



# CITY OF AURORA

## ILLINOIS

### DISPARITY STUDY JULY 2022



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## II. EXECUTIVE SUMMARY OF FINDINGS AND RECOMMENDATIONS

This chapter presents the findings and recommendations resulting from the Disparity Study for the City of Aurora, Illinois related to Construction, Architecture & Engineering (A&E), Other Professional Services, Other Services, and Goods for CY2015-CY2019.

As outlined in the Legal Analysis (Chapter III), the courts have indicated that for race-based or gender-based preference programs to be instituted there must be a strong basis in the evidence for the establishment of such programs or the continuation of existing programs. As the detailed findings below will demonstrate, GSPC found statistically significant Underutilization of MBEs and in each of the five (5) Industry Categories that GSPC analyzed. Any exceptions based upon ethnicity will be discussed in the findings below.

A regression analysis was performed and GSPC found that there was evidence to indicate disparities by race, ethnicity, or gender status of the firm owners even after controlling for capacity and other race and gender-neutral factors. This statistical evidence found support in the anecdotal evidence of the experiences of firms in the City's marketplace.

### A. FINDINGS

#### 1. Legal Findings

#### ***FINDING 1: LEGAL FINDING***

Consistent with the “narrow tailoring” aspect of the strict scrutiny analysis discussed in the Legal Chapter, the City continues to implement race and gender-neutral measures to try to increase Utilization of MWBE firms, but the present Study shows that those measures have not been effective in resolving or significantly reducing the identified disparities.<sup>1</sup> Accordingly, the City has a basis to introduce race and gender-conscious remedies or policies toward that goal.<sup>2</sup>

<sup>1</sup> See generally *City of Richmond v. J. A. Croson Company*, 488 U.S. 469, 507-508; 109 S. Ct. 706 (1989) (discussing factual predicate for race and/or gender conscious remedies or policies).

<sup>2</sup> *Id.*

Moreover, the use of a regression analysis and consideration of the contracting environment in the private sector as part of this Study have demonstrated that factors *other than* MWBE status cannot fully account for the statistical disparities found. Stated otherwise, the City can show that MWBE status continues to have an adverse impact on a firm's ability to secure contracting opportunities with the City of Aurora, further supporting more aggressive remedial efforts.

Lastly, having obtained statistical and anecdotal evidence of disparities that are race, ethnicity, and gender specific, the City of Aurora can ensure that the more robust remedies considered as a result of this Study can be limited to minority groups for which Underutilization and an inference of discrimination has been identified.<sup>3</sup>

## 2. Quantitative Findings

### ***FINDING 2: RELEVANT GEOGRAPHIC AND PRODUCT MARKETS***

The Study compares the Availability and Utilization of firms in a common area, the Relevant Geographic Market, where about 75% of Aurora spending with vendors takes place. The Geographic Relevant Market was the **Chicago Metropolitan Statistical Area (MSA)**, based on the following percentages of spending.

- In Construction, 99.47%
- In A&E, 99.54%
- In Other Professional Services, 78.88%
- In Other Services, 75.13%
- In Goods, 78.82%

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<sup>3</sup> *Id.*; see also *H.B. Rowe Company, Inc. v. W. Lindo Tippet*, 615 F.3d 233, 256-58 (4<sup>th</sup> Cir. 2010) (finding strong basis in evidence for remedial action for African American and Native American firms, but no similar basis for inclusion of other minority groups (including women-owned businesses) in the remedial policy).

**FINDING 3: AVAILABILITY**

The measures of Availability utilized in this Study incorporate all of the criteria of Availability required by City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

- The firm does business within an industry group from which the City makes certain purchases.
- The firm's owner has taken steps to demonstrate interest in doing business with government.
- The firm is located within a relevant geographical area such that it can do business with Aurora.

The firms used to calculate Availability came from the Master Vendor File in the Relevant Market Area. GSPC found that firms were available to provide goods and services to Aurora as reflected in the following percentages by each race, ethnicity, and gender group (Table 1).

*Table 1: Availability Estimates by Work Category*

*In the Relevant Market  
(Based upon the Master Vendor File)  
Aurora Disparity Study*

<b>Ethnicity of Vendor</b>	<b>Construction</b>	<b>A&amp;E</b>	<b>Professional Services</b>	<b>Other Services</b>	<b>Goods</b>
African American	3.85%	7.01%	4.62%	1.34%	0.72%
Asian American	1.37%	13.25%	0.97%	0.67%	0.67%
Hispanic American	10.35%	5.19%	0.24%	1.06%	1.11%
Native American	0.00%	0.26%	0.00%	0.04%	0.00%
<b>TOTAL MINORITY</b>	<b>15.57%</b>	<b>25.71%</b>	<b>5.84%</b>	<b>3.10%</b>	<b>2.50%</b>
Woman Owned	2.74%	10.39%	3.16%	1.06%	1.54%
<b>TOTAL MWBE</b>	<b>18.31%</b>	<b>36.10%</b>	<b>9.00%</b>	<b>4.17%</b>	<b>4.05%</b>
TOTAL Non-MWBE	81.69%	63.90%	91.00%	95.83%	95.95%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

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**FINDING 4: MWBE PRIME UTILIZATION**

As Table 2 below shows, Aurora paid a total of \$119.45 million in prime construction spending in the Relevant Market during the Study Period and \$2.19 million of this amount, or 1.83% was paid with MWBE firms as prime contractors. MWBEs were paid 19.51% of A&E Services, 0.20% of Other Professional Services, 4.85% of Other Services, and 0.08% of Goods. MWBEs won 3.11% of prime payments across all purchasing categories.

*Table 2: Summary of Prime Utilization by Work Category*

*In the Relevant Market  
(Based upon Payments CY2015-CY2019)  
Aurora Disparity Study*

Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods	TOTAL
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
African American	\$ -	\$ 14,142	\$ -	\$ 1,227,367	\$ -	\$ 1,241,509
Asian American	\$ 65,282	\$ 106,068	\$ -	\$ 67,383	\$ -	\$ 238,733
Hispanic American	\$ 510,988	\$ 5,000	\$ -	\$ 1,144,309	\$ 18,482	\$ 1,678,779
Native American	\$ -	\$ 3,454,237	\$ -	\$ -	\$ -	\$ 3,454,237
<b>TOTAL MINORITY</b>	<b>\$ 576,270</b>	<b>\$ 3,579,447</b>	<b>\$ -</b>	<b>\$ 2,439,059</b>	<b>\$ 18,482</b>	<b>\$ 6,613,258</b>
Women Owned	\$ 1,614,625	\$ 45,758	\$ 28,700	\$ 111,852	\$ 34,423	\$ 1,835,358
<b>TOTAL MWBE</b>	<b>\$ 2,190,895</b>	<b>\$ 3,625,205</b>	<b>\$ 28,700</b>	<b>\$ 2,550,911</b>	<b>\$ 52,905</b>	<b>\$ 8,448,616</b>
TOTAL NON-MWBE	\$ 117,261,004	\$ 14,956,294	\$ 14,158,242	\$ 50,073,203	\$ 66,353,979	\$ 262,802,722
<b>TOTAL FIRMS</b>	<b>\$ 119,451,897</b>	<b>\$ 18,581,499</b>	<b>\$ 14,186,943</b>	<b>\$ 52,624,113</b>	<b>\$ 66,406,884</b>	<b>\$ 271,251,336</b>
Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods	TOTAL
	(%)	(%)	(%)	(%)	(%)	(%)
African American	0.00%	0.08%	0.00%	2.33%	0.00%	0.46%
Asian American	0.05%	0.57%	0.00%	0.13%	0.00%	0.09%
Hispanic American	0.43%	0.03%	0.00%	2.17%	0.03%	0.62%
Native American	0.00%	18.59%	0.00%	0.00%	0.00%	1.27%
<b>TOTAL MINORITY</b>	<b>0.48%</b>	<b>19.26%</b>	<b>0.00%</b>	<b>4.63%</b>	<b>0.03%</b>	<b>2.44%</b>
Women Owned	1.35%	0.25%	0.20%	0.21%	0.05%	0.68%
<b>TOTAL MWBE</b>	<b>1.83%</b>	<b>19.51%</b>	<b>0.20%</b>	<b>4.85%</b>	<b>0.08%</b>	<b>3.11%</b>
TOTAL NON-MWBE	98.17%	80.49%	99.80%	95.15%	99.92%	96.89%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

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***FINDING 5: MWBE TOTAL UTILIZATION***

There was limited subcontracting with firms in the relevant market during the Study Period, therefore Total Utilization (prime plus subcontracting) as represented in Table 3 is similar to the prime contracting numbers. MWBEs received 2.42% of Total Construction dollars. There was little to no subcontract dollars outside of Construction, which is common.

*Table 3: Summary of Construction Total Utilization*

*In the Relevant Market  
(Based upon Payments CY2015-CY2019)  
Aurora Disparity Study*

<b>Business Ownership Classification</b>	<b>TOTAL (\$)</b>
African American	\$ -
Asian American	\$ 65,282
Hispanic American	\$ 1,028,511
Native American	\$ -
<b>TOTAL MINORITY</b>	<b>\$ 1,093,793</b>
Women Owned	\$ 1,631,221
<b>TOTAL MWBE</b>	<b>\$ 2,725,014</b>
TOTAL NON-MWBE	\$ 116,726,885
<b>TOTAL FIRMS</b>	<b>\$ 119,451,897</b>
<b>Business Ownership Classification</b>	<b>TOTAL (%)</b>
African American	0.00%
Asian American	0.05%
Hispanic American	0.86%
Native American	0.00%
<b>TOTAL MINORITY</b>	<b>0.92%</b>
Women Owned	1.37%
<b>TOTAL MWBE</b>	<b>2.28%</b>
TOTAL NON-MWBE	97.72%
<b>TOTAL FIRMS</b>	<b>100.00%</b>

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**FINDING 6: SUMMARY OF DISPARITY ANALYSIS FOR CY2015-CY2019**

Table 4 below indicates those MWBE groups where a statistically significant disparity (X) was found in prime Utilization for Construction, A&E Services, Other Professional Services, Other Services, or Goods. There was Underutilization in prime contracts for all MWBEs groups, except Native American firms in A&E and African Americans and Hispanic Americans in Other Services. All MWBE groups were also underutilized in Total Utilization in Construction. Non-MWBEs were overutilized.

*Table 4: Summary of Statistically Significant Underutilization of MWBEs in Prime Contracting*

*Aurora Disparity Study*

<b>Business Owner Classification</b>	<b>Construction</b>	<b>A&amp;E</b>	<b>Other Professional Services</b>	<b>Other Services</b>	<b>Goods</b>
<b>African American</b>	X	X	X		X
<b>Asian American</b>	X	X	X	X	X
<b>Hispanic American</b>	X	X	X		X
<b>Native American</b>	X		X	X	X
<b>Women</b>	X	X	X	X	X

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Disparity was also examined eliminating larger prime projects. The same pattern of disparity for all MWBE groups was also found for prime payments less than \$500,000 and less than \$1 million for all procurement categories.

### **3. Policy Findings**

#### ***FINDING 7: INFORMAL PROCUREMENT***

Informal procurement is used by the City for purchases of goods and non-professional Services costing more than \$5,000 but less than \$25,000. Purchases below \$5,000 may be made by a City department and require only a vendor-generated price quote, seeking the most competitive pricing available. For informal purchases between \$5,000 and \$25,000, the Procurement Division is responsible for sourcing such purchase(s). In these situations, the Procurement Division is encouraged to informally obtain three (3) competitive quotes and is also required to send a notice of the proposed purchase to all potentially qualified minorities, women, and disabled persons (MWDP) businesses to encourage increased participation.

#### ***FINDING 8: APPRENTICESHIP REQUIREMENT***

The City has a provision that for public works construction contracts in excess of \$25,000, the bidder must participate in a federally-approved apprenticeship program.

#### ***FINDING 9: LOCAL PREFERENCE ORDINANCE***

The City of Aurora has a policy granting bid preferences to local businesses in the solicitation of bids for supplies, materials and equipment or a contract for any work or public improvement.

#### ***FINDING 10: BONDING AND INSURANCE***

Payment and performance bonds are generally required for construction projects but are discretionary by written policy. Interviews indicated that there were few complaints by bidders or potential bidders that bonds requirements were a barrier to participation in City contracting. The GSPC Survey of Business Owners found that 9.8% of firms stated that performance bonds and 11.1% that bid bonds were barriers to their firm obtaining work on projects for the City of Aurora. Insurance likewise was not cited in interviews as a potential barrier to participation. Similarly, 5.2% of survey respondents stated that insurance requirements were a barrier to their firm obtaining work on projects for the City of Aurora. It is interesting to note that zero Non-Minority owned firms stated that bonding or insurance were barriers.



***FINDING 11: PROMPT PAYMENT***

The City is subject to the Illinois Local Government Prompt Pay Act, which requires payment by the City to prime contractors within thirty (30) days of receipt by the City of an invoice or corrected invoice. Primes must pay their subcontractors within fifteen (15) days of their payment by the City. The GSPC Survey of Business Owners respondents stated that as prime contractors, 21.3% were paid within thirty (30) days from the date they submitted their invoice with a valid purchase order number; 44.7% 30-59 days, 4.3% 60-89 days, and 29.8% didn't know or it is not applicable.

***FINDING 12: MINORITY, WOMEN AND DISABLED PERSONS DEVELOPMENT PROGRAM ("MWDP")***

In 2011, the City of Aurora established a Procurement Development Program for Minorities, Women and Disabled Persons. "The mission of the program is to encourage the use of minorities, women, and disabled persons (MWDP) businesses interested in addressing procurement needs for the City of Aurora." The MWDP program established the following "action items" and goals:

- Require city staff to include consideration of diverse vendors for all City contracts, especially those related to Other Professional Services for which city staff exercise discretion.
- Include as part of the bidding process a requirement that responding firms provide data regarding the participation level for minorities, women, and persons with disabilities.
- Improve communication with Aurora small businesses by establishing a process by which businesses can be notified when bid opportunities are available.

The MWDP program requires the city to maintain an MWDP directory for use by the Purchasing Division and the various city departments in seeking greater participation and must send notice of pending projects valued over \$5,000 to all potentially qualified MWDPs. The Utilization of MWDP firms is tracked as part of the program.

***FINDING 13: BUSINESS DEVELOPMENT ASSISTANCE***

The MWDP program provides that the Minority Procurement Officer will conduct annual training classes on the program, coordinating with local chambers of commerce and other stakeholder groups for the training.

#### **4. Private Sector Findings**

##### ***FINDING 14: SMWDBE FIRM REVENUE***

A descriptive and inferential private sector analysis of the City of Aurora Market Area revealed that in general, being an SMWDBE in the City of Aurora Market Area is associated with lower firm revenue, and for the construction sector, which is an important venue for public contracting, lower self-employment likelihoods for firms owned by Women, African Americans, Hispanic Americans, Pacific Islanders, and Asian Americans. This lends some support to the “but-for” justification for affirmative action in public procurement. Lower revenues for SMWDBEs in the City of Aurora Market Area are suggestive of private sector disparities that undermines their capacity to enter the market and compete with non-SMWDBEs firms for public contracting and subcontracting opportunities.

##### ***FINDING 15: BUILDING PERMITS***

An analysis of the distribution of building permits reveals that non-MWDBEs dominate economic activity in the City of Aurora market area. The dominance of Non-MWDBEs in securing building permits suggest the presence of private sector barriers faced by MWDBEs, that inhibit their ability to gain access to public contracting/subcontracting opportunities with the City of Aurora. This seems particularly true for African American owned firms, who account of zero of every one thousand building permits issued in the relevant market areas.

##### ***FINDING 16: CREDIT MARKETS***

Relative to White-owned firms in the City of Aurora Market Area, firms owned by Women have more commercial bank loan denials, suggesting these SMWDBEs face private credit market barriers that may inhibit their capacity to compete in the market for public procurement.

***FINDING 17: SMWDBE DIFFERENCES IN PRIOR SUBCONTRACTS***

Relative to non-SMWDBEs firms certified as Black and Disadvantaged received fewer City of Aurora subcontracts. Firms owned by African Americans, Hispanic Americans, Asian Americans, Bi/Multiracial, and Other Race received fewer City of Aurora subcontracts. To the extent that success in public contracting is proportional to having prior subcontracts, this suggests that any contracting disparities between non-SMWDBEs and SMWDBEs can possibly be explained by past, and possibly discriminatory constraints on subcontracting, which could constrain their future capacity to secure prime contracts.

***FINDING 18: SMWDBEs PRIOR CONTRACTING/SUBCONTRACTING OUTCOMES***

Relative to non-SMWDBEs, certified Small Business Enterprises, are more likely to have never received a City of Aurora prime contract or subcontract. Firms owned by African Americans and Other Race are more likely to have “never” been a prime contractor or subcontractor with the City of Aurora. To the extent that success in public contracting is proportional to having prior prime contracts or subcontracts, this suggests that any City of Aurora public contracting disparities between SMWDBEs and non-SMWDBEs can possibly be explained by their relative disadvantage in having secured prior prime contracts or subcontracts from the City of Aurora.

***FINDING 19: SMWDBEs PERCEPTION OF INFORMAL***

Relative to non-SMWDBEs, firms certified as Minority are more likely to perceive that informal networks enable contracting success with the City of Aurora. Firms owned by African Americans and Women are more likely to perceive that informal networks enable contracting success with the City of Aurora. This suggests that, at least for firms classified as Minority, and firms owned by African Americans and Women, City of Aurora contracting disparities between them and non-SMWDBEs can potentially be explained by their exclusion from the City of Aurora public contracting networks that reduces their ability to secure prime contracts and subcontracts.

## 5. Anecdotal Findings

### ***FINDING 20: OUTREACH FOR BID OPPORTUNITIES***

Many small, Minority and Woman owned firms, in particular those new to the marketplace, reported inconsistent information regarding opportunities and how to do business with the City. In a Survey of Business Owners, 19.9% were signed up to receive notifications from the City, but 85.6% were registered with other government entities. 26.7% of those who identified themselves as not being registered to do business with the City indicated that they did not know how to. Among that nearly 27% of respondents there was a slightly higher percentage of Women, African American and Hispanic respondents stating the same. Further, 75% of those who acknowledged they were not registered said they did not know there was a registry. This was borne out further when asked the number of bids submitted to the City, 65.4% said they had not submitted any bids to the City, but only 31.4% had not submitted bids in the private sector and 34.4% had not submitted bids to other government agencies.

### ***FINDING 21: BIDDING AGAINST LARGE FIRMS***

Small business owners described the City's procurement process tedious and unnecessarily difficult with an apparent advantage to larger firms that had more staffing and resources, overlooking the priorities that smaller firms had to place on the job to be done before devoting valuable time and labor to responding to RFPs. The Survey revealed that 12.4% of business owners expressed a concern that they faced unfair competition with larger firms. Excessive paperwork was identified as a barrier to doing business with the City, according to 11.8% of survey respondents, and 13.1% cited limited time to prepare a bid package or quote as an obstacle.

### ***FINDING 22: PERFORMANCE AND QUALIFICATION STANDARDS***

Women business owners in particular described being required to do more in order to participate in the City's procurement process. When asked in the Survey of Business Owners if they strongly agree, agree, neither agree or disagree, disagree or strongly disagree whether double standards in

qualifications and work performance make it more difficult for Minority, Women, Disadvantaged and Small businesses to win bids or contracts, 37.2% of Women checked "agreed." African American owned firms either agreed or strongly agreed with the same at a combined rate of 53.1%, although the survey did not distinguish how many businesses among those respondents were owned by women.

***FINDING 23: OPPORTUNITIES FOR MWDP DEVELOPMENT, LOCAL PREFERENCE***

Study participants outlined ways that prime contractors worked to avoid giving opportunities to local businesses and MWDPs despite programs in place to encourage such hiring. Some business owners expressed knowledge of “fronts” where non-minority males put 51% of the ownership in their wives’ name when the male controls the business and the wife does not perform a commercially useful function, while others reported being invited onto a project during the bidding process only to be dropped after the project was awarded. Roughly one-third of the firms polled for the Study – 33.3% – said they either agreed or strongly agreed that sometimes a prime contractor would contact them to ask for quotes but never give the proposal a sufficient review to consider awarding them the project.

***FINDING 24: INFORMAL NETWORKS***

MWDPs, new businesses and small firms identified that a group of well-connected, often longstanding businesses often monopolize contracting with the City. When asked in the GSPC Survey if the respondent believed that there was an informal network of prime and contractors doing business with the City that monopolized the public contracting process, 43.8% of all respondents said “yes” which included 59.2% of African American respondents, 45.5% of Hispanic American business owners and 40% of Women owned businesses.

***FINDING 25: EXPERIENCES OF MARKETPLACE DISCRIMINATION COMPARED TO THE CITY***

Only nine (9) respondents out of 153 GSPC Survey participants – just 6% – said they had experienced any discriminatory behavior based on racial, gender, or ethnicity when doing or attempting to do business with the City. Of that number, seven (7) said they experienced discriminatory behavior “often” while one (1) respondent acknowledged “seldom” experiencing such behavior and another one (1) participant indicated having such an experience “very often.”

However, in the private sector of the Aurora, IL marketplace, 57 respondents – 37.3% – said they had encountered discriminatory behavior at some level.

### ***FINDING 26: ACCOMODATION OF FOREIGN LANGUAGE SPEAKERS***

None of the Survey participants indicated language barrier as something that prevented them from bidding on projects from or doing business with the City. And only 6.7% of business owners polled during the survey disagreed that the City was generally accommodating to vendors' language needs.

## **B. RECOMMENDATIONS**

The City has a current race and gender-neutral program that encourages the use of minority, women, and disabled owned firms. However, GSPC's research found that there are statistically significant disparities among all MWBE groups in every Industry Category, except Native American owned firms in A&E; and African American and Hispanic owned firms in Other Services. Further, an examination of building permits issued by the City show almost no MWDBEs.

Therefore, the findings of this Study conclude that there is a factual predicate for race and gender conscious remedial efforts, which can be based on the current effects of past discrimination. GSPC's analysis of marketplace disparities supports findings that the City has had a passive participation in marketplace disparities toward these same groups. As a result, GSPC makes the following recommendations to assist the City in remedying the disparities found to ensure that all available firms within the Relevant Market are given every chance to succeed in business with the City.

### **RECOMMENDATION 1: ALLOCATING ADDITIONAL RESOURCES**

While the MWDP Development Program and the Local Business Preference Program offer positive steps toward evening the playing field when it comes to participating in City procurement, more resources will be required by the City to establish additional race and gender neutral and race and gender conscious elements to the City's remedial programs. The City should not

undertake these recommendations without first allocating sufficient resources. GSPC is aware that additional funding may be delayed due to the budgeting process.

## **RECOMMENDATION 2: SET MWBE CONTRACT-BY-CONTRACT SUBCONTRACTING GOALS**

The Study found that even with encouraging prime contractors to utilize minority and women owned firms, with few exceptions, MWBEs were statistically significantly underutilized. As a result of its Study analyses, GSPC finds a factual predicate for race and gender conscious MWBE contract-by-contract subcontracting goals. The City may utilize the annual goals as a starting point for considering contract-by-contract goals.

Such contract-by-contract goals - should include the following ownership groups:

<b>Construction: African American, Asian American, Hispanic American, Native American, Non-Minority Woman</b>
<b>A&amp;E: African American, Asian American, Hispanic American, Non-Minority Woman;</b>
<b>Other Professional Services: African American, Asian American, Hispanic American, Native American, Non-Minority Woman</b>
<b>Other Services: Asian American, Native American, and Non-Minority Women</b>
<b>Goods: African American, Asian American, Hispanic American, Native American, Non-Minority Woman<sup>44</sup></b>

The City should set separate MBE and WBE goals on the same projects and not combine MWBE goals.

If firms do not meet the MBE or WBE subcontractor goals, they should be permitted to demonstrate Good Faith Efforts.

<sup>44</sup> GSPC does not generally recommend contract-by-contract goal setting in Goods because there are typically few subcontracting opportunities. However, the City should apply goals where such opportunities do exist.

### RECOMMENDATION 3: CONTRACT COMPLIANCE

To date, the City has been requesting subcontractor data from prime contractors at the time of bid. The recommended program adds some additional contract compliance steps to effectively administer an MWBE subcontracting program. This will begin with the application of the annual or contract-by-contract goals in the solicitation itself. Then prime contractor commitments will be a contract term to make sure they are held to the commitments made in their bid package. The City should then undertake a structured contract compliance program that includes the following five (5) steps:

- Assessment – An initial assessment of individual firm Availability and capacity for specific scopes of work.
- Outreach – An on-going campaign to let the MWBE business community know that the City wants to do business with them, and that the City is willing to work with firms to create opportunities and assist, particularly local firms in building capacity.
- Certification/Verification –The City does not currently certify firms and GSPC is not recommending that it begin to certify. However, the City should accept a broad list of certifications to satisfy its goals including the City of Chicago, the Illinois Department of Transportation, and the State of Illinois Business Enterprise Program. It should also do an outreach campaign to get firms to certify.
- Procurement – All applicable solicitation packages and awarded contracts should include the MWBE commitments as contract terms, as well as City participation requirements, such as all firms performing commercially useful functions.
- Monitoring – It is essential that there is close monitoring of vendor performance and the efficient closeout of projects to verify that MWBE firms are actually performing the work that they contracted to perform and that they are compensated in a timely manner and in the amounts committed. Monitoring vendor performance should also assure equal and fair treatment on contracts.

### RECOMMENDATION 4: OUTREACH

There are only a small number of MWBE firms certified and located within the City of Aurora. Therefore, there is likely an opportunity for the City to bring in substantially more MWBEs both



to be certified and to assist in growing their capacity and doing business with the City, particularly given that more than 41% of its population is Hispanic. GSPC recommends that the City undertake the following besides a general outreach campaign:

- **Targeted Outreach** – As informal and formal opportunities emerge, identify firms in the Relevant Market that are capable of doing the work for notification of the work. In other words, find firms that may not be coming to the City. This is important so that firms, including those outside of construction are aware of upcoming opportunities;
- **Supportive Services** - may be offered internally in coordination with other agencies, the Small Business Administration bonding program, and the Small Business Development Centers. This is particularly important on the City's large capital projects to insure diverse supplier participation. Firms in the Aurora marketplace may be suffering from undercapitalization and access to capital may be an important component to supportive services.
- **Forecasting** – alerting businesses to upcoming needs even before a formal bid is issued. This will allow the City to provide supportive services well in advance of the bid issuance, if needed. Where there is no formal bid, lists of the City's upcoming needs and types of services and goods anticipated should also be made available to firms with opportunities posted. Knowing ahead of time what work will be presented in the coming year will give room for contract compliance to schedule networking events and encourage firms to team. It also gives more time for mandatory pre-bid conferences where potential prime contractors can meet potential subcontractors.

## **RECOMMENDATION 5: SMALL BUSINESS RESERVE PROGRAM**

GSPC heard complaints from firms that it is difficult for small businesses to compete against large companies. Under a race and gender neutral, small business reserve program, the City would set aside certain contracts under a determined threshold on which only small businesses can bid. It is a race- and gender- neutral prime contractor program that has been effective in other jurisdictions in increasing MWBE participation. This is also an excellent way to get firms that have only worked as subcontractors to bid as prime contractors and grow their capacity. This will ultimately result in more competition in the marketplace. But it is important to provide supportive services to firms making this transition.

***RECOMMENDATION 6: REQUIRE JOINT VENTURES ON LARGE CONSTRUCTION PROJECTS***

On very large Construction projects, the County should encourage firms to joint venture with MWBE firms. This will assist MWBE firms to build their capacity. The City of Atlanta has had a very successful required MWBE joint venture program for more than 25 years for projects over \$5 Million. The prime contractor must joint venture with a firm that has a majority ownership by a racial group other than that of the prime contractor.

On a smaller scale, GSPC recommends a similar joint venture requirement for the City on large Construction projects (over a certain threshold, to be determined by the City). This will again assist diverse firms to grow their capacity and participate at a higher level as prime contractors and increase competition on County contracts.

***RECOMMENDATION 7: SET ANNUAL GOALS BASED UPON AVAILABILITY***

Annual goals are set from the Disparity Study findings. They are an internal measure for the City to determine if the participation of firms in each race, ethnicity, and gender is what should be expected based upon Availability and current Utilization. Although the Availability numbers remain until the next Disparity Study, the annual goals can be adjusted over several years depending on the gap between Utilization and Availability. GSPC can work with the City following acceptance of the Study to set the annual goals for the first year and the formula for succeeding years for MWBE participation.

***RECOMMENDATION 8: ELIMINATE THE THRESHOLD FOR REQUIRING APPRENTICESHIP PROGRAM***

The City has a provision that for public works construction contracts in excess of \$25,000, the bidder must participate in a federally-approved apprenticeship program. Policy interviews indicated that there were few, if any, firms that could finance and maintain an approved, non-union apprenticeship program. This requirement, on its face may be a barrier to small, minority, and women owned businesses that do not have the resources to have an internal apprenticeship program and may not be members of the unions that have these programs. Therefore, GSPC recommends that the City eliminate this requirement.

**RECOMMENDATION 9: DATA MAINTENANCE REFORM**

GSPC recommends that the City make the following changes to its maintenance of data:

- **Payment Data:** The City should include a more detailed descriptions of payments or add in commodity codes (NIGP, NAICS, or UNSPSC).
- **Subcontractor Data:** The City should maintain and track subcontractor payments in a data file. Currently, they can only be found by opening individual pay apps. The new data file should include fields for: prime vendor name, contract number, and award amount as well as subcontractor name, description of services, amount paid, date paid, and any relevant project info.
- **Vendor list:** The City should solicit vendors to identify their commodity codes for the vendor data file.
- **Bid Tabulations:** The City should require bidders to register as vendors. This way they are captured in the City's data files for both notification of bid opportunities and for tracking purposes. In addition, the City should include all bidders in its bid tabulation data file. Currently unsuccessful bidders only appear on individual PDFs of the bid tabulations.

**RECOMMENDATION 10: NEXT STEPS**

Once the Study has been finalized, GSPC recommends the following next steps:

1. Accepting the Study and its Recommendations;
2. Conducting a Gap Analysis (What needs new legislation and what can be implemented under current authority)
3. Plan for Implementation (Steps, Phases, and Tasks)
4. Draft New Program Plan
5. Determine Budget and Staffing Needs for New Program Elements
6. Develop a Training Protocol and Train Staff