvantage M/WBEs in the relevant market area. The M/WBE Program sunset date should be scheduled in 2029 and re-evaluated prior to the sunset period.

8.5 Conclusions

This study provides factual predicate evidence for Athens-Clarke County establishing a M/WBE program. This evidence is based on quantitative and qualitative data from public and private sources. It is important that Athens-Clarke County implements and executes any future M/WBE initiatives that are narrowly tailored to rectify the issues identified in this report.

8.6 M/W/SBE Selected Practices

Many state and local government agencies have policies and practices that attempt to address marketplace discrimination and barriers faced by minority-owned businesses and woman-owned businesses in their contracting. These practices are categorized into two distinct remedies: race- and gender-neutral and race- and gender-conscious measures. Race- and gender-neutral measures are methods designed to encourage the participation of all businesses—or all small businesses—in an organization’s contracting. Participation in such measures is not limited to minority- and women-owned businesses. In contrast, race- and gender-conscious measures are measures that are specifically designed to encourage the participation of minority- and woman-owned businesses in an organization’s contracting (e.g., using minority-owned or women-owned business subcontracting goals on individual contracts).

The following provides selected industry practices for race- and gender-conscious and race- and gender-neutral measures to encourage the participation of minority-owned businesses, women-owned businesses, and small businesses in government contracting and procurement. Such assistance may include technical assistance to small and new entrepreneurs, mentor-protégé programs, bonding assistance, and collaboration with organizations that provide management and technical assistance to businesses. The practices identified have worked in certain localities, and some have not been as effective in others. Effectiveness can depend on a variety of factors. As such, it is difficult to determine whether a particular policy or practice is solely responsible for the success of a program.

Practice A: Combined Race-and Gender-conscious and Race- and Gender-neutral Programs

Several agencies combine race-neutral and race-conscious program features.

City of Tallahassee (City), Leon County Government (County), and Blueprint Intergovernmental Agency (Blueprint), Florida. The City, County, and Blueprint implemented a consolidated Minority, Women, and Small Business Enterprise (MWSBE) policy that is administered by the MWSBE Division of the Office of Economic Vitality (OEV). Within this policy, respondents are required to meet the project-specific goal or provide documentation of their good faith effort to engage MWBE firms. The MWBE Program is intended to ensure the utilization of MWBE firms in all aspects of City, County, and Blueprint procurement activity and to award contracts with MWBE participation consistent with the MWBE aspirational goals. The SBE Program benefits the City, County, and Blueprint by promoting competition in City, County, and Blueprint contracting; and promoting economic growth and development in the Market Area. The small business standards set at 200 or fewer employees and a firm net worth of under \$5 million are reasonably reflective of business size in the Tallahassee Market Area.

City of Savannah, Georgia. The Savannah Business Opportunity (SBO) Program is a City program aimed at increasing the utilization of Local (Savannah-based) Small, Minority, Women-Owned, and Disadvantaged Business Enterprises (hereinafter referred to as “LSBE”, “M/WBE” and “L/DBE”) in all areas of City procurements, including small contract purchases, materials and equipment, and professional services. The SBO Program helps encourage local economic growth and allows small firms to compete at the prime contractor level. The Minority and Women-Owned Business Enterprise (M/WBE) Program was re-introduced to the minority and woman-owned business community as a part

of the *Savannah First* initiative. Businesses that meet required revenue and employee thresholds are eligible for certification as Local Small Business Enterprise (LSBE), allowing them to participate in sheltered City contracts. Solicitations valued at less than \$100,000 are reserved for LSBEs provided that at least 3 LSBEs firms are registered with the City and provide goods/services related to what is being procured.

Macon-Bibb County, Georgia. The Office of Small Business Affairs exists to develop and coordinate inclusive programs to promote the growth of small businesses, minority business enterprises, women business enterprises, and disadvantaged business enterprises. The Office supports the enhancement of the economic well-being of the County by providing resources that will improve the competitiveness of small businesses, minority business enterprises, women business enterprises, and disadvantaged business enterprises within the RFQ/RFP and bid process. The Office also promotes small business development and workforce development. The Office maintains a Department Dashboard on its website summarizing technical assistance interactions with businesses and the number of events attended or hosted monthly.

Practice B: Prime Contracting Programs

Prime Contractor Assistance

City of Oakland, California. On July 28, 2022 the City announced the launch of the Minority Contractor Support Program, one of two business support programs funded by a recent grant from the U.S. Department of Commerce's Economic Development Agency (EDA). Merriweather & Williams Insurance Services provides technical support for BIPOC-owned construction firms¹⁵³. One-on-one business assistance and training will prepare contractors to navigate the requirements of construction contracts for City Capital Improvement Projects. Focus areas in the public contracting process will include pre-qualification, certification with City social policies, online bidding, bonding and insurance requirements, and labor reporting requirements. The program The funds are used to support the Minority Contractor Support Program and Technical Assistance Support for BIPOC-owned Small Businesses.

Florida Department of Transportation (Florida DOT) Business Development Initiative. The Florida DOT has created BDI (BDI) to provide more opportunities and support for small businesses to move from sub-contracting and sub-consulting to prime contracting and consulting roles. Components of the Initiative include reserving some professional services, maintenance and construction contracts, providing special assistance in bidding and contract completion, waiving bond requirements, and implementing other strategies that would increase competition.

University of Georgia Small Business Development Center (UGA SBDC). The UGA SBDC, a Public Service and Outreach Extension, of The University of Georgia, is funded in part by the U.S. Small Business Administration (SBA) to provide tools, training, and resources to help small businesses grow and succeed. The Multicultural Business Division (MBD) is a special initiative of the University of Georgia Small Business Development Center. This Division was created to provide special attention to the needs of minority entrepreneurs by identifying procurement opportunities, locating sources of capital, and supporting outreach efforts of minority businesspeople around the state. Through collaborative efforts with the

¹⁵³ Merriweather & Williams Insurance Services

Department of Administrative Services (DOAS), UGA SBDC MBD hosts webinars informing business owners how to implement human resources, insurance bonding, and other financial considerations that may improve business efficiency to achieve state government contract goals.

Rotation of Bidders

Some agencies use a bidder rotation program to limit habit purchases from majority firms and ensure that all firms have an opportunity to bid with majority firms. A number of agencies, including the City of Oakland, California; Metropolitan Sewer District of Greater Cincinnati, Ohio; and Miami-Dade County, Florida, use bidder rotation to encourage utilization, particularly in architecture and engineering. Some examples of bidder rotation from these agencies include:

City of Oakland, California. The City issues a request for qualifications for pre-construction and construction services for the design and/or construction of projects costing less than \$250,000 solely from Oakland-certified Small Local Business Enterprises¹⁵⁴. From this Mandatory Preferred Small Local Business (MPSLB) list, the City solicits proposals or bids from at least three businesses. MPSLB contracts under \$250,000 are exempt from Oakland's Local and Small Local Business Enterprise participation requirements because the contractors will meet the requirements by virtue of their Oakland-certified small local business status.

Metropolitan Sewer District of Greater Cincinnati (MSD), Ohio. MSD's Small Business Manager established a Small Contract Rotation Pool for certified SBEs, including procedures applicable to construction, supplies/services, and professional services for contracts between \$5,000 and \$50,000. Each certified SBE is grouped by its commodity code based on its primary line of business.¹⁵⁵ In 2020, MSD spent \$21.3 million with SBEs¹⁵⁶.

Miami-Dade County, Florida. Miami-Dade County uses small purchase orders for the Small Business Enterprise program and rotates on that basis. In addition, Miami-Dade County utilizes an Equitable Distribution Program, whereby a pool of qualified architecture and engineering professionals are rotated awards of county miscellaneous architecture and engineering services as prime contractors and subcontractors.

Small Business Reserves/Sheltered Markets

A small business reserve program provides small businesses with the opportunity to participate as prime contractors by establishing a unique marketplace where small businesses compete against other small businesses instead of larger, more established, companies.

City of Oakland, California. On February 16, 2021, the City Council passed Ordinance No. 13640 C.M.S., which amended Ordinance No. 13101 C.M.S.¹⁵⁷ to revise further the provisions governing the participation of local and small local business enterprises in City contracting. The Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP). Supporting and/or complementing these programs are policies regarding living wage, local construction employment

¹⁵⁴ City of Oakland Municipal Code §2.04.045

¹⁵⁵ Metropolitan Sewer District of Greater Cincinnati Small Business Enterprise Program Rules and Guidelines Section 4(F).

¹⁵⁶ Metropolitan Sewer District of Greater Cincinnati 2020 Report

¹⁵⁷ Amended Ordinance No. 12389 C.M.S on December 20, 2011

referral program, prevailing wage, disadvantaged business enterprises, certifications, apprenticeship, and equal benefits for domestic partners, and workplace and employment standards.

City of Savannah, Georgia. Businesses that meet required revenue and employee thresholds are eligible for certification as Local Small Business Enterprise (LSBE), allowing them to participate in sheltered City contracts. Solicitations valued less than \$100,000 are reserved for LSBEs provided that at least 3 LSBEs are registered with the City and provide goods/services related to what is being procured.

City of St. Petersburg, Florida. The City of St. Petersburg's Sheltered Market program is used when it is determined that there are sufficient SBEs to afford effective competition and where necessary to meet the annual city-wide goals for SBE participation, both for construction and the purchase of supplies and services¹⁵⁸. For construction sheltered market contracts, SBE prime contractors or subcontractors collectively shall perform at least 20 percent of the contracting effort, including the costs of materials, goods and supplies, with their own organization and resources.

City of Tallahassee (City), Leon County Government (County), and Blueprint Intergovernmental Agency (Blueprint), Florida. The City, County, and Blueprint may reserve contracts valued at \$150,000 or less for competition among only certified SBE firms. If no SBE firms respond to a solicitation for reserved projects or the responses submitted are deemed too high or unreasonable based upon the nature of the service or prices for similar services in the local Market Area, then all responses will be rejected. The project will be re-advertised in a normal manner to all prospective respondents.

County of Alameda, California. The County of Alameda endeavors to achieve and sustain, for three consecutive years, parity in the number of strong competitive economically and culturally diverse firms in the County as demonstrated through bidding patterns and receipt of contracts and dollars in public sector contracting. The County established the Small and Emerging Local Business (SLEB) Program¹⁵⁹ to achieve a minimum of 20% SLEB participation level in all County discretionary spending, contracts, and awards. To reach this goal departmental discretionary spending for goods and services up to \$25,000 is targeted toward small and emerging local businesses.

State of Maryland. Maryland's Small Business Reserve Program (SBR) provides prime contracting opportunities in an exclusive environment where small businesses compete against other small businesses. This race- and gender-neutral reserve program applies to 70 designated agencies that are required to spend at least 15 percent of their total fiscal year procurement expenditures with SBR vendors.¹⁶⁰ During Fiscal Year 2021, the SBR Program achieved 10.2 percent participation with total payments of \$448 million to SBR vendors¹⁶¹.

State of New Jersey. The State of New Jersey Small Business Set-Aside Program was established with the goal of awarding 25 percent of state contracting and purchase order dollars to small businesses¹⁶². At least 10 percent of the State contracts shall be awarded to small businesses whose gross revenues do not

¹⁵⁸ City of St. Petersburg Municipal Code Section 2-239 to 2-246 of Division 4, Article 5, Chapter 2.

¹⁵⁹ Alameda County Administrative Code §4.12.150

¹⁶⁰ Md. Code Ann., State Fin. & Proc. Art. §14-501 – 14-505

¹⁶¹ Governor's Office of Small, Minority, and Women Business Affairs Annual Report Fiscal Year 2021

¹⁶² N.J.S.A. 52:32-17 *et seq.*

exceed \$500,000; at least an additional 15 percent shall be awarded to additional categories of small businesses whose gross revenues do not exceed \$12 million or the applicable Federal revenue standards.

Joint Ventures

City of Atlanta, Georgia. The City of Atlanta may require the establishment of joint ventures on eligible projects at \$5 million or more¹⁶³. This rule applies to women- and minority-owned firms as well as nonminority firms. This rule has resulted in tens of millions of dollars in contract awards to women- and minority-owned firms. To receive joint venture credit, any certified MFBE joint venture partner may not hold an ownership interest in the joint venture equal to or greater than 50%.

City of Oakland, California. The City recognizes two types of joint ventures (JV): (1) an approved joint venture where the two parties form a relationship for bidding on any project and (2) a project-specific joint venture. The JV receives bid discounts depending upon the LBE or SLBE percentage of participation. The parties must agree to enter the relationship for at least the life of the project. On a case-by-case basis, the City will allow an additional 5% preference points for JVs where the junior partner is a certified SLBE or VSLBE.

Construction Management, Request for Proposals, and Design-build

One method of unbundling in construction is through the use of multi-prime construction contracts in which a construction project is divided into several prime contracts which are then managed by a construction manager at risk (CM at Risk or CMAR). For example, this approach has been used on projects where each prime contractor is responsible for installation and repair in particular areas. The construction manager is responsible for obtaining materials at volume discounts based upon total agency purchases. If one contractor defaults, a change order is issued to another prime contractor working in an adjacent area. The construction manager at risk is responsible for cost overruns that result from prime contractor default.

Construction management also facilitates the rotation of contracts within an area of work. For example, if several subcontractors have the capacity to bid on an extended work activity (e.g., concrete flat work, traffic control, hauling), the construction manager can rotate contracting opportunities over the duration of the activity.

Using a request for proposal process can provide the flexibility for including small business participation in prime contractor requirements and selection. One of the non-financial criteria can be the proposer's approach and past history with diverse business inclusion subcontractor utilization as well as the utilization of local unemployed or underemployed workforce¹⁶⁴.

Clayton County, Georgia. On February 15, 2022, the Clayton County Board of Commissioners approved Clayton County Central Services to implement a Mentor Protégé Program (MPP)¹⁶⁵. The MPP is designed to build the capacity of local businesses, increase access to organizations, and enhance business competencies. Specifically, the MPP will deliver support services and training to participant firms in areas such as: proposal and/or bidding; sales and marketing; back-office functions, accounting, human

¹⁶³ City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

¹⁶⁴ Alameda County First Source Program

¹⁶⁵ Clayton County Georgia, Mentor Protégé Program (MPP)

resources; construction practices – estimating, bonding, project management; and leadership development.

To qualify as a protégé, businesses must be for-profit, registered as a vendor with Clayton County, and certified as a Small Local Business Enterprise with Clayton County. The business must also be in good standing (i.e., not currently suspended or debarred from federal, state, or local procurements). To qualify as a mentor, businesses must be for-profit with a minimal financial capacity of \$5 million, registered as a vendor with Clayton County, possess a minimum five years of industry experience, and actively participate in at least one Clayton County contract. Once the Protégé has been accepted into the program, a Business Development Plan -which includes measurable milestones- will be created based on the needs of the Protégé.

County of Alameda, California. The County allows price preferences for SLEB prime contractors for procurements over \$25,000. The County considers a small business one that is located within Alameda County and meets the U.S. Small Business Administration (SBA) size standards for its classification; whereas an emerging business meets the location requirements but is less than one-half the U.S. SBA size standards for its classification. Businesses that meet the County's local definition are eligible for a 5% bid preference and an additional 5% for small or emerging business certification. The maximum bid evaluation preference point is 10%. Bid preferences are applied to price when an award is based on the lowest cost or to evaluation criteria points when an award is based on qualifications.

Practice C: Subcontracting Goals

City of Charlotte, North Carolina. The Charlotte Business Inclusion (CBI) program seeks to enhance competition and participation of Minority, Women, and Small Business Enterprises (MWSBEs) in City contracting. For all Construction Contracts of \$200,000 or more, and for all Architecture, Engineering, and Surveying Contracts of \$100,000 or more, the City may establish one or more Subcontracting Goals unless an exemption is granted. Subcontracting goals on such contracts may consist of (a) both an SBE Goal and an MWBE Goal; (b) a combined MWSBE Goal; (c) only an MWBE Goal; or (d) only an SBE Goal. The City may establish SBE goals for Service Contracts or Commodities Contracts of \$100,000 or more, on a case-by-case basis. MBE and WBE goals may only be established for those categories of firms where disparity has been identified¹⁶⁶.

City of Hinesville, Georgia. The City's MWBE Program was expanded in 2021 to further promote equal access and increase support efforts for minority and women-owned businesses in the community. The aspirational goal for minority and women-owned businesses in construction projects over \$100,000 is now at a minimum of 13 percent: 10 percent for MBEs and 3 percent for WBEs.

City of Oakland, California. On February 16, 2021, the City Council passed Ordinance No. 13640 C.M.S., which amended Ordinance No. 13101 C.M.S.¹⁶⁷ to further revise the provisions governing the participation of local and small local business enterprises in City contracting. The Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP). Supporting and/or complementing these programs are policies regarding living wage, local construction employment

¹⁶⁶ Charlotte Business Inclusion Program, 2021

¹⁶⁷ Amended Ordinance No. 12389 C.M.S on December 20, 2011

referral program, prevailing wage, disadvantaged business enterprises, certifications, apprenticeship, and equal benefits for domestic partners, and workplace and employment standards.

Cook County Government, Illinois. In Cook County, the Compliance Contract Director (CCD), following the compilation and stringent review of the availability of MBEs and WBEs who have the capacity to successfully supply the relevant goods and services, and in consultation with the User Agency, establish Project Specific Goals for construction, which are incorporated into each bid and RFP.¹⁶⁸

County of Alameda, California. The Small and Emerging Local Business (SLEB) Program provides a method of inclusion for SLEBs and creates an opportunity for growth, capacity building, and participation in County contracting and procurement activities. Businesses not meeting the definition of a small or emerging local business are required to subcontract a minimum of 20% of the contract award to a certified SLB or ELB to be eligible for contract award. Additionally, prime contractors that subcontract with SLEBs for a minimum 40% of the contract will also be eligible to receive a 5% bid preference. Compliance with the SLEB program is required for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services projects except when prohibited by law.

Sacramento Municipal Utility District (SMUD), California. All prime bids that include 20 percent SBE subcontract utilization with SEED vendors will receive a 5 percent bid preference (capped at \$250,000) and 10 points on RFP evaluations. Proposals with less than 20 percent SBE subcontract utilization are awarded a 5 percent bid preference on the part of their bid that includes SBE subcontractors.

Practice D: Technical Assistance and Outreach

City of Atlanta, Georgia. The City of Atlanta Department of Procurement partnered with Our Village United (OVU) to provide information to participants in the upcoming Get Procured workshop. The Get Procured program, led by OVU, is designed for Black, Indigenous, and Person of Color (BIPOC) small business owners in the state of Georgia to assist in navigating the state and local government procurement landscape. The program includes a 6-month intensive network with decision-makers in procurement agencies on how to access procurement opportunities, obtain and leverage certifications, and ways to partner with other businesses to secure contracting opportunities.

City of Augusta, Georgia. The City of Augusta Business Equity Fund (CABE Fund)¹⁶⁹ is a joint initiative by the City of Augusta and the Greater Augusta Black Chamber to provide funding for small businesses and social enterprises in the Greater Augusta Area due to the lingering impacts of the COVID-19 pandemic. Specifically, this program assists small businesses with less than 10 employees by providing technical assistance, capacity building, and funding support through guaranteed grants and loans. On April 19, 2022, the Augusta Commission approved an allocation of \$425,000 to the Greater Augusta Black Chamber of Commerce. The funds provided by the City of Augusta are dispersed in accordance with the final ruling of the American Rescue Plan Act to assist local small businesses that have been negatively impacted by the recent economic downturn. In return for the use of public funds, small businesses are

¹⁶⁸ Cook County Ord. No. 14-1232, 3-12-2014; Ord. No. 16-3598, 6-29-2016; Ord. No. 17-3217, 6-7-2017.

¹⁶⁹ A description of the CABE Fund can be found at: <https://cabefund.org/>

encouraged to create job opportunities to enhance the economic vitality of the local community. The CABE program is offered in the Central Savannah River Area as a comprehensive and innovative approach to assist both new and existing entrepreneurs. This program provides four weeks of training and an additional six weeks of coaching and mentorship for new and existing minority-owned business owners and entrepreneurs. The workshops include topics on business formation and development, business planning, finance management, banking services, and more.

Clayton County, Georgia. Clayton County entered into a Memorandum of Understanding (MOU) with the Small Business Administration (SBA). The MOU allows Clayton County to partner with SBA to provide resources to the small business community. The MOU allows for the dissemination of up-to-date information to the small business community regarding SBA's business development services, programs and services, sharing of access to resource partners, and speakers to participate in workshops, conferences, seminars, and other activities to discuss SBA financing, government contracting, and other business topics.

Fulton County, Georgia. The Fulton County Department of Purchasing & Contract Compliance, Department of Public Works, and Department of Real Estate & Asset Management hosted an Outreach Information Session to discuss County Capital Improvement Projects for 2023. Trade contractors including local, disadvantaged, small, minority, and female businesses were invited to attend this outreach event to obtain additional information about the upcoming projects for the year, network with prime contractors, and participate in one-on-one interviews with project managers.

Georgia Micro Enterprise Network (GMEN). The GMEN is a statewide hub and network of entrepreneurial training programs and microlenders supporting GA businesses. The nonprofit serves as an industry membership association that acts as a resource to support and fund viable micro-businesses to create new jobs and business opportunities.

Macon-Bibb County, Georgia. The Office of Small Business Affairs partnered with the Service Corps of Retired Executives (SCORE) Middle Georgia to host the Women's Pitch Contest. The contest was open to Macon-Bibb women seeking to start a business and women of other counties with an interest in opening a business in Macon-Bibb County. Six finalists were selected to win a \$1,000 cash prize as well as free services from various providers. Coaches were assigned to each finalist to assist them in preparing a 4-minute presentation. After each presentation, finalists participated in a 5-minute Q&A session with the Pitch Contest judges.

University of Georgia Small Business Development Center (UGA SBDC). As an awardee of the Federal and State Technology (FAST) Partnership Program, the UGA SBDC, provides financial support, technical assistance, and mentoring to Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) applicants and awardees. Financial support is in the form of grants or loans to applicants to pay a portion or all the cost of developing SBIR/STTR proposals, attending relevant conferences, and bridging possible gaps between phases. Organizations with FAST funding conduct outreach or run programs to increase the participation of women, socially economically disadvantaged individuals, and small businesses in underrepresented areas and rural states.

Practice E: M/W/SBE Websites

An overview of multiple city and county agencies has found the following information on websites dedicated to their M/W/SBE Programs: bid opportunities; directory of certified firms; uniform certification application, if the agency is a certifying entity; M/WBE program description; comprehensive contracting guides; M/W/SBE ordinance; how to do business information; bid tabulations; links to management and technical assistance providers; newsletters; data on SBE and M/WBE utilization; annual M/W/SBE program reports; direct links to online purchasing manuals; capacity, bonding, qualifications, and experience data on certified firms; and an annual forecast of business opportunities.