



GEORGIA DEPARTMENT OF TRANSPORTATION

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DISPARITY STUDY

EXECUTIVE SUMMARY
AUGUST 2016



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STRONG P.C.
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INTRODUCTION

In 2015, the Georgia Department of Transportation (“GDOT” or “Georgia Department of Transportation”) contracted with Griffin & Strong, P.C. (“GSPC”) to conduct a comprehensive disparity study (“Study”) to ascertain the participation and utilization of minority and woman owned businesses that are ready, willing, and able to contract with GDOT on its federal and state funded projects. It is GDOT’s mandate to ensure that public contracting opportunities are equally available to minority and women-owned firms, but also to render a diverse and equitable business environment that will benefit all vendors.

Governmental entities across the country authorize disparity studies in response to City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and subsequent cases in order to determine whether there is a compelling interest for the creation or continuation of remedial procurement programs, based upon race, gender, and ethnicity. In order for the legal requirements of Croson and its progeny to be satisfied for any race or gender based activities, GSPC must determine whether GDOT has been a passive or active participant in discrimination with regard to the access of minority and woman owned firms to its procurement processes, or whether its existing federal DBE Program has effectively reached its goals for disadvantaged business engagement. Further, GSPC will review state-funded contracts to determine if there is a factual predicate and compelling interest to create a remedial program for such state-funded contracts.

To achieve these ends, GSPC analyzed the contracting and subcontracting activities of GDOT, its prime contractors, and grantees during the three (3) year period from FY2012 to FY2015 (“Study Period”). The goal of the Study was to determine whether, due to race, ethnicity, or gender status there exists a statistically significant disparity between the percentage of available DBEs in GDOT’s marketplace and the percentage of these firms that have been awarded contracts from GDOT or its prime contractors.

OBJECTIVES

The principal objectives of this Study were:

- to examine the extent of participation of minorities and women in the race and gender conscious programs of GDOT's DBE Program on federally funded projects;
- to collect and analyze relevant data to determine if there is a disparity between the number of minority and women owned businesses that are "ready, willing and able" as vendors in the areas of construction services, professional services, and manufacturing/suppliers;
- to determine whether there are current discriminatory practices, or the present effects of past discriminatory practices in GDOT's solicitation and award of contracts;
- to determine if a legally justified need continues to exist for any or all of GDOT's remedial efforts with regard to the awarding of contracts; and
- to provide recommendations for actions to be taken by GDOT as a result of the findings of the Study, including serious consideration of race-neutral program options.



MEET OUR TEAM



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Ken Weeden & Associates, Anecdotal Interviews Subconsultant

A. L. Burruss Institute of Public Service and Research at
Kennesaw State University, Online Surveys

ABOUT THE TEAM

Griffin & Strong, P.C. is a professional corporation based in Atlanta, Georgia, that is actively engaged in the practice of law, as well as governmental and private consulting. Since the firm's inception in 1992, the public policy consulting division has been continuously directed and controlled by Rodney K. Strong. Attorney Strong has an extensive background in the area of public contracting with specific experience conducting disparity studies. Gregory Price, Ph.D., served as Senior Economist for this Study and reviewed all quantitative aspects of the Study. Michele Clark Jenkins, as the Project Manager, was responsible for the day-to-day aspects of the Study and for executing the methodology. Mrs. Jenkins has extensive experience in managing disparity studies, bench-markings, and goal settings. Imani Strong served as Deputy Project Manager and qualitative research coordinator of the Study. Ms. Strong's expertise in anthropology and prior experience on GSPC studies made her an asset to the execution of this Study, particularly in the analysis of the anecdotal evidence. Susan Johnson handled the administration of the Study, particularly with regard to subcontractor tracking and payments.

ABOUT THE TEAM

Other Members of the Project Team

Hubert Owens – Purchasing Practices Policies and Procedures Subconsultant. Mr. Owens is the former Director of The City of Atlanta Mayor’s Office of Contract Compliance, and was employed with the City of Atlanta since 1994. Mr. Owens managed the City’s Equal Business Opportunity (EBO) Program, Small Business Enterprise (SBE) Program and the federal Disadvantaged Business Enterprise (DBE) Program, including airport concessions. He holds a Bachelor of Science degree in Business Administration from Mississippi Valley State University.

Ken Weeden & Associates (“KWA”) – Anecdotal Interviews Subconsultant. KWA is a North Carolina based consulting firm with offices in Atlanta. Founded in 1989, KWA specializes in urban planning, DBE programs, and transportation planning and programs. The firm has prepared FAA, FTA, and FHWA DBE plans/goals for more than 100 airports and transit systems.

A.L. Burruss Institute of Public Service and Research at Kennesaw State University – Online Survey of Business Owners. The A.L. Burruss Institute of Public Service and Research draws upon the expertise of the academic departments of Kennesaw State University by providing opportunities for many faculty, from diverse research fields, to participate in applied research projects on an as-needed basis. Similarly, Kennesaw State University students, serving as student assistants, interns, co-ops and as interviewers in the Telephone Survey Research Laboratory, have contributed experience in day-to-day operations at the Institute or at government agencies and community organizations.



LEGAL BASIS
FOR STUDY

LEGAL BASIS FOR STUDY

Disparity studies are a creation of the courts in response to challenges against disadvantaged business enterprise programs that were enacted to remedy perceived past or present discrimination. Laws that, on their face, favor one class of citizens over another, may run afoul of the 5th or 14th Amendments, which were the basis of the U.S. Supreme Court's decisions in the City of Richmond v. J. A. Croson Company, 488 U.S. 469; 109 S. Ct. 706; 102 L. Ed. 2d 854; 1989 U.S. LEXIS 579; 57 U.S.L.W. 4132; 53 Fair Empl. Prac. Cas. (BNA) 197; 48 Empl. Prac. Dec. (CCH) P38,578; 36 Cont. Cas. Fed. (CCH) P76,005, and Adarand Constructors, Inc. v. Peña, 515 U.S. 200; 115 S. Ct. 2097; 132 L. Ed. 2d 158; 1995 U.S. LEXIS 4037; 63 U.S.L.W. 4523; 67 Fair Empl. Prac. Cas. (BNA) 1828; 66 Empl. Prac. Dec. (CCH) P43, 556; 78 Rad. Reg. 2d (P & F) 357; 95 Cal. Daily Op. Service 4381; 95 Daily Journal DAR 7503; 40 Cont. Cas. Fed. (CCH) P76, 756 and their progeny.

In its Croson decision, the Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy the requirements of "strict scrutiny" in order to have a race conscious program. "Strict scrutiny" is a level of judicial review that has two (2) prongs: 1-A Compelling Governmental Interest, and 2-A Narrowly Tailored Remedy. Under the first prong, the City of Richmond failed to show that its minority set-aside program was "necessary" to remedy the effects of discrimination in the marketplace. In fact, the City of Richmond had not established the necessary factual predicate to infer that discrimination in contracting had occurred. The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50 percent African-American), and awards of prime contracts to minority-owned firms (0.67 percent to African-American firms), was an irrelevant statistical comparison and insufficient to raise an inference of discrimination. Regarding the evidence that Richmond provided to support its goal program, the Court emphasized the distinction between "societal discrimination", which it found to be an inappropriate and inadequate basis for social classification, and the type of identified discrimination that can support and define the scope of race-based relief. The Court noted that a generalized assertion that there has been past discrimination in an entire industry provided no guidance to determine the present scope of the injury a race-conscious program would seek to remedy.

LEGAL BASIS FOR STUDY

The Court emphasized that "there was no direct evidence of race discrimination on the part of the City in letting contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors." City of Richmond v. J.A. Croson Company, 488 U.S. 469, 480 (1989).

In summary, the Court concluded there was no prima facie case of a constitutional or statutory violation by anyone in the construction industry. Justice O'Connor did opine, however, on what evidence might indicate a proper statistical comparison:

[W]here 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. Croson, 488 U.S. at 509.

In other words, the statistical comparison would be one between the percentage of MBEs in the marketplace qualified to do contracting work (including prime contractors and subcontractors) and the percentage of total City contracting dollars awarded to minority firms. The relevant question among lower federal courts has been how to determine this particular comparison. See discussion of statistical comparison, *infra*.

Additionally, the Court stated that identified anecdotal accounts of past discrimination also could provide the basis to establish a compelling interest for local governments to enact race-conscious remedies. However, conclusory claims of discrimination by City officials, alone, would not suffice. In order to uphold a race- or ethnicity-based program, there must be a determination that a strong basis in evidence exists to support the conclusion that the remedial use of race is necessary. A strong basis in evidence cannot rest on an amorphous claim of societal discrimination, on simple legislative assurances of good intention, or congressional findings of discrimination in the national economy.

LEGAL BASIS FOR STUDY

Regarding the second prong of the strict scrutiny test, the Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination. First, the Court held that Richmond's MBE program was not remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no evidence of discrimination in Richmond. Thus, the scope of the City's program was too broad. Second, the Court ruled that the thirty percent (30%) goal for MBE participation in the Richmond program was a rigid quota not related to identified discrimination. Specifically, the Court criticized the City for its lack of inquiry into whether a particular minority business, seeking racial preferences, had suffered from the effects of past discrimination. Third, the Court expressed disappointment that the City failed to consider race-neutral alternatives to remedy the underrepresentation of minorities in contract awards. Finally, the Court highlighted the fact that the City's MBE program contained no sunset provisions for a periodic review process intended to assess the continued need for the program. Croson, 488 at 500.

Thus, in order for states, municipalities, and other local governments to satisfy the narrow tailoring prong of the strict scrutiny test, the Croson Court suggested analyzing the following five factors:

- Whether the MBE program covers minorities for which there is evidence of discrimination (i.e. statistical disparity, anecdotal evidence, etc.);
- Whether the size of the MBE participation goal is flexible and contains waiver provisions for prime contractors who make a "good faith" effort to satisfy MBE utilization goals, but are unsuccessful in finding any qualified, willing and able MBEs;
- Whether there was a reasonable relationship between the numerical goals set and the relevant labor pool of MBEs capable of performing the work in the marketplace;
- Whether race-neutral alternatives were considered before race-conscious remedies were enacted; and
- Whether the MBE program contains sunset provisions or mechanisms for periodic review to assess the program's continued need.



FINDINGS



FINDINGS

As the detailed findings below will demonstrate, GSPC found sufficient statistically significant underutilization of minority and woman owned firms as prime contractors and consultants, and subcontractors in federal contracting to indicate an inference of discrimination which may be present discrimination or the present effects of past discrimination. Further, from GSPC's analysis of the Private Sector in the State of Georgia, an inference of discrimination can be made in the relevant construction, professional services, and manufacturing industries.

FINDING 1: MWBE/DBE Prime and Subcontractor Utilization

As the table below shows, GDOT spent \$3,066,334,607 with prime contractors in the Relevant Market during the Study Period with 2.25% of this amount, or \$69,044,066 spent with MWBE/DBE firms as primes. GDOT prime contractors spent \$122,736,937 on subcontracting with MWBE/DBE firms, roughly 17% of all subcontracting dollars.

Table 1
GDOT Disparity Study
Summary of Utilization

GDOT Disparity Study Utilization Totals				
	Construction	Professional Services	Manufacturing	Totals
Prime				
Asian Pacific	\$0.00	\$0.00	\$0.00	\$0.00
Subcontinent Asian	\$29,187,916.00	\$0.00	\$0.00	\$29,187,916.00
Black American	\$585,545.00	\$3,159,101.71	\$0.00	\$3,744,646.71
Hispanic American	\$1,958,403.00	\$34,550.00	\$0.00	\$1,992,953.00
Native American	\$0.00	\$0.00	\$0.00	\$0.00
Women	\$24,047,574.00	\$10,070,977.01	\$0.00	\$34,118,551.01
Total MWBE/DBE	\$55,779,438.00	\$13,264,628.72	\$0.00	\$69,044,066.72
Non-MWBE/DBE	\$2,482,223,561.00	\$515,066,979.45	\$0.00	\$2,997,290,540.45
Total	\$2,538,002,999.00	\$528,331,608.17	\$0.00	\$3,066,334,607.17
Sub				
Asian Pacific	\$2,971,822.00	\$0.00	\$368,479.00	\$3,340,301.00
Subcontinent Asian	\$0.00	\$331,664.46	\$0.00	\$331,664.46
Black American	\$26,779,551.00	\$7,147,665.00	\$1,141,064.00	\$35,068,280.00
Hispanic American	\$4,019,915.00	\$0.00	\$0.00	\$4,019,915.00
Native American	\$205,012.00	\$0.00	\$0.00	\$205,012.00
Women	\$69,416,363.00	\$7,968,039.51	\$2,387,363.00	\$79,771,765.51
Total MWBE/DBE	\$103,392,663.00	\$15,447,368.97	\$3,896,906.00	\$122,736,937.97
Non-MWBE/DBE	\$459,324,919.00	\$101,191,846.85	\$37,028,682.00	\$597,545,447.85
Total	\$562,717,582.00	\$116,639,215.82	\$40,925,588.00	\$720,282,385.82

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FINDING 2: Disparity Analysis of MWBE/DBEs as Primes

The statistical chapter of the study has revealed that GDOT issues a number of large contracts in Construction and Professional Services. The unutilized capacity of DBE firms reveals that, except for Subcontinent Asian American owned firms, every MWBE/DBE group had at least 24% more capacity than they have received. Also, with the exceptions of Native American owned firms where there was no availability and no utilization and one Subcontinent Asian firm that received a percentage of prime awards in Construction prime contracting in excess of the 1% availability of Subcontinent Asian firms in the Relevant Market, every other ethnic minority group was substantially and statistically significantly underutilized as primes during the Study Period.

Table 2
GDOT Disparity Study
Summary of Statistically Significant MWBE/DBE
Disparity Analysis in Prime Contracting

CONSTRUCTION	PROFESSIONAL SERVICES
Black American	Black American
Asian or Pacific Islander	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian
Hispanic	Hispanic
Native American	
Woman	Woman

Bolded in **blue**=statistically significant underutilization

Bolded in **red**=statistically significant overutilization

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FINDING 3: Summary of Statistically Significant MWBE/DBE Disparity Analysis in Subcontracting

Non-MWBE/DBEs were overutilized in every category of subcontracting and, although woman owned firms were overutilized as subcontractors in Construction, it was not statistically significant. Each every other MWBE/DBE group represented was underutilized to a statistically significant degree in every category of subcontracting work.

Table 3
 GDOT
 Summary of Statistically Significant MWBE/DBE
 Disparity Analysis in Subcontracting

CONSTRUCTION	PROFESSIONAL SERVICES	MANUFACTURING
Black American	Black American	Black American
Asian or Pacific Islander	Asian or Pacific Islander	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian	Subcontinent Asian
Hispanic	Hispanic	Hispanic
Native American	Native American	Native American
	Woman	Woman

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FINDING 4: Overconcentration of MWBE/DBE Haulers

GSPC found a dramatic overutilization of MWBE/DBE haulers with an availability of 60.76% and a utilization 92.59% in the Relevant Market. In contrast, Non-DBE haulers were dramatically underutilized in Hauling with a 39.24% availability, but only 7.41% utilization. This indicates overconcentration of MWBE/DBE haulers in hauling, particularly when overall, MWBE/DBEs are generally underutilized in Construction subcontracting.

FINDING 5: Summary of Statistically Significant MWBE/DBE Disparity Analysis in State Funded Contracts

In total, MWBE/DBEs were statistically significantly underutilized as both prime and subcontractors throughout the Study Period in all districts.

Table 4
GDOT State Funded
Summary of Statistically Significant MWBE/DBE Underutilization
(Using LMIG Data)

CONSTRUCTION PRIME CONTRACTORS	CONSTRUCTION SUBCONTRACTORS
Black American	Black American
Asian or Pacific	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian
Hispanic American	Hispanic American
Native American	Native American
Woman	Woman

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FINDING 6: Private Sector Analysis

GSPC's analysis explicitly links a business firm owner's race/ethnicity/gender to public contracting and related outcomes in the GDOT market area. Our focus on minority firm owners' success likelihoods relative to non-minority firm owners in entering the market as new business owners, realizing public contracting and subcontracting opportunities, provides a framework to rationalize observed simple disparity indexes.

The results suggest that in the GDOT market area, race/ethnicity/gender matter for public contracting outcomes. Indeed, we find that in general, a firm owner's race, ethnicity, and gender all have statistically significant effects in the GDOT market area with respect to the likelihood of securing financing, public contracting, and subcontracting opportunities relative to non-minority or non-woman-owned firms. We also find that being a minority or woman-owned firm increases the likelihood of a having a perception that the process by which bids are selected by GDOT is not fair and transparent, which could discourage participation from minority or woman-owned firms in the public contracting process—exacerbating racial/ethnic/gender disparities in public contracting outcomes for GDOT.

FINDING 7: Anecdotal Evidence

Anecdotal evidence is gathered from the impressions and experiences of firms throughout the State of Georgia. It was gathered from:

- Informational Meetings
- Focus Groups
- Public Hearings
- Anecdotal Interviews
- Survey of Business Owners
- Emailed Comments

The findings of anecdotal evidence are as follows:

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- ❑ As was noted by GSPC in the purchasing practices analysis, many MWBE/DBEs and small firms feel that the prequalification requirements warrant evaluation, especially for engineering, and might be a barrier to entry. Bonding continues to be a problem for smaller firms and many feel that GDOT could break out contracts into smaller pieces to make room for wider participation.
- ❑ Many MWBE/DBE's outside of Atlanta especially were concerned with the lack of monitoring of State Contracts and continued monitoring of White female owned firms to prevent "fronts" was considered necessary by participants at two hearings.
- ❑ It was argued that GDOT should implement further outreach efforts to areas outside of Atlanta as well as DBE-program specific training, perhaps with a networking component. To this point, suppliers and professional consultants feel left out of the program and find that many of the resources are not geared to their needs. Overconcentration of DBEs in trucking and hauling was a recurrent theme.
- ❑ The certification process is considered unnecessarily lengthy and invasive by some and many feel that DBE certification has not been of benefit. There was a notable lack of buy-in to the program on the part of majority firms interviewed and who submitted comments. It should be noted that these were both semi-anonymous forums and no majority firms decided to speak at hearings. There is also perceived lack of buy-in to the program by GDOT staff and some feel that the procurement process is colored by favoritism.

FINDING 8: Purchasing Practices Policies and Procedure Findings

GSPC's purchasing practices, policies, and procedures analysis revealed that some aspects of GDOT's requirements may present unique barriers to MWBE firms. These include the department's prequalification requirements, the lack of diversity language in the Official Code of Georgia, only conducting pre-bid conferences on design build projects, not involving the EEO office in the DBE goal setting process for professional services, and not including that office in the evaluation of DBE submittals for either construction or professional services contracts.

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Furthermore, the DBE Program is a responsibility that is outside of the user departments' performance mandates. This position, although not ideal, is why goal setting and good faith efforts should be evaluated at the committee level by an EEO officer. This change would also bring GDOT into compliance with the requirements of the Office of Procurement and the Office of Construction Bidding Administration to challenge the scope, specifications, and experience requirements as drafted by the user agencies to ensure underutilized classes of businesses are not systemically prohibited from competing for contracts.

GDOT should also review the weight that is given to the award of contracts based upon past performance for GDOT. This could be a barrier for any new entrants that are otherwise qualified because firms who have already done business with GDOT will continue to carry more weight than firms attempting to do business with GDOT. Historically, these types of barriers particularly affect underutilized classes.

Also, not having pre-bid conferences on other construction projects is may prevent the successful engagement of historically underutilized firms. Pre-bid conferences are often used by small, minority, female-owned and disadvantaged businesses as an opportunity, to network and share their skill set with prime contractors interested in bidding on GDOT projects, thus increasing the prime contractors' chances of developing robust small, minority, female owned or disadvantaged participation plan on GDOT projects.

Finally, 49 CFR 26 allows GDOT to create business development initiatives, such as a mentor protégé program, at their discretion. A mentor-protégé program would give firms the opportunity to continue to participate in the program once they have graduated.



RECOMMENDATIONS



RECOMMENDATIONS

GSPC makes the following recommendations based upon the findings of the Study. It should be noted that these recommendations make take legislative action and may not be able to be implemented by GDOT until such legislative action is taken.

Commendation and Recommendation 1: Continue the current federal DBE Program

The EBO Program has taken great strides in developing and supporting DBE firms through its increased commitment to supportive services since the Study Period was completed. However, during the Study Period, GSPC found that the evidence presented in the Study indicates an inference of discrimination that supports the continuation of the federal DBE Program as an appropriate and narrowly tailored remedy to address such a finding.

Commendation and Recommendation 2: Extend the current DBE Program to State -Funded Projects Administered by GDOT

Again, GDOT has instituted a new State Supportive Services Program in 2016, after the completion of the Study Period. However, during the Study Period, an inference of discrimination can be drawn from the statistically significant disparity in LMIG contracting which is supported by the regression analysis performed in Chapter V – Private Sector. Although the federal DBE Program is only required for federally funded projects, GSPC recommends that GDOT extend the DBE Program to cover state funded programs in this respect:

GDOT should require DBE certification for state funded projects in the same manner as federally funded projects.

GDOT should administer and monitor DBE participation in the same manner.

Administer goals in the same manner as the federal DBE Program. In setting goals however, GDOT has used a weighted availability in each of the work group categories (which is then adjusted) to determine its DBE goal. The weighting uses GDOT's budget and not the weighting that would be applicable to LMIG or perhaps other state funded projects. Therefore, GDOT should set a separate unweighted goal for state-funded contracts (subject to adjustment) based upon overall availability factors which may be adjusted.

RECOMMENDATIONS

By utilizing the same administration and methods for both DBE Programs, each Program is likely to operate most effectively, rather than attempting to establish two separate programs.

Commendation and Recommendation 3: If State-Funded Contracts Are Administered by Local Governmental Authorities, Institute a Robust Non-Discrimination Program

The Title VI Program already assures that “no person shall be excluded from participation in, or is denied the benefits of, or is subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Transportation on the grounds of race, color, age, sex, disability or national origin.”

In addition to adherence to this policy, GSPC recommends enhancing the policy with uniform requirements in the administration of contracts receiving state funding:

- Written agreement to adhere to DBE guidelines as a condition to receiving state funds.
- Outreach to DBE firms, so that all certified DBEs throughout the state are notified and given an opportunity to bid. DBE’s should be able to bid contracts in all districts.
- Set up DBE guidelines in all state-funded bid packages and contracts
- Require DBE reporting on every contract to EBO

Recommendation 4: If State Funded Contracts Are Administered by Local Governmental Authorities, Institute a Small Business Preference Program

Almost half of the prime contractors that were identified as receiving LMIG contracts were on the GDOT prequalified list and approved for performing on projects over \$2 Million. Since the projects administered by local governmental authorities average well under \$200,000, GDOT should consider requiring small business preferences in the awards of LMIG and

RECOMMENDATIONS

other locally administered contracts using state funding. Since most DBE firms are small businesses, this would be a race- and gender-neutral remedy that could increase DBE participation. It should be noted that this recommendation would be subject to additional legislation in order to implement.

Commendation and Recommendation 5: DBE-to-DBE Mentor-Protégé Program

GDOT already encourages Mentor-Protégé relationships. In addition, GDOT should consider the development of a DBE-to-DBE mentor-protégé program (a suggestion that has considerable support from anecdotal evidence gathered for this study). In such a program, veteran and mid-size DBEs who have graduated from the program serve as mentors for smaller and newer DBE firms.

Recommendation 6: Joint Venture Contracts/DBE Teams

In order to encourage participation on high-dollar contracts, GDOT should look for instances in which DBE capacity can be increased to match contract size. DBE capacity can be increased by encouraging joint ventures. For example, in Oregon, the Northeast Urban Trucking Consortium, an organization composed of seven DBE independent trucking firms with 15 trucks, joined together to win a \$2 million trucking contract. DBE collaboration can be encouraged by citing consortium examples in newsletters and increasing outreach for projects where such collaboration may be effective.

GDOT may also cautiously encourage joint ventures between DBEs and non-minority firms on large-scale projects. It must be noted that this type of joint venture poses potential illicit “front” risks, and GDOT must examine these joint ventures carefully.

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Commendation and Recommendation 7: Adjusted Prequalification Requirements

GDOT has already made changes since the Study Period in not requiring more than one engineer on staff in order for firms to bid Professional Services Contracts. For some engineering firms, having two professional engineers (PEs) on staff is required for prequalification with GDOT. From our anecdotal research, we found that many firms felt that they were reasonably qualified with one PE on staff and that this requirement has been exclusionary for their firms from an economic standpoint. Lowering the requirement for engineering firms from two professional engineers on staff to one on staff and one on-call, would encourage more engineering firms to come to the table and would ease the path of those smaller firms seeking to become prequalified. Still, there is a perception that, although more than one staff engineer may not be required, firms that do not have more than one staff engineer may be at a disadvantage. Even with the new changes, GDOT should continue to review this area of prequalification requirement.

Recommendation 8: Contract Sizing

GDOT should consider issuing contracts in small dollar amounts to expand the opportunities that small DBEs have to do business with the Department.

Commendation and Recommendation 9: Performance Reviews and Evaluations

GDOT already considers civil rights aspects in its performance reviews. GSPC recommends additional measures for GDOT staff to be evaluated regularly based on the quality, transparency, and effectiveness of their attempts to reach procurement goals and achieve the overall goals of the DBE programs in place.

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Commendation and Recommendation 10: Bonding Assistance Programs

GDOT currently provides information on bonding through its supportive services program. However, due to the results of the private sector analysis, as well as an overwhelming concern heard from DBE firms through anecdotal evidence, GSPC believes that it is important for GDOT to provide additional resources to SBE and DBE firms by utilizing non-profit organizations for loans and bonding, and forming agreements with local banks to provide funding to small, minority, and woman owned businesses recognized by GDOT's program. GDOT may also consider providing information for small businesses and DBEs on the Small Business Administration's bonding assistance program. It should also consider exploring sequential bonding in lieu of project bonding.

Recommendation 11: Mandatory Pre-Bid Conferences

Mandatory pre-bid conferences are important for participation because they are an opportunity for DBE and majority firms to interact. They encourage teaming and partnering and, importantly, allow firms to clarify questions that they have in a setting that gives everyone an opportunity to receive the same response. Instituting mandatory pre-bid conferences will enable GDOT's bidders to express their interest and to network in a setting that might not otherwise be afforded to them, particularly on large contracts with substantial subcontracting opportunities.

Recommendation 12: Continued Monitoring of Women-Owned DBE firms

Unfortunately, the use of woman-owned firms as "fronts" is a relevant aspect of contract compliance monitoring in a great many jurisdictions. In these scenarios, some woman who may not actually run a firm on a day-to-day basis will put the firm in their name, while a male relative conducts regular operations. It is important to do a careful certification review of any firms that may be suspected of engaging in such a practice.

RECOMMENDATIONS

The overutilization of women-owned firms in some categories in this study suggests that there may be a problem in that regard. GDOT is encouraged to review its certification practices to enhance monitoring in this sphere and to take careful note in future of any suspicious activity.

Commendation and Recommendation 13: Address Overconcentration of MWBE/DBE firms in Hauling

GSPC applauds GDOT for already undertaking an aggressive, multi-pronged approach to addressing overconcentration of MWBE/DBE firms in hauling. In addition to the existing and planned efforts, GSPC recommends that contract-specific goals based on GDOT's weighted availability of firms in each work category should be instituted to ensure that any issues of overconcentration will be alleviated. This will allow the user department to issue goals on a contract-by-contract and category basis, in essence identifying those areas of work that are available to fulfill the DBE goals based on the percentage of availability in that area. GSPC has demonstrated that there is sufficient availability for DBE subcontractors to be used in many areas other than hauling.

In addition, GDOT should develop a mentor-protégé program for DBEs who are heavily concentrated in trucking and hauling so that they can begin to find work in other categories. Such a program may help DBEs navigate network and bidding processes as well as build relationships that can help them to obtain work in other areas.



CONCLUSION

CONCLUSION

GSPC found substantial underutilization by GDOT of all minority and women-owned firms as prime contractors, with the exception of Subcontinent Asian owned firms. In all aspects of the anecdotal evidence, GSPC heard complaints from MWBE firms, especially Black American - owned firms, that their capabilities were being underutilized by GDOT as primes. The statistical data bore out that only a relatively small number of firms were getting prime contracts from GDOT. Similarly, with the exception of non-minority women, all minority groups were underutilized as subcontractors.

The consistent conclusion that can be taken from this Study is that GDOT should consider narrowly tailored ways to provide more contracting opportunities for minority and women-owned firms. This may include revisiting prequalification requirements, as well as increasing supportive services, and reducing contract sizing. This would assist in not only rectifying the disparities found in GDOT's own contracting, but also assist with remedying the marketplace discrimination found in the Private Sector Analysis.

GSPC believes that the institution of a parallel state-funded DBE Program may present an opportunity for GDOT to increase the participation of minority and women-owned firms through race-and gender-neutral means by using small business preferences and creating more outreach to participate in smaller contracts. In addition, an active attempt by GDOT to break up the overconcentration in hauling which would give Non-MWBE/DBE haulers more opportunities in hauling, while focusing more efforts on spreading out MWBE/DBE participation into every other work category where there is unutilized MWBE/DBE capacity.

Griffin & Strong, P.C.
April, 2016

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Griffin & Strong, P.C. is a professional corporation based in Atlanta, Georgia, that is actively engaged in the practice of law, as well as governmental and private consulting. Since the firm's inception in 1992, the public policy consulting division has been continuously directed and controlled by Rodney K. Strong. Attorney Strong has an extensive background in the area of public contracting with specific experience conducting disparity studies. Gregory Price, Ph.D., served as Senior Economist for this Study and reviewed all quantitative aspects of the Study. Michele Clark Jenkins, as the Project Manager, was responsible for the day-to-day aspects of the Study and for executing the methodology. Mrs. Jenkins has extensive experience in managing disparity studies, bench-markings, and goal settings. Imani Strong served as Deputy Project Manager and qualitative research coordinator of the Study. Ms. Strong's expertise in anthropology and prior experience on GSPC studies made her an asset to the execution of this Study, particularly in the analysis of the anecdotal evidence. Susan Johnson handled the administration of the Study, particularly with regard to subcontractor tracking and payments.

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- **A.L. Burruss Institute of Public Service and Research at Kennesaw State University – Online Survey of Business Owners.** The A.L. Burruss Institute of Public Service and Research draws upon the expertise of the academic departments of Kennesaw State University by providing opportunities for many faculty, from diverse research fields, to participate in applied research projects on an as-needed basis. Similarly, Kennesaw State University students, serving as student assistants, interns, co-ops and as interviewers in the Telephone Survey Research Laboratory, have contributed experience in day-to-day operations at the Institute or at government agencies and community organizations.

I. INTRODUCTION

In 2015, the Georgia Department of Transportation (“GDOT” or “Georgia Department of Transportation”) contracted with Griffin & Strong, P.C. (“GSPC”) to conduct a comprehensive disparity study (“Study”) to ascertain the participation and utilization of minority and woman owned businesses that are ready, willing, and able to contract with GDOT on its federal and state funded projects. It is GDOT’s mandate to ensure that public contracting opportunities are equally available to minority and woman owned firms, but also to render a diverse and equitable business environment that will benefit all vendors.

Governmental entities across the country authorize disparity studies in response to City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and subsequent cases in order to determine whether there is a compelling interest for the creation or continuation of remedial procurement programs, based upon race, gender, and ethnicity. In order for the legal requirements of Croson and its progeny to be satisfied for any race or gender based activities, GSPC must determine whether GDOT has been a passive or active participant in discrimination with regard to the access of minority and woman owned firms to its procurement processes, or whether its existing federal DBE Program has effectively reached its goals for disadvantaged business engagement. Further, GSPC will review state-funded contracts to determine if there is a factual predicate and compelling interest to create a remedial program for such state-funded contracts.

To achieve these ends, GSPC analyzed the contracting and subcontracting activities of GDOT, its prime contractors, and grantees during the three (3) year period from FY2012 to FY2015 (“Study Period”). The goal of the Study was to determine whether, due to race, ethnicity, or gender status there exists a statistically significant disparity between the percentage of available DBEs in GDOT’s marketplace and the percentage of these firms that have been awarded contracts from GDOT or its prime contractors.

A. Objectives

The principal objectives of this Study were:

- to examine the extent of participation of minorities and women in the race and gender conscious programs of GDOT's DBE Program on federally funded projects;
- to collect and analyze relevant data to determine if there is a disparity between the number of minority and woman owned businesses that are "ready, willing and able" as vendors in the areas of construction services, professional services, and manufacturing/suppliers;
- to determine whether there are current discriminatory practices, or the present effects of past discriminatory practices in GDOT's solicitation and award of contracts;
- to determine if a legally justified need continues to exist for any or all of GDOT's remedial efforts with regard to the awarding of contracts; and
- to provide recommendations for actions to be taken by GDOT as a result of the findings of the Study, including serious consideration of race-neutral program options.

B. Technical Approach

In conducting this Study and preparing its recommendations, GSPC followed a carefully designed work plan that allowed Study team members to fully analyze availability, utilization, and disparity with regard to DBE participation. The final work plan consisted of, but was not limited to, the following major tasks related to both federal and state funded projects:

- establishing data parameters and finalizing a work plan;
- legal analysis;
- policy and procurement process review and DBE program analysis;
- collecting electronic data, inputting manual data, organizing, and cleaning data, as well as filling any data gaps;
- conducting market area analyses;
- conducting utilization analyses;
- determining the availability of qualified firms;
- analyzing the utilization and availability data for disparity and statistical significance;

- conducting private sector analysis including credit and self-employment analysis including overconcentration;
- collecting and analyzing anecdotal information; and
- preparing a final report that presents race- and gender-neutral and narrowly tailored race- and gender-based remedies if indicated by the findings.

C. Report Organization

This report is organized into the following sections, which provide the results of GSPC's analytical findings as to the utilization and availability of firms to perform work for GDOT. In addition to this introductory chapter, this report includes:

- Chapter II, which is an overview of the legal history and basis for the Study;
- Chapter III, which provides a review of GDOT's purchasing policy and remedial policy;
- Chapter IV, which presents the methodology used in the collection of statistical data from GDOT and the analyses of the data as it relates to relative DBE availability and utilization analyses, and also includes a discussion on levels of disparity for GDOT's prime contractors and subcontractors;
- Chapter V, which determines whether there is an overconcentration of MWBE/DBEs in Hauling;
- Chapter VI, which analyses contracts funded by the State of Georgia;
- Chapter VII, which analyzes whether there is discrimination in the private sector;
- Chapter VIII, which outlines the qualitative analyses: the analysis of anecdotal data collected from the online survey, personal interviews, focus groups and public meetings;
- Chapter IX, which calculates the appropriate DBE goal for federally funded contracts;
- Chapter X, which presents GSPC's detailed findings and recommendations;
- Chapter XI, which is GSPC's conclusion; and
- Chapter XII, which contains the Appendices.

II. LEGAL ANALYSIS

A. Background and Introduction

Disparity studies are a creation of the courts in response to challenges against disadvantaged business enterprise programs that were enacted to remedy perceived past or present discrimination. Laws that, on their face, favor one class of citizens over another, may run afoul of the 5th or 14th Amendments, which were the basis of the U.S. Supreme Courts' decisions in the City of Richmond v. J. A. Croson Company, 488 U.S. 469; 109 S. Ct. 706; 102 L. Ed. 2d 854; 1989 U.S. LEXIS 579; 57 U.S.L.W. 4132; 53 Fair Empl. Prac. Cas. (BNA) 197; 48 Empl. Prac. Dec. (CCH) P38,578; 36 Cont. Cas. Fed. (CCH) P76,005, and Adarand Constructors, Inc. v. Peña, 515 U.S. 200; 115 S. Ct. 2097; 132 L. Ed. 2d 158; 1995 U.S. LEXIS 4037; 63 U.S.L.W. 4523; 67 Fair Empl. Prac. Cas. (BNA) 1828; 66 Empl. Prac. Dec. (CCH) P43,556; 78 Rad. Reg. 2d (P & F) 357; 95 Cal. Daily Op. Service 4381; 95 Daily Journal DAR 7503; 40 Cont. Cas. Fed. (CCH) P76,756 and their progeny.

B. The Croson Decision

In its Croson decision, the Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy the requirements of "strict scrutiny" in order to have a race conscious program. "Strict scrutiny" is a level of judicial review that has two (2) prongs: 1-A Compelling Governmental Interest, and 2-A Narrowly Tailored Remedy. Under the first prong, the City of Richmond failed to show that its minority set-aside program was "necessary" to remedy the effects of discrimination in the marketplace. In fact, the City of Richmond had not established the necessary factual predicate to infer that discrimination in contracting had occurred. The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50 percent African-American), and awards of prime contracts to minority owned firms (0.67 percent to African-American firms), was an irrelevant statistical comparison and insufficient to raise an inference of discrimination. Regarding the evidence that Richmond provided to support its goal program, the Court emphasized the distinction between "societal discrimination," which it found to be an inappropriate and

inadequate basis for social classification, and the type of identified discrimination that can support and define the scope of race-based relief. The Court noted that a generalized assertion that there has been past discrimination in an entire industry provided no guidance to determine the present scope of the injury a race-conscious program would seek to remedy. The Court emphasized that "there was no direct evidence of race discrimination on the part of the City in letting contracts or any evidence that the City's prime contractors had discriminated against minority owned subcontractors." City of Richmond v. J.A. Croson Company, 488 U.S. 469, 480 (1989).

In summary, the Court concluded there was no prima facie case of a constitutional or statutory violation by anyone in the construction industry. Justice O'Connor did opine, however, on what evidence might indicate a proper statistical comparison:

[W]here 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. Croson, 488 U.S. at 509.

In other words, the statistical comparison would be one between the percentage of MBEs in the marketplace qualified to do contracting work (including prime contractors and subcontractors) and the percentage of total City contracting dollars awarded to minority firms. The relevant question among lower federal courts has been how to determine this particular comparison. See discussion of statistical comparison, *infra*.

Additionally, the Court stated that identified anecdotal accounts of past discrimination also could provide the basis to establish a compelling interest for local governments to enact race-conscious remedies. However, conclusory claims of discrimination by City officials, alone, would not suffice. In order to uphold a race- or ethnicity-based program, there must be a determination that a strong basis in evidence exists to support the conclusion that the remedial use of race is necessary. A strong basis in evidence cannot rest on an amorphous claim of societal

discrimination, on simple legislative assurances of good intention, or congressional findings of discrimination in the national economy.

Regarding the second prong of the strict scrutiny test, the Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination. First, the Court held that Richmond's MBE program was not remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no evidence of discrimination in Richmond. Thus, the scope of the City's program was too broad. Second, the Court ruled that the thirty percent (30%) goal for MBE participation in the Richmond program was a rigid quota not related to identified discrimination. Specifically, the Court criticized the City for its lack of inquiry into whether a particular minority business, seeking racial preferences, had suffered from the effects of past discrimination. Third, the Court expressed disappointment that the City failed to consider race-neutral alternatives to remedy the under-representation of minorities in contract awards. Finally, the Court highlighted the fact that the City's MBE program contained no sunset provisions for a periodic review process intended to assess the continued need for the program. Croson, 488 at 500.

Thus, in order for states, municipalities, and other local governments to satisfy the narrow tailoring prong of the strict scrutiny test, the Croson Court suggested analyzing the following five factors:

- Whether the MBE program covers minorities for which there is evidence of discrimination (i.e. statistical disparity, anecdotal evidence, etc.);
- Whether the size of the MBE participation goal is flexible and contains waiver provisions for prime contractors who make a "good faith" effort to satisfy MBE utilization goals, but are unsuccessful in finding any qualified, willing and able MBEs;
- Whether there was a reasonable relationship between the numerical goals set and the relevant labor pool of MBEs capable of performing the work in the marketplace;

- Whether race-neutral alternatives were considered before race-conscious remedies were enacted; and
- Whether the MBE program contains sunset provisions or mechanisms for periodic review to assess the program's continued need.

C. The Adarand Decision

In Adarand Constructors, Inc. v. Pena, the United States Supreme Court determined which standard of review was to be employed when analyzing federal race-conscious DBE programs. In Adarand, the petitioner claimed that the Federal Government's practice of giving general contractors . . . a financial incentive to hire subcontractors controlled by "socially and economically disadvantaged individuals," [and] . . . the Government's use of race-based presumptions in identifying such individuals, violates . . . equal protection . . . (Internal punctuation omitted.) Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 204 (1995).

The Tenth Circuit Court of Appeals rejected Adarand's claim and supported the District Court's conclusion that intermediate scrutiny, as applied in Fullilove v. Klutznick, 448 U.S. 448 (overruled by 515 U.S. 200 (1980)) was the appropriate level of scrutiny and not strict scrutiny as was claimed by petitioner Adarand. Adarand, 16 F.3d at 1543.

The Eleventh Circuit also appeared to have come to a similar conclusion as is gauged through its remarks in S. J. Groves & Sons Company v. Fulton County et al, 920 F.2d 752 (11th Cir. 1991):

[I]t seems to us that the Court has created a dual inquiry for evaluating affirmative action programs. First, we must determine whether a state or local government has developed the program, or whether Congress has authorized the program's creation. If the former, a court must strictly scrutinize the program. That is, the means chosen must be narrowly tailored to achieve a compelling governmental interest. If the latter, however, then an intermediate level of scrutiny is appropriate. The program must serve an important

governmental interest and the means must be substantially related to the achievement of that objective. S. J. Groves & Sons, 920 F.2d at 767.

The Supreme Court observed, in its review of Adarand, the conundrum created by its decision in Metro Broadcasting and addressed by the Eleventh Circuit in S. J. Groves & Sons. In addressing the same, it said:

Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests. To the extent that Metro Broadcasting is inconsistent with that holding, it is overruled. Adarand, 515 U.S. at 227.

D. Procedural Posture, Permissible Evidence, and Burdens of Proof

1. Standing

Legal “standing” is an absolute requirement of one who brings an action in any federal court of the United States or any State court that is called upon to decide a matter upon federal law. U.S. Const. Art. III, § 2, Cl 1; Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Though “some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III. Lujan, 504 U.S. at 560.

[S]tanding contains three elements. First, the plaintiff must have suffered an injury in fact -- an invasion of a legally protected interest which is . . . concrete and particularized . . . [s]econd, there must be a causal connection between the injury and the conduct complained of . . . [; and t]hird, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision [of the Court wherewith the matter is brought]. Lujan, 504 U.S. at 560-61, (internal punctuation and citations omitted). See

also Adarand, 515 U.S. at 211-12; Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964, 967-68 (2003); Northeastern Fla. Ch. of the Associated Gen. Contrs. of Amr. v. City of Jacksonville, Fla., 508 U.S. 656, 664-66 (1993).

Following the Croson decision, courts have entertained numerous legal challenges to DBE programs. Standing has been important in a number of these challenges, because it has been pivotal in determining a party's relevance in a lawsuit. Under the traditional standing analysis, in order to satisfy the "injury in fact" requirement, plaintiffs must establish a causal connection between the injury, the program, and the likelihood that the injury will be redressed by a favorable decision. Moreover, the Courts may not tolerate a lawsuit unless the plaintiff shows some "concrete and particularized" injury that is in fact imminent and which amounts to something more than "conjectural or hypothetical" injury. Lujan, 504 U.S. at 560-61.

In Associated General Contractors of America, San Diego Chapter v. California DOT, Plaintiff sought relief against the California Department of Transportation . . . , because “[California DOT’s] 2009 Disadvantaged Business Enterprise program unconstitutionally provided race- and sex-based preferences to Black American-, Native American-, Asian-Pacific American-, and woman owned firms on certain transportation contracts.” Associated Gen. Contrs. Of Amr. (AGC), San Diego Ch., 713 F.3d at 1190. It brought its claim to court on the theory that it had representational standing. However, the Court of Appeals, subsequent to AGC’s adverse summary judgment ruling by the District Court, held that it did not, because it (AGC) presented no evidence identifying “any of its members who have suffered or will suffer harm as a result of . . . [California DOT’s] program.” 713 F.3d at 1190. The Court, citing to one of its prior rulings, wrote in support of its decision that,

[t]o establish associational standing, AGC must show: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Associated Gen. Contrs. Of Amr., San Diego Ch., 713 F.3d at 1194.

In Northeastern Florida General Contractors v. City of Jacksonville, Fla., 508 U.S. 656 (11th Cir. 1993), the United States Supreme Court granted certiorari because of the Eleventh Circuit Court of Appeals' ruling regarding the petitioner's (Appellant) lack of standing. In that case, the Eleventh Circuit ruled that the Petitioner lacked standing "because it failed to allege that one or more of its members would have been awarded a contract but for the challenged ordinance. Under these circumstances, the Court of Appeals concluded, there is no injury. . ." (Northeastern Florida General Contractors, 508 U.S. at 664 (internal quotation marks omitted)), and such ruling was contrary to that which was held by the Ninth Circuit and D.C. Circuit Courts of Appeals when presented with similar questions of law. Northeastern Florida General Contractors, 508 U.S. at 660.

In this case, The City of Jacksonville enacted an ordinance which required that 10% of the amount spent on city contracts be set aside each fiscal year for so-called "Minority Business Enterprises" (MBEs). Jacksonville defined an MBE as a business whose ownership was at least 51% "minority" or woman, and a "minority" was in turn defined as a person who is or considers himself to be Black, Spanish-speaking, Oriental, Indian, Eskimo, Aleut, or handicapped. Once projects were earmarked for MBE bidding by the City's chief purchasing officer, they were "deemed reserved for minority business enterprises only." . . . The ordinance also provided for waiver or reduction of the 10% set-aside under certain circumstances. The Northeastern Florida Chapter of the Associated General Contractors of America (AGC), is an association of individuals and firms in the construction industry whose members do business in Jacksonville, and most of them did not qualify as MBEs under the City's ordinance. AGC filed an action against the City and its mayor claiming that Jacksonville's ordinance violated the Equal Protection Clause of the Fourteenth Amendment (both on its face and as applied). In its complaint, AGC alleged that many of its members "regularly bid on and perform construction work for the City of Jacksonville," and that they "would have . . . bid on . . . designated set aside contracts but for the restrictions imposed" by the ordinance. See Northeastern Florida General Contractors, 508 U.S. at 659 (Emphasis added).

Noteworthy is the fact that Justice Thomas' opinion in Northeastern Florida Chapter of Associated General Contractors of America, modified the traditional standing requirement for

contractors challenging local and state government minority preference schemes. The Court relaxed the injury in fact requirements by holding that:

[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. . . And in the context of a challenge to a set-aside program, the "injury in fact" is the inability to compete on an equal footing in the bidding process, not the loss of a contract. Northeastern Florida General Contractors, 508 U.S. at 666 (internal citations omitted).

To establish standing, therefore, a party challenging a set-aside program...need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal footing.” Northeastern Florida Chapter of Associated General Contractors of America, 508 U.S. 666.

Finally, in Adarand, the Supreme Court continued to find standing in cases in which the challenging party made "an adequate showing that sometime in the relatively near future it will bid on another government contract." Adarand Constructors v. Pena, 515 U.S. 200, 211-12 (1995). That is, if the challenging party is very likely to bid on future contracts, and must compete for such contracts against MBEs, then that contractor has standing to bring a lawsuit.

2. Equal Protection Clause Standards

The second preliminary matter that courts address is the standard of equal protection review that governs their analysis. The Fourteenth Amendment provides that “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend.

XIV, § 1. However, many challenges that are brought to DBE programs are through the Fifth Amendment to the U.S. Constitution. See *Adarand*, supra; *Northern Contracting, Inc. v. Illinois*, et al., 473 F.3d 715 (7th Cir. 2007); *Sherbrooke Turf, Inc.* supra; *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005); *Associated Gen. Contrs. Of Amr., San Diego Ch.*, supra; and *S. Fla. Ch. of the Associated Gen. Contrs.*, et al, supra. However, the analysis whether the challenge is brought under the Fifth Amendment or Fourteenth Amendment is “precisely the same.” *Adarand Constructors, Inc.*, 515 U.S. at 217; *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638, n. 2, 43 L. Ed. 2d 514, 95 S. Ct. 1225 (1975); see also *United States v. Paradise*, 480 U.S. 149, 166, n. 16, 94 L. Ed. 2d 203, 107 S. Ct. 1053 (1987) (plurality opinion of Brennan, J.).

a) Judicial Standards of Review

Courts determine the appropriate standard of equal protection review by examining the protected classes embodied in the statute. The courts “require” strict scrutiny to review a race-conscious DBE program authorized by Congressional action. The question to be decided is whether the law is narrowly tailored to achieve a compelling governmental interest. *Adarand Constructors*, 515 U.S. at 235; *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989). Conversely, gender-based classifications are typically evaluated under the intermediate scrutiny rubric, which provides that the statute must be substantially related to an important governmental objective. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718(1982). See *Engineering Contractors Ass’n of South Florida, Inc., et al v. Metropolitan Dade County, et al*, 122 F.3d 895 (11th Cir. 1997). (Eleventh Circuit explaining *U.S. v. Virginia*, 518 U.S. 515 (1996) and the appropriate gender-based affirmative action equal protection analysis). Therefore, race-conscious affirmative action is typically subject to a higher standard of judicial review than gender-conscious affirmative action.

(i) Strict Scrutiny

In order for a local government to enact a constitutionally valid MWBE ordinance which applies to awards of its contracts, it must show a compelling governmental interest. This compelling interest must be proven by particularized findings of discrimination. The strict

scrutiny test ensures that the means used to address the compelling goal of remedying discrimination "fit" so closely that there is little likelihood that the motive for the racial classification is illegitimate racial prejudice or stereotype. Croson, *Supra*; Engineering Contractors, 122 F.3d at 906. See also, Adarand Constructors, 515 U.S. at 235. A federal DBE program "is subject to scrutiny that is no less strict than the scrutiny applied to the race-based policies of municipalities ..." Rothe Dev. Corp. v. Dep't of Def., 545 F.3d 1023, 1045 (Fed Cir. 2008). The Court goes on to say, citing to its previous opinion in Rothe III:

[A]lthough . . . [a federal DBE program] is subject to scrutiny that is no less strict than the scrutiny applied to the race-based policies of municipalities, Congress nevertheless has, in a sense, a "'broader brush' than municipalities for remedying discrimination," because Congress has the power to legislate for the entire nation. Rothe Dev. Corp. v. Dep't of Def., 545 F.3d 1023, 1045 (Fed Cir. 2008).

The Court went on to warn "that evidence of a few isolated instances of discrimination would be insufficient to uphold the nationwide program. . ." Rothe, 545 F.3d at 1046. Thus, following remand, when the only evidence of nationwide discrimination in public contracting, though competent, was evidence of a compelling interest in "one state, two counties and three cities," the Court of Appeals vacated the District Court's holding of the DBE program's Constitutionality. Id.

Courts have ruled that general societal discrimination is insufficient to justify the use of race-based measures to satisfy a compelling governmental interest. Adarand Constructors, 515 U.S. at 227; Croson, 488 U.S. at 496-97. Rather, there must be some showing of prior discrimination by the governmental actor involved, either as an "active" or "passive" participant. Croson, 488 U.S. at 498; Engineering Contractors, *supra*. Even if the governmental unit did not directly discriminate, it can take corrective action.

In Western States Paving Co., the Court stated, pointing to the record of other courts, i.e. Sherbrooke Turf, Inc., 345 F.3d at 970, the proposition that "Congress has spent decades

compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority owned construction businesses, and of barriers to entry." Western States Paving Co. v. Washington State DOT, 407 F.3d at 992-93.

The Court, in Croson, restated the Fullilove recognition of Congressional power and experience under section five of the Fourteenth Amendment and section 8 of the Small Business Act of 1953:

Congress not only may induce voluntary action to assure compliance with existing federal statutory or constitutional antidiscrimination provisions, but also, where Congress has authority to declare certain conduct unlawful, it may, as here, authorize and induce state action to avoid such conduct. Croson, 488 U.S. at 488, quoting Fullilove v. Klutznick, 448 U.S. at 483-484 (emphasis added).

Since all racial classifications are viewed as legally suspect, the governing body must show a "strong basis in evidence" of discrimination in order to justify any enactment of race-conscious legislation. Merely stating a "benign" or "remedial" purpose does not constitute a "strong basis in evidence" that the remedial plan is necessary, nor does it establish a prima facie case of discrimination. (Croson, 488 U.S. at 500-01), and particularized findings of discrimination must also be set forth. Although Croson places the burden on the government to demonstrate a "strong basis in evidence," the Fourteenth Amendment does not require a court to make an ultimate judicial finding of discrimination before the government may take affirmative steps to eradicate discrimination.

The types of evidence required to be presented to show the existence of a compelling interest include statistical and anecdotal evidence. Croson, 488 U.S. at 501. See, Engineering Contractors, Supra; 49 C.F.R. 26.45(c). Where gross statistical disparities exist, they alone may constitute prima facie proof of a pattern or practice of discrimination. Anecdotal evidence, such as testimony from minority contractors, is most useful as a supplement to strong statistical evidence. Concrete Works, 36 F.3d at 1520. Nevertheless, anecdotal evidence is rarely so

dominant that it can, by itself, establish discrimination under Croson. The "combination of anecdotal and statistical evidence," however, is viewed by the courts as "potent." Coral Construction Co. v. King County, 941 F.2d 910, 920 (9th Cir. 1991).

Finally, in Northern Contracting, the Plaintiff challenged the compelling interest of the Illinois DOT's DBE program, after failing to continue the USDOT's DBE program. The Seventh Circuit ruled that the ability to challenge the Illinois DOT DBE program was forfeited, but affirmed its joinder with the conclusions of the Eighth and Ninth Circuits in saying, "a state entity implementing a congressionally mandated program. . . [may rely] primarily on the federal government's compelling interest in remedying the effects of past discrimination in the national construction market." Northern Contracting, 473 F.3d at 720; See Western States Paving Co., 407 F.3d at 997; Sherbrooke Turf, 345 F.3d at 970.

If it is conceded that there is a compelling interest for the DBE program, the next question is whether the means of achieving that compelling governmental interest are narrowly tailored. There is a split in the Circuits as to the correct analysis to be employed when evaluating narrow tailoring. The Eleventh Circuit Court of Appeals has not yet ruled on this subject, but the Southern District of Florida District Court has. In South Florida Chapter of the Associated General Contractors v. Broward County Florida, the Court observed the vacuum in the Eleventh Circuit when the plaintiff challenged the Broward County DBE program asking the Court to adopt the view of the Eighth and Ninth Circuits on the subject of narrow tailoring. The Court's survey of other circuits yielded the following:

In Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005), the United States, as intervener, "did take the position that the "state would have to have evidence of past or current effects of discrimination to use race-conscious goals." The Ninth Circuit agreed, holding that "whether Washington's DBE program is narrowly tailored to further Congress's remedial objective depends upon the presence or absence of discrimination in the State's transportation contracting industry." Id. at 997-98; S. Fla. Ch. of the Associated Gen. Contrs., 544 F. Supp. 2d at 1339. The District Court also noted that the United States DOT on its website urged readers to ignore the Western States decision. Id. The Court also noted that the prior Eighth

Circuit case of Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (2003) is of the same opinion as Western States.

In the Seventh Circuit case of Milwaukee County Pavers Ass'n v. Fiedler, 922 F.2d 419, 423 (1991), Judge Posner wrote in response to a narrow tailoring challenge to a DBE program that, “[i]nsofar as the state is merely complying with federal law it is acting as the agent of the federal government and is no more subject to being enjoined on equal protection grounds than the federal civil servants who drafted the regulations.” Id.; S. Fla. Ch. of the Associated Gen. Contrs., 544 F. Supp. 2d at 1340. The Seventh Circuit in Northern Contracting, reaffirmed its holding in Milwaukee County Pavers Ass'n, and responded to remarks and observations made by the Court in Western States. Id., 473 F.3d 715; Id., 544 F. Supp. 2d at 1340. The Northern Contracting Court further refined its position in choosing the later remarks of Judge Posner when he wrote, “Insofar as the state is merely doing what the statute and regulations envisage and permit, the attack on the state is an impermissible collateral attack on the statute and regulations.” Id., 473 F.3d at 722. The Court in Northern Contracting sought to bolster its opinion in its noting that,

In Adarand, the Supreme Court did not seize the opportunity to conclude that our decision in Milwaukee County Pavers, along with the Sixth Circuit's in Tennessee Asphalt, was incorrect...It did not invalidate our conclusion that a challenge to a state's application of a federally mandated program must be limited to the question of whether the state exceeded its authority. Here, because NCI has not challenged on appeal the district court's grant of summary judgment for the federal government, it has forfeited the opportunity to challenge the federal regulations. Id., 473 F.3d at 721-22.

Judge Cohn turned next to Tennessee Asphalt Co. v. Farris, 942 F.2d 969, 975 (6th Cir. 1991), the case cited by Northern Contracting, and opened his remarks by identifying the similarity between it and the case at bar. In Tennessee Asphalt Co., Judge Cohn wrote:

In Tennessee Asphalt, the plaintiffs argued that Tennessee violated the Fourteenth Amendment by participating in the federal highway construction set-aside program without first making "particularized findings" of discrimination. . . The court concluded, however, that "since 'Congress [can] mandate state and local compliance with [a] set-aside program under its §5 power to enforce the Fourteenth Amendment,' a state's compliance with the mandates of a federal scheme is nothing more than compliance with federal law." Id. (quoting City of Richmond v. J.A. Croson Co., 488 U.S. 469, 487, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989)). S. Fla. Ch. of the Associated Gen. Contrs., 544 F.Supp.2d at 1340.

Judge Cohn also noted that the Tenth Circuit took a similar approach in Ellis v. Skinner, 961 F.2d 912, 916 (1992), and that the Tenth Circuit "also explicitly agreed with, and quoted from, the Seventh Circuit's conclusion in Milwaukee County, and cited to the Tennessee Asphalt decision in its opinion." S. Fla. Ch. of the Associated Gen. Contrs., 544 F.Supp.2d at 1340.

Judge Cohn concluded that when evaluating for narrow tailoring under strict scrutiny as regards a DBE program, "the appropriate factual inquiry . . . is whether or not Broward County has fully complied with the federal regulations in implementing its DBE program." Id., at 1341. The Court went on to remark as did the Court in Northern Contracting and Milwaukee County Pavers, that

Plaintiffs have not challenged the as-applied constitutionality of the regulations themselves, but rather have focused their challenge on the constitutionality of Broward County's actions in carrying out the DBE program. This Court agrees with Judge Posner's opinion, and those in accordance with it, holding that this type of challenge is simply an impermissible collateral attack on the constitutionality of the statute and implementing regulations. Id., at 1341.

Until the Eleventh Circuit Court of Appeals has an opportunity to weigh in on the correct analysis regarding narrow tailoring, the only law in the Eleventh Circuit, which is controlling for the State of Georgia, is that emerging from the United States District Court for the Southern

District of Florida. If the authorizing legislation of Congress states a compelling interest, and the DBE program of the recipient governmental agency fully complies with the enabling regulations governing that program, then the DBE program will withstand strict scrutiny analysis, absent a challenge to the enabling regulation itself. Furthermore, persuasive authority exists for this position in the Sixth, Seventh, and Tenth Appellate Circuits of the United States.

(ii) Intermediate Scrutiny - Gender

In Western States Paving Co. v. Washington State DOT, 407 F.3d 983, 991 (2005), the Ninth Circuit Court of Appeals acknowledged that “Sex-based classifications must be both supported by an “exceedingly persuasive justification” and substantially related to the achievement of that underlying objective.” Id. In the Sixth Circuit, “gender based affirmative action plans are subject to strict scrutiny when challenged under the Equal Protection Clause.” Brunet v. City of Columbus, 1 F.3d 390, 403-04 (1993); Conlin v. Blanchard, 890 F.2d 811, 816 (1989). The Sixth Circuit Court of Appeals declined to avail themselves of the opportunity to articulate a different standard in Miami University Wrestling Club v. Miami University, 302 F.3d 608, 614 (6th Cir. 2002). The Eleventh Circuit Court of Appeals in Ensley Branch NAACP v. Seibels, addressed the issue in a Title VII action. In this decision, the Eleventh Circuit rejected the argument that, based on Croson, the Supreme Court intended strict scrutiny to apply to gender-conscious programs challenged under the Equal Protection Clause. Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548, 1579 (11th Cir. 1994). This split in the circuits occurred after the Supreme Court’s ruling in Croson, and acquired further justification as a result of the U.S. Supreme Court’s opinion in U.S. v. Virginia, supra. In the Virginia opinion, more commonly referred to as the VMI decision, the Supreme Court held, “parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.” Engineering Contractors, 122 F.3d at 90, (quoting VMI, 116 S. Ct. at 2274). Nevertheless, the Eleventh Circuit remains steadfast in its resolve that intermediate scrutiny is the correct level of review of gender-based affirmative action programs. As justification for its resolve, the Eleventh Circuit reported in Engineering Contractors,

There is a long line of directly applicable Supreme Court precedents applying traditional intermediate scrutiny to gender classifications. More specifically, the Supreme Court held in Mississippi University for Women v. Hogan, that intermediate scrutiny was the appropriate test to apply to a gender-based classification favoring women, which is the same type of classification created by the County's WBE program. Instead of overruling Mississippi University for Women, the VMI Court cited that case as "immediately in point" and the "closest guide" for the VMI decision itself. The Supreme Court is not in the practice of overruling its own precedents by citing them with approval, and we decline to hold that the Court did so in the VMI case. Engineering Contractors, 122 F.3d at 908.

The Court went on to cite to Supreme Court case law that permitted an appellate court to hold to or abandon its precedent, as it would, when faced with a quandary such as that which was brought about with the change in nomenclature used by the Supreme Court here-above. The Court concluded its discussion of the issue by announcing, "[u]nless and until the Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender preference may be upheld so long as it is substantially related to an important governmental objective." Engineering Contractors, 122 F.3d at 908. See also, Danskine v. Miami-Dade Fire Dept., 253 F.3d 1288, 1294 (11th Cir. 2001).

A) Gender in DBE Programs

We turn now to a discussion of what level of scrutiny to give to gender-based preferences in modern day DBE programs. Here there is no case law directly on point. We believe that this is due to the fact that 49 C.F.R. 26.45 recognizes woman and historically disadvantaged races jointly, and §26.51(e)(1) provides that "Generally, race- and gender-conscious means may not be targeted at specific groups." Associated Gen. Contrs. Of Amr., San Diego Chapter, 713 F.3d at 1191. The Seventh Circuit stated when evaluating the Illinois DOT DBE program that, "the Supreme Court has not made clear whether a more permissive standard applies to programs, such as this one, which also involve gender classifications. . . ." It went further to recognize that, "[a]nother unresolved issue is whether a different, and specifically a more permissive, standard is applicable

to preferential treatment on the basis of sex rather than race or ethnicity...” Northern Contracting, 473 F.3d at 720. Concluding as it did, the Seventh Circuit applied a “Strict Scrutiny” standard of review to both the gender-based and race-based preferences of the Illinois DBE program. The Court, in Associated General Contractors of America, San Diego Chapter, had subjected the entire DBE program of the California DOT to strict Scrutiny analysis, and declined to subject separately the gender-based portion of that program to intermediate scrutiny. Associated Gen. Contrs. Of Amr., San Diego Ch., 713 F.3d at 1195.

B) The Important Government Objective Prong of Intermediate Scrutiny

In Engineering Contractors, the government stated that its important governmental objective in creating its WBE program was “to “redress discrimination against woman.” The Eleventh Circuit remarked, “[t]hat stated objective is typical, and it is unquestionably a sufficiently “important” one to sustain a gender-conscious affirmative action program.” Engineering Contractors, 122 F.3d at 908. The Court next cited to a case from the Ninth Circuit with a similar objective, and then to its holding in Ensley Branch N.A.A.C.P. v. Seibels, which was that, “the government interest prong of the inquiry can be satisfied by a showing of societal discrimination in the relevant economic sector.” Engineering Contractors, 122 F.3d at 909. However, the Court in Engineering Contractors quickly moved to the same stance that it had in Ensley Branch N.A.A.C.P. when looking at gender-based programs when it concluded that, “the true test of an affirmative action program is usually not the nature of the government’s interest, but rather the adequacy of the evidence of discrimination offered to show that interest.” Engineering Contractors, 122 F.3d at 909.

“[A] gender-conscious affirmative action program can rest safely on something less than the ‘strong basis in evidence’ required to bear the weight of a race- or ethnicity-conscious program,” but the Supreme Court has not provided us with a label as it did in race-based programs, and the body of case law is less developed. Engineering Contractors, 122 F.3d at 909. The Eleventh Circuit most recently said, “we believe the . . . two guidelines [stated below] will assist courts in determining when a government has presented sufficient probative evidence in support of its stated rationale for enacting a gender preference. . .”

First, "under the intermediate scrutiny test, a local government must demonstrate some past discrimination against woman, but not necessarily discrimination by the government itself." Second, the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a "last resort," but instead to ensuring that the affirmative action program is "a product of analysis rather than a stereotyped reaction based on habit." . . . That is why the intermediate scrutiny evidentiary "inquiry turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed." Unsupported generalizations will not suffice. Danskine, 253 F.3d at 1294.

Because GDOT receives federal funding from the U.S. Department of Transportation, it is mandated and authorized to have a Disadvantaged Business Program ("DBE"). GDOT is further directed in the crafting of its DBE program by part 26 of the Code of Federal Regulations. In §26.45(c), the first step in goal setting is to determine "a base figure for the relative availability of DBEs." 49 C.F.R. § 26.45(c). Once this is done, the regulation requires the recipient of funds to "examine all of the evidence available in . . . [its] jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at . . . [its] overall goal," and sets forth an explanation of the term "evidence" and the quality of such that is acceptable. 49 C.F.R. § 26.45(d). After a local goal is established, the recipient must submit its DBE plan to USDOT for approval, with explanations as to how it arrived at the goal. 49 C.F.R. § 26.45(f); Northern Contracting, 417 F.3d at 718. In Part 26.51, regulations provide a mandate that the recipient must "meet the maximum feasible portion of . . . [its] overall goal by using race-neutral means of facilitating race-neutral DBE participation," along with providing examples of what is meant by "race-neutral means." 49 C.F.R. § 26.51(a)-(d); see Associated Gen. Contrs. Of Amr., San Diego Chapter, 713 F.3d at 1191. Part 26.67 provides that a Caucasian male can qualify for DBE status if the individual can demonstrate that he is in fact socially and economically disadvantaged. Id. § 26.67(d)." Western States Paving, 407 F.3d at 989. And § 26.51(e)(1) provides that "Generally, race- and gender-conscious means may not be targeted at specific groups." Associated Gen. Contrs. Of Amr., San Diego Chapter, 713 F.3d at 1191. Section 26.15 provides that a waiver can be obtained upon application for an allowable reason illustrated therein. 49 CFR. § 26.15.

(iii) Passive Participation

Strict scrutiny requires a strong basis in evidence of either active participation by government in prior discrimination or passive participation by government in discrimination by local industry. Croson, 488 U.S. at 491-92. In Dade County, the court noted again that the measure of evidence required for a gender classification is less clear. The court agreed with the Third Circuit’s holding that intermediate scrutiny requires that evidence be probative but here the court added that probative must be “sufficient as well.” Engineering Contractors, 122 F.3d at 909-10.

Justice O'Connor wrote in Croson that if a government has become "a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry," then that government may take "affirmative steps to dismantle" the exclusionary system. 488 U.S. at 492. Rothe Dev. Corp., 545 F.3d at 1040.

Subsequent lower court rulings have provided more guidance on passive participation by local governments. In Concrete Works, Supra, the Tenth Circuit held that it was sufficient for the local government to demonstrate that it engaged in passive participation in discrimination rather than showing that it actively participated in the discrimination. Thus, the desire for a government entity to prevent the infusion of public funds into a discriminatory industry is enough to satisfy the requirement.

In Dynalantic v. United States DOD, Plaintiff argued that “Defendants may only seek to remedy discrimination by a governmental entity, or discrimination by private individuals directly using government funds to discriminate.” Dynalantic v. United States DOD, 885 F. Supp. 2d 237, 251 (D. C. 2012). The Court began its historical review of the law by way of rejecting Dynalantic’s argument saying,

It is well established that "[t]he federal government has a compelling interest in ensuring that its funding is not distributed in a manner that perpetuates the effect

of either public or private discrimination" within an industry in which it provides funding. Western States, 407 F.3d at 991.

Although we do not read Croson as requiring the federal government to identify an exact linkage between its award of public contracts and private discrimination, such evidence has enhanced the government's factual predicate for a racial gender conscious program. See Dynalantic, supra.

In summary, in Croson, the Supreme Court concluded that governments have a compelling interest to remedy identified past and present discrimination within their jurisdictions. Thus, courts have to assess whether a public entity has the requisite factual support for its MWBE program in order to satisfy the particularized showing of discrimination required by Croson. This factual support can be developed from anecdotal and statistical evidence.

b) Disadvantaged Business Enterprise Programs: Why and How They Are Created.

GDOT is required, by federal law, to establish and implement a Disadvantaged Business Enterprise Program ("DBE"). It is important to note why DBE programs exist today. In the 109th Congress, First Session, Congress passed the "The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users." Pub. L. No. 109-59, § 1101(b), 119 Stat. 1144 (2005). The Act signed into law by President George W. Bush in Aurora, Illinois "authorizes the U.S. Department of Transportation to distribute funds to states for transportation-related projects." Associated Gen. Contrs. Of Amr., San Diego Chapter, 713 F.3d at 1190. "The Act . . . [provides] for race- and gender-based preferences in the transportation contracting industry in response to pervasive and ongoing discrimination. (Emphasis in original.) Id. The Act directs the Secretary of Transportation to ensure that 10% of funds distributed to states and municipalities are expended on "disadvantaged business enterprises." Id. It does not however, "establish a uniform national affirmative action program," but commands that each State receiving federal funds "implement a preference program that complies with federal regulations." Id., 49 C.F.R. § 26.1 et seq.

The regulations define what a DBE is in § 26.5, and provide for a “rebuttable presumption” that “citizens of the United States (or lawfully admitted permanent residents) who are Women, Black Americans, Hispanics, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the U.S. Small Business Administration, are socially and economically disadvantaged individuals.” 49 C.F.R. § 26.67. In §26.45, regulations require recipients who “receive federal funding . . . [to] establish overall goals for disadvantaged business participation in federally assisted contracts,” while specifically denying to them in subpart (b) the ability to “rely on either the 10 percent national goal, . . . [their] previous overall goal or past DBE participation rates in...[their] program without reference to the relative availability of DBEs in... [their] market.” 49 C.F.R. 26.45. See Associated Gen. Contrs. Of Amr., San Diego Chapter, 713 F.3d at 1191. Also see, Gross Seed Company v. Nebraska Department of Roads, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041.

3. Evidentiary Requirements

a) Anecdotal Evidence

The majority decision in Croson impliedly endorsed the inclusion of personal accounts of discrimination. Croson, 488 U.S. at 480, (noting as a weakness in the City's case that the Richmond City Council heard "no direct evidence of race conscious discrimination on the part of the city in letting contracts or any evidence that the City's prime contractors had discriminated against minority owned subcontractors"). However, according to the Croson standard, selective anecdotal evidence about MBE experiences alone would not provide an ample basis in evidence to demonstrate public or private discrimination in a municipality's construction industry. See, Associated Gen. Contrs. Of Amr., San Diego Ch., 713 F.3d at 1196 (Caltrans' statistical evidence combined with anecdotal evidence passes constitutional muster.); Western States, 407 F.3d at 991 (Both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination.) Nonetheless, personal accounts of actual discrimination or the effects of discriminatory practices may complement empirical evidence. In addition, anecdotal evidence of a governmental entity's institutional practices that provoke discriminatory market conditions is particularly probative. Thus, courts have required the inclusion of anecdotal

evidence of past or present discrimination. See Engineering Contractors, 122 F.3d at 925-26, (We have found [anecdotal] . . . evidence to be helpful in the past, but only when it was combined with and reinforced by sufficiently probative statistical evidence.). In addition, the Ninth Circuit contrasted with approval the California DOT's presentment of strong statistical evidence with supporting anecdotal evidence in Associated General Contractors of America, San Diego Chapter to that supplied in Western States, *supra*.

On the other hand, neither empirical evidence alone nor selected anecdotal evidence alone provides a strong enough basis in evidence to demonstrate public or private discrimination to meet the Croson standard. In Engineering Contractors, the federal district court held that, "we have found that kind of evidence [anecdotal] to be helpful in the past, but only when it was combined with and reinforced by sufficiently probative statistical evidence. Engineering Contractors Ass'n, 122 F. 3d at 925.

Accordingly, a combination of statistical disparities in the utilization of MWBEs and particularized anecdotal accounts of discrimination are required to satisfy the factual predicate. Thus, any study should include anecdotal evidence of past and present discrimination in order to establish the factual predicate by these guidelines.

b) Statistical Data

The Court in Croson explained that an inference of discrimination may be made with empirical evidence that demonstrates "a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually engaged by the locality or the locality's prime contractors. Croson, 488 U.S. at 509. A predicate to governmental action is a demonstration that gross statistical disparities exist between the proportion of MBEs awarded government contracts and the proportion of MBEs in the local industry "willing and able to do the work," in order to justify its use of race conscious contract measures. Ensley Branch, 31 F.3d at 1565. In order to adequately assess statistical evidence, there must be evidence identifying the basic qualifications of minority contractors "willing and able to do the job," and the Court

must determine, based upon these qualifications, the relevant statistical pool with which to make the appropriate statistical comparisons. Engineering Contractors Ass'n, 122 F. 3d. at 925 (11th Cir. 1997). Although subsequent lower court decisions have provided considerable guidelines for statistical analyses sufficient for satisfying the Croson factual predicate, there are multiple ways that the courts have accepted for conducting statistical analyses.

c) Availability

Whereas 49 C.F.R. §26.45(b) declares that a DBE program determine what businesses and DBEs are ready, willing and able to participate on your DOT-assisted contracts for purposes of goal setting, 49 C.F.R. §§ 26.45(c) and (d) define how that calculation is to be made and adjusted. 49 C.F.R. § 26.45(c)(5) provides in relevant part that, “you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.” Id. It is presumed that the same measures of availability should be used for purposes of a disparity study as well as goal setting whenever possible. The attempted methods of calculating DBE availability have varied from case to case. It is appropriate to note here, that the methodology for determining DBE availability and MWBE availability are the same, although the pool of MWBEs is expected to be somewhat larger given the inclusion of more than minorities and woman because of the lack of net worth or firm revenue ceilings. An example is found first in Associated General Contractors of America, San Diego Chapter, where the Court therein examining the availability of a DBE looks first to the supporting methodology identified in H.B. Rowe Co. v. Tippett, 615 F.3d 233, 243-44 (4th Cir. 2010). Associated General Contractors of America, San Diego Chapter, 713 F.3d at 1191.

In Contractors Association of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3rd Cir. 1993), the Third Circuit stated that available and qualified minority owned businesses comprise the “relevant statistical pool” for purposes of determining availability. The Court permitted availability to be based on the metropolitan statistical area (“MSA”) census data and local list of the Office of Minority Opportunity. In Associated General Contractors of America v. City of Columbus, 936 F.Supp. 1363 (S. D. Ohio 1996), the City’s consultants collected data on the

number of MWBE firms in the Columbus MSA in order to calculate the percentage of available MWBE firms. This is referred to as the rate of availability. Three sources were considered to determine the number of MWBEs “ready, willing and able” to perform construction work for the city. Associated General Contractors of America v. City of Columbus, 936 F. Supp. 1363 (1996). (Reversed on unrelated grounds, 172 F.3d 411 (6th Cir. 1999)). However, the Court found that none of the measures of availability purported to measure the number of MWBEs who were qualified and willing to bid as a prime contractor on city construction projects because they were not attentive to which firms were able to be responsible or provide either a bid bond or performance bond. The Court observed that the anecdotal evidence collected demonstrated that only a fraction of all collection firms were capable of meeting these requirements. The Court wrote, “[t]here is no basis in the evidence for an inference that qualified MWBE firms exist in the same proportions as they do in relation to all construction firms in the market.” Associated General Contractors of Am., 936 F. Supp. at 1389. The Court wondered aloud why the City did not simply use the records it already maintains “of all firms which have submitted bids on prime contracts” since it represents “a ready source of information regarding the identity of the firms which are qualified to provide contracting services as prime contractors.” Id.

The issue of availability also was examined by the Eleventh Circuit in Engineering Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al., 122 F.3d 895 (11th Cir. 1997). Here, the Court opined that when reliance is made upon statistical disparity, and special qualifications are necessary to undertake a particular task, the relevant statistical pool must include only those minority owned firms qualified to provide the requested services. Moreover, these minority firms must be qualified, willing and able to provide the requested services. If the statistical analysis includes the proper pool of eligible minorities, any resulting disparity, in a proper case, may constitute prima facie proof of a pattern or practice of discrimination.

In an opinion by the Sixth Circuit in Associated General Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), the Court of Appeals ruled that the State of Ohio failed to satisfy the strict scrutiny standard to justify the state’s minority business enterprise act, by relying on statistical evidence that did not account for which firms were qualified, willing and able to perform on construction contracts. The court stated that “although Ohio’s most compelling statistical

evidence compares the percentage of contracts awarded to minorities to the percentage of minority owned businesses...The problem with Ohio's statistical comparison is that the percentage of minority-owned businesses in Ohio (7% as of 1978) did not take into account how many of those businesses were construction companies of any sort, let alone how many were qualified, willing, and able to perform state construction contracts.” Drabik, 214 F.3d at 736. Although this was more data than was submitted in Croson, it was still insufficient under strict scrutiny, according to the court. Id.

d) Utilization

Utilization is a natural corollary of availability, in terms of statistical calculation. It is a determination of the actual dollars awarded by the governmental entity. In Engineering Contractors, 122 F.3d at 914, the City’s consultants calculated the percentage of City contracting dollars that were awarded to MWBE firms. This is referred to as the rate of utilization.

e) Disparity Index and Croson

To demonstrate the under-utilization of MWBEs in a particular area, parties can employ a statistical device known as the "disparity index." See Contractors Assn., 6 F.3d at 1005 (Third Circuit joining the First, Ninth, and Eleventh Circuits in relying on disparity indices to determine whether a municipality satisfies Croson’s evidentiary burden). The disparity index is calculated by dividing the percentage of available MWBE participation in government contracts by the percentage of MWBEs in the relevant population of local firms. A disparity index of one (1) demonstrates full MWBE participation, whereas the closer the index is to zero, the greater the MWBE under-utilization. Some courts multiply the disparity index by 100, thereby creating a scale between 0 and 100, with 100 representing full MWBE utilization. Engineering Contractors, 122 F.3d at 914. See also Associated General Contractors of America, San Diego Chapter, 713 F.3d at 1191; H.B. Rowe Co., 615 F.3d at 243-44 (4th Cir. 2010); Rothe Dev. Corp., 545 F.3d at 1038.

Courts have used these disparity indices to apply the "strong basis in evidence" standard in Croson. Based on a disparity index of 0.22, the Ninth Circuit upheld the denial of a preliminary injunction to a challenger of the City of San Francisco's MBE plan based upon an equal protection claim. AGC v. Coal. for Economic Equity, 950 F.2d 1401, 1414 (9th Cir. 1991). Accordingly, the Third Circuit held that a disparity of 0.04 was "probative of discrimination in City contracting in the Philadelphia construction industry." Contractors Ass'n., 6 F.3d at 1005.

f) Standard Deviation

The number calculated via the disparity index is then tested for its validity through the application of a standard deviation analysis. Standard deviation analysis measures the probability that a result is a random deviation from the predicted result (the more standard deviations, the lower the probability the result is a random one.) Social scientists consider a finding of two standard deviations significant, meaning that 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. The Eleventh Circuit has directed that " 'where the difference between the expected value and the observed number is greater than two or three standard deviations', then the hypothesis that [employees] were hired without regard to race would be suspect." Peightal v. Metropolitan Dade County, 26 F.3d 1545, 1556 (11th Cir. 1994) (quoting Hazelwood School District et al. v. United States, 433 U.S. 308, quoting Castaneda v. Partida, 430 U.S. 482, 497 n.17, 97 S.Ct. 1272, 1281 n.17, (1977)). See also Engineering Contractors Ass'n of South Florida Inc., 122 F.3d at 914; Danskine, 253 F.3d at 1299. In the Fourth Circuit case of H.B. Rowe Company, the statistician considered anything greater than two standard deviations suspect. Id., at 244.

g) Statistical Regression Analysis

The statistical significance of certain quantitative analyses was another issue that arose in the Webster case. The District Court indicated that the appropriate test should resemble the one employed in the Engineering Contractors case, wherein two standard deviations or any disparity ratio that was higher than .80 (which is insignificant), should be used. The Webster court

criticized the Fulton County expert for failing to use a regression analysis to determine the cause of the disparity. The court likewise discredited the post-disparity study for failing to use regression analysis to determine if underutilization was due to firm size or inability to obtain bonding and financing.

The Webster court noted that the Court of Appeals in Engineering Contractors affirmed the District Court's conclusion that the disparities offered by Dade County's experts in that case were better explained by firm size than by discrimination. Webster v. Fulton County, 51 F. Supp.2d 1354, 1365 (N. D. Ga. 1999). Dade County conducted a regression analysis to control for firm size after calculating disparity indices with regard to the utilization of BBEs, HBEs and WBEs in the Dade County market, by comparing the amount of contracts awarded to the amount each group would be expected to receive based on the group's bidding activity and the awardee success rate. Although there were a few unexplained disparities that remained after controlling for firm size, the District Court concluded (and the Court of Appeals affirmed) that there was no strong basis in evidence for discrimination for BBEs and HBEs and that the quantitative analysis did not sufficiently demonstrate the existence of discrimination against WBEs in the relevant economic sector. Engineering Contractors, 122 F.3d at 917. Specifically, the court noted that finding a single unexplained negative disparity against BBEs for the years 1989-1991 for a single SIC code was not enough to show discrimination.

The Department of Defense in Dynalantic v. United States DOD, 885 F. Supp. 2d 237 (D. C. 2012) used data subjected to regression analysis to support its assertion that racial discrimination, and not credit worthiness and other financial factors, was the single factor accounting for denial of access to capital. Id. at 259.

h) Geographic Scope of the Data

The Croson Court observed that because discrimination varies across market areas, state and local governments cannot rely on national statistics of discrimination in the disputed industry to draw conclusions about prevailing market conditions in their respective regions. Croson, 488

U.S. at 504. However, to confine the permissible data to a governmental entity's strict geographical borders would ignore the economic reality that contracts are awarded to firms located in adjacent areas. Thus, courts closely scrutinize pertinent data related to the jurisdictional area of the state or municipality.

Generally, the scope of the statistical analyses pertains to the geographic market area from which the governmental entity offerors come from. In addition, disparities concerning utilization, firm size, and formation are also relevant in determining discrimination in a marketplace. It has been deemed appropriate to examine the existence of discrimination against MWBEs even when these areas go beyond the geographical boundaries of the local jurisdictions. See Contractors Association of Eastern Pennsylvania v. City of Philadelphia, 91 F.3d 586, 604 (3rd Cir. 1996).

Court decisions have allowed jurisdictions to utilize evidence of discrimination from nearby public entities and from within the relevant private marketplace. Nevertheless, extra-jurisdictional evidence must still pertain to the operation of an industry within the geographic boundaries of the relevant jurisdiction. As the court wrote in Tennessee Asphalt v. Farris, “[s]tates and lesser units of local government are limited to remedying sufficiently identified past and present discrimination within their own spheres of authority.” Tennessee Asphalt Co. v. Farris, 942 F.2d 969 974 (6th Cir. 1991).

i) Post-Enactment Evidence

In Croson, the Court stated that a state or local government "must identify that discrimination . . . with some specificity before they may use race-conscious relief." Croson, 488 U.S. at 504. However, the Court declined to require that all relevant evidence of such discrimination be gathered prior to the enactment of the program. Pre-enactment evidence refers to evidence developed prior to the enactment of an MWBE program by a governmental entity. Such evidence is critical to any affirmative action program because, absent any pre-enactment evidence of discrimination, a state or local government would be unable to satisfy the standards established in Croson. Post-enactment evidence is that which has been developed since the

affirmative action program was enacted and therefore was not specifically relied upon as a rationale for the government's race and gender conscious efforts. As such, post-enactment evidence has been another source of controversy in contemporary litigation, though most subsequent rulings have interpreted Croson's evidentiary requirement to include post-enactment evidence. Significantly, crucial exceptions exist in rulings from the federal district courts.

Early post-Croson decisions permitted the use of post-enactment evidence to determine whether an MWBE program complies with Croson. See, e.g., Contractors Assn., 6 F.3d, at 1003-04 (3rd Cir. 1993). In Ensley, the Eleventh Circuit explicitly held that post-enactment evidence is properly introduced in the record and relied upon by district courts in determining the constitutionality of government race and gender-conscious programs. This holding was reaffirmed in Engineering Contractors, 122 F.3d at 911. See also Dynalantic, 885 F. Supp.2d at 257.

Post-enactment evidence seems necessary to determine the program's success for narrow tailoring and continued need after the program's initial term has expired. Contractor's Association of Eastern PA., Inc. v. City of Philadelphia, 91 F.3d 606, 606 (3rd Cir. 1996).

4. Remedies-- Narrowly Tailored

Under the Croson framework, any race-conscious plan must be narrowly tailored to ameliorate the effects of past discrimination. Croson's progeny provide significant guidance on how remedies should be narrowly tailored. "Generally, while 'goals' are permissible, unyielding preferential 'quotas' will normally doom an affirmative action plan." Virdi v. DeKalb County School District, 135 Fed. Appx. 262 (2005). See also Tuttle v. Arlington County School Board, 195 F.3d 698 (4th Cir. 1999).

Not unlike other U.S. District Courts and U.S. Courts of Appeal throughout the United States, Eleventh Circuit courts have, citing to United States v. Paradise, 480 U.S. 149, 171 (1987), also recognized four considerations in determining whether a plan is narrowly tailored. See Peightal, 940 F.2d 1394, 1406 (11th Cir. 1991); Engineering Contractors, 122 F.3d. 895, 927 (citing Ensley Branch, 31 F.3d at 1569). They are: consideration of race neutral alternatives,

- (a) flexibility of plan,
- (b) relationship of plan's numerical goals to relevant market, and
- (c) effect of plan on third parties.

Post-Croson cases articulated the general guidelines listed below in construing the elements of the narrow tailoring prong:

- a) Relief is limited to minority groups for which there is identified discrimination;
- b) Remedies are limited to redressing the discrimination within the boundaries of the enacting jurisdiction;
- c) The goals of the programs should be flexible and provide waiver provisions;
- d) Race and/or gender neutral measures should be considered; and
- e) The program should include provisions or mechanisms for periodic review and sunset.

MWBE programs must be designed so that the benefits of the programs are targeted specifically toward those firms that faced discrimination in the local marketplace. To withstand a challenge, relief must extend only to those minority groups for which there is evidence of

discrimination. See Drabik, 214 F.3d at 735. Consequently, MWBE firms from outside the local market must show that they have unsuccessfully attempted to do business within the local marketplace in order to benefit from the program.

Croson requires that there not only be a strong basis in evidence for a conclusion that there has been discrimination, but also for a conclusion that the particular remedy is made necessary by the discrimination. In other words, there must be a "fit" between past/present harm and the remedy. The Sixth Circuit said in Drabik, "outdated evidence does not reflect prior unremedied or current discrimination," (Internal quotations and citations omitted). Drabik, 214 F.3d at 730.

Inherent in the above discussion is the notion that MWBE programs and remedies must maintain flexibility with regard to local conditions in the public and private sectors. Courts have suggested project-by-project goal setting and waiver provisions as means of insuring fairness to all vendors. As an example, the Fourth Circuit had little problem rejecting the Banneker scholarship program at the University of Maryland because it had no "sunset" provision. "The program thus could remain in force indefinitely based on arbitrary statistics unrelated to constitutionally permissible purposes. Podberesky, 38 F.3d at 160. Additionally, some courts have indicated that goals need not directly correspond to current availability if there are findings that availability has been adversely affected by past discrimination. Lastly, "review" or "sunset" provisions are necessary components to guarantee that remedies do not out-live their intended remedial purpose.

5. Burdens of Production and Proof

The Croson court struck down the City of Richmond's minority set-aside program because the City failed to provide an adequate evidentiary showing of past and present discrimination. Croson, 488 U.S. at 498-506. So did the State of Ohio in Associated Gen. Contrs. of Ohio, Inc. v. Drabik, 1998 U.S. Dist. LEXIS 22042 . Since the Fourteenth Amendment only allows race-conscious programs that narrowly seek to remedy particularized discrimination, the Court held that state and local governments "must identify that discrimination . . . with some specificity before they may use race-conscious relief." The Court's rationale for judging the sufficiency of

the City's factual predicate for affirmative action legislation was whether there existed a "strong basis in evidence for its [government's] conclusion that remedial action was necessary." Croson, 488 U.S. at 500 (quoting Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 277, 106 S.Ct. 1842, 1849(1986)).

Croson places the initial burden of production on the state or local governmental actor to demonstrate a "strong basis in evidence" that its race- and gender-conscious contract program is aimed at remedying identified past or present discrimination. A state or local affirmative action program that responds to discrimination is sustainable against an equal protection challenge so long as it is based upon strong evidence of discrimination. A municipality may establish an inference of discrimination by using empirical evidence that proves a significant statistical disparity between the number of qualified MWBEs, the number of MWBE contractors actually contracted by the government, or by the entity's prime contractors. Furthermore, the quantum of evidence required for the governmental entity must be determined on a case-by-case basis and in the context and breadth of the MWBE program it advanced. See Concrete Works, 36 F.3d 1513 (10th Cir. 1994). If the local government is able to do this, then the burden shifts to the challenging party to rebut the municipality's showing. See Contractors v. Philadelphia, 6 F.3d at 1007.

Once the governmental entity has shown acceptable proof of a compelling interest in remedying past discrimination and illustrated that its plan is narrowly tailored to achieve this goal, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional. Mazeske v. City of Chicago, 218 F.3d 820 (7th Cir. 2000); Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (8th Cir. 2003). See also, Engineering Contractors, 112 F.3d at 916.

E. The Latest Developments

1. Associated General Contractors of America, San Diego Chapter v. California DOT, 713 F.3d 1187 (9th Cir. 2013).

On April 16, 2013, in a case styled, Associated General Contractors of America, San Diego Chapter v. California DOT, the United States Court of Appeals for the Ninth Circuit upheld the constitutionality of the California Department of Transportation’s (“Caltrans”) Disadvantaged Business Enterprise (“DBE”) program. The Caltrans program implements the federal DBE Program. The federal program applies to state and local government recipients of federal funds from the U. S. Department of Transportation (“DOT”) through the U. S. Federal Aviation Administration (“FAA”), Federal Transit Administration (“FTA”), and Federal Highway Administration (“FHWA”). Caltrans had engaged a consulting firm to conduct a disparity study and significantly the court found the information in the disparity study probative and ruled that Caltrans met the burden of strict scrutiny. The Ninth Circuit stated in pertinent part:

Based on review of public records, interviews, assessments as to whether a firm could be considered available, for Caltrans contracts, as well as numerous other adjustments, the firm concluded that minority- and woman owned businesses should be expected to receive 13.5% of contract dollars from Caltrans-administered federally assisted contracts... [The disparity study] accounted for the factors mentioned in Western States Paving. Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005); Geod Corp. v. NJ Transit Corp., 746 f.supp.2d 642 (NJ Dist. 2010); M.K. Weeden Constr., Inc. v. Mont. Dep’t of Trans., 2013 U.S.Dist.LEXIS 126286, as well as others, adjusting availability data based on capacity to perform work and controlling for previously administered affirmative action programs...The substantial statistical disparities alone would give rise to an inference of discrimination, and certainly Caltrans’ statistical evidence combined with anecdotal evidence passes constitutional muster.

This decision is important because it is the most recent validation of the efficacy of a properly conducted disparity study in allowing a governmental actor to survive the constitutional test of strict scrutiny when its narrowly tailored programs are challenged.

2. Northern Contracting, Inc. v. State of Illinois, et al., 473 F.3d 715 (7th Cir. 2007)

In Northern Contracting, Inc. v. State of Illinois, et al., 473 F.3d 715 (7th Cir. 2007), the Seventh Circuit upheld a public entity’s race-specific program, in large part, because the program was narrowly-tailored to achieve the state’s compelling interest in remedying the effects of past and current discrimination. The court found that the program was narrowly-tailored because of the sophistication of the availability analysis used by the public entity. In that case, the Illinois Department of Transportation (“IDOT”) had requested that its consultant perform a “custom census” in order to determine the availability of minority- and woman owned firms in the state. Consequently, IDOT used the availability figure to prepare its Disadvantaged Business Enterprise (“DBE”) plan for Fiscal Year 2005. The custom census included a survey of Dun & Bradstreet’s “Marketplace” database, along with the list of minority- and woman owned firms maintained by IDOT. The consultant then contacted a random sample of two groups: 1) businesses from the combined database list of minority- and woman owned firms; and, 2) businesses in the state that did not identify themselves as minority- or woman owned firms. The consultant determined that 22.8% of the firms in the first group were, in fact, owned by White men and 14.5% of the businesses in the second group were owned by minorities and woman who had chosen not to self-identify. Based upon these results, the consultant calculated a relative rate of availability at 22.77%. Northern Contracting, Inc., 473 F.3d at 718.

3. Rothe Dev. Corp. v. Dep't of Def., 545 F.3d 1023 (Fed. Cir. 2008)

In this case, a non-minority woman contractor brought suit against the Department of Defense, because a contract wherewith it had submitted the lowest bid on was in fact awarded to a Socially Disadvantaged minority bidder, because the scheme devised by Congress permitted an SDBE to receive a 10% adjustment in excess of the amount bid against other non-disadvantaged competitors for government contracts. Though the case had been appealed multiple times to the Federal Circuit Court of Appeals, the last appeal brought with it a facial validity challenge from Rothe.

Although the party challenging a statute bears the ultimate burden of persuading the court that it is unconstitutional, the government first bears a burden to produce strong evidence supporting the legislature's decision to employ race-conscious action... "The court must review the government's evidentiary support to determine whether the legislative body had a 'strong basis in evidence' to believe that remedial action based on race was necessary." (Internal punctuation and citations omitted). Rothe Dev. Corp., 545 F.3d at 1036

Although Croson places the burden on the government to demonstrate a "strong basis in evidence," the Fourteenth Amendment does not require a court to make an ultimate judicial finding of discrimination before the government may take affirmative steps to eradicate discrimination. However, the courts have said that such prerequisite particularized finding of discrimination "need not incriminate itself with a formal finding of discrimination prior to using a race-conscious remedy." Rothe Dev. Corp., 545 F.3d at 1043 (Fed. Cir. 2008) (citing, Dean v. City of Shreveport, 438 F.3d 448, 455 (5th Cir. 2006)).

This case is important because it caused the dismantling of the Department of Defense's DBE program and, if it had had wide-spread authority or if it had established a trend in the courts, could have had a chilling effect on all federal DBE programs. However, this case has been narrowly interpreted to apply only to this case and no other jurisdictions have followed its outcome.

4. H.B. Rowe Company, Incorporated v. W. Lyndo Tippet, et. al, 615 F.3d 233 (2010)

Denied a contract because of its failure to demonstrate good faith efforts to meet participation goals for minority and woman owned subcontractors, H. B. Rowe Company, Incorporated ("Rowe"), a prime contractor brought an action, asserting that the goals set forth in North Carolina statute (N.C. Gen. Stat. § 136-28.4 (1990)), violate the Equal Protection Clause, and sought injunctive relief as well as money damages. After extensive discovery and a bench trial, the District Court held the challenged statutory scheme constitutional both on its face and as

applied. The Fourth Circuit Court of Appeals held that it agreed with the District Court that the State produced a strong basis in evidence justifying the statutory scheme on its face, and as applied to Black American and Native American subcontractors, and that the State demonstrated that the scheme was narrowly tailored to serve its compelling interest in remedying discrimination against these racial groups. But the Court did not agree with the District Court that the same was true as applied to other minority groups and woman owned businesses.

Reviewing the results of the research firm's (that had conducted a disparity study) testing, together with the data concerning the events in subcontractor inclusion during the program's suspension period, the Court was able to see that (1) the State's use of a goals program for inclusion of African-American, Native-American, and non-minority woman owned businesses was supported by a statistically strong basis, and that (2) the newly revised North Carolina statute which called for frequent goal setting was constitutional. The Court of Appeals noticed prominently that the State's program had been going on since 1983, and had only achieved the inclusion numbers adduced in the 2004 study performed by the commissioned national researcher. H. B. Rowe, 615 F.3d 250.

Furthermore, the Court's rejection of Rowe's challenge of the North Carolina statute on the grounds of its lack of flexibility was thwarted by Rowe's failure to make a good faith effort to include minority subcontractors. The Court of Appeals wrote:

Prime contractors can bank any excess minority participation for use against future goals over the following two years. Given the lenient standard and flexibility of the "good faith" requirement, it comes as little surprise that as of July 2003, only 13 of 878 good faith submissions--including Rowe's--had failed to demonstrate good faith efforts. H. B. Rowe, 615 F.3d at 253-54.

The importance of this case is that ...solidified in Rowe, is the trend that began in the other appellate courts of this country. The Court, when presented with a viable challenge to a state's statute as it concerns MWBE programs, will need to see not only a program that has what Croson

requires at the statute's initial enactment, but also that when the program's continuation is at issue, it too then will be well supported by more than mere conjecture as to its necessity to continue. There will need to be statistically sound collection of data from appropriate sources; testing of that data once collected to ensure high confidence; and anecdotal corroboration of findings to disprove other explanations for apparent disparities. Some other signals were presented by the Appellate Court in Rowe.

The Court also reported that the State did in fact, though it was not challenged on the basis of its having failed to do so, sought out race neutral measures in an attempt to overcome the effects of past and present racial exclusion. H. B. Rowe, 615 F.3d at 252. And the Court did not disapprove of the State requiring statutorily, that a new disparity study be conducted every five years. H. B. Rowe, 615 F.3d at 253.

5. Dunnet Bay Constr. Co. v. Borggren (7th Cir., 2015)

Dunnet Bay was a non-minority male owned construction company that sued the Illinois Department of Transportation and its then Secretary of Transportation, Gary Hannig, in his official capacity, claiming that IDOT's DBE Program discriminated on the basis of race. The U.S. Seventh Circuit District Court ruled against Dunnet Bay and upheld the DBE program in summary judgment. The District Court determined that Dunnet Bay did not have standing to sue and in any event, the IDOT DBE Program withstood Constitutional scrutiny and the U.S. Court of Appeal, for the Seventh Circuit affirmed.

In 2009, IDOT sought bids for 4 contracts to work on the Eisenhower Expressway. The DBE goal were set between 8% and 10%. Secretary Hannig subsequently withdrew the bid because he had been advised that the Governor's Office wanted a 20% DBE goal set on these projects, which they believed could be legally met. "IDOT expanded the scope of the projects and items deemed eligible for DBE consideration – by expanding the geographic areas to determine DBE eligibility and by adding pavement patching, landscaping, and other work originally reserved for small business initiatives to the existing DBE goals." These efforts increased the weighted

average of the projects to 20%. IDOT actually issued the DBE goal on one of the contracts at 22%. FHWA approved the methodology used to establish the statewide DBE goal at 22.77%.

When the Eisenhower Expressway contracts were rebid, IDOT inadvertently left Dunnet Bay off of the “For Bid List,” the list issued by IDOT stating which primes were prequalified; to which DBEs typically will submit subcontracting quotes to. Dunnet Bay submitted the lowest quote, but only had 8.26% DBE participation. The other 3 bids submitted met the DBE goal but were over the awardable range based upon IDOT estimates. It should be noted that Dunnet Bay typically met the DBE goals and that after the award, DBE’s submitted quote that would have satisfied the goal, at least one saying that if Dunnet Bay had been on the “For Bid List”, they would have submitted a quote earlier. Dunnet Bay requested a waiver of the DBE goal based upon good-faith efforts. IDOT denied Dunnet Bay’s waiver request stating that it had not used supportive services and that the other bidders were able to meet the 22% goal. Because of Dunnet Bay had been left off the “For Bid List” and the next lowest bidders were at least 16% above the program estimate, IDOT decided to rebid the project. On the rebid, which packaged three of the contract, Dunnet Bay was the third lowest bidder. Dunnet Bay sued stating that the Defendants exceeded the authority granted to them in the federal rules regarding DBE programs. The Appellate Court upheld the District Court ruling that Dunnet Bay was not deprived of the ability to compete on an equal basis and therefore lacked standing because it suffered no “particularized injury.” The U.S. Court of Appeals for the Seventh Circuit went on to say that even if Dunnet Bay had standing to sue:

...to establish an equal protection violation, [Dunnet Bay] would have to show that it was treated less favorably than another similarly situated entity. The court found that only speculation could resolve whether Dunnet Bay or any other contractor would have been awarded the Contract but for IDOT's DBE Program. It reasoned that no one could know what the second lowest bidder's bid would have been if it had not met the 22% goal or what Dunnet Bay's bid would have been had it met the 22% goal, or whether Dunnet Bay would have been awarded the contract had it demonstrated adequate good faith efforts because its bid was over the program estimate. And because Dunnet Bay was held to the same standards as every other bidder, the court concluded that Dunnet Bay could not establish that it was the victim of racial discrimination. Dunnet Bay Constr. Co. v. Borggren (7th Cir.,2015) at 20.

6. M.K. Weeden Constr., Inc. v. Montana (D. Mont., 2013)

Plaintiff M.K. Weeden Construction was the low bidder on the Arrow Creek Slide Project, but failed to meet the 2%. Weeden was the only bidder that did not meet the goal. Other bidder not only met, but exceeded the goal; one as high as 6.98%. The Montana Department of Transportation (“MDT”) ruled that M. K. Weeden Construction did not exercise good faith efforts, partially because it had gotten a DBE bid for traffic control, but decided to perform the work itself in order to lower its bid amount. Weeden sought an injunction against MDT from letting the contract to another bidder. Weeden claimed that the DBE program violated the Equal Protection Clause of the U.S. Constitution and the Montana Constitution. The Court found the Weeden had no standing to sue because it was not deprived of the ability to compete on an equal footing with the other bidders and, “even if Weeden were a non-DBE subcontractor and therefore had Article II standing to present an equal protection claim, MDT presented significant evidence of underutilization of disadvantaged businesses generally, evidence that supports a narrowly tailored race and gender preference program.” The District Judge denied Weeden’s application for a Temporary Restraining Order and Preliminary Injunction.

7. Geyer Signal, Inc. v. Minn. Dep't of Transp. (D. Minn., 2014)

Geyer Signal, Inc., a small traffic control business brought suit against the Minnesota Department of Transportation, claiming that the DBE Program violated the Equal Protection Clause of the U.S. Constitution and several federal statutes because it unfairly discriminated against Caucasian male ownership both on its face and as implemented. Geyer Signal, Inc. claimed that the DBE Program resulted in overconcentration in certain areas because DBEs cannot perform in all areas; therefore, in order to satisfy the DBE goals, prime contractor, hire DBEs only in certain areas, resulting in the exclusion of non-minority male owned firms from getting work in those areas, which Plaintiff claimed traffic control was one. Geyer Signal also challenged the DBE goal setting methodology. The Court dismissed Geyer Signal’s claims and upheld the DBE Program, as implemented by MnDOT.

8. Midwest Fence Corp. v. U.S. Dep't of Transp., 84 F.Supp.3d 705 (N.D. Ill., 2015)

Midwest Fence Corp. v. U.S. Dep't of Transp., 84 F.Supp.3d 705 (N.D. Ill., 2015) is presently on appeal to the U.S. Court of Appeals for the Seventh Circuit. The non-minority male owned guardrail and fencing contractor challenged the federal DBE program by both IDOT and Illinois Tollway Authority, the implementation of the federal program, and the application of the program to state contracts. The District Court granted summary judgment to the governmental entities and Midwest Fence has appealed.

9. Mountain West Holding Co. v. Montana (D. Mont., 2014)

Also currently on appeal is Mountain West Holding Co., Inc. v. Montana (D. Mont., 2014). Mountain West provides construction-specific traffic planning and staffing for construction projects and is owned by non-minority males. It claims that on three occasions in 2012, it was the low-quoting subcontractor to a prime contractor on Montana DOT projects that utilized DBE goals. It challenged the Montana DBE Program as-applied. The plaintiff challenged the underlying disparity study as being flawed, but the Court found that the study, as well as the significant drop in DBE utilization after Montana ceased using contract goals, supported the inference of discrimination. Summary judgment was granted to Montana and the DBE Program as-applied was upheld by the District Court.

F. Summary

GDOT is required by 49 CFR §26 to participate in the federal DBE Program, but the federal DBE program only exists because of legal mandates from the courts, like the Croson decision that was handed down more than 25 years ago. GDOT is not required to apply the DBE Program to state funded contracts, but is not precluded from doing so if it is the appropriate remedy based on the outcomes of this Study.

Croson certainly changed the face of minority contracting and race and gender conscious programs but only set standards and not exact methodologies for achieving such standards. GSPC has considered all of the case law in this area, as well as the legal trends and has tailored its methodology in conducting this Study so that the Study itself can withstand legal scrutiny.

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III. PURCHASING PRACTICES, POLICIES, AND PROCEDURES

The purchasing practices, policies and procedures analysis of the Georgia Department of Transportation with regard to contracts, where there is federal funding, is conducted to determine the following:

1. Whether there is any policy that will inherently present a barrier that will more highly impact small, minority, woman owned and disadvantaged businesses' participation in GDOT's procurement process;
2. Whether GDOT's personnel involved in the procurement process understand GDOT's procurement policies, and particularly the DBE Program; and
3. Whether the practices of GDOT's procurement personnel match GDOT's policies.

A. Prequalification

In accordance with GDOT's policies regarding prospective bidders, all companies seeking to participate as prime contractors on GDOT construction related projects valued over two million dollars must be prequalified to work on GDOT projects. Companies seeking to be prequalified must submit a prequalification application (form 478) accompanied by audited financial statements showing a net worth of the company being over \$250,000 and a listing of equipment owned or lease agreements showing access to equipment (form 477). The firm must also show a list of previous GDOT projects or references from similar non-GDOT projects.

Companies seeking to do business on small contracts (under two million dollars) or as subcontractors must be registered with GDOT. Companies in this category must submit the same form 478 that prequalified prime contractors submit, but they do not submit the financial form 477. In addition, companies must submit three reference letters from previous jobs verifying the company's experience and performance in the areas in which they are seeking registration and a

list of equipment or lease agreements showing the company has access to equipment. Companies seeking to become registered are not required to submit any financial information.

Observations:

- Prequalification requirements historically limit overall competition, and, specifically, participation by small, minority, woman owned, and disadvantaged businesses by preventing certain segments of the potential bidding pool an opportunity to compete.
- In order for firms performing under \$2M to get prequalified, they must fill out the same form as those over \$2M. Perhaps GDOT could reconsider some aspects of the prequalification requirements in evaluating a firm. Rather than exclude firms from bidding that may have certain experience that just falls short of the requirements GDOT might establish a more discretionary evaluation process.
- Part of the prequalification requirements is bonding. Prequalification judges the bonding ability of firms rather than allowing firms to seek bonding capacity in the marketplace. This prevents firms from even bidding.
- Prequalification does not permit firms to bond incrementally. If this were permitted, firms could increase their bonding capacity. For example, if a firm bids on a project that is scheduled over a 3-year completion schedule and the firm had \$10M in bonding capacity, it could use that \$10M each year to bid on a \$30M project.

B. Division of Work

There are basically two departments responsible for federal procurement activities on behalf of the Georgia Department of Transportation. Those departments are the Office of Procurement and the Office of Construction Bidding Administration. The interviews conducted with officials from the respective divisions offered detailed insight into the Georgia Department of Transportation's procurement policies and practices.

GDOT's procurements using federal funding are governed by 23 CFR 172 for Engineering and Design Related Service Contracts; and 23 CFR 635 for Construction and Maintenance.

1. Office of Procurement

The Office of Procurement's operation has two divisions that engage in non-construction procurement using federal funding:

- Transportation Services Procurement (Engineering & Design)
- Right of Way Acquisition

a) **23 CFR 172, Administration of Engineering and Design Related Services**

The Transportation Services Procurement Division administers procurements for Design and Engineering Contracts under 23 CFR 172. The Transportation Services Procurement Division serves various units throughout GDOT, including Program Delivery, Construction, Intermodal, Utilities, Design, and Materials Research. Program Managers from the referenced units will submit procurement requisitions to the Transportation Services Procurement Manager. PPI-6 stated that "the requisitions will include a fully developed scope of services desired or needed by the units." The solicitation document, or "statement of qualifications" as it is referred to within the department, is prepared by GDOT staff.

23 CFR 172 outlines provisions related to the procurement of federal aided highway contracts for engineering and design related services. The three procedures available to the agency to procure the engineering and design services are noncompetitive negotiations, small purchases, and competitive negotiation. This code section is silent on the specifics of the solicitation process.

(i) Noncompetitive Negotiations

Noncompetitive negotiations are used in three circumstances. Those circumstances are when the services are available from a single source (commonly referred to as sole source), when there is an emergency which will not permit the time necessary to conduct competitive negotiations, or it is determined there are an inadequate number of firms competing for the contract.

(ii) Small Purchases

Small purchase procedures are simple procurement methods. The agency must ensure that an adequate number of qualified sources are reviewed and the contract amount does not exceed the threshold fixed in 41 U.S.C. 403(11) which is currently set at \$100,000. The agency must be careful not to break down contract requirements into smaller components to avoid using the competitive negotiation process. It is important that, although this is a less formal procurement process, small businesses and DBE firms be reviewed and considered in order to assist them in building capacity.

(iii) Competitive Negotiations

The phrase “competitive negotiations” might be somewhat misleading because price is not used in as a factor in the analysis and selection phase. These contracts use qualifications-based selection procedures followed by negotiations for pricing.

The selection of the evaluation committee is determined by the end user departments and although the evaluation committee must be approved by the Chief Engineer there is no input from the procurement division. The Evaluation Committee usually consists of three to five members, according to PPI-6. The “GDOT Guide for Selection of Committee Members” states that proposals are to be received in two phases. An Evaluation Committee is convened in Phase I, facilitated by a Contract Specialist, to review and evaluate the Phase I submittals. Phase I submittals are worth

50% of the overall scoring. Three to five firms are shortlisted and recommended to participate in Phase II of the process. Phase II requires the selected firms to document their technical approach and past performance. Those submittals are reviewed by the Evaluation Committee and scored. These submittals are worth 50% of the overall scoring. The selected firm is posted on the DOAS web site and notified in writing of their selection.

According to PPI-6, projects are not presented to the DBE Goal Setting Committee as is the case with the Department’s construction solicitations, but instead, DBE goals are assessed by the Transportation Services Procurement Division themselves without oversight by the EEO Office. The Department’s own disadvantaged business enterprise goal of 15% is applied to all design and engineering solicitations. The EEO Office, which is responsible for DBE Administration, as shared by PPI-6, is not involved in determining DBE participation or if “good faith efforts” have been met. This is determined by the end user and procurement divisions. PPI-6 states that “as long as the procurement is open after the submittal date, the proposer has an opportunity to comply with the DBE requirements” (PPI-6). According to PPI-10, the EEO Office is only involved with monitoring compliance in the administration of the contract.

b) 23 CFR 710, Right of Way Contracts

Right of Way contracts also fall under Professional Services and there are a number of trade industries associated with right of way contracts according to PPI-4, including acquisition, condemnation, property management, demolition, asbestos testing and removing, underground storage tank removal, valuation services, signage, and trade fixture removal. According to the State of Georgia, Department of Transportation Consultant Prequalification Manual, companies seeking to become consultants with GDOT on right of way and geotechnical contracts must be prequalified based on experience, ability to acquire insurance, and reports on previous work. According to PPI-6, experience requirements usually range from two years to six years based on a given project’s needs.

All contracts in this division are awarded based on lowest bids. The department's role is to prescreen all applications to ensure that the required information is included in a company's application. Once this has been confirmed, PPI-3 will forward the package to the subject matter experts in Right of Way Administration. Those subject matter experts are also involved in evaluating proposals for award of contracts.

Observations:

- The EEO Office has little involvement with the DBE goal setting and once proposals are received, the EEO office is not involved in the evaluation process as it relates to the proposer's compliance with the Disadvantaged Business Enterprise guidelines.
- Representatives from the EEO office are not present during negotiations to ensure that adjustments to the original scope during these proceedings do not adversely affect the small, minority, woman owned, or disadvantaged business enterprise's ability to effectively participate on the project.

2. Office of Construction Bidding Administration-23 CFR 635, Construction and Maintenance

The Code of Federal Regulations, 23 CFR 635, outlines provisions related to the procurement of federal aid highway contracts for construction and maintenance contracts. Provisions under this section include:

- a. Letting contracts in a balanced program to assure opportunities for all sizes of contracting organizations.
- b. The advertisement, approved plans and specifications shall be made available to the bidding public three weeks prior to the bid opening.
- c. The bid documents should not have language that place geographical restrictions on bidders.

- d. Bidders must submit a statement or affidavit of non-collusion provided by the State.
- e. Bids received shall be publicly opened and announced either by item or total bid amount.
- f. The name of the bidder and the reason for not announcing a bid that has been received by the State must be shared publicly at the bid letting.
- g. Federal aid contracts are awarded on the basis of the lowest responsive bid.
- h. The agency must examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimate.
- i. Bids found to be mathematically unbalanced, but not materially unbalanced, may be awarded.
- j. Bids found to be both mathematically and materially unbalanced may be rejected and the agency may move to the next apparent low bidder.
- k. The agency must include provisions outlined in 49 CFR 26, Participation by Disadvantaged Business Enterprise.

Observations:

- GDOT only has two levels of contracting: over \$2 Million and under \$2 Million in order to comply with the requirements to “assure opportunities for all sizes of contracting organizations.” Although there are also \$100,000 and below small purchases, they have no formal bidding requirements to assure such opportunities, except for construction contracts which are subject to goals regardless of size.
- Although federal aid contracts are awarded to the lowest responsive bid, the prequalification process, which determines which firms can bid, may have substantial restrictions (such as those requiring more than one professional engineer on staff or requiring a certain number of years of experience in order to bid) that make the award contingent on the prequalification factors as well as low bid.

The Office of Construction Bidding Administration, responsible for construction procurements, is a stand-alone division that is not affiliated with the Office of Procurement. This Office handles projects as small as \$200,000.00 and as large as 200 million dollars. PPI-7 indicated that GDOT construction procurements are governed by two policies. The determination of which policy prevails is based on the funding source for a given project. Procurement procedures for projects that are utilizing federal funds are governed by the Code of Federal Regulations (23 CFR 635). Procurement procedures for projects that are not federally funded are governed by the Official Code of Georgia (OCGA) but they are not the subject of this analysis and only projects using federal funds are discussed herein.

The need for a construction project is determined by the various Project Managers from the various units throughout the Department. The Project Managers and their teams are also responsible for developing the project scope, writing specifications, and developing a project budget. Additionally, the Project Managers' team is also responsible for ensuring that the funds are authorized by the appropriate funding sources. Utility Certifications, Environmental Certifications, and Right of Way Certifications must also be in place and are the responsibility of the Project Management Team.

When the above referenced tasks are complete, the Office of Construction Bidding Administration will convene with the Disadvantaged Business Enterprise (DBE) Goal Setting Committee to determine the appropriate DBE Participation Goal for a given project. The Department establishes DBE Participation Goals based on assessments of current DBE availability. As a general rule (with numerous exceptions), all contracts under \$250,000 are under a "race-neutral" goal, or a goal that is tracked but has no requirements for good faith efforts to be met.

The project is presented to the DBE Goal Setting Committee three weeks before the project is advertised. The staff in the Office of Construction Bidding Administration will ensure that other items are included in the solicitation documents in accordance to federal provisions. Title VI Provisions and Davis Bacon Wage Rates, for example, are prepared by the Office of Construction Bidding Administration.

Once the above referenced tasks have been completed, according to PPI-7, the Office of Bidding Administration can advertise the procurement to the general public. Bidding opportunities are advertised, a minimum of four weeks when the advertising process is initiated in the months of January thru November. Design/Build projects are advertised for 2 months. All projects out for bid are advertised on the GDOT's official web site and all bid documents are submitted electronically, including questions from prospective bidders. Addenda, if needed, will also be posted electronically.

The only time the department will conduct pre-bid conferences is for design build projects. Web site advertising represents the extent of outreach efforts undertaken by this division. The EEO office and its supportive services consultants are involved in outreach efforts on each project with goals attached. The Office of Program Controls publishes a projection of projects that includes unofficial preconstruction overviews, rough estimates, and job locations on the GDOT web site. This appears to be the only other advance notice from the department to the public regarding upcoming projects or bid assistance.

PPI-7 continued on to state that the Department will have one letting of bids each month during the year which includes multiple projects. The Department will only accept electronic bids on or before 10:59am on designated dates utilizing software called Bid Express to receive bids from interested parties. Bid Express allows the bidder to electronically submit its' pricing, bid bonds, any certifications, bid tabs, and other relevant information required by the bid process. Only authorized agents of the company can enter data into Bid Express for submission to the Department. The information submitted is encrypted for security purposes. Department. Representatives from GDOT will then download and decrypt the submittals and generate the necessary information to determine the apparent low bidder and most responsive and responsible bidder. Fridays after the bid opening, responsive bidders' unofficial results are posted on Bid Express for the public to view at their leisure.

The process continues on the Wednesday after the bid opening, at which point the Post Estimating Committee convenes to review the bid tabs of all bidders. The voting members of the Post Estimating Committee are the State Construction Engineer, State Transportation Office

Engineer, Transportation Administrator for Engineering Services and a representative from the Maintenance Division. There may be others sitting in on the committee meeting such as the Chief Estimator and Assistant Administrator of Administrative Services. Those individuals may assist the committee members by clarifying areas of the bid or using their knowledge to answer any questions from the committee members. The recommendation from the Post Estimating Committee is moved to the Bid Review Committee.

A summary of the bid tabs and the referenced recommendation is received by the Bid Review Committee for further discussion. The Bid Review Committee is comprised of the Chief Engineer, Department Commissioner, Director of Construction, Director of Engineering, and the Director of Operations. The Bid Review Committee will have three options as it relates to the bid in question. Those options are to award, reject, or defer the award of the bid until a later date. Once a decision is reached by the Bid Review Committee, the appropriate letter is prepared for the Commissioner's signature and mailed to the respective bidders. The process described in the previous two paragraphs takes two weeks from the bid opening date. Award announcements are posted on GDOT's web site and Bid Express."

PPI-7 states that "there are occasions when the Office of Construction Bidding Administration will have to solicit specialty contracts" and, in those cases, additional qualifications may be required over and above the standard prequalification requirements. An example of a Specialty Contract is Carbon Fiber Wrapping on Bridge Supports. Another example of a special contract is associated with resurfacing projects.

Observations:

- Prime Contractor and Subcontractor prequalification requirements, just as with consultant prequalification requirements, tend to limit competition and the ability of small, minority, woman owned, and disadvantaged business enterprises to compete for contracts.

- Potential projects being published on the GDOT website by Program Controls with project projection overviews, rough estimates, and job locations enhance competition. However, GDOT should explore other opportunities to reach out to DBE firms, other than through its own websites.
- The four-week advertising of solicitations in addition to the contract opportunities having been posted by Program Controls and the outreach done by the EEO staff should have a positive effect on competition by giving interested bidders plenty of time to prepare responsive bids.
- Not holding pre-bid conferences could limit competition and adversely affect the quality of bids received by the department because interested bidders may not have a clear understanding of the project expectations. Further, it limits the potential for subcontractors, interested in performing on a project, to meet prime contractors.

3. 49 CFR 26 - GDOT Disadvantaged Business Program (“DBE”)

The DBE Program was established to achieve several objectives as it relates to Disadvantaged Business Enterprises participating on Department of Transportation assisted contracts. Those objectives, as stated in 49 CFR 26.1 are to ensure non-discrimination in the award and administration of contracts, create a level playing field for DBEs by removing barriers to participation and to assist the development of firms to the extent that they will be able to compete for opportunities outside the DBE program. There are a number of subparts outlined in 49 CFR 26, but those that have the greatest impact on DBEs and their ability to compete for contracts are outlined below:

a) Subpart C – Goals and Good Faith Efforts; 49 CFR 26.53

When the recipient has established a DBE contract goal, the recipient must only award the contract to a bidder that has demonstrated good faith efforts to meet the goal. The recipient must

determine that the bidder has made good faith efforts by achieving one of the following; 1) the bidder submits a DBE utilization plan documenting it has met the established goal, 2) the bidder documents that it made adequate good faith efforts to meet the goal, even though it did not obtain enough DBE participation to meet the goal. Additional guidance regarding good faith efforts can be found in Appendix A to 49 CFR 26.

b) Subpart B – Business Development; 49 CFR 26.35

Under the provisions outlined in this subpart, recipients may establish a DBE Business Development Program (BDP) to assist firms in gaining the ability to compete for DOT assisted contracts. A mentor-protégé program is the program referenced as an example of business development in this subpart. Business development is most critical to the development of DBE firms in the geographical areas outside the Atlanta Metropolitan area. Enhancing the pool of available DBE firms in the rural areas of Georgia will enhance GDOT’s ability to meet its overall DBE program goals. To this end, GDOT has included business development program proposals as requirements in its supportive services solicitations.

c) Subpart D - Certification; Certification Standards; 49 CFR 26.65

Firms seeking to participate on contracts as disadvantaged businesses must:

- Be a for-profit firm that is at least 51% owned by a “socially and economically disadvantaged” individual defined as, “Black Americans,” “Hispanics,” “Native Americans,” “Asian-Pacific Americans,” “Subcontinent Asian Americans,” “Woman”, and any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

- Be an existing small business as defined by the Small Business Administration standards. SBA size standards vary based on the type of work the firm is seeking to perform, including the primary industry classification of the firm. Specific SBA size standards are found in 13 CFR Part 121. The exception to applying the SBA size standards outlined in this subpart is if the DBE has revenues in excess of \$23.98 million over the firms previous three fiscal years. Having the \$23.98 million size cap will ultimately mean there will be firms meeting the SBA requirements, but not eligible to participate in the DBE program.
- Be owned at least 51% by individuals listed in (a) above, whose ownership and control are relied upon for DBE Certification, and who certify that their personal net worth does not exceed \$1.32 million. Having additional requirements under 49 CFR 26, will ultimately mean there will be firms meeting the SBA requirements, but are not eligible to participate in the DBE program. This will ultimately reduce the available pool of MWBE firms capable of participating on GDOTs federally assisted contracts.

C. Summary

The Georgia Department of Transportation has implemented a number of elements that enhance the procurement process. Bid Express allows all bids to be submitted electronically. This obviously reduces the amount of paper that has to be handled, allows for more timely awards, and enhances the overall experience for the bidding public. Additionally, the fact that construction projects are posted more than 30 days prior to advertising identifying project overviews, rough estimates, and location of job sites promote competition and responsive bids. As with many technologically streamlined processes, small businesses that may not be as advanced may be excluded from the procurement process if no alternative means of disseminating information and submitting bids is provided.

Some aspects of GDOT's requirements do present unique barriers to MWBE firms. A few examples of these requirements that may be addressed are the department's prequalification requirements, the lack of diversity language in the Official Code of Georgia, only conducting

prebid conferences on design build projects, not involving the EEO office in the DBE goal setting process for professional services, and not including that office in the evaluation of DBE submittals for either construction or professional services contracts.

Though it seems that the GDOT staff understands the procurement policies and is complying with federal regulations, there does not appear to be a vested interest in the purposes of the DBE requirements. What is meant is that the DBE Program is not a bottom-line responsibility, in that it is outside of the user departments' performance mandates and therefore may not be central to their objectives. This position, although not ideal, is why goal setting and good faith efforts should be evaluated at the committee level by an EEO officer.

Further, the State requires the Office of Procurement and the Office of Construction Bidding Administration to challenge the scope, specifications, and experience requirements as drafted by the user agencies to ensure underutilized classes of businesses are not systemically prohibited from competing for contracts. Neither Office appears to provide such challenges and therefore may facilitate the systematic elimination of certain opportunities for underutilized groups. One area that could improve participation by small, minority, woman owned, and disadvantaged businesses and their ability to compete for contracts is to eliminate or modify the prequalification requirements for companies that are only interested in participating as subcontractors and on contracts under \$2,000,000. This would give firms an opportunity to present varying forms of qualifications as part of the bid process rather than being excluded from the bid process all together.

GDOT should also review the weight that is given to the award of contracts based upon past performance for GDOT. This could be a barrier for any new entrants that are otherwise qualified because firms who have already done business with GDOT will continue to carry more weight than firms attempting to do business with GDOT. Historically, these types of barriers particularly affect underutilized classes.

Also, while conducting pre-bid conferences on Design Build projects is positive, not having prebid conferences on other construction projects is problematic. Pre-bid conferences are critical to the success of historically underutilized firms. Pre-bid conferences are often used by small, minority, woman owned and disadvantaged businesses as an opportunity, one not routinely afforded them, to network and share their skill set with prime contractors interested in bidding on GDOT projects, thus increasing the prime contractors' chances of developing robust small, minority, woman owned or disadvantaged participation plans on GDOT projects.

Finally, 49 CFR 26 allows GDOT to create business development initiatives, such as a mentor protégé program, at their discretion. It is strongly encouraged that GDOT take advantage of this opportunity to enhance participation, primarily due to the need to continue to develop firms that graduate from the program, per federal regulations due to the net worth cap, but are not necessarily able to compete on their own. There is no opportunity under the code to build a solid foundation of available DBE firms, because once they begin to gain the requisite experience, they must leave the program. A mentor-protégé program would ameliorate this, giving firms the opportunity to continue to participate. Also, GDOT's focus in the Atlanta metropolitan area and lack of guidelines for DBE outreach in outlying areas with smaller numbers of DBE firms may prevent participation statewide. Greater outreach to the more rural areas in the State of Georgia and business development resources for firms outside of Atlanta would expand the Department's overall participation numbers.

IV. STATISTICAL ANALYSIS

A. Introduction

The quantitative, or statistical, portion of this disparity study is made up of several key statistical components, all of which are based upon collecting and processing the appropriate data relating to GDOT’s contracting history from **July 1,**

2011 through June 30, 2014. The source of the data is primarily GDOT, but outside sources were utilized as well in an attempt to neutralize any bias in the GDOT data.

IMPORTANT NOTE: GDOT currently operates a DBE Program for all projects that utilize federal funding. As a result, all of its reporting is of DBEs. In contrast, this Study is an analysis of all minority and women owned firms in both availability and utilization as it addresses whether race, ethnicity or gender status affects their participation in receiving awards. The outcome of this analysis will determine whether the current DBE Program is an appropriate narrowly tailored remedy.

The first step in the statistical analysis is to determine the geographic area where 75-85% of the firms attempting to do business with GDOT by bidding are located, which is called the “Relevant Market.” This determination is essential because the analysis will encompass only firms located within the geographic relevant market of each business category. Then, within the relevant market, GSPC compares the percentage of firms in each race, ethnicity, and gender group that are ready, willing and able, called “Availability,” to perform services utilized by GDOT within each business category (i.e. Construction, Professional Services, and Manufacturing) against the percentage of dollars spent by GDOT, called “Utilization,” with the same groups in the same categories. In that comparison, GSPC will determine whether GDOT underutilized or overutilized a particular group, or whether they were at parity, called “Simple Disparity.” GSPC must then establish if the difference between the availability percentage and the utilization percentage, or the disparity, is significant enough to be meaningful. These analyses below, along with the public and private regression analyses performed in Chapter V for the private sector, are used to determine whether or not discrimination exists in the Relevant Market and whether or not GDOT has been an active or passive participant in such discrimination.

Finally, a full disparity analysis requires a consideration of the extent to which contracting/subcontracting outcomes are conditioned on race/ethnicity/gender, and are not

merely random. If indeed race/ethnicity/gender are found to condition contracting and subcontracting outcomes in a statistically significant way, there is an implication that any observed disparities reflect discrimination in the market for contracting/subcontracting with public authorities such as the Georgia Department of Transportation.

If it is determined that there is any statistically significant disparity between the availability and utilization of MWBE firms and such disparity was likely caused by race/gender/ethnicity, then GSPC will make such recommendations regarding appropriate and narrowly-tailored race/ethnicity/gender-neutral remedies in order to attempt to provide all firms with equal access to GDOT's contracts. If appropriate, GSPC may also recommend narrowly-tailored race/ethnicity/gender-conscious remedies. In the event that no statistically significant disparity exists between the availability and utilization of MWBE firms that was likely caused by race/gender/ethnicity, then GSPC may still make certain recommendations to enhance and support the continuation of outreach, small business development, and non-discrimination policies in GDOT's procurement processes.

A thorough statistical disparity analysis involves several tasks related to the identification, collection and assessment of data. Data is key to determining accurate outcomes in a disparity study. As such, it is important to properly track and document a chain of data that can be checked, double-checked, and verified.

B. Data Assessment

GSPC conducted data assessment meetings in order to determine how GDOT conducts its federally funded procurements, and how, where and from whom data could be collected. GSPC generated a Data Assessment Report, which is attached as Appendix A, which summarizes those meetings and sets forth action items and preliminary questions to be answered. It is necessary to issue a Data Assessment Report prior to completing the data collection plan in order to confirm that GSPC has the correct understanding.

On March 4, 2015, GSPC staff met with the Director of Equal Employment Opportunity (“EEO”), Kimberly King and EEO’s Assistant Administrator, Betty Mason, to ascertain the location, types, and constraints to the data needed for the disparity study. On March 5, 2015, GSPC met with GDOT’s Procurement Administrator, Treasury Young, who provided information particular to professional services/consultant services for GDOT. On March 7, 2015, GSPC met with K. Joe Carpenter, Director of P3/Program Delivery and Assistant Director, Genetha Rice Singleton, to gain insight into construction contracts. It was determined in these meetings what data GSPC would need from GDOT.

C. Data Set-Up

Following approval of the Data Assessment Report, GSPC developed and executed a Data Collection Plan and submitted data requests to GDOT. The Data Collection Plan set out the process for collecting any manual and electronic data for statistical analyses. In addition, it included a plan for collecting data needed for the anecdotal portions of the study which included surveys, public hearings, focus groups, and interviews. GSPC’s Data Collection Plan is attached hereto as Appendix B.

D. Data Collection and Creation of Databases

1. Electronic Data

GDOT provided some of the data needed for the study in electronic format in pre-existing reports. GSPC was provided access to GDOT’s Web Intelligence systems in order to run other reports for the additional data needed. This data was then catalogued and stored in GSPC’s computer systems and used to develop databases containing the contracting history for each business type, for both prime contracting and subcontracting. GSPC related all of the databases collected in order to cross-reference information among the files, including matching addresses, work categories, and MWBE identification.

2. Manual Data Entry

GSPC entered the Board Reports that contained Professional Services Bidders with their subcontractors manually from PDF documents into electronic spreadsheets. All other data, except for the results of the Prime Vendor Questionnaire (see D (3)(m) below), was collected electronically from GDOT.

3. Data Source Descriptions

The following describes the databases created by GSPC and used for the analyses contained in this Study:

a) Certified DBEs

GSPC used the current DBE List from GDOT and determined race, ethnicity, and gender by matching the firms to the owner. Although Caucasian owned firms can be DBEs, the only Caucasian owned firms in the DBE database were woman owned. Firms could be DBE certified and denied prequalification. This list was used to match to the owner's race/ethnicity/gender and was included in the subcontractor availability.

b) Item Codes – Construction

GDOT has an internal commodity code system for Construction in the form of “Item Codes.” These Item Codes were used instead of NAICS codes because they are more specific for the specialty trades utilized by GDOT and are therefore more efficiently utilized, particularly with regard to GDOT goal setting. Work codes are also more descriptive to a layperson than NAICS codes. This list was assigned to firms by GDOT in the Prequalified Contractor/Registered

Subcontractor file. Because this list of Item Codes is so exact, GSPC grouped the codes into “Work Class Groups” to avoid being too narrow for purposes of this study and to avoid the natural duplication of firms in categories so closely aligned. The list of Work Class Groups, including the Item Codes in each group can be found in Chapter VI -Goal-Setting below. This data set was used to determine the Construction Product Relevant Market.

c) Area Classes – Professional Services

GDOT has an internal commodity codes system for Professional Services in the form of “Area Classes.” Unlike the Item Codes used for construction, consultants must be prequalified in Area Classes. There are 8 major categories of Area Classes. They are strictly assigned and are determined by the relevant departments. There is a prequalification committee that is chaired by the division director of engineering (as engineering has the vast majority of Area Classes). This data set was used to determine the Professional Services Product Relevant Market.

d) QPL Codes – Manufacturing

Manufacturing is a subcontracting area within Construction contracting, however, manufacturing sources must be on an approved list for each QPL Code in order for prime construction contractors to use them. The QPL Codes are listed in Appendix C attached hereto. This data set was used to determine the Manufacturing Product Relevant Market. Suppliers were not included in the Study.

e) Prequalified Contractors – Construction

Firms desiring to do work as Construction primes or as subcontractors performing work in excess of \$2,000,000 must prequalify, which assesses capability. Firms must be capable of, and perform, at least 30% of the work on an award. The list of Prequalified Contractors was

available for download in Excel from GDOT's website. This data set was used in determining both Prime and Subcontractor Construction Availability.

f) Registered Subcontractors – Construction

Primes or subcontractors performing awards under \$2,000,000 do not have to be prequalified, but they must register with GDOT by application. The difference between the construction prequalification process and the registered subcontractor process is that in order to be prequalified a firm must submit an overhead audit by a CPA and be given a maximum capacity rating which equals the maximum level of contracting that they may bid. The list of Registered Subcontractors was available for download in Excel from GDOT's website. This data set was used in determining both Prime and Subcontractor Construction Availability.

g) Prequalified Consultants - Professional Services

Firms desiring to do work as Consultants with GDOT must prequalify in each Area Class that they propose to provide services in, either as primes or as subcontractors. The list of Prequalified Consultants was available for download in Excel from GDOT's website. This data set was used in determining both Prime and Subcontractor Professional Services Availability.

h) Selection Packages – Professional Services

“Selection packages,” are prepared for each Professional Services project and include all respondents to RFPs, as well as the subcontractors. The procurement manual contains Area Classes and their criteria. The link to the GDOT Consultant Prequalification Manual is <http://www.dot.ga.gov/PartnerSmart/Business/Prequalification/Documents/ConsultantPrequalificationManual-1-15-16-v2.pdf>. The Selection Packages were provided by GDOT in PDF format, so GSPC personnel entered the data into electronic spreadsheets to use for bidder data and subcontractor availability. This data set was used as Professional Services Bidders in order to

determine Geographical and Product Relevant Markets and Prime and Subcontractor Professional Services Availability.

i) Board Reports – Professional Services

“Board Reports” are regular reporting from the PeopleSoft Financial System to the GDOT Board of Professional Services contracts that have been awarded. GSPC utilized this data source for Professional Services prime utilization and for “Right of Way” services, which include demolition, appraisals, and real property acquisitions. GDOT provided these reports in individual Excel spreadsheets. This data set was used in determining Prime and Subcontractor Professional Services Availability and Prime Contractor Utilization.

j) Bid Express

“Bid Express” is GDOT’s list of prime construction bidders that is available at <https://www.bidx.com/ga/main>. This data set was used to determine Construction Geographical Relevant Market. Since all prime bidders must be prequalified, the Prequalified Contractor list was used for Availability.

k) Subcontractors from CMIS – Professional Services

GSPC pulled Professional Services subcontractor data from GDOT’s Web Intelligence system, TRAQS in CMIS universe. This data set was used for Professional Services Subcontractor Availability and Utilization.

l) Subcontractors from TRAQS – Construction

GSPC pulled Construction Subcontractor data from GDOT’s Web Intelligence system in CMIS. This data set was used for Professional Services Subcontractor Availability and Utilization. All potential subcontractors now must be registered, but some subcontractors from 2012 may not appear on the Subcontractor List.

m) Prime Vendor Questionnaire

Subcontractors are tracked in Construction, except Non-DBE haulers. Since Haulers are always subcontractors, GSPC sent a questionnaire to all Construction Prime Contractors that received awards during the Study Period and requested certain information about the Prime and their Hauler subcontractors in all nine areas of Hauling:

- 109 – Hauling Fuel
- 205a – Hauling Soil within the Project
- 206a – Hauling Soil to the Project
- 310a – Hauling GAB
- 400a – Hauling Asphaltic Concrete Mix
- 400b – Hauling Liquid Asphaltic Concrete
- 432a – Hauling Millings
- 603a – Hauling Rip Rap to Project, All Sizes
- 800a – Hauling Aggregate

The questionnaire was sent out through The Print Shop, a Georgia-based mailing house. Of the 87 unique firms that were sent the questionnaire, three were returned for bad addresses, so our assumption is that 84 were received. Of those 84, 24 prime contractors responded, which was a response rate of 29% sufficient to infer reliable conclusions about all of GDOT’s prime construction contractors. There was no discernable response bias that can be inferred by the firms that failed to return the questionnaire.

The results of the Prime Vendor Questionnaire were utilized to calculate Subcontractor Utilization, to include subcontractors in availability estimates. In addition, the subcontractor race/ethnicity/gender identification was used to verify like information provided by GDOT. A copy of the correspondence sent to prime construction contractors is attached as Appendix D.

n) Award List

The Award List is a data file of all prime awards (using federal dollars) made during the Study Period. This data file was provided by GDOT in electronic format and was used for Prime Utilization and the Threshold Analysis. It will also be included in the Master Vendor File for purposes of counting Availability Estimates.

o) Master Vendor File

The Master Vendor file is a compilation of all lists of vendors used to determine availability estimates. It was also used to match and verify data in the various data files, particularly to make sure that information assigned to firms for utilization calculations matched the information assigned to firms for availability calculations. This is important to make sure that GSPC is comparing like-data to like-data. The Master Vendor File contains the lists of firms from the following data sources:

- GDOT Prequalified Contactor and Registered Subcontractor (current)
- GDOT Prequalified Consultants (current)
- GDOT Subcontractors
- GDOT Prime Award (FY2012-FY2014)
- GDOT QPL List (current)
- GDOT DBE (current)
- GDOT ROW (FY2012-FY2014)
- GDOT Board Reports (FY2012-FY2014)
- GDOT Selection Packages (FY2012-FY2014)

- GDOT Bid Express (FY2012-FY2014)
- Prime Vendor Questionnaire Results
- City of Atlanta Awards (FY2012-FY2014)
- City of Savannah Bidders (FY2010-FY2014)
- Fulton County Vendors (current)
- SAM (federal contractor registry) (current)
- City of Augusta Awards (FY2014)

The purpose of the Master Vendor File is to collect, in one database, a listing of all firms that are ready, willing, and able to do business with GDOT. It includes internal lists from the Georgia Department of Transportation as well as outside lists. By including the outside data lists, GSPC has a broader inclusion of firms that have expressed an interest in doing business with government entities. Although GSPC may not have picked up every available firm in the Relevant Market, it has included such a broad sample that the percentages are reliable and no sample bias would be indicated.

p) Data Sets Outside of GDOT

Included in the Master Vendor File were data sets outside of the data provided by GDOT. Outside sources are important because the purpose of the Disparity Study is to analyze all minority and woman owned firms in the Relevant Market and not just those already registered, prequalified, or doing business with GDOT. In order to accomplish this, GSPC collected data from these sources:

- (i) City of Atlanta Awards (Prime & Subcontractor) FY2011-FY2014;
- (ii) City of Savannah Bidders (FY2010-2014);
- (iii) City of Augusta Awards (2014); and
- (iv) Fulton County Registered Vendors (current)

4. Data Cleanup and Verification

After the completion of data collection, the data was electronically and manually “cleaned” to eliminate duplicates, fill in unpopulated fields, and resolve any anomalies. In the cleanup process, GSPC made the assumption that any vendor that was not otherwise identified as an ethnic minority or Caucasian woman owned business is owned by a non-MWBE. In addition, when a firm owner appeared in multiple categories, GSPC counted race and ethnicity over gender, resulting in only Caucasian woman owned firms in the woman owned category.

GSPC used Item Codes to determine the Work Class Groups in which firms performed in. For those firms that were not already assigned to Item Codes by GDOT, GSPC used NAICS codes (to the extent that they could translate), work descriptions, and project descriptions to determine the Work Class Groups.

Any firm for which GSPC did not have an identification of the work performed or could not determine addresses were eliminated from the analysis. However, since both MWBEs and non-MWBEs were equally likely to be in this category, the omission of these firms should not introduce any bias into the analysis.

5. Contract Classifications

Firms were identified and classified into the following three (3) work categories:

- Construction
- Professional Services
- Manufacturing (subcontractors only)

E. Relevant Market Analysis

The Relevant Market is the geographic area where 75-85% of the firms bidding with the Georgia Department of Transportation are located. The now commonly-held idea that the relevant market area should encompass at least 75-85% of the "qualified" vendors that serve a particular sector has its origins in antitrust lawsuits. In line with antitrust precepts, United States Supreme Court Justice Sandra Day O'Connor, in Croson, reasoned that a mere statistical disparity between the overall minority population in Richmond, Virginia, which was 50% Black American, and the award of prime contracts to minority owned firms, 0.67% of which were Black American owned firms, was an insufficient statistical comparison to raise an inference of discrimination. Justice O'Connor also wrote that the relevant statistical comparison is one between the percentage of Minority Business Enterprises in the marketplace [or Relevant Market] who were qualified to perform work (including prime and subcontractors) and the percentage of total City dollars awarded to minority firms.

In this study, the relevant market has been determined using each of the major prime procurement categories:

- Construction
- Professional Services

For each procurement category, GSPC measured the "Relevant Market" by the area where at least 75% of the bidders are located. GSPC gives this method greater weight than other potential methods for two reasons. First, in our view, it more accurately defines where firms come from that are offering their services to GDOT, and reflects the spirit of the Supreme Court's test, which asserts that qualified firms in the area demonstrate that they are "ready, willing and able" to do business with governmental or other entities. Second, an emphasis on the percentage of monetary awards or payments in a market ignores the possibility that a few firms dominate contracting. It also concentrates the relevant market only in areas where GDOT is already spending money, perhaps because of discrimination, and ignores those areas where there are firms that have, at least, expressed an interest in doing business with GDOT but who may have not had the opportunity, again perhaps because of discrimination. However, because the Relevant Market

results from using Bidder data was close to the 75%, at 70%, GSPC also measured the prime award dollars, using federal funding, to determine whether the Relevant Market should include just the State of Georgia or also the State of Florida.

Tables 1-4 summarize the geographic area where at least 75% of bidders and awardees offering their services, or providing their goods, are located. In analyzing the relevant market data, GSPC tabulated the percentage of usage beginning with the State of Georgia and expanding out according to proximity. If the number of firms bidding, or dollars spent in the State of Georgia, did not reach the 75% benchmark, then GSPC began counting firms and dollars located in the surrounding states of Alabama, Florida, North Carolina, South Carolina, and Tennessee (in the order of the surrounding state where the most bidders are located to the surrounding state where the least number of bidders are located). If the benchmark was still not reached, GSPC included the bidders and dollars awarded to firms in the entire U.S.

In Construction, 70% of all Bidders are from the State of Georgia, while 93% of award dollars are made to firms located in Georgia. Therefore, although the Bidders are slightly under the 75% benchmark, the definitive nature of the 93% awards to firms located in Georgia causes GSPC to determine that the proper geographic Relevant Market should be the State of Georgia.

Table 1:
 GDOT Disparity Study
 Geographical Relevant Market - Construction
 (Using Bidders FY2012-2014)

Construction Total	960			
	#	%	Cum #	Cum %
State of Georgia	671	70%	671	70%
State of Florida	61	6%	732	76%
State of South Carolina	29	3%	761	79%
State of Alabama	28	3%	789	82%
State of North Carolina	26	3%	815	85%
State of Tennessee	21	2%	836	87%
U.S.	124	13%	960	100%
Total		100%		

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Table 2
 GDOT Disparity Study
 Geographical Relevant Market – Construction
 (Using Award Dollars FY2012-2014)

Construction Total	622			
	#	%	Cum#	Cum%
State of Georgia	580	93%	580	93%
State of Florida	14	2%	594	95%
U.S.	14	2%	608	98%
State of Alabama	9	1%	617	99%
State of South Carolina	3	0%	620	100%
State of Tennessee	2	0%	622	100%
State of North Carolina	0	0%	622	100%
Total		100%		

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In Professional Services, it is clear from both Bidders and Award Dollars that the geographical Relevant Market is the State of Georgia with 81% of the Bidders and 97% of the Award Dollars.

Table 3
 GDOT Disparity Study
 Geographical Relevant Market – Professional Services
 (Using Bidders FY2012-2014)

Professional Services	259			
	#	%	Cum #	Cum %
State of Georgia	211	81%	211	81%
State of Florida	15	6%	226	87%
State of Tennessee	3	1%	229	88%
State of South Carolina	2	1%	231	89%
State of North Carolina	0	0%	231	89%
State of Alabama	0	0%	231	89%
U.S.	28	11%	259	100%
Total		100%		

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Table 4
 GDOT Disparity Study
 Geographical Relevant Market – Professional Services
 (Using Award Dollars FY2012-2014)

Professional Services	3881			
	#	%	Cum#	Cum%
State of Georgia	3749	97%	3749	97%
State of South Carolina	47	1%	3796	98%
State of Florida	20	1%	3816	98%
State of Tennessee	3	0%	3819	98%
State of Alabama	0	0%	3819	98%
State of North Carolina	0	0%	3819	98%
U.S.	62	2%	3881	100%
Total		100%		

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F. Availability

Croson gives guidance regarding the elements that must be present in a well-executed disparity study but does not provide an exact methodology. However since Croson the courts have acknowledged numerous approaches to measuring available, qualified firms. No court has stated any one way of estimating availability although they have ruled out certain methods. Each method is a way to understanding the percentage of representation that each race, ethnicity, and gender group has in the pool of firms that are ready, willing, and able to perform under GDOT contracts as a prime or subcontractor.

Every measurement is a sample intended to be representative of the universe of available firms, and therefore it is important to utilize various data sources that provide both MWBE and non-MWBE firms in order to test that balance, or percentages of firms likely to be available in the marketplace.

In order to best test the readiness and willingness of firms, GSPC has established a methodology for measuring availability based upon demonstrated interest in doing business with government entities. This means that GSPC only uses firms that are at least registered to do business with one governmental entity at minimum. The ability, or capacity to perform the work is tested below in the Threshold Analysis and the regression analysis conducted in Chapter V below.

1. Capacity

GSPC determined a separate availability estimate for primes and subcontractors for two reasons. First, GDOT utilizes a breadth of specialty contractors that typically perform services on GDOT contracts only as subcontractors in the primary area of road-building. Second, as the Threshold Table below indicates, the size of current GDOT contracts would likely be prohibitive for small firms to perform under, regardless of race, ethnicity, or gender. In order to assist in getting a clearer picture of the size of contracts awarded by GDOT, GSPC conducted a threshold analysis.

Table 5
 GDOT Disparity Study
 Award Thresholds – Construction
 (From All Prime Awards FY2012-2014 Using Federal Funding)

Award Threshold	Number of Awards	Percent of Total	Dollars
Under 100,000	4	0.64%	\$343,374
100,000-500,000	87	13.99%	\$29,450,272
500,000-1,000,000	103	16.56%	\$76,059,471
1,000,000-1,500,000	98	15.76%	\$121,886,696
1,500,000-2,000,000	68	10.93%	\$120,747,556
2,000,000-2,500,000	47	7.56%	\$105,066,127
2,500,000-5,000,000	109	17.52%	\$382,431,008
5,000,000-7,500,000	26	4.18%	\$159,747,569
7,500,000-10,000,000	14	2.25%	\$120,051,941
10,000,000-15,000,000	21	3.38%	\$255,335,581
15,000,000-20,000,000	15	2.41%	\$253,031,482
20,000,000-25,000,000	7	1.13%	\$159,811,677
25,000,000-30,000,000	7	1.13%	\$193,872,830
30,000,000-36,500,000	4	0.64%	\$132,564,059
Over 36,500,000	12	1.93%	\$704,646,231
Total	622	100.00%	\$2,815,045,874

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Average: \$ 4,525,797

There were 622 Prime Construction awards using federal funding during the Study Period. The average dollar amount of the awards was \$4,525,797, with 57.88% of all awards being under \$2,000,000 in terms of the number of awards, but only 12.38% of the award dollars.

GSPC will discuss any concerns about contract sizing in its conclusions; however, with the current average contract size at \$4.5 Million, not all firms will be able to qualify for bonding or perform at that level. Therefore, GSPC has conducted a separate availability for GDOT Prime and GDOT Subcontractors.

There were 368 Prime Professional Services Awards through Contracts & Task Orders using federal funding during the Study Period. The average dollar amount of the awards was \$354,965.33, which is much smaller sizing than Construction awards, potentially more subcontractors could qualify for the dollar values, but this may not address other qualifications.

Table 6 GDOT Disparity Study Award Thresholds – Professional Services Contracts & Task Orders (From All Prime Award FY2012-2014 Using Federal Funding)			
Award Threshold	Number of Awards	Percent of Total	Dollars
Under 100,000	186	50.54%	\$7,477,212
100,000 ≥ 500,000	127	34.51%	\$28,156,865
500,000 ≥ 1,000,000	27	7.34%	\$17,991,912
1,000,000 ≥ 1,500,000	13	3.53%	\$15,338,774
1,500,000 ≥ 2,000,000	3	0.82%	\$4,588,446
2,000,000 ≥ 2,500,000	2	0.54%	\$4,805,662
2,500,000 ≥ 5,000,000	6	1.63%	\$24,744,107
5,000,000 ≥ 7,500,000	3	0.82%	\$18,524,268
7,500,000 ≥ 10,000,000	1	0.27%	\$9,000,000
10,000,000 ≥ 15,000,000	0	0.00%	\$0
15,000,000 ≥ 20,000,000	0	0.00%	\$0
20,000,000 ≥ 25,000,000	0	0.00%	\$0
25,000,000 ≥ 30,000,000	0	0.00%	\$0
30,000,000 ≥ 36,500,000	0	0.00%	\$0
Over 36,500,000	0	0.00%	\$0
Total	368	100.00%	\$130,627,245

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Average: \$354,965

Similarly, there were 254 Prime Professional Services Right of Way contracts using federal funding during the Study Period. The average dollar amount of the awards was \$228,153.00, which is small, but there is no substantial subcontracting in this area so the availability thresholds have less applicability.

Table 7
GDOT Disparity Study
Award Thresholds – Professional Services Right of Way
(From All Prime Award FY2012-2014 Using Federal Funding)

Award Threshold	Number of Awards	Percent of Total	Dollars
Under 100,000	214	84.25%	\$4,351,976
100,000 ≥ 500,000	22	8.66%	\$4,675,743
500,000 ≥ 1,000,000	11	4.33%	\$8,126,457
1,000,000 ≥ 1,500,000	2	0.79%	\$2,178,305
1,500,000 ≥ 2,000,000	2	0.79%	\$3,362,860
2,000,000 ≥ 2,500,000	0	0.00%	
2,500,000 ≥ 5,000,000	0	0.00%	
5,000,000 ≥ 7,500,000	1	0.39%	\$5,000,000
7,500,000 ≥ 10,000,000	0	0.00%	
10,000,000 ≥ 15,000,000	1	0.39%	\$10,000,000
15,000,000 ≥ 20,000,000	0	0.00%	
20,000,000 ≥ 25,000,000	1	0.39%	\$20,255,520
25,000,000 ≥ 30,000,000	0	0.00%	
30,000,000 ≥ 36,500,000	0	0.00%	
Over 36,500,000	0	0.00%	
Total	254	100.00%	\$57,950,861

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Average: \$ 228,153

GSPC reviewed the level of contracting with each race/ethnicity/gender group and compared their annual revenues as reported in the GSPC Survey of Business Owners (See Appendix E for more information on that survey) from all categories to GDOT’s Prime Construction awards. This comparison assumes a correlation between annual revenues and the capacity of firms.¹

¹ Many factors, including discrimination could impede a firm’s full capacity potential, but a firm can accurately be presumed to possess at least the capacity of the revenues it is currently achieving.

Table 8
 GDOT Disparity Study
 Response to Question #11 of GSPC Survey of Business Owners
 Revenue of Responding Firms in 2014

	Caucasian Male	Caucasian Woman	Black American	Asian or Pacific Islander	Sub-Continent Asian	Hispanic	American Indian or Alaska Native	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
\$50,000 or less	10	23	76	2	4	2	0	1	4	122
	13.3%	41.8%	47.5%	28.6%	44.4%	28.6%	0.0%	50.0%	36.4%	37.3%
\$50,001 - \$100,000	2	5	11	1	0	1	0	0	0	20
	2.7%	9.1%	6.9%	14.3%	0.0%	14.3%	0.0%	0.0%	0.0%	6.1%
\$100,001 - \$300,000	5	6	19	2	0	0	0	0	1	33
	6.7%	10.9%	11.9%	28.6%	0.0%	0.0%	0.0%	0.0%	9.1%	10.1%
\$300,001 - \$500,000	6	3	9	1	1	1	0	0	0	21
	8.0%	5.5%	5.6%	14.3%	11.1%	14.3%	0.0%	0.0%	0.0%	6.4%
\$500,001 - \$1,000,000	12	6	12	1	1	1	0	0	0	33
	16.0%	10.9%	7.5%	14.3%	11.1%	14.3%	0.0%	0.0%	0.0%	10.1%
\$1,000,001 - \$3,000,000	8	9	16	0	1	0	1	0	1	36
	10.7%	16.4%	10.0%	0.0%	11.1%	0.0%	100.0%	0.0%	9.1%	11.0%
\$3,000,001 - \$5,000,000	5	3	2	0	0	1	0	0	0	11
	6.7%	5.5%	1.3%	0.0%	0.0%	14.3%	0.0%	0.0%	0.0%	3.4%
\$5,000,001 to \$10,000,000	6	0	4	0	1	1	0	0	1	13
	8.0%	0.0%	2.5%	0.0%	11.1%	14.3%	0.0%	0.0%	9.1%	4.0%
over \$10 million	16	0	5	0	0	0	0	0	3	24
	21.3%	0.0%	3.1%	0.0%	0.0%	0.0%	0.0%	0.0%	27.3%	7.3%
Don't know	5	0	6	0	1	0	0	1	1	14
	6.7%	0.0%	3.8%	0.0%	11.1%	0.0%	0.0%	50.0%	9.1%	4.3%
Total	75	55	160	7	9	7	1	2	11	327
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

A.L Burruss Institute of Public Service and Research, 2015

As a result of comparing annual revenues to the highest awards made to the race/ethnicity/gender group, GSPC determined, in Table 9 below, the percentage of such group that had annual revenues in excess of the highest award made to that group, based on the responses in Table 8 above, and deemed it “Unutilized Capacity.”

Only Subcontinent Asian and Non-MWBE firms had awards in the highest category in excess of \$10 Million. All other ethnic groups that could be measured had at least 24% unutilized capacity. With zero awards, Asian and Pacific Islanders had 71.5% unutilized capacity in prime construction awards from FY2012-FY2014.

Table 9
 GDOT Disparity Study
 Unutilized Capacity by Ethnicity
 (from Prime Construction Awards and
 Question 11 responses from Survey of Business Owners)

GDOT Disparity Study Unutilized Capacity by Ethnicity			
Race/Ethnicity	Highest Award	% Surveyed with Revenues in Excess of the Highest Award for that group (Unutilized capacity)	Category of next highest awards
Black American	\$436,298	24.4%	\$500,000 or more
Asian or Pacific Islander	0	71.5%	\$50,000 or more
Sub-Continent Asian	\$12,412,326	n/a*	n/a
Hispanic	\$707,289	28.6%	\$1 Million or more
American Indian or Alaskan Native	0	**	\$50,000 or more
Woman	\$5,006,829	32.8%	over \$10 Million
Non-MWBE	\$176,247,662	n/a*	n/a

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* Race, ethnicity, or gender group has awards in the highest category.

**Only one respondent in this group. Not sufficient to draw conclusions.

The average dollar amount of GDOT's Construction contracts was \$4.5 Million. It should be noted that 29.3% of Non-MWBE firms had annual revenues in 2014 in excess of that amount, as compared to 5.6% of Black American, 11% of Subcontinent Asian and 14.3% of Hispanic owned firms. No Caucasian woman or Asian or Pacific Islanders responded that they had revenues in excess of the average amount of GDOT contracts.

2. Methodology

The methodology utilized to determine the availability of businesses for public contracting is crucial to understanding whether a disparity exists

AVAILABILITY is the determination of how many “ready, willing, and able” businesses are qualified to perform work for GDOT.

within the relevant market. Availability is a benchmark to examine whether there are any disparities between the utilization of MWBEs and their availability in the marketplace.

In addition to the previous discussion in Paragraph 1 above about capacity, GSPC’s measures of availability utilized in this disparity study incorporate the following criteria:

- The firm does business within an industry group from which GDOT makes certain purchases;
- The firm's owner has taken steps to do business with some government entity through registering, being certified, bidding, or actually doing business with a governmental entity; and
- The firm is located within a relevant geographical area such that it can do business with GDOT.

ECONOMIC DEFINITION FOR THE DETERMINATION OF AVAILABILITY

Definitions:

Let: A = Availability Estimates

A (Asian) = Availability Estimates for Asian Business Enterprises

N (Asian) = Number of Asian Business Enterprises in the relevant market

N (MWBE) = Number of Minority owned Business Enterprises

N (t) = Total number of businesses in the pool of bidders in the procurement category (for example, Construction)

Availability, (A), is a percentage and is computed by dividing the number of firms in each MWBE group by the total number of businesses in the pool of bidders for that procurement category, N (t). For instance, availability for Asians is given by:

$$A (\text{Asian}) = N (\text{Asian})/N (t),$$

and total availability for all MWBE groups is given by

$$A (\text{MWBE}) = N (\text{MWBE})/N (t).$$

Once these availability estimates were calculated, GSPC compared them to the percentage of firms utilized in the respective business categories in order to generate the disparity indices which will be discussed later in this analysis.

3. Measurement Basis for Availability

In determining whether a firm is ready, willing, and able, it cannot be presumed that simply because a firm is doing business in a relevant market, it desires, or is capable of, working for GDOT, particularly as a prime, which may require a particular capability. However, for a determination of availability for subcontractors, where all levels of work are available, to be made strictly based upon GDOT's existing vendor base assumes that there are no discriminatory barriers associated with registration or certification. GSPC measured Prime Contractor

Availability by only counting firms that had performed as primes in the Master Vendor File (the contents of which are set out in D(3)(o) above) in the Work Class Groups in which GDOT does business and within the Relevant Market. In determining those firms to be included in the subcontractor availability pool, GSPC included the entire Master Vendor File, but only firms that perform in the Work Class Groups in which GDOT does business and within the Relevant Market.

a) Prime Availability

In Tables 10 and 11, the Availability of minority and woman owned firms are displayed in comparison to all firms in each category of Construction and Professional Services. In Construction, MWBE firms account for 31.35% of all primes in the Relevant Market, while they make up 16.71% of all Professional Services firms in the Relevant Market.

Table 10 GDOT Disparity Study Availability Prime - Construction In the Relevant Market – State of Georgia (From Master Vendor File)		
Race/Ethnicity	#	%
Asian Pacific American	3	0.58%
Subcontinent Asian American	5	0.96%
Black American	72	13.85%
Hispanic	15	2.88%
Native American	3	0.58%
Unidentified MBE	0	0.00%
Total MBE	98	18.85%
Woman	65	12.50%
Unidentified DBE	0	0.00%
Total MWBE/DBE	163	31.35%
Non-MWBE/DBE	357	68.65%
TOTALS	520	100.00%

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Table 11
 GDOT Disparity Study Availability
 Prime – Professional Services
 In the Relevant Market – State of Georgia
 (From Master Vendor File)

Race/Ethnicity	#	%
Asian Pacific American	3	0.75%
Subcontinent Asian American	10	2.49%
Black American	25	6.23%
Hispanic	3	0.75%
Native American	0	0.00%
Unidentified MBE	0	0.00%
Total MBE	41	10.22%
Woman	26	6.48%
Unidentified DBE	0	0.00%
Total MWBE-DBE	67	16.71%
Non-MWBE/DBE	334	83.29%
TOTALS	401	100.00%

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b) Subcontractor Availability

Tables 12-13 show the Availability of Subcontractors in the Relevant Market that perform in the areas of Construction, Professional Services, and Manufacturing. In Construction, MWBEs make up 47.36% of all Subcontractors, 36.44% in Professional Services, and 24.58% in Manufacturing.

Table 12 GDOT Disparity Study Availability Subcontractors - Construction In the Relevant Market – State of Georgia (From Master Vendor File)		
Race/Ethnicity	#	%
Asian Pacific American	31	0.75%
Subcontinent Asian American	57	1.39%
Black American	1151	27.98%
Hispanic	168	4.08%
Native American	61	1.48%
Unidentified MBE	3	0.07%
Total MBE	1471	35.76%
Woman	460	11.18%
Unidentified DBE	17	0.41%
Total MWBE/DBE	1948	47.36%
Non-MWBE/DBE	2165	52.64%
TOTALS	4113	100.00%

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Table 13 GDOT Disparity Study Availability Subcontractors – Professional Services In the Relevant Market – State of Georgia (From Master Vendor File) ²		
Race/Ethnicity	#	%
Asian Pacific American	10	1.33%
Subcontinent Asian American	27	3.59%
Black American	145	19.28%
Hispanic	17	2.26%
Native American	3	0.40%
Unidentified MBE	0	0.00%
Total MBE	202	26.86%
Woman	72	9.57%
Unidentified DBE	0	0.00%
Total MWBE-DBE	274	36.44%
Non-MWBE/DBE	478	63.56%
TOTALS	752	100.00%

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² Does not include Right of Way

Table 14 GDOT Disparity Study Availability Subcontractors - Manufacturing In the Relevant Market – State of Georgia		
Race/Ethnicity	#	%
Asian Pacific American	10	1.52%
Subcontinent Asian American	6	0.91%
Black American	60	9.10%
Hispanic	13	1.97%
Native American	9	1.37%
Unidentified MWBE/DBE	2	0.30%
Total MBE	100	15.17%
Woman	62	9.41%
Total MWBE-DBE	162	24.58%
Non-MWBE/DBE	497	75.42%
TOTALS	659	100.00%

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G. UTILIZATION

A prime contractor is a contractor that contracts and is paid directly by GDOT while a subcontractor is hired by the prime and paid by the prime to carry out some of the services or provide some of the materials required under the prime’s contract. Prime contractors may have certain prequalification requirements that must be satisfied in order for a firm to bid and therefore be awarded a prime contract. See Section III(A) above for a discussion on prequalification requirements.

The Prime Utilization analysis measures the awards made by GDOT to prime contractors in Construction and Professional Services during the Study Period; and the Subcontractor Utilization analysis measures awards made to subcontractors by prime contractors in Construction, Professional Services, and Manufacturing (of construction materials). It compares the percentage of awards in each category that are made to minority and woman owned firms to all awards. In Tables 15 through 18, GSPC has provided a table of the number of firms that

received awards in each race/ethnicity/gender group followed by a table that measures the dollars awarded.

1. Construction - Prime Utilization

Table 15 below shows the utilization percentages by number of firms receiving awards while Table 16 shows utilization by dollars. Asian Pacific and Native American owned firms received no awards during the Study Period. MWBEs represented 12.50% of all firms receiving awards but received only 2.2% of the prime award dollars. This means that the average size of an award to MWBE firms was less than the average size of non-MWBE awards. In fact, non-MWBE firms received 87.50% of the awards but 97.80% of the award dollars. Although Subcontinent Asian American firms received approximately 12% of all MWBE awards, they received more than half of all dollars awarded to DBEs.

PRIME UTILIZATION is the percentage of awards made by GDOT to MWBEs during the Study Period as compared to all awards made by GDOT.

Of the total Construction awards, 64 firms were awarded \$2.54 Billion. Eight of those firms were MWBEs that shared \$55.78 Million, while 56 non-MWBE firms were awarded a total of \$2.48 Billion.

Table 15
 GDOT Disparity Study
 Prime Utilization
 Construction

By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	1	2.22%	0	0.00%	1	2.22%	0	0.00%
2014	0	0.00%	1	2.22%	2	4.44%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	1	1.56%	2	3.13%	1	1.56%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	3	7.50%	3	7.50%	37	92.50%	40	100.00%
2013	2	4.44%	2	4.44%	4	8.89%	41	91.11%	45	100.00%
2014	3	6.67%	2	4.44%	5	11.11%	40	88.89%	45	100.00%
TOTAL*	4	6.25%	4	6.25%	8	12.50%	56	87.50%	64	100.00%

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Table 16
 GDOT Disparity Study
 Prime Utilization
 Construction

By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$0.00	0.00%	\$14,643,144.00	1.64%	\$0.00	0.00%	\$1,958,403.00	0.22%	\$0.00	0.00%
2014	\$0.00	0.00%	\$14,544,772.00	1.55%	\$585,545.00	0.06%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$0.00	0.00%	\$29,187,916.00	1.15%	\$585,545.00	0.02%	\$1,958,403.00	0.08%	\$0.00	0.00%

FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0.00	0.00%	\$1,892,676.00	0.27%	\$1,892,676.00	0.27%	\$708,718,324.00	99.73%	\$710,611,000.00	100.00%
2013	\$16,601,547.00	1.86%	\$18,654,565.00	2.09%	\$35,256,112.00	3.96%	\$855,847,337.00	96.04%	\$891,103,449.00	100.00%
2014	\$15,130,317.00	1.62%	\$3,500,333.00	0.37%	\$18,630,650.00	1.99%	\$917,657,900.00	98.01%	\$936,288,550.00	100.00%
TOTAL*	\$31,731,864.00	1.25%	\$24,047,574.00	0.95%	\$55,779,438.00	2.20%	\$2,482,223,561.00	97.80%	\$2,538,002,999.00	100.00%

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2. Professional Services – Prime Utilization

Tables 17-20 break down the analysis into Professional Services Contracts & Task Orders and Right of Way Contracts. Table 21 below shows the utilization of all Professional Services percentages by number of firms. Table 22 demonstrates the dollars awarded and will be used to calculate the Disparity Indices.

Of the number of firms obtaining Contracts & Task Orders, MWBEs made up 8.42%. However, MWBE’s only received 2.66% of the dollars that were shared between Black American owned firms at .67% and woman owned firms at 1.99%. Asian Pacific, Subcontinent Asian, Hispanic and Native American owned firms received no awards during the Study Period. Of all firms obtaining Right of Way awards, MWBEs made up 1.78% and 1.31% of the dollars.

In all of Professional Services, MWBE firms accounted for 3.30% of the firms and 2.51% of the awarded dollars.

Table 17
 GDOT Disparity Study
 Prime Utilization
 Professional Services – Contracts & Task Orders
 By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	#	%	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	2	3.51%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	2	3.77%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	2	2.78%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	3	3.16%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
#	%	#	%	#	%	#	%	#	%	#	%
2	3.51%	3	5.26%	0	0.00%	5	8.77%	52	91.23%	57	100.00%
2	3.77%	1	1.89%	0	0.00%	3	5.66%	50	94.34%	53	100.00%
2	2.78%	5	6.94%	0	0.00%	7	9.72%	65	90.28%	72	100.00%
3	5.26%	5	8.77%	0	0.00%	8	8.42%	87	91.58%	95	100.00%

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Table 18
GDOT Disparity Study
Prime Utilization
Professional Services – Contracts & Task Orders
By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$1,298,273.78	0.78%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$0.00	0.00%	\$0.00	0.00%	\$383,343.22	0.25%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2014	\$0.00	0.00%	\$0.00	0.00%	\$1,471,484.71	0.97%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$0.00	0.00%	\$0.00	0.00%	\$3,159,101.71	0.67%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	\$	%		%
\$1,298,273.78	0.78%	\$4,829,417.33	2.90%	\$0.00	3.68%	\$6,127,691.11	3.68%	\$160,602,699.36	96.32%	\$166,730,390.47	100.00%
\$383,343.22	0.25%	\$1,766,783.29	1.16%	\$0.00	0.00%	\$2,150,126.51	1.41%	\$150,484,792.89	98.59%	\$152,640,919.40	100.00%
\$1,471,484.71	0.97%	\$2,755,786.93	1.82%	\$0.00	0.00%	\$4,227,271.64	2.79%	\$147,287,908.69	97.21%	\$151,515,174.33	100.00%
\$3,159,101.71	0.67%	\$9,351,981.55	1.99%	\$0.00	2.66%	\$12,511,083.26	2.66%	\$458,375,400.94	97.34%	\$470,886,484.20	100.00%

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Table 19
GDOT Disparity Study
Prime Utilization
Professional Services – Right of Way
By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	#	%	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	1	0.59%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	1	0.69%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	1	0.89%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	1	0.44%	0	0.00%	0	0.44%

*TOTAL represents the number of unique firms during the Study Period

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
#	%	#	%	#	%	#	%	#	%	#	%
1	0.59%	4	1.76%	0	0.00%	5	2.35%	166	97.65%	170	100.00%
1	0.69%	2	1.39%	0	0.00%	3	2.08%	141	97.92%	144	100.00%
1	0.89%	2	1.79%	0	0.00%	3	2.68%	109	97.32%	112	100.00%
1	0.44%	4	1.33%	0	1.78%	5	1.78%	220	98.22%	225	100.00%

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Table 20
 GDOT Disparity Study
 Prime Utilization
 Professional Services – Right of Way
 By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,000.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$32,550.00	0.24%	\$0.00	0.00%	\$0.00	0.00%
2014	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$1,000.00	0.01%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$34,550.00	0.06%	\$0.00	0.00%	\$0.00	0.06%

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	\$	%		%
\$1,000.00	0.00%	\$249,529.98	0.78%	\$0.00	0.78%	\$250,529.98	0.78%	\$31,896,485.35	99.22%	\$32,147,015.33	100.00%
\$32,550.00	0.24%	\$247,710.02	1.80%	\$0.00	0.00%	\$280,260.02	2.04%	\$13,447,661.36	97.96%	\$13,727,921.38	100.00%
\$1,000.00	0.01%	\$221,755.46	1.92%	\$0.00	0.00%	\$222,755.46	1.93%	\$11,347,431.80	98.07%	\$11,570,187.26	100.00%
\$34,550.00	0.06%	\$718,995.46	1.25%	\$0.00	1.31%	\$753,545.46	1.31%	\$56,691,578.51	98.69%	\$57,445,123.97	100.00%

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Table 21
 GDOT Disparity Study
 Prime Utilization
 Professional Services - All
 By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	#	%	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	2	1.01%	1	0.51%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	2	1.13%	1	0.56%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	2	1.22%	1	0.61%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	3	1.10%	1	0.37%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
#	%	#	%	#	%	#	%	#	%	#	%
3	1.52%	5	2.53%	0	0.00%	8	4.04%	190	95.96%	198	100.00%
3	1.69%	2	1.13%	0	0.00%	5	2.82%	172	97.18%	177	100.00%
3	1.83%	5	3.05%	0	0.00%	8	4.88%	156	95.12%	164	100.00%
4	1.47%	5	1.83%	0	0.00%	9	3.30%	264	96.70%	273	100.00%

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Table 22
 GDOT Disparity Study
 Prime Utilization
 Professional Services - All
 By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$1,298,273.78	0.65%	\$1,000.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$0.00	0.00%	\$0.00	0.00%	\$389,343.22	0.23%	\$32,550.00	0.02%	\$0.00	0.00%	\$0.00	0.00%
2014	\$0.00	0.00%	\$0.00	0.00%	\$1,471,484.71	0.90%	\$1,000.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$0.00	0.00%	\$0.00	0.00%	\$3,159,101.71	0.60%	\$34,550.00	0.01%	\$0.00	0.00%	\$0.00	0.00%

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
\$1,299,273.78	0.65%	\$5,078,947.31	2.55%	\$0	0.00%	\$6,378,221.09	3.21%	\$192,499,184.71	96.79%	\$198,877,405.80	100.00%
\$421,893.22	0.25%	\$2,014,493.31	1.21%	\$0	0.00%	\$2,436,386.53	1.46%	\$163,932,454.25	98.54%	\$166,368,840.78	100.00%
\$1,472,484.71	0.90%	\$2,977,536.39	1.83%	\$0	0.00%	\$4,450,021.10	2.73%	\$158,635,340.49	97.27%	\$163,085,361.59	100.00%
\$3,193,651.71	0.60%	\$10,070,977.01	1.91%	\$0	0.00%	\$13,264,628.72	2.51%	\$515,066,979.45	97.49%	\$ 528,331,608.17	100.00%

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3. Construction – Subcontractor Utilization

GDOT participates in the federally mandated DBE program, which is a subcontractor program. It sets DBE contract goals every three years according to the schedule of Federal Highway Administration. Table 23 demonstrates the Construction

subcontractor awards taken from GDOT's TRAQS data system. MWBEs represented 24.92% of all subcontractors but were awarded only 18.37% of all subcontracting

dollars. This means that the amount of MWBE subcontractor awards was less than the average subcontractor award made to Non-MWBE subcontractors in Construction.

SUBCONTRACTOR UTILIZATION is the percentage of awards made by GDOT Prime Contractors to MWBEs as compared to all subcontractors on prime contracts awarded during the Study Period

GEORGIA DEPARTMENT OF TRANSPORTATION DISPARITY STUDY

Table 23
GDOT Disparity Study
Subcontractor Utilization
Construction

By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	14	10.00%	1	0.71%	0	0.00%
2013	1	0.41%	0	0.00%	19	7.76%	3	1.22%	2	0.82%
2014	1	0.47%	0	0.00%	24	11.16%	4	1.86%	1	0.47%
TOTAL*	1	0.30%	0	0.00%	36	10.81%	6	1.80%	2	0.60%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	15	10.71%	24	17.14%	39	27.86%	101	72.14%	140	100.00%
2013	25	10.20%	34	13.88%	59	24.08%	186	75.92%	245	100.00%
2014	30	13.95%	29	13.49%	59	27.44%	156	72.56%	215	100.00%
TOTAL*	45	13.51%	38	11.41%	83	24.92%	250	75.08%	333	100.00%

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Table 24
GDOT Disparity Study
Subcontractor Utilization
Construction
By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$875,070.00	1.88%	\$505,862.00	1.09%	\$0.00	0.00%
2013	\$683,398.00	0.27%	\$0.00	0.00%	\$14,310,034.00	5.59%	\$1,193,715.00	0.47%	\$171,483.00	0.06%
2014	\$2,288,423.00	0.88%	\$0.00	0.00%	\$11,594,447.00	4.45%	\$2,320,337.00	0.89%	\$33,529.00	0.02%
TOTAL*	\$2,971,822.00	0.53%	\$0.00	0.00%	\$26,779,551.00	4.76%	\$4,019,915.00	0.71%	\$205,012.00	0.04%

Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	#	%
\$1,380,932.00	2.97%	\$6,289,236.00	13.54%	\$7,670,168.00	16.51%	\$38,792,184.00	83.49%	\$46,462,352.00	100.00%
\$16,358,630.00	6.39%	\$30,757,528.00	12.01%	\$47,116,158.00	18.40%	\$208,881,111.00	81.60%	\$255,997,269.00	100.00%
\$16,236,736.00	6.24%	\$32,369,599.00	12.44%	\$48,606,335.00	18.68%	\$211,651,624.00	81.32%	\$260,257,959.00	100.00%
\$33,976,300.00	6.04%	\$69,416,363.00	12.34%	\$103,392,663.00	18.37%	\$459,324,919.00	81.63%	\$562,717,582.00	100.00%

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4. Professional Services – Subcontractor Utilization

In Professional Services, Black American and woman owned firms achieved 6.13% and 6.83%, respectively, of all subcontracting dollars. Subcontinent Asian American firms represented .28% of subcontracting dollars, while Asian Pacific, Hispanic, and Native American owned firms received none of the subcontracting dollars in Professional Services.

MWBE firms represent 27.27% of all firms receiving contracts but represent only 13.24% of the subcontracting dollars. This means that, on average, non-MWBE subcontractor awards in Professional Services were approximately 50% higher than MWBE Professional Services subcontractor awards.

Table 25
 GDOT Disparity Study
 Subcontractor Utilization
 Professional Services
 By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	#	%	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	1	4.17%	1	4.17%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	1	3.03%	1	3.03%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
#	%	#	%	#	%	#	%	#	%	#	%
2	8.33%	3	12.50%	0	0.00%	5	20.83%	19.00	79.17%	24.00	100.00%
0	0.00%	1	20.00%	0	0.00%	1	20.00%	4.00	80.00%	5.00	100.00%
0	0.00%	5	41.67%	0	0.00%	5	41.67%	7.00	58.33%	12.00	100.00%
2	6.06%	7	21.21%	0	0.00%	9	27.27%	24.00	72.73%	33.00	100.00%

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Table 26
 GDOT Disparity Study
 Subcontractor Utilization
 Professional Services
 By Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$331,664.46	0.38%	\$7,147,665.00	8.13%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2014	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$0.00	0.00%	\$331,664.46	0.28%	\$7,147,665.00	6.13%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
\$7,479,329.46	8.51%	\$3,968,374.31	4.51%	\$0.00	00.00%	\$11,447,703.77	13.02%	\$76,483,562.33	86.98%	\$87,931,226.10	100.00%
\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$19,317,489.90	100.00%	\$19,317,489.90	100.00%
\$0.00	0.00%	\$3,999,665.20	42.59%	\$0.00	0.00%	\$3,999,665.20	42.59%	\$5,390,794.62	57.41%	\$9,390,459.82	100.00%
\$7,479,329.46	6.41%	\$7,968,039.51	6.83%	\$0.00	0.00%	\$15,447,368.97	13.24%	\$101,191,846.85	86.76%	\$116,639,215.82	100.00%

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Manufacturing firms are only utilized as subcontractors on Construction prime contracts. They are also unique because there are very exact specifications about which products can be used in GDOT projects and manufacturing firms must be pre-approved. MWBE firms made up 22.33% of all firms available to provide manufacturing but received only 9.52% of all manufacturing subcontracts.

GEORGIA DEPARTMENT OF TRANSPORTATION DISPARITY STUDY

Table 27
GDOT Disparity Study
Subcontractor Utilization
Manufacturing
By Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	#	%	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	1	1.33%	0	0.00%	2	2.67%	0	0.00%	0	0.00%	0	0.00%
2014	1	1.64%	0	0.00%	7	11.48%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	1	0.97%	0	0.00%	8	7.77%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
#	%	#	%	#	%	#	%	#	%	#	%
0	0.00%	8	19.05%	0	0.00%	8	19.05%	34	80.95%	42.00	100.00%
3	4.00%	11	14.67%	0	0.00%	14	18.67%	61	81.33%	75.00	100.00%
8	13.11%	8	13.11%	0	0.00%	16	26.23%	45	73.77%	61.00	100.00%
9	8.74%	14	13.59%	0	0.00%	23	22.33%	80	77.67%	103.00	100.00%

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Table 28
GDOT Disparity Study
Subcontractor Utilization
Manufacturing
By Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American		Unidentified MBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2013	\$120,461.00	0.88%	\$0.00	0.00%	\$244,325.00	1.79%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2014	\$248,018.00	1.37%	\$0.00	0.00%	\$896,739.00	4.96%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
TOTAL*	\$368,479.00	0.90%	\$0.00	0.00%	\$1,141,064.00	2.79%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%

Total MBE		Woman		Unidentified DBE		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
\$	%	\$	%	\$	%	\$	%	\$	%	#	%
\$0.00	0.00%	\$196,371.00	2.14%	\$0.00	0.00%	\$196,371.00	2.14%	\$8,993,039.00	97.86%	\$9,189,410.00	100.00%
\$364,786.00	2.67%	\$775,065.00	5.68%	\$0.00	0.00%	\$1,139,851.00	8.35%	\$12,505,349.00	91.65%	\$13,645,200.00	100.00%
\$1,144,757.00	6.33%	\$1,415,926.00	7.83%	\$0.00	0.00%	\$2,560,683.00	14.15%	\$15,530,294.00	85.85%	\$18,090,977.00	100.00%
\$1,509,543.00	3.69%	\$2,387,363.00	5.83%	\$0.00	0.00%	\$3,896,906.00	9.52%	\$37,028,682.00	90.48%	\$40,925,588.00	100.00%

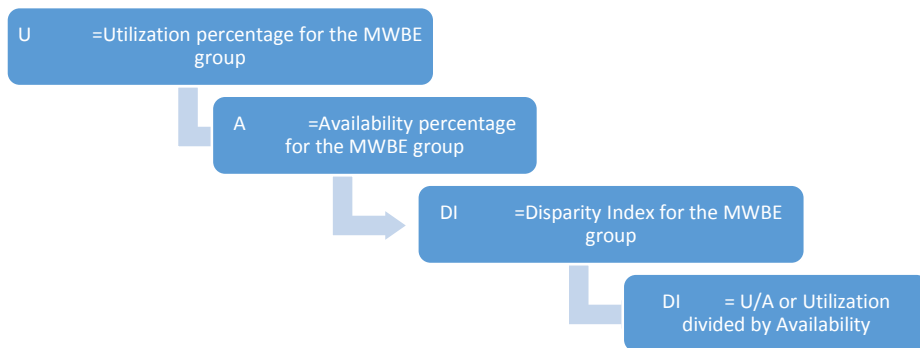
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H. DISPARITY INDICES

To assess the existence and extent of disparity, GSPC compared the MWBE utilization percentages to the percentage of the total pool of MWBE firms in the relevant geographic area. The simple disparity derived as a result of employing this approach is measured by use of a Disparity Index (“DI”).

The DI is defined as the ratio of the percentage of MWBE firms utilized (U) divided by the percentage of such firms available in the marketplace, (A):

Let:



When the DI is one, which indicates that the utilization percentage equals the availability percentage, there is parity or an absence of disparity. In situations where there is availability, but no utilization, the corresponding disparity index will be zero. In cases where there is utilization, but no availability, the resulting disparity index is designated by the infinity (∞) symbol. Finally, in cases where there is neither

DISPARITY INDICES calculate the difference between the percentage of MWBE UTILIZATION during the Study Period and the current percentage of AVAILABLE MWBEs.

utilization nor availability, the corresponding disparity index is undefined and designated by a dash (-) symbol. Disparity analyses are presented separately for each procurement category and for each race, ethnicity and gender group. They are also broken out by year, for each year of the Study Period.

GSPC performs separate disparity analysis for prime contractors and subcontractors because prime contractors and subcontractors have separate availabilities. Therefore, GSPC compared the percentage Utilization by award dollars divided by the percentage of Available firms to determine the Disparity Index.

The results obtained by a disparity analysis will result in one of three conclusions: overutilization, underutilization or parity. Underutilization is when the Disparity Index is below one. Overutilization is when the Disparity Index is over one. Parity is when the Disparity Index is one.

In Table 29 below, which represents Prime Construction disparity from FY2012-FY2014, there is underutilization in each MWBE group for every year of the Study, except Subcontinent Asian American owned firms. In both 2013 and 2014, there was overutilization of Subcontinent Asian American owned firms in prime Construction contracting. This overutilization occurred due to one Subcontinent firm that received substantial awards with less than 1% availability³.

In Table 30 for Construction subcontracting during the same period, all MWBE groups, except Caucasian woman owned firms and Asian Pacific owned firms in 2014, were underutilized in every year of the Study. Caucasian woman owned firms were overutilized in every year of the Study but, on average were not statistically significantly overutilized.

³ The Subcontinent Asian American owned firm is a civil engineering and construction firm that focuses solely on highway design and construction and has been in business since 1996. It was awarded seven (7) contracts during the Study Period ranging from approximately \$650,000 to \$12.4 Million.

Also, as shown in Tables 31 and 32, every MWBE group was underutilized in Professional Services, both as primes and subcontractors every year of the Study, again, except Caucasian woman owned firms that were overutilized in FY 2014 as subcontractors.

Manufacturing, which is a subcontracting aspect of Construction, also shows underutilization of every MWBE group during each year of the Study Period in Table 33.

Table 29
CONSTRUCTION PRIME DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.58%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	0.96%	0.00	Underutilized
Black American	0.00%	13.85%	0.00	Underutilized
Hispanic	0.00%	2.88%	0.00	Underutilized
Native American	0.00%	0.58%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.00%	18.85%	0.00	Underutilized
Woman	0.27%	12.50%	0.02	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	0.27%	31.35%	0.01	Underutilized
Non-MWBE/DBE	99.73%	68.65%	1.45	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.58%	0.00	Underutilized
Subcontinent Asian Americans	1.64%	0.96%	1.71	Overutilized
Black American	0.00%	13.85%	0.00	Underutilized
Hispanic	0.22%	2.88%	0.08	Underutilized
Native American	0.00%	0.58%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	1.86%	18.85%	0.10	Underutilized
Woman	2.09%	12.50%	0.17	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	3.96%	31.35%	0.13	Underutilized
Non-MWBE/DBE	96.04%	68.65%	1.40	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.58%	0.00	Underutilized
Subcontinent Asian Americans	1.55%	0.96%	1.61	Overutilized
Black American	0.06%	13.85%	0.00	Underutilized
Hispanic	0.00%	2.88%	0.00	Underutilized
Native American	0.00%	0.58%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	1.62%	18.85%	0.09	Underutilized
Woman	0.37%	12.50%	0.03	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	1.99%	31.35%	0.06	Underutilized
Non-MWBE/DBE	98.01%	68.65%	1.43	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.58%	0.00	Underutilized
Subcontinent Asian Americans	1.15%	0.96%	1.20	Overutilized
Black American	0.02%	13.85%	0.00	Underutilized
Hispanic	0.08%	2.88%	0.03	Underutilized
Native American	0.00%	0.58%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	1.25%	18.85%	0.07	Underutilized
Woman	0.95%	12.50%	0.08	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	2.20%	31.35%	0.07	Underutilized
Non-MWBE/DBE	97.80%	68.65%	1.42	Overutilized

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Table 30
CONSTRUCTION SUBCONTRACTOR DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	1.88%	27.98%	0.07	Underutilized
Hispanic	1.09%	4.08%	0.27	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	2.97%	35.76%	0.08	Underutilized
Woman	13.54%	11.18%	1.21	Overutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	16.51%	47.36%	0.35	Underutilized
Non-MWBE/DBE	83.49%	52.64%	1.59	Overutilized
FY 2013				
Asian Pacific American	0.27%	0.75%	0.36	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	5.59%	27.98%	0.20	Underutilized
Hispanic	0.47%	4.08%	0.12	Underutilized
Native American	0.07%	1.48%	0.05	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	6.39%	35.76%	0.18	Underutilized
Woman	12.01%	11.18%	1.07	Overutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	18.40%	47.36%	0.39	Underutilized
Non-MWBE/DBE	81.60%	52.64%	1.55	Overutilized
FY 2014				
Asian Pacific American	0.88%	0.75%	1.17	Overutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	4.45%	27.98%	0.16	Underutilized
Hispanic	0.89%	4.08%	0.22	Underutilized
Native American	0.01%	1.48%	0.01	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	6.24%	35.76%	0.17	Underutilized
Woman	12.44%	11.18%	1.11	Overutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	18.68%	47.36%	0.39	Underutilized
Non-MWBE/DBE	81.32%	52.64%	1.54	Overutilized
TOTALS				
Asian Pacific American	0.53%	0.75%	0.71	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	4.76%	27.98%	0.17	Underutilized
Hispanic	0.71%	4.08%	0.17	Underutilized
Native American	0.04%	1.48%	0.03	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	6.04%	35.76%	0.17	Underutilized
Woman	12.34%	11.18%	1.10	Overutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	18.37%	47.36%	0.39	Underutilized
Non-MWBE/DBE	81.63%	52.64%	1.55	Overutilized

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Table 31
PROFESSIONAL SERVICE PRIME DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	2.49%	0.00	Underutilized
Black Americans	0.65%	6.23%	0.10	Underutilized
Hispanic	0.00%	0.75%	0.00	Underutilized
Native American	0.00%	0.00%	0.00	-
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.65%	10.22%	0.06	Underutilized
Woman	2.55%	6.48%	0.39	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	3.21%	16.71%	0.19	Underutilized
Non-MWBE/DBE	96.79%	83.29%	1.16	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	2.49%	0.00	Underutilized
Black Americans	0.23%	6.23%	0.04	Underutilized
Hispanic	0.02%	0.75%	0.03	Underutilized
Native American	0.00%	0.00%	0.00	-
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.25%	10.22%	0.02	Underutilized
Woman	1.21%	6.48%	0.19	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	1.46%	16.71%	0.09	Underutilized
Non-MWBE/DBE	98.54%	83.29%	1.18	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	2.49%	0.00	Underutilized
Black Americans	0.90%	6.23%	0.14	Underutilized
Hispanic	0.61%	0.75%	0.81	Underutilized
Native American	0.00%	0.00%	0.00	-
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.90%	10.22%	0.00	Underutilized
Woman	1.83%	6.48%	0.28	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	2.73%	16.71%	0.16	Underutilized
Non-MWBE/DBE	97.27%	83.29%	1.17	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	2.49%	0.00	Underutilized
Black Americans	0.60%	6.23%	0.10	Underutilized
Hispanic	0.01%	0.75%	0.01	Underutilized
Native American	0.00%	0.00%	0.00	-
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.60%	10.22%	0.06	Underutilized
Woman	1.91%	6.48%	0.29	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	2.51%	16.71%	0.15	Underutilized
Non-MWBE/DBE	97.49%	83.29%	1.17	Overutilized

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Table 32
PROFESSIONAL SERVICE SUBCONTRACTOR DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	1.33%	0.00	Underutilized
Subcontinent Asian Americans	0.38%	3.59%	0.11	Underutilized
Black Americans	8.13%	19.28%	0.42	Underutilized
Hispanic	0.00%	2.26%	0.00	Underutilized
Native American	0.00%	0.40%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	8.51%	26.86%	0.32	Underutilized
Woman	4.51%	9.57%	0.47	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	13.02%	36.44%	0.36	Underutilized
Non-MWBE/DBE	86.98%	63.56%	1.37	Overutilized
FY 2013				
Asian Pacific American	0.00%	1.33%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	3.59%	0.00	Underutilized
Black Americans	0.00%	19.28%	0.00	Underutilized
Hispanic	0.00%	2.26%	0.00	Underutilized
Native American	0.00%	0.40%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.00%	26.86%	0.00	Underutilized
Woman	0.00%	9.57%	0.00	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	0.00%	36.44%	0.00	Underutilized
Non-MWBE/DBE	100.00%	63.56%	1.57	Overutilized
FY 2014				
Asian Pacific American	0.00%	1.33%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	3.59%	0.00	Underutilized
Black Americans	0.00%	19.28%	0.00	Underutilized
Hispanic	0.00%	2.26%	0.00	Underutilized
Native American	0.00%	0.40%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	0.00%	26.86%	0.00	Underutilized
Woman	42.59%	9.57%	4.45	Overutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	42.59%	36.44%	1.17	Overutilized
Non-MWBE/DBE	57.41%	63.56%	0.90	Underutilized
TOTALS				
Asian Pacific American	0.00%	1.33%	0.00	Underutilized
Subcontinent Asian Americans	0.28%	3.59%	0.08	Underutilized
Black Americans	6.13%	19.28%	0.32	Underutilized
Hispanic	0.00%	2.26%	0.00	Underutilized
Native American	0.00%	0.40%	0.00	Underutilized
Unidentified MBE	0.00%	0.00%	0.00	-
Total MBE	6.41%	26.86%	0.24	Underutilized
Woman	6.83%	9.57%	0.71	Underutilized
Unidentified DBE	0.00%	0.00%	0.00	-
Total MWBE/DBE	13.24%	36.44%	0.36	Underutilized
Non-MWBE/DBE	86.76%	63.56%	1.37	Overutilized

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Table 33
MANUFACTURING SUBCONTRACTOR DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	1.52%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	0.91%	0.00	Underutilized
Black American	0.00%	9.10%	0.00	Underutilized
Hispanic	0.00%	1.97%	0.00	Underutilized
Native American	0.00%	1.37%	0.00	Underutilized
Unidentified MBE	0.00%	0.30%	0.00	Underutilized
Total MBE	0.00%	15.17%	0.00	Underutilized
Woman	2.14%	9.41%	0.23	Underutilized
Unidentified DBE	0.00%	0.00%	-	-
Total MWBE/DBE	2.14%	24.58%	0.09	Underutilized
Non-MWBE/DBE	97.86%	75.42%	1.30	Overutilized
FY 2013				
Asian Pacific American	0.88%	1.52%	0.58	Underutilized
Subcontinent Asian Americans	0.00%	0.91%	0.00	Underutilized
Black American	1.79%	9.10%	0.20	Underutilized
Hispanic	0.00%	1.97%	0.00	Underutilized
Native American	0.00%	1.37%	0.00	Underutilized
Unidentified MBE	0.00%	0.30%	0.00	Underutilized
Total MBE	2.67%	15.17%	0.18	Underutilized
Woman	5.68%	9.41%	0.60	Underutilized
Unidentified DBE	0.00%	0.00%	-	-
Total MWBE/DBE	8.35%	24.58%	0.34	Underutilized
Non-MWBE/DBE	91.65%	75.42%	1.22	Overutilized
FY 2014				
Asian Pacific American	1.37%	1.52%	0.90	Underutilized
Subcontinent Asian Americans	0.00%	0.91%	0.00	Underutilized
Black American	4.96%	9.10%	0.55	Underutilized
Hispanic	0.00%	1.97%	0.00	Underutilized
Native American	0.00%	1.37%	0.00	Underutilized
Unidentified MBE	0.00%	0.30%	0.00	Underutilized
Total MBE	6.33%	15.17%	0.42	Underutilized
Woman	7.83%	9.41%	0.83	Underutilized
Unidentified DBE	0.00%	0.00%	-	-
Total MWBE/DBE	14.15%	24.58%	0.58	Underutilized
Non-MWBE/DBE	85.85%	75.42%	1.14	Overutilized
TOTALS				
Asian Pacific American	0.90%	1.52%	0.59	Underutilized
Subcontinent Asian Americans	0.00%	0.91%	0.00	Underutilized
Black American	2.79%	9.10%	0.31	Underutilized
Hispanic	0.00%	1.97%	0.00	Underutilized
Native American	0.00%	1.37%	0.00	Underutilized
Unidentified MBE	0.00%	0.30%	0.00	Underutilized
Total MBE	3.69%	15.17%	0.24	Underutilized
Woman	5.83%	9.41%	0.62	Underutilized
Unidentified DBE	0.00%	0.00%	-	-
Total MWBE/DBE	9.52%	24.58%	0.39	Underutilized
Non-MWBE/DBE	90.48%	75.42%	1.20	Overutilized

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I. Determining the Significance of Disparity Indices

The determination that a particular ethnic or gender group has been overutilized or underutilized is not, standing alone, proof of discrimination. Typically, the determination of whether a disparity is “statistically significant” can be based on the depth of the disparity in that any disparity index that is less than .80 is considered to be a statistically significant underutilization and any disparity index over 1.10 is considered to be a statistically significant overutilization. The disparity indexes’ impact as designated in the preceding tables as “overutilization,” “underutilization,” or “parity,” have been bolded in **RED** to indicate such statistically significant impact.

However, further, our approach to determining whether a measured disparity is significant in the general population versus being merely an artifact of our sample is nonparametric, meaning that we do not assume the data or population have any characteristic structure or parameters. In particular, we use a Wilcoxon test that considers whether or not the typical disparity index across all vendor categories is equal to unity. This constitutes a null hypothesis of “parity” and the Wilcoxon test estimates the probability that the typical disparity index departs from unity, and the magnitude of the calculated z-score indicates whether there is typically underutilization ($z < 0$) or overrepresentation ($z > 0$).

For all instances of the estimated disparity indices reported in the tables above, the Wilcoxon test rejected the null hypothesis of parity, and the z-score for the typical disparity index was negative, suggesting underrepresentation in all the relevant contracting categories on average. As the Wilcoxon test is based upon the median or typical value in the distribution of disparity indices, the finding of underrepresentation overall applies to all groups except Non-MWBEs, as they are at the top of the disparity index distribution, with a disparity index that is on average greater than unity.

The existence of a statistically significant disparity between the availability and utilization of minority or woman owned businesses that is determined to likely be the result of the owners’

race, gender, or ethnicity, will impact the recommendations provided as a result of this study. GSPC will, in such a case, make recommendations for appropriate and narrowly-tailored race/ethnicity/gender-neutral remedies for this discrimination to give all firms equal access to public contracting with GDOT. GSPC will also, if appropriate, recommend narrowly-tailored race/ethnicity/gender-conscious remedies. If no statistically significant disparity is found to exist or if such a disparity is not determined to be a likely result of firm owners' race, ethnicity, or gender on their success in the marketplace, GSPC may still make recommendations to support the continuation of engagement, outreach, small business development, and non-discrimination policies in the procurement processes of GDOT.

J. Summary

The Statistical Chapter of this Disparity Study has shown that GDOT currently issues extremely large contracts in the areas of Construction and Professional Services: 66 contracts in over the 3-year Study Period over \$10 Million, and 12 of those in excess of \$36.5 Million, with one as high as \$176 Million. With contracts this large, contract sizing is an obvious issue from which also will come credit and bonding issues. The obvious conclusion is that the larger the contract, the less small firms will receive prime awards from GDOT. This is borne out by the fact that in prime construction contracting, 64 firms received awards in excess of \$2.5 Billion.

It is also clear from the Construction Unutilized Capacity in Table 9 that minority and woman owned firms are not receiving the full potential, in terms of contract size, that they are capable of receiving. Except for Subcontinent Asian American owned firms, every MWBE group had at least 24% more capacity than they were receiving.

Except for one Subcontinent Asian firm that received 1.15% of all prime awards in Construction prime contracting (Subcontinent Asian owned firms account for .96% availability), every ethnic minority group was substantially and statistically significantly underutilized prime contractors during the Study Period.

The Federal DBE program is a subcontractor program. It resulted in an overutilization of women owned firms in Construction throughout the Study Period and in Professional Services in 2014. Asian Pacific American firms were overutilized in 2014. In all other instances, MWBEs were underutilized as subcontractors throughout the Study Period.

Despite some substantial disparities, this data alone only demonstrates a simple disparity but does not explain it. In the Private Sector Analysis, GSPC presents a regression analysis to determine whether or not other elements would explain the disparity and discusses the crucial issues of self-employment and credit markets. The Anecdotal Chapter will provide anecdotal evidence which will further identify the perceptions of the business community. Anecdotal evidence will assist GSPC in completing the story of minority and woman contracting with GDOT.

V. DETERMINATION OF OVERCONCENTRATION IN HAULING

A. The Basis for Analysis

Griffin & Strong PC (“GSPC”) conducted a separate review of the work category of hauling for GDOT with the aim of determining if there is overconcentration of DBEs in this area. The possibility of overconcentration was brought up in several forums anecdotally in the process of conducting the 2016 disparity study, and also emerged statistically from the 2012 disparity study. GDOT, as a recipient of federal funds from the United States Department of Transportation, is subject to the requirements of Federal Regulation 49 CFR Part 26.33 in the administration of its mandatory DBE program. 49 CFR requires that:

If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

Appropriate measures to address overconcentration may include technical assistance and mentor-protégé programs designed to help DBEs obtain work in other areas as well as varying the use of contract goals. The 2012 disparity study found statistically significant underutilization in all areas except for the trucking, where 72% of the contracts went to DBEs and GDOT let one quarter of its total construction subcontracting dollars to firms in the trucking category. The current Study found underutilization of all MWBEs in Construction subcontracting in all years of the Study Period (except that woman owned firms were overutilized in all years, but in total the overutilization was not statistically significant, and Asian Pacific Americans were overutilized in 2014 but over the total Study Period, Asian Pacific Americans were underutilized). However, GSPC did not have sufficient data to determine the balance of disparity in the work categories and GDOT did not maintain data on non-DBE haulers.

For all of the foregoing reasons, GSPC administered a tailored questionnaire to obtain information on the ethnicity, gender, and DBE status of haulers that have worked with GDOT. As

haulers are always subcontractors, GSPC sent a questionnaire to all Construction Prime Contractors (including outside of the Relevant Market) that received awards during the Study Period and requested certain information about the Primes and their Hauler subcontractors in all nine areas of Hauling:

- 109 – Hauling Fuel
- 205a – Hauling Soil within the Project
- 206a – Hauling Soil to the Project
- 310a – Hauling GAB
- 400a – Hauling Asphaltic Concrete Mix
- 400b – Hauling Liquid Asphaltic Concrete
- 432a – Hauling Millings
- 603a – Hauling Rip Rap to Project, All Sizes
- 800a – Hauling Aggregate

The questionnaire was sent out through The Print Shop, a Georgia-based mailing house. Of the 87 unique firms that were sent the questionnaire, 3 were returned for bad addresses, so our assumption is that 84 were received. Of those 84, 24 prime contractors responded, which was a response rate of 29% sufficient to infer reliable conclusions about all of GDOT’s prime construction contractors. There was no discernable response bias that can be inferred by the firms that failed to return the questionnaire.

In the qualitative research portions of the current Study, the issue of overconcentration in trucking and hauling came out several times from different sources. One contractor rose to speak at the Informational Meeting held for the Study, stating that he finds that there is an overconcentration of DBEs in trucking and that GDOT needs to require primes to “open up other categories of work” to DBE firms (IM-2). At a Public Hearing held in Atlanta, another firm owner spoke up about the same issue. In PH-ATL-7’s view, primes have already decided what work categories they want to use for their DBE percentage “prior to anything hitting the street.” Though PH-ATL-7 attends all the outreach programs, she asserts that “all these primes have the same

work...hauling, traffic control” and that these primes are not “utilizing the opportunity of the program for the integrity in which it was put in place.”

However, two woman owned trucking firms state that they have had significant success in trucking and hauling as DBEs, despite the complaints of DBE firms in other work categories that this is the only work available. AI-T-4, a Caucasian woman, the co-owner of a trucking company, estimated that 85-90% of her bids have been awarded as a subcontractor. “I just make a reasonable bid, and it seems to work out.” AI-T-4 was previously a nurse and her husband bought a dump truck. They bought more trucks and when they couldn’t find enough drivers, she got her license and learned to drive the trucks. Her husband is co-owner and takes care of maintenance on the trucks. She does all contracts, bidding, payroll and other work.

AI-T4’s account shows more than that there is plenty of work to be done in trucking and hauling for DBEs, it also illuminates a belief that DBE certification is the only way for firms in this field to obtain work. “From my understanding, you can’t work for the state or federal government unless you are certified DBE, WBE, or something like that.” AI-T-4 said she has not observed or experienced discrimination as a small or woman owned business. She would like to think that even if the public sector didn’t have goals related to minority or woman owned businesses, that they would call her for business anyway. Prior to getting their DBE status, all of their work was in the private sector; now, they work solely for the State. “Without (certification), you can’t get anything. You’re just stuck in the private sector.”

B. Findings of Overconcentration

Table 34 below compares the availability of haulers in the Relevant Market (See Table 35 below) to their utilization (from the Prime Vendor Questionnaire). Non-DBE firms are significantly underutilized, with an availability percentage of 39.24% of all firms, but only a 7.41% utilization. On the other hand, Black Americans, Hispanics, and woman owned firms are significantly overutilized, with the total MWBE awards at 92.59% of all dollars, with only a 60.76% availability. It should also be noted that Asian-American firms, both Asian Pacific and

Subcontinent Asian, as well as Native American owned firms are underutilized in this category with none of the contracting dollars going to any of the available firms.

Table 34
 GDOT Disparity Study
 Hauling Availability/Utilization and Disparity Indices

	AVAILABILITY (from Master Vendor File)		UTILIZATION (From Prime Vendor Questionnaire Responses)				DISPARITY	
	#	% Firms	#	% Firms	\$	% \$	Disparity	Over-Under
Black American	211	40.19%	43	32.82%	\$23,643,917	46.99%	1.17	Overutilization
Hispanic	23	4.38%	5	3.82%	\$5,991,919	11.91%	2.72	Overutilization
Native American	2	0.38%	1	0.76%	\$536	0.00%	0.00	Underutilization
Asian Pacific	2	0.38%	0	0.00%	\$0	0.00%	0.00	Underutilization
Sub-Continent Asian	3	0.57%	0	0.00%	\$0	0.00%	0.00	Underutilization
Woman	71	13.52%	18	13.74%	\$16,957,911	33.70%	2.49	Overutilization
Unidentified DBE	7	1.33%	0	0.00%	\$0	0.00%	0.00	Underutilization
Total MWBE/DBE	319	60.76%	67	51.15%	\$46,594,283	92.59%	1.52	Overutilization
Non-DBE	206	39.24%	64	48.85%	\$3,727,974	7.41%	0.19	Underutilization
TOTAL	525	100%	131	100%	\$50,322,257	100%		

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C. Remedies and Alternate Availability

Disparity indexes are the most accurate indicators of overconcentration. Where one finds substantial and statistically significant overutilization of DBE firms accompanied by a statistically significant underutilization of non-DBEs, an inference can be made that there is significant overconcentration in that area. Alonso-Villar, et al. analyzed “occupational crowding” by race and gender and noted that, in employment, occupational segregation leads to pay differentials for minorities and women and that it “favors gender and racial devaluation.”⁴ The concept of overconcentration is similar to that of occupational crowding and, though this study cannot confirm evidence of economic devaluation as a result of DBE overconcentration, a finding of overconcentration may encourage research into this area in future studies. Regardless of whether

⁴ Alonso-Villar, Del Rio, and Gradin. 2012. “The Extent of Occupational Segregation in the United States: Differences by Race, Ethnicity, and Gender.” *Industrial Relations: A Journal of Economy and Society*. Volume 51. Pg 179-212

trucking and hauling is devalued from an economic standpoint, it certainly limits the ability of non-minority firms in that particular work category and therefore could lead to an argument that the program is not “narrowly tailored” as defined by the Supreme Court.

Table 35
 GDOT Disparity Study
 Subcontractor Availability by Work Class Group
 (from Master Vendor File)

GDOT WORK CLASS GROUPS	#	# ALL FIRMS	RELATIVE AVAILABILITY OF DBE FIRMS
Asphalt Concrete Paving	24	77	31.17%
Bituminous Surface Treatment	8	27	29.63%
Brick Masonry	105	180	58.33%
Clearing and Grubbing	220	443	49.66%
Drainage	57	153	37.25%
Earthwork	65	218	29.82%
Fence	16	37	43.24%
Graded Aggregate Construction	22	111	19.82%
Grassing	210	336	62.50%
Guardrail	14	32	43.75%
Highway Signs	25	57	43.86%
Miscellaneous Concrete	90	207	43.48%
Miscellaneous Erosion Control	52	128	40.63%
Pavement Markings	17	39	43.59%
Portland Cement Concrete Pvmt.	19	50	38.00%
Reinforcing Steel	15	38	39.47%
Structural Steel & Precast Concrete	84	173	48.55%
Temporary Traffic Control	23	81	28.40%
Traffic Signal Installation	38	72	52.78%
Utility Construction	165	367	44.96%
Timber Structure	1	23	4.35%
Bridge Foundation	3	13	23.08%
Poured Concrete Foundation	133	285	46.67%
Painting	162	260	62.31%
Drain Pipes	36	90	40.00%
Monitoring/Testing	1	18	5.56%
Cracks & Seals	7	20	35.00%
Milling	6	17	35.29%
Jack & Boring	6	45	13.33%
Concrete Structures	5	20	25.00%
Hauling (All)	319	525	60.76%

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A finding of overconcentration is also an indicator of prime “crowding” of DBEs in one particular area, likely by identifying it as the only area in which they can fulfill a mandatory DBE goal. Table 35 clearly demonstrates that DBEs are available to perform services in other specialty areas, so there is no need to concentrate the utilization of DBEs in this area.

The concentration of DBEs in hauling has the unintended effect of also pushing non-DBEs out of this area of work while simultaneously depriving DBEs in other areas. In Adarand, the Court was faced with a situation in which federal law, under the Surface Transportation and Uniform Relocation Assistance Act of 1987, called for the use of a “subcontractor compensation clause” which read, in pertinent part:

“Monetary compensation is offered for awarding subcontracts to small business concerns owned and controlled by socially and economically disadvantaged individuals.”

Adarand’s General Manager said in a deposition that his company bid on every guardrail project in Colorado. Adarand argued that the use of the Subcontractor Compensation Clause caused prime contractors to reject its bids in favor of DBEs in order to obtain compensation. The Supreme Court in this case ruled that federal programs which implicated race were subject to strict scrutiny, which means the government had to show a compelling interest in remedying discrimination or the present effects of past discrimination and that the means chosen have to be narrowly tailored. The federal regulation previously referenced, 49 CFR Part 26.33 is designed to ensure narrow tailoring as required by the court.

GSPC finds, based upon both statistical and anecdotal evidence, that there is an overconcentration of DBE utilization in hauling subcontracting, even though there is a substantial availability of DBE firms in other specialty trade areas that could be used in subcontracting. GSPC further finds that such overconcentration unduly burdens the opportunity of non-DBE firms to participate in this type of work.

VI. STATE FUNDED CONTRACTS

A. Introduction

Generally, GDOT uses federal funds to build roads and uses state funds to maintain roads. Any project that uses federal funds is subject to the federally mandated DBE Program. However, there has been no formal MWBE or DBE program for state funded contracts. The purpose of this portion of the disparity analysis is to examine the extent of participation of minority and woman owned firms in contracts funded by the State of Georgia during the Study Period. GSPC will determine under the Crosby standards whether there can be any inference of discrimination (past or present) that would support extending either race or gender-neutral or race or gender-conscious remedial programs to state funded contracts.

GSPC conducted a separate disparity analysis of Georgia state funded contracts using data gathered from Local Maintenance & Improvement Grants (“LMIG”).⁵ The LMIG Program was established in 2009 as the successor to the Local Assistance Road Program (“LARP”). Local governing authorities throughout Georgia apply to GDOT for LMIG grants each year that can only be used on improvements for roads and bridges that are within the county, city, or state right of way. The allocation of the grants is determined by a formula using population and centerline miles within that local area as compared with the total statewide centerline road miles and total statewide population. Further, the local governing authority must submit a project list with the costs of each project and obtain matching funds of 10% (if the region passed the Transportation Investment Act (“TIA”) from sales and use tax or 30% for all other locations). Once funds are distributed to the local governing authorities, they must substantially complete the project within three (3) years.⁶ For the Study year, 2012, GDOT hired the contractors that performed services on LMIG projects, but in Study years 2013 and 2014, those contracts were bid and awarded by the local governing authorities directly.

⁵ LMIG is the only state funded GDOT program where all the state funds come from GDOT.

⁶ Georgia Department of Transportation. *Local Maintenance & Improvement Grant (LMIG) Program: General Guidelines & Rules*. Revised 19 June 2014.

<http://www.dot.ga.gov/PartnerSmart/Local/LMIGReportsForms/Guidelines-rules.pdf>

LMIG funding can only be used for the following types of projects or activities:

- Preliminary engineering (including engineering work for R/W plans and Utility plans)
- Construction supervision & inspection
- Utility Adjustments or replacement
- Patching, leveling and resurfacing a paved roadway
- Grading, Drainage, Base and Paving existing or new roads
- Replacing storm drain pipe or culverts
- Intersection improvements
- Turn lanes
- Bridge repair or replacement
- Sidewalk adjacent (within right of way) to a public roadway or street
- Roadway Signs, striping, guardrail installation
- Signal installation or improvement
- Aggregate Surface Course for dirt road maintenance

LMIG funding cannot be used for:

- Right of Way acquisition for a county or city road
- Street Lighting
- Beautification & Streetscapes
- Walking trails and tracks
- Landscaping
- Administrative Services⁷

⁷ Ibid.

During the Study Period, there were 595 unique local governments that received LMIG dollars. GSPC selected 126 random grantees from the seven (7) districts weighted by the amount of dollars spent in each region. Each of the 126 grantees was sent a request for data related to their awardees, bidders, and subcontractors (if known). The correspondence is attached hereto as Appendix F, along with the details of the survey responses. However, it can be reported here that 77.42% of the local governmental authorities that were sent data requests (and were not returned for wrong addresses) responded. Responses came from 58.87% with data about competitive contracts, 14.52% responded that they either self-performed the work with their own staff or the work was performed by another local government.

B. LMIG Prime Utilization

To conduct the utilization analysis of LMIG funded projects, GSPC included the full amount of the project reported by the local governmental authority for use of private contractors. In addition, since the only engineering permitted for LMIG funded projects is preliminary engineering and respondents did not separate out these tasks, they have all been included together with construction activities.

Overall, GSPC's analysis included 75 unique firms that were awarded \$148,458,808 in total project awards during the LMIG grant years of 2012-2014. Of those amounts, MWBE/DBE firms accounted for 12% of the firms utilized and 1.86% of the dollars awarded as seen in Tables 36 and 37 below.

Table 36
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga

By Number of Firms (from Sample) FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	1	3.03%	1	3.03%	0	0.00%
2013	0	0.00%	0	0.00%	2	3.85%	3	5.77%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	2	2.67%	3	4.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	2	6.06%	1	3.03%	3	9.09%	30	90.91%	33	100.00%
2013	5	9.62%	3	5.77%	8	15.38%	44	84.62%	52	100.00%
2014	0	0.00%	1	2.86%	1	2.86%	34	97.14%	35	100.00%
TOTAL*	5	6.67%	4	5.33%	9	12.00%	66	88.00%	75	100.00%

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Table 37
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga

By Award Dollars (from Sample) FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$117,600	0.15%	\$213,018	0.28%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$357,950	0.74%	\$383,166	0.79%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$475,550	0.32%	\$596,184	0.40%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$330,618	0.43%	\$1,071,124	1.40%	\$1,401,742	1.84%	\$74,913,757	98.16%	\$76,315,499	100.00%
2013	\$741,116	1.53%	\$558,934	1.15%	\$1,300,050	2.68%	\$47,198,520	97.32%	\$48,498,570	100.00%
2014	\$0	0.00%	\$65,950	0.28%	\$65,950	0.28%	\$23,578,789	99.72%	\$23,644,739	100.00%
TOTAL*	\$1,071,734	0.72%	\$1,696,008	1.14%	\$2,767,742	1.86%	\$145,691,066	98.14%	\$148,458,808	100.00%

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GSPC did a breakdown of the utilization of MWBE/DBE firms by each of the seven (7) GDOT districts⁸. The summary of the seven districts is as follows, with the detailed tables in Appendix G.

Table 38
 GDOT Disparity Study
 LMIG MWBE Utilization by District FY2012-2014

District #	% of Unique MWBE Firms	% of MWBE Awards
1	6.90%	2.30%
2	10.00%	0.91%
3	0.00%	0.00%
4	0.00%	0.00%
5	9.09%	0.85%
6	30.00%	9.64%
7	30.77%	1.71%
All Districts Combined	12.00%	1.86%

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C. LMIG Subcontractor Utilization

With few exceptions, the local governmental authorities do not track subcontractor utilization on LMIG funded projects. Therefore, GSPC sent out a Prime Vendor Questionnaire to all of the prime contractors identified by the local governmental authorities to request information about their subcontractors and to verify the data provided by the local governmental authority about the prime contractor. A copy of the request to prime subcontractors is attached as Appendix H.

Of the 80 firms that were sent questionnaires (and were not returned for wrong addresses), 13 firms responded, which is a response rate of 16.25%. This resulted in data on 23 projects which was not enough to disaggregate the data by districts or years, so the data is presented in total. GSPC found that, of the firms that responded, 39% of them reported no subcontracting. Of the remaining 61% reporting subcontractors, Tables 39 and 40 show the

⁸ The local government is located in the district with their prime contractor located anywhere within the Study's Relevant Geographic Market of the State of Georgia

utilization. Black American and woman owned firms were the only MWBEs to receive subcontracting awards, which accounted for 2.66% of the subcontracting award dollars.

Table 39
 GDOT Disparity Study
 LMIG Subcontractor Utilization
 All Districts
 (From Prime Vendor Questionnaire)
 Number of Firms FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	#	%	#	%	#	%	#	%	#	%
TOTAL*	0	0.00%	0	0.00%	1	4.00%	0	0.00%	0	0.00%
*TOTAL represents the number of unique firms during the Study Period										
FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
TOTAL*	1	4.00%	2	8.00%	3	12.00%	23	88.00%	25	100.00%

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Table 40
 GDOT Disparity Study
 LMIG Subcontractor Utilization
 All Districts
 (From Prime Vendor Questionnaire)
 Award Dollars FY2012-2014

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
TOTAL*	\$0	0.00%	\$0	0.00%	\$7,770	0.83%	\$0	0.00%	\$0	0.00%
FY	Total MBE		Woman		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
TOTAL*	\$7,770	0.83%	\$17,094	1.84%	\$24,794	2.66%	\$906,151	97.34%	\$930,945	100.00%

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D. Availability

GSPC utilized the GDOT Construction Subcontractor Availability estimates contained in Table 12 above to compare to the LMIG Prime and Subcontractor Utilization. This is because GSPC concluded that the average GDOT Subcontractor award using federal dollars was comparable or more than the average LMIG Prime and Subcontractor award; therefore, the firms included in the GDOT Subcontractor availability estimates would have the capacity to perform as a LMIG Prime or Subcontractor.

There were 3,504 GDOT Construction Subcontractor awards (including those outside of the Relevant Market) during the Study Period, which totaled \$747,183,158. This means that the average award was approximately \$213,237. In comparison, there were 3,058 LMIG projects that were state funded during the Study Period for a total of \$339,735,260, with an average project of \$111,097. Out of that number, only 133 projects were \$500,000 or over, 292 were \$200,000 or over, and the remaining 2,633 were between \$60 and \$199,999.

E. Disparity Indices

To assess the existence and extent of disparity in state funded LMIG contracts, GSPC compared the MWBE utilization percentages to the percentage of the total pool of MWBE firms in the Relevant Market (State of Georgia) and in each of the seven (7) GDOT districts. The simple disparity derived as a result of employing this approach is measured by use of a Disparity Index (“DI”). A detailed explanation and definition of disparity indices is in Section IV(H) above.

Overall, in Construction Prime awards, there is statistically significant and substantial underutilization of all MWBE firms in each of the seven (7) GDOT districts, and in total throughout all the districts. Table 41 below shows the statewide disparity in prime LMIG contracting, with 1.86% utilization of all MWBEs compared to 47.36% availability.

In the districts, the only exceptions to underutilization of each and all MWBE groups was an overutilization of Hispanic owned firms in District 2 during FY2013, but still resulting in underutilization of Hispanic owned firms in total during the Study Period; and an overutilization of woman owned firms in District 6 during FY2013, but resulting in underutilization (but not statistically significant) in total during the Study Period. In all districts, Non-MWBEs were overutilized in every year of the Study Period. The disparity indices for each individual district are contained in Appendix I hereto.

Table 41
LMIG CONSTRUCTION PRIME DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION BY DOLLARS % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.15%	27.98%	0.01	Underutilized
Hispanic American	0.28%	4.08%	0.07	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.43%	35.76%	0.01	Underutilized
Women	1.40%	11.18%	0.13	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	1.84%	47.36%	0.04	Underutilized
Non-MWBE/DBE	98.16%	52.64%	1.86	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.74%	27.98%	0.03	Underutilized
Hispanic American	0.79%	4.08%	0.19	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	1.53%	35.76%	0.04	Underutilized
Women	1.15%	11.18%	0.10	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	2.68%	47.36%	0.06	Underutilized
Non-MWBE/DBE	97.32%	52.64%	1.85	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.28%	11.18%	0.03	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.28%	47.36%	0.01	Underutilized
Non-MWBE/DBE	99.72%	52.64%	1.89	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.32%	27.98%	0.01	Underutilized
Hispanic American	0.40%	4.08%	0.10	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.72%	35.76%	0.02	Underutilized
Women	1.14%	11.18%	0.10	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	1.86%	47.36%	0.04	Underutilized
Non-MWBE/DBE	98.14%	52.64%	1.86	Overutilized
Griffin & Strong, P.C. 2015				

In LMIG subcontracting, MWBEs accounted for 12.00% utilization as compared to 47.36% availability. All individual MWBE groups were underutilized while Non-MWBEs were overutilized.

Table 42
LMIG CONSTRUCTION SUBCONTRACTOR DISPARITY

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION BY DOLLARS% (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	4.00%	27.98%	0.14	Underutilized
Hispanic	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	4.00%	35.76%	0.11	Underutilized
Woman	8.00%	11.18%	0.72	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	12.00%	47.36%	0.25	Underutilized
Non-MWBE/DBE	88.00%	52.64%	1.67	Overutilized

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F. Summary

State funded LMIG contracting is administered by each of the 595 grantees across the state. Because the contracting is not uniform and some of the work is contracted to other nearby local governmental authorities, it is nearly impossible to ascertain the methods used to procure the contracts. Therefore, our focus is only on the results in which MWBE firms are statistically significantly underutilized.

VII. PRIVATE SECTOR ANALYSIS

A. Introduction

In this section, GSPC considers the market entry, public contracting and subcontracting outcomes and experiences of minority or woman owned relative to non-minority or non-woman owned firms in the relevant market area for GDOT. Our analysis utilizes data from business firms that are either willing, able, or have actually contracted/subcontracted with GDOT, with the aim of determining if the likelihood of successful contracting/subcontracting with GDOT is conditioned in a statistically significant manner on the race, ethnicity, or gender status of firm

The PRIVATE SECTOR ANALYSIS seeks to answer the query: Has GDOT been a passive participant in the continuation of private discriminatory practices in the State of Georgia?

owners. Such an analysis is a useful and important complement to estimating simple disparity indexes, which assume all things important for success and failure are equal among business firms competing for public contracts, and are based on unconditional

moments—statistics that do not necessarily inform causality or the source of differences across such statistics. As simple disparity indexes do not condition on possible confounders of new firm entry, and success and failure in public sector contracting/subcontracting by business firms, they are only suggestive of disparate treatment, and their implied likelihood of success/failure could be biased.

Our analysis posits that there are possible confounders of success and failure in the entry of new firms in the market and public sector contracting/subcontracting, that are sources of heterogeneity among business firms that lead to differences in success and failure. Failure to condition on the sources of heterogeneity in success/failure in new firm formation and public sector contracting/subcontracting outcomes can leave simple disparity indexes devoid of substantive policy implications. Disparate outcomes could possibly reflect in part or in whole outcomes driven by disparate business firm characteristics that matter fundamentally for success/failure in the formation of new firms and public sector contracting/subcontracting outcomes. If the race, ethnicity, or gender status of a firm owner conditions lower likelihoods of

success/failure, this would be suggestive of these salient characteristics causing the observed disparities .

B. Data

Our analysis is based on survey data compiled by GSPC, and constitutes a two-stage cluster sample of firms from the construction and professional services availability lists compiled by GSPC. Clusters were constructed on the basis of assigned categories for a business enterprise’s primary line of business. The GSPC survey categorized four primary lines of business: Construction, Professional Services, General Services, and Goods & Materials. Given a cost-based constraint of a total sample of 333, was received from an online request for responses to all firms in the GSPC construction and Professional services availability data files and for which GDOT’s data files had email addresses, and the cluster share of total observations was used to approximate probability weights for the individual observations of businesses in the cluster.

The GSPC survey was a 53 item questionnaire, that captured data on firm and individual owner characteristics. The interest in this section is in the extent to which a business firm owner’s race, ethnicity, and gender status conditions success/failure in GDOT public contracting opportunities. As such, our use of the data in the GSPC survey is limited to the measured covariates that in our view are best suited for evaluating the extent to which a business firm owner’s race, ethnicity and gender status are a possible cause of public contracting disparities. Table 43 reports the description, mean and standard deviation of the covariates from the GSPC survey that are relevant to the analysis.

Table 43
GDOT Disparity Study
Covariate Summary

Covariate	Description	Mean	Standard Deviation	Number of Observations
Number of Prime Contractor Bids Submitted to GDOT: 2012-2014	Categorical Variable: 1 = Zero bids 2 = 1 - 10 bids 3 = 11 - 25 bids 4 = 26 - 50 bids 5 = 51 - 100 bids 6 = More than 100 bids	1.67	1.17	319
Firm Entered Between 2012-2014	<i>Binary Variable: 1 = Yes</i>	0.153	0.361	333
Served as a Prime Contractor on a GDOT Project 2012-2014	<i>Binary Variable: 1 = Yes</i>	0.120	0.326	333
Served as a Subcontractor Contractor on a GDOT Project 2012-2014	<i>Binary Variable: 1 = Yes</i>	0.327	0.469	333
Pre-Qualification Requirements are a Barrier to Bids and Securing Contracts from GDOT	<i>Binary Variable: 1= Yes</i>	0.333	0.472	333
Performance bond requirements are a Barrier to Bids and securing contracts from GDOT	<i>Binary Variable: 1 = Yes</i>	0.156	0.363	333
Bid bond Are a barrier to Submitting Bids to GDOT Securing Contracts from GDOT	<i>Binary Variable: 1 = Yes</i>	0.162	0.369	333
Financing is a barrier to bids to GDOT and securing contracts from GDOT	<i>Binary Variable: 1 = Yes</i>	0.228	0.420	333
Informal networks are a barrier to submitting bids to GDOT and securing contracts from GDOT	<i>Binary Variable: 1 = Yes</i>	0.216	0.412	333
Selection process is a barrier to submitting bids to GDOT and securing contracts from GDOT	<i>Binary Variable: 1 = Yes</i>	0.391	0.489	333
Majority firm owner is Black American	<i>Binary Variable: 1 = Yes</i>	0.483	0.501	333
Majority firm owner is Subcontinent Asian	<i>Binary Variable: 1 = Yes</i>	0.027	0.162	333
Majority firm owner is Asian or Pacific Islander	<i>Binary Variable: 1 = Yes</i>	0.024	0.153	333
Majority firm owner is Hispanic	<i>Binary Variable: 1 = Yes</i>	0.021	0.144	333
Majority firm owner is Native American or Alaskan	<i>Binary Variable: 1 = Yes</i>	0.003	0.055	333
Majority firm owner is Bi/Multi-Racial	<i>Binary Variable: 1 = Yes</i>	0.006	0.077	333
Majority firm owner is Other Race	<i>Binary Variable: 1 = Yes</i>	0.036	0.187	333
Majority firm owner is a Woman	<i>Binary Variable: 1 = Yes</i>	0.414	0.493	333
Firm is a Certified Woman or Minority Enterprise	<i>Binary Variable: 1 = Yes</i>	0.308	0.463	269
Firm is Certified with GDOT	<i>Binary Variable: 1 = Yes</i>	0.197	0.398	269
Firm owner has more than twenty years of experience	<i>Binary Variable: 1 = Yes</i>	0.691	0.463	269
Firm has more than ten employees	<i>Binary Variable: 1 = Yes</i>	0.498	0.501	269
Firm owner has a baccalaureate degree	<i>Binary Variable: 1 = Yes</i>	0.401	0.491	269

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C. **Statistical and Econometric Framework**

Methodologically, the GSPC statistical and econometric analysis of public contracting disparities at GDOT, conditioned on the race, ethnicity, and gender status of business firm owners utilizes a Categorical Regression Model (CRM) framework.⁹ As the covariates measuring public contracting activity and success in Table 43 are categorical responses to questionnaire items (e.g. public contracting bid ranges, yes, no), a CRM views the categories as latent variables with likelihood thresholds that are conditioned on other covariates. In the case where there are more than two categories and the succession of categories has a natural ranking, a CRM permits a determination as to how particular covariates condition the likelihood/probability of being in the highest valued category relative to the lower-valued categories. In the case of just two categorical but not naturally ordered categories, the CRM reduces to a Binary Regression Model (BRM).¹⁰

For all the CRM/BRM parameter estimates below, we report them as “Odds Ratios,” which measure the ratio of the probability of success and the probability of failure relative to the omitted group in all our specifications—non-minority owned firms. When the odds ratio is greater (less) than unity for a parameter, the measured characteristic has the effect of increasing (decreasing) the likelihood of the outcome under consideration relative to nonminority owned firms. We determine the statistical significance of the outcomes, i.e., overutilization or underutilization, on the basis of the estimated coefficient’s probability value—or P-value. The P-

⁹ See: Richard D. McKelvey and William Zavoina. 1975. “A Statistical Model for the Analysis of Ordinal Level Dependent Variables,” *Journal of Mathematical Sociology*, 4: pp. 103 - 120.

¹⁰ More formally, if the latent realization of an outcome is Y_i^* , ranging from $-\infty$ to ∞ , a structural and conditional specification for Y_i^* is $Y_i^* = \mathbf{X}_i \boldsymbol{\beta} + \varepsilon_i$, where \mathbf{X} is a vector of exogenous covariates, $\boldsymbol{\beta}$ is a vector of coefficients measuring the effects of particular covariates on the realization of Y_i^* , and ε_i is a random error. For categorical and ordinal outcomes $m = 1 \dots J$, $Y_i = m$ if $\tau_{m-1} \leq Y_i^* < \tau_m$, where the τ_i are thresholds for the particular realizations of $Y_i^* = m$. Conditional on \mathbf{X} the likelihood/probability that Y_i takes on a particular realization is $Pr(Y_i = m | \mathbf{X}) = \Phi(\tau_m - \mathbf{X}\boldsymbol{\beta}) - \Phi(\tau_{m-1} - \mathbf{X}\boldsymbol{\beta})$, where Φ is the cumulative density function of ε .

value is the probability of obtaining an estimate of the coefficient by chance alone, assuming that the null hypothesis of the variable having a zero effect is true. As a convention, GSPC rejects the null hypothesis of no effect, and concludes the estimated coefficient is statistically significant as long as the P -value $\leq .10$, which we highlight in bold for all parameter estimates.

As nonresponse probabilities are unknown, we estimate all parameters from our CRM/BRM specifications with bootstrapped standard errors to minimize/eliminate the bias that can result from the sample being unrepresentative of the population of interest due to nonresponse.¹¹ To the extent that bootstrapped standard errors enable consistent estimation of parameters given misspecification that could result from the omission of sampling and nonresponse weights, CRM/BRM parameter estimates with bootstrapped standard error effects can mitigate/eliminate the bias caused by a sample that may not be fully representative of the population of interest.¹²

D. The Relative New Firm Entry Propensities of Minority Firm Owners in the GDOT Market Area

We first examine the effects of minority ownership status on an individual's participation in the private sector as a relatively new business firm in the State of Georgia. To the extent that new minority or woman owned firms have a lower likelihood of market entry relative to non-minority or non-woman owned firms, it would suggest that discrimination against minority or woman owned firms is sufficiently present to warrant consideration of public sector legal remedies, such as affirmative action and minority set-aside contracting, that would improve the prospects for the entry of new minority or woman owned firms in the market. Such a perspective on discrimination suggests that entry barriers impede the formation of minority or woman owned firms. The counterfactual is that in the absence of such entry barriers, manifested perhaps as discrimination against minority or woman owned firms in access to capital, credit, etc., minority

¹¹ See: Bradley Efron and Robert J. Tibshirani. 1993. *An Introduction to the Bootstrap*, Chapman and Hall, NY.

¹² See: Silvia Goncalves and Halbert White. 2005. "Bootstrap Standard Error Estimates For Linear Regression," *Journal of the American Statistical Association*, 100: pp. 970 -979., and Stanislav Kolenikov. 2010. "Resampling Variance Estimation for Complex Survey Data," *Stata Journal*, 10: pp. 165 – 199.

or woman owned firms would be able to enter the market, and compete with non-minority or non-woman owned firms in bidding and securing public contracts from government agencies.

If minority or woman owned firms are relatively more likely to be new entrants in a market, this would suggest that while they may have overcome entry barriers due perhaps to discrimination, they are possibly in position to compete for public contracting opportunities. As relatively new entrants, the long-term survival of minority or woman owned firms could be enhanced by securing public contracting opportunities, as such opportunities could be the source of managerial/employee experiences that enable minority or woman owned firms to be just as competitive as non-minority owned firms in competing for and securing public contracts.

To determine how minority status conditions the formation of new businesses in the State of Georgia, Table 44 reports the estimated parameters of a Logit BRM with a binary variable for a firm establishing itself between the years 2012-2014 as the dependent variable, or within the five previous years of our analysis. As standard control covariates, we include the race/ethnicity of the firm's majority owner, and whether or not the owner has a baccalaureate degree. As a goodness-of-fit measure, Pseudo- R^2 is reported.¹³

With respect to the minority status of the firm, the estimated coefficient is statistically significant and greater than one only for firms owned by Black Americans. This suggests that firms owned by Black Americans are more likely to be new entrants to the market relative to non-minority or non-woman owned firms, a result that does not appear to be the case for the other minority or woman owned firms in the State of Georgia. To the extent that market experience is an important determinant of success in bidding for and securing public contracts, the relatively higher probability of being a new firm for those owned by Black Americans may be of public contracting policy consequence. If successful public contract bidding follows from having market tenure that translates into acquiring significant knowledge/experience about bidding and

¹³ Pseudo- R^2 is not to be interpreted as the R^2 in standard Ordinary Least Squares (OLS) estimation, as OLS proceeds by minimizing variance to get parameter estimates. Probit specifications are likelihood-based, and higher values of Pseudo- R^2 indicate that the specified model is an increasingly better alternative to a null model with only an intercept.

securing public contracts, the receipt of public contracts by relatively new minority or woman owned firms could be a useful substitute for market tenure, and expedite the closure of any public contracting disparities between minority or woman owned and non-minority or non-woman owned firms in the future.

Table 44
 Logit Parameter Estimates (Odds Ratio):
 Business Enterprise Ownership Status and New Firm Entry
 In GDOT Market Area

Regressand: Firm entered market: 2010-2015 (binary)	Coefficient	Standard Error	P-value
Regressors:			
Firm owner has a baccalaureate degree	0.759	0.255	0.4130
Majority firm owner is Black American	3.22	1.23	0.0021
Majority firm owner is Subcontinent Asian	3.03	20.38	0.8692
Majority firm owner is Asian or Pacific Islander	1.64	12.58	0.9480
Majority firm owner is Hispanic	1.98	14.84	0.9282
Majority firm owner is Native American or Alaskan	0.0001	0.00001	0.00001
Majority firm owner is Bi/Multi-Racial	0.0001	0.00001	0.0001
Majority firm owner is Other Race	0.0001	0.00001	0.00001
Majority firm owner is a Woman	0.144	0.4915	0.2857
Number of observations	333		
<i>Pseudo - R²</i>	0.067		

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E. Are Minority or Woman Wwned Firms Less Likely to Compete for Contracts in the State of Georgia?

One reason disparities in public contracting outcomes between minority or woman owned and non-minority or non-woman owned firms could exist is that, relative to non-minority or non-woman owned businesses, minority or woman owned firms are less likely to submit bids for public contracts. To determine if this is the case with GDOT, Table 45 reports Ordinal Logit parameter estimates of a CRM with the number of prime contracting bids submitted by a firm to GDOT between 2012-2014 as the dependent variable. As standard control covariates we include, in addition to whether the firm owner has a baccalaureate degree, measures for the number of employees the business employs, and the number of years of experience the firm owner has.

The parameter estimates in Table 45 suggest that relative to non-minority owned firms, only those owned by Native Americans/Alaskans and women submit fewer prime bid submissions, as the estimated odds ratio is statistically significant and less than one in these instances. To the extent that public contract success is proportional to the number of submissions, this suggests that firms owned by Native Americans/Alaskans and women could have public contract success disparities relative to non-minority or non-woman owned firms as a consequence of submitting fewer bids for public contracts with GDOT.

Table 45
 Ordinal Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status and Prime Bid Submissions
 In GDOT Market Area

Regressand: Number of contractor bids submitted: 2012-2014	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.801	0.4596	0.0214
Firm has more than ten employees	1.751	0.4103	0.0172
Firm owner has a baccalaureate degree	0.8544	0.1994	0.5005
Majority firm owner is Black American	0.8573	0.2735	0.6292
Majority firm owner is Subcontinent Asian	2.05	1.48	0.3194
Majority firm owner is Asian or Pacific Islander	0.5037	2.69	0.8988
Majority firm owner is Hispanic	0.2286	1.44	0.8153
Majority firm owner is Native American or Alaskan	0.0001	0.0001	0.00001
Majority firm owner is Bi/Multi-Racial	2.05	14.85	0.9212
Majority firm owner is Other Race	0.2864	1.83	0.8453
Majority firm owner is a Woman	0.6371	0.1407	0.0416
Firm is certified with the GDOT	1.12	0.2854	0.6481
Number of observations	317		
<i>Pseudo - R²</i>	0.041		

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F. Minority or Woman Owned Firms and Prime Contracting with GDOT

To the extent that frequency of public contract bids reflects past experience as a prime contractor, minority or woman owned firms can potentially become frequent prime contract bidders by actually gaining experience as successful prime contractors. As such, the low-frequency of prime bids by minority or woman owned firms need not be a concern if they are actually gaining valuable experience as prime contractors that will translate into frequent contract bids and success later. To explore if this is the case with GDOT, Table 46 reports Logit BRM parameter estimates where the dependent variable is whether or not a firm served as a prime contractor with GDOT between 2012-2014.

The parameter estimates in Table 46 suggest that relative to non-minority owned firms, those owned by Black Americans, Asian/Pacific Islanders, Native Americans/Alaskans, and women, are less likely to have served as prime contractors, as the estimated odds ratio is statistically significant and less than one in these instances. Non-minority other-race owned firms are more likely, relative to non-minority or non-woman owned firms, to have served as prime contractors with GDOT. To the extent that public contract success is proportional to prior experience as a prime contractor, the parameter estimates suggest that any public contract success disparities of firms owned by Black Americans, Asian/Pacific Islanders, Native Americans/Alaskans, and women reflect past constraints on public contract success, if current public contracting success is correlated with the experience gained from past success.

Table 46
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status and Prime Contracting

Regressand: Served as a prime contractor on a GDOT project: 2012-2014	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.01	0.8813	0.9885
Firm has more than ten employees	4.21	3.24	0.0627
Firm owner has a baccalaureate degree	1.08	0.5110	0.8662
Majority firm owner is Black American	0.0817	0.0745	0.0068
Majority firm owner is Subcontinent Asian	1.58	10.26	0.9446
Majority firm owner is Asian or Pacific Islander	0.0001	0.0001	0.0001
Majority firm owner is Hispanic	0.4428	3.50	0.9181
Majority firm owner is Native American or Alaskan	0.0001	0.0001	0.0001
Majority firm owner is Bi/Multi-Racial	12.64	139.45	0.8184
Majority firm owner is Other Race	3.73	2.43	0.0431
Majority firm owner is a Woman	0.3411	0.2036	0.0725
Firm is certified with the GDOT	2.72	2.16	0.2093
Number of observations	333		
<i>Pseudo - R²</i>	0.259		

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G. Minority or Woman Owned Firms and Subcontracting with GDOT

To the extent that submitting and winning public contract bids requires experience, which can also be gained through subcontracting with lead prime firms, minority or woman owned firms can potentially become more frequent and successful prime contract bidders by acquiring experience as subcontractors. As such, the low-frequency of prime bid submission and lower likelihood of being a prime contractor by minority or woman owned firms need not be concerns if they are gaining valuable subcontracting experience that will translate into high frequency contract bids and success later. To explore if this is the case with GDOT, Table 47 reports Logit BRM parameter estimates where the dependent variable is whether or not a firm served as a subcontractor for GDOT between 2012-2014.

The parameter estimates in Table 47 suggest that relative to non-minority owned firms, those owned by Black Americans and Bi/Multi-Racials are less likely to have served as subcontractors, as the estimated odds ratio is statistically significant and less than one in these instances. Firms owned by Native Americans/Alaskans are more likely, relative to non-minority owned firms, to have served as subcontractors. To the extent that public contract success is proportional to prior experience as a subcontractor, this suggests that any public contract success disparities of firms owned by Black Americans, , and Bi/Multi-Racials reflect constraints on access to subcontracting opportunities, as success with respect to securing prime contracts is plausibly correlated with the experience gained from performing as a subcontractor on public contracts.

Table 47
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status and Subcontracting
 with GDOT

Regressand: Served as subcontractor on a GDOT Project: 2012-2014	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	0.7529	0.2221	0.3369
Firm has more than ten employees	2.01	0.6944	0.0441
Firm owner has a baccalaureate degree	0.9087	0.2472	0.7258
Majority firm owner is Black American	0.3827	0.1207	0.0026
Majority firm owner is Subcontinent Asian	0.6421	2.67	0.9152
Majority firm owner is Asian or Pacific Islander	0.5203	2.71	0.9001
Majority firm owner is Hispanic	0.4993	2.65	0.8961
Majority firm owner is Native American or Alaskan	1731	1603	0.0001
Majority firm owner is Bi/Multi-Racial	0.0001	0.0001	0.0001
Majority firm owner is Other Race	0.6112	1.73	0.8628
Majority firm owner is a Woman	1.25	0.3585	0.8622
Firm is certified with the GDOT	1.17	0.4301	0.6709
Number of observations	333		
<i>Pseudo - R²</i>	0.068		

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H. Do Minority or Woman Owned Firms Face Additional Barriers in Submitting Bids and Securing Contracts with GDOT?

The differential success in public contracting/subcontracting conditional on being a minority or woman owned firm implied by the parameter estimates reported in Tables 45-47 are suggestive of race/ethnicity alone conditioning GDOT, public contracting outcomes. Such an implication follows from the statistically significant odds ratios estimated in Tables 45-47 being sensitive to the race/ethnic status of firm owners in a manner that lowers their likelihood of success in public contracting outcomes relative to non-minority firm owners—the comparison group in all the parameter estimates.

Of course, race/ethnicity/gender alone, if at all, need not be the only barrier preventing minority or woman owned firms from realizing public contracting success likelihoods that are similar to those of non-minority or non-woman owned firms. Tables 48-52 report Logit BRM parameter estimates where the dependent variable measures the extent to which firm owners agree that there exist barriers to submitting bids and securing public contracts from GDOT with respect to: Pre-Qualification Requirements, Performance Bond Requirements, Bid Bond Requirements, Financing, and Informal Networks.

Given the statistical significance of the greater than one estimated odds-ration, the parameter estimates in Tables 48-52 suggest that relative to non-minority owned firms, among all minority or woman owned firms, those owned by Black Americans are more likely to face barriers in submitting bids and securing public contracts with GDOT as a result of Pre-Qualification Requirements, Performance Bond Requirements, Bid Bond Requirements, and Financing. For firms owned by Subcontinent Asians, the estimated odds ratio is also positive and statistically significant in the case of Informal Networks being a barrier, suggesting that relative to non-minority owned firms, firms owned by Asians-Indians have perceptions of unfair informal networks that may constrain them from submitting bids and securing public contracts with GDOT. It is plausible that public contracting success by firms is proportional to perceptions of fairness, and transparency in the public contracting process. In this context, the results in Tables 48-52 suggest that any efforts to enhance confidence in the legitimacy of the process by which bids are selected could improve public contracting outcomes for minority or woman owned firms in the GDOT market area.

A policy-relevant counterfactual is also implied by the Logit Parameter estimates in Table 51. The results suggest that in the absence of financing barriers, manifested perhaps as discrimination against black owned firms in private credit markets—a major source of financing—black owned firms would be able to compete with non-minority or non-woman owned firms in bidding and securing public contracts from GDOT. In general, that being a black owned firm increases the likelihood of financing being a barrier to securing public contracts with GDOT lends some support to the “but-for” justification for affirmative action in public procurement.¹⁴ The statistically significant and positive effect of being a black owned firm on the likelihood of financing being a barrier to securing contracts with GDOT suggests that private discrimination in the market for credit undermines their capacity to compete with other firms. This motivates a private discrimination justification for Affirmative Action in GDOT procurement policies; otherwise, GDOT is potentially a passive participant in the private discrimination against minority or woman owned firms with respect to its procurement practices.

¹⁴ See Ian Ayres and Fredrick E. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” *Columbia Law Review*, 98(7), November 1988, pp. 1577 – 1641. The “But-for” rationale for affirmative action in public procurement posits that government is a passive participant in private discrimination when it does not adjust its affirmative action goal to account for how private discrimination (e.g. in credit markets) has reduce minority firm availability. In this context, government rejecting minority or woman owned firms because of credit constraints renders government a passive participant in discrimination against minority or woman owned firms.

Table 48
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status, Pre-Qualification Requirements, and Bid Submissions

Regressand: Pre-qualification requirements are a barrier to submitting bids and securing contracts from GDOT	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.65	0.4673	0.0731
Firm has more than ten employees	0.3743	0.0992	0.0001
Firm owner has a baccalaureate degree	1.29	0.4037	0.4115
Majority firm owner is Black American	1.72	0.5513	0.0918
Majority firm owner is Subcontinent Asian	3.46	3.01	0.1535
Majority firm owner is Asian/Pacific Islander	0.2795	1.88	0.8493
Majority firm owner is Hispanic	0.4231	2.69	0.8921
Majority firm owner is Native American or Alaskan	0.0001	0.0001	0.0001
Majority firm owner is Bi/Multi-Racial	4.61	51.49	0.8917
Majority firm owner is Other Race	1.58	1.04	0.4843
Majority firm owner is a Woman	0.8453	0.2167	0.5129
Firm is Certified with GDOT	1.09	0.2728	0.7262
Number of observations	33		
<i>Pseudo - R²</i>	0.069		

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Table 49
Ordinal Logit Parameter Estimates (Odds ratio):
Minority Ownership Status, Performance Bond Requirements, and Bid Submissions

Regressand: Performance bond requirements are a barrier to submitting bids and securing contracts from the GDOT	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.44	0.4792	0.2774
Firm has more than ten employees	0.4856	0.2230	0.1161
Firm owner has a baccalaureate degree	1.31	0.5271	0.5042
Majority firm owner is Black American	8.65	5.61	0.0013
Majority firm owner is Subcontinent Asian	0.0001	0.0001	0.0001
Majority firm owner is Asian or Pacific Islander	0.0001	0.0001	0.0001
Majority firm owner is Hispanic	0.0001	0.0001	0.0001
Majority firm owner is Native American or Alaskan	161.09	158.62	0.0001
Majority firm owner is Bi/Multi-Racial	0.00001	0.00001	0.00001
Majority firm owner is Other Race	1.99	14.72	0.9262
Majority firm owner is a Woman	1.09	0.3774	0.7981
Firm is certified with the GDOT	0.4397	0.1450	0.0137
Number of observations	333		
<i>Pseudo - R²</i>	0.173		

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Table 50
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status, Bid Bond Requirements, and Bid Submissions
 In GDOT Market Area

Regressand: Bid bond requirements are a barrier to submitting bids and securing contracts from the GDOT	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.16	.5751	.7648
Firm has more than ten employees	0.3624	0.1867	0.0495
Firm owner has a baccalaureate degree	1.36	0.5194	0.4248
Majority firm owner is Black American	6.09	1.97	0.0001
Majority firm owner is Subcontinent Asian	0.0001	0.0001	0.0001
Majority firm owner is Asian or Pacific Islander	1.54	11.65	0.9553
Majority firm owner is Hispanic	2.97	12.013	0.8702
Majority firm owner is Native American or Alaskan	600.49	578.87	0.0001
Majority firm owner is Bi/Multi-Racial	0.0001	0.0001	0.0001
Majority firm owner is Other Race	1.41	10.57	0.9635
Majority firm owner is a Woman	0.8450	0.3223	0.6598
Firm is certified with the GDOT	0.3244	0.1155	0.0023
Number of observations	333		
<i>Pseudo - R²</i>	0.155		

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Table 51
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status, Financing Requirements, and Bid Submissions

Regressand: Financing is a barrier to submitting bids and securing contracts from the GDOT	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	0.7929	0.3316	0.5798
Firm has more than ten employees	0.3585	0.1819	0.0432
Firm owner has a baccalaureate degree	0.7823	0.2882	0.5058
Majority firm owner is Black American	20.68	12.70	0.0001
Majority firm owner is Subcontinent Asian	0.0001	0.0001	0.0001
Majority firm owner is Asian or Pacific Islander	23.11	127.02	0.5683
Majority firm owner is Hispanic	0.0001	0.0001	0.0001
Majority firm owner is Native American or Alaskan	0.0001	0.0001	0.0001
Majority firm owner is Bi/Multi-Racial	18.91	271.80	0.8386
Majority firm owner is Other Race	15.38	60.89	0.4903
Majority firm owner is a Woman	1.26	0.4434	0.5051
Firm is certified with the GDOT	0.3138	0.1134	0.0013
Number of observations	333		
<i>Pseudo - R²</i>	0.273		

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Table 52
 Logit Parameter Estimates (Odds ratio):
 Minority Ownership Status, Informal Networks, and Bid Submissions

Regressand: Informal networks are a barrier to submitting bids and securing contracts from the GDOT	Odds Ratio	Standard Error	P-value
Regressors:			
Firm owner has more than twenty years of experience	1.34	0.4402	0.3786
Firm has more than ten employees	0.9056	0.2676	0.7379
Firm owner has a baccalaureate degree	0.8209	0.2412	0.5025
Majority firm owner is Black American	1.65	0.7508	0.2738
Majority firm owner is Subcontinent Asian	4.01	2.76	0.0448
Majority firm owner is Asian or Pacific Islander	3.01	14.82	0.8242
Majority firm owner is Hispanic	0.00001	0.00001	0.00001
Majority firm owner is Native American or Alaskan	0.00001	0.00001	0.00001
Majority Firm Owner Is Bi/Multi-Racial	0.0001	0.0001	0.0001
Majority firm owner is Other Race	1.66	6.39	0.8968
Majority firm owner is a Woman	0.8189	0.2464	0.5071
Firm is certified with the GDOT	1.63	0.5606	0.1584
Number of observations	333		
<i>Pseudo - R²</i>	0.051		

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I. Summary

GSPC’s analysis of disparities in public contracting and subcontracting outcomes at GDOT aimed to provide some policy relevant insight to observed unconditional disparity indexes. Our analysis explicitly links a business firm owner’s race/ethnicity/gender to public contracting and related outcomes in the GDOT market area. Our focus on minority firm owners’ success likelihoods relative to non-minority firm owners in entering the market as new business owners, realizing public contracting and subcontracting opportunities, provides a framework to rationalize observed simple disparity indexes. The results reported in Table 44-52 all suggest that in the GDOT market area, race/ethnicity/gender matter for public contracting outcomes. Indeed we find that in general, a firm owner’s race, ethnicity, and gender all have statistically significant effects in the GDOT market area with respect to the likelihood of securing financing, public contracting, and subcontracting opportunities relative to non-minority or non-woman owned firms. We also find that being a minority or woman owned firm increases the likelihood of having a perception that the process by which bids are selected by GDOT is not fair and transparent, which could discourage participation from minority or woman owned firms in the public contracting process—exacerbating racial/ethnic/gender disparities in public contracting outcomes for GDOT.

VIII. QUALITATIVE ANALYSIS

A. Introduction

GSPC utilizes various methods for gathering qualitative evidence for the purpose of illustrating the actual experiences of contractors and business owners in GDOT’s marketplace. The firm places a particular focus on ascertaining if there have been any perceived barriers, experiences of discrimination, or aspects of GDOT’s Disadvantaged Business Enterprise program that have been beneficial or need improvement. GSPC has conducted 60 recorded anecdotal interviews, five focus groups, three informational meetings, three public hearings, meetings and correspondence with various organizations and has been taking email comments since early 2015¹⁵. Anecdotal evidence is presented herein according to the overarching themes and most corroborated statements, heard across various types of evidence-gathering. This evidence is presented along with countervailing statements to present a picture of the perceptions and realities of business owners in the Georgia Department of Transportation’s marketplace. The conclusions and arguments presented in this chapter are not the conclusions of Griffin & Strong PC but a reporting of the statements gathered through community outreach and qualitative research.

B. Informational Meetings

GSPC held informational meetings at the beginning of the study in Atlanta, Macon, and Jesup, GA to provide project timelines, methodological information, and ways to get involved to any member of the public that was interested. At these meetings, some participants spoke after the presentation to provide their perspective on the disparity study process and the DBE program in General. At the first informational meeting in Atlanta, IM-1, a retired contractor whose interest is in GDOT expenditures, said that he expects that the study will look at the “impact of past discrimination” on present policy because, “to expect MBEs and WBEs to have x years of experience when they’ve been kept out is almost impossible” (IM-1). He went on to state that changing certification and qualification requirements, “such as previously requiring one PE

¹⁵ The names of interviewees and other participants have been withheld in the Study, but may be identified by a unique code of IM-1, IM-2, IM-3, etc. for Informational Meeting; AI-1, AI-2, AI-3, etc. for Anecdotal Interviews.

(professional engineer) to stay certified and changing it to two or three automatically impacts SBEs’ ability to do business” (IM-1). A solution to this issue of disparate impact, he argues, would be to sit down with DBEs prior to changing the requirements and “hear how it might impact them.”

Another contractor rose to speak, stating that he questions the prequalification criteria used to determine capacity and finds that there is an overconcentration of DBEs in trucking, but that GDOT needs to require primes to “open up other categories of work” to DBE firms (IM-2). This was reiterated later by an architect, IM-3, who stated that an examination of how capacity is determined might yield evidence of disparity in her industry. She finds that there seems to be “certain firms getting all the work” (IM-2). Several participants asked whether or not state-funded contracts would be included, noting that it would be “cost effective” and beneficial to include an examination of state contracts in the current study. GSPC’s contract was since amended to include state contracts.

IM-4 rose to ask if bonding would be a part of the report, to which GSPC answered that it would. He went on to state that many are unaware of Small Business Association surety bonds and that GDOT should do more outreach on this subject. The gentleman who spoke after him indicated that he had had problems getting bonding, saying that due to capacity levels, small subcontractors “can be prequalified by GDOT but can’t bond” (IM-5). This sparked a lively discussion around bonding, wherein Attorney Rodney Strong of GSPC provided information about SBA bonding.

Key Points

- Prequalification Requirements, specifically requiring two PEs in Engineering, are still an issue according to some business owners
- According to some, bonding continues to be an issue and a barrier for smaller firms
- Many business owners would like for State-Funded Contracts to be examined

C. Anecdotal Interviews

GSPC’s subcontractor, Ken Weeden & Associates, conducted 60 interviews with firms randomly selected from GDOT’s vendor lists. The interviews were conducted by telephone with firms across the state, in various demographics and work categories. Several firms felt that bonding was a barrier to participation, and others stated that project size prevents them from being able to obtain bonding and to bid on projects. As for the DBE program itself and the fairness of the bidding process, the interviewees, by and large, had quite a bit to say.

AI-V-6, a multi-racial woman firm owner, said that she does not feel that the state has a fair or equitable process. “People already know who they want. ... You don’t even get to the table.” She said that the process is not openly discriminatory, but the vendors who are chosen are “cronies, people that they [the procurement staff] like, or people who they have already used. They don’t give people who are new a chance.” Some firms, however, do not believe that purchasing agents within GDOT are the most significant barrier, but rather the DBE program itself. AI-V-5, an African-American male firm owner, agreed that the biggest obstacles for minority owned businesses are the “gatekeepers” who put out bids, review quotes, and award contracts. He has tried to follow up with them for work, but “they can avoid you.” He feels that the jobs go to people who know someone.

AI-S-14, a White male, stated the DBE certification has outlived its usefulness. In his estimation, subcontractors of every race get a fairer shake today in the construction industry than they did in the past as long as they “do good work at a fair price.” However, he went on to state, “It’s almost to the point where DBE’s know they are going to get a certain percentage of the work, so they demand a higher rate” (AI-S-14). “The contractor’s hands are tied because they have percentages to meet” he said, before stating that, because “there is not a required percentage to use us, so we have to be the low bidder and be lucky enough to be on a job where they can get their DBEs” in another work category (AI-S-14).

AI-T-4, a Caucasian woman, is the co-owner of a trucking company, estimated that 85-90% of her bids have been awarded as a subcontractor. “I just make a reasonable bid, and it seems to work out.” AI-T-4 was previously a nurse and her husband bought a dump truck. They bought more trucks and when they couldn’t find enough drivers, she got her license and learned to drive the trucks. Her husband is co-owner and takes care of maintenance on the trucks. She does all contracts, bidding, payroll and other work. “From my understanding, you can’t work for the state or federal government unless you are certified DBE, WBE, or something like that.” AI-T-4 said she has not observed or experienced discrimination as a small or woman owned business. She would like to think that even if the public sector didn’t have goals related to minority or woman owned businesses, that they would call her for business anyway. Prior to getting their DBE status, all of their work was in the private sector; now, they work solely for the State. “Without (certification), you can’t get anything. You’re just stuck in the private sector.” AI-T-4 said that trying to get certified was the biggest obstacle she has faced. “It was an ordeal. I submitted everything and they denied it. And I responded with a grievance-type thing and they reviewed it and I had to go before a committee. I went in front of the (DBE Committee) and presented my case, and they gave it to me.”

AI-T-4’s conviction about the necessity of the DBE program was not shared by some other DBE firms, many of whom stated that the program has not been beneficial for them. Though his company has the certification, AI-S-17 said the special status in no way has been of much benefit. He stated that non-minority business owners put their companies in their wives’ names, creating additional competition for minorities with woman owned businesses. “It’s a loop or circle,” he added. “They just keep everything in that circle. That’s just the way I feel” (AI-S-17). He said he gets contacted three or four times a year from general contractors regarding minority participation. But after he gives the prime a bid, and the bid goes out, nothing materializes. AI-S-17 also stated that his skin color continues to be a major obstacle and that his experience in Columbus has been that general contractors don’t want to see minorities in state contracting.

AI-T-5, an African-American male firm owner, also has difficulty working with prime contractors but says, of discrimination, “You can’t prove it’ (AI-T-5). “They do tricks like telling you, ‘Hey...right now, you’re the low bidder but your bid is so low, 15% lower than everybody else, and you have a chance to change your bid.’ So when you raise your bid, [they tell you that] that

puts you in the middle of the pack, and so well I have to give it to the low bidder.” AI-T-5 said this has happened 2 or 3 times when he did public sector work, about 6 or 7 years ago. He did not take any action in response to this. “You’ve got no recourse. When he pulls out the bid and he says, ‘See there? Your bid is 10% higher; I can’t give you the bid.’” AI-T-5 said that this is why he has concentrated on working in the private sector. “I don’t have to be bothered with all these tricks and games that the general contractors play.”

AI-S-18, a Caucasian woman firm owner, said that her take on contracting with GDOT is that the primes she’s worked with generally don’t have a problem using such businesses. She said that the primes would, however, like more flexibility in their selections. They sometimes get stuck working with a low-bidder that they aren’t happy with because of past history. AI-S-18 also stated that some subs take advantage of their status and will do what they want instead of complying with the primes’ request. She used the example of a prime asking for four trucks only to have the sub provide two or seven, causing the prime to come under fire from the drivers for having too little work to keep them busy for the entire day. “It’s a small group that messes it up for everybody,” AI-S-18 added. Businesses like hers have to choose between bidding low to stay competitive or making a profit, according to AI-S-18. If bids are too low they can eat up all the profits from a job, making it difficult to make a living, she added.

AI-S-20, a White male firm owner, said he has found GDOT’s selection process very fair. The most significant factors preventing his company from bidding on more jobs, particularly large projects, are manpower and capacity. If the job is too big, he can’t bid on it. AI-S-20 said his company has experienced (discrimination) indirectly through the presence of the DBE program. He stated that he opposes the minority and woman owned business participation requirements that GDOT includes with its contracts. He said such rules give members of those special classes an unfair advantage and preferential treatment. The nation, he added, has evolved beyond the need to provide such assistance. “I don’t think there are minorities anymore,” he said. The special certifications that they receive gives them a competitive advantage because the contracts GDOT awards require a certain level of participation by minority and woman owned companies, according to AI-S-20. “If I give the same price and they give the same price, it’s in the best interest of the contractor to award the job to a minority because they get credit for it,” he said.

Key Points

- Some non-DBE firms believe the DBE program to be an unnecessary and unfair advantage
- Minority DBEs typically find the program to be ineffective, mostly due to the attitudes of prime contractors
- Many woman owned DBE firms are able to find work and feel that the program is useful

D. Focus Groups

GSPC's Deputy Project Manager, Imani Strong, held five focus groups in cities across the State of Georgia, inviting participants to share their experiences in doing business, or attempting to do business, with the Georgia Department of Transportation or on transportation-related, local state-funded projects. The focus groups were held in August, 2015 in Atlanta, Augusta, Columbus, Albany, and GDOT Georgia. Each meeting was attended by between three and ten participants. Participants for the focus groups were called from a random list created from GDOT's DBE database. Each of the focus group participants are DBE certified and are therefore qualified to provide evidence and suggestions for the improved effectiveness of GDOT's DBE program. Additionally, the participants were asked to provide as much insight as they felt comfortable regarding the climate for disadvantaged business owners in their particular localities. Most focus groups tend to fall under a few major themes as the discussion continues organically, with little input from the moderator except to clarify. The aim of the focus group was to allow business owners to dialogue and interact around the general topic of contracting with the Georgia Department of Transportation.

"It is a good old boy town, it's true. It's who you know, AU-FG-3, an Augusta, Georgia focus group participant says of her city. Each city in which GSPC held focus groups centered on different topics, bringing into stark relief the difference in business ownership in each area of the Georgia marketplace. In Atlanta, the concern is less with a "good old boy" network, and more with networking opportunities in general. "I think if you're going to go through DBE process, them introducing you to networking arenas where your specific business is, is key.... They set stringent

measures but don't show you how to get it and don't tell you who to talk to." (ATL-FG-5). The lone attendee in Columbus GA expressed his opinion that "It's tough being a minority contractor. The way they look at it is that we shouldn't be on that level (of business ownership). We work and sweat and that's all we can do." (CO-FG-1). In Albany, GA, two attendees believe that small dollar contracts can be crucial for small firms. "Ten or fifteen thousand dollars could make all the difference in the world for a contractor in a community like ours." (AL-FG-1). And in GDOT, GA, the primary concern is competing with the larger cities and out-of-state contractors for local projects. "People in the coastal region feel left out. We pay our tax dollars and money doesn't get outside of Atlanta when it comes to GDOT. We need participation and monitoring." (SA-FG-5).

1. **Atlanta, GA**

In attendance at the Atlanta meeting was a diverse group of five DBE contractors: one in goods and supplies, one construction services contractor, an engineer, a marketing professional, and a special needs transportation provider. Three of the attendees were newly certified, whereas the engineer and supplier both had extensive experience with GDOT and have been doing business in Georgia for a number of years. The two business owners who have participated in the program for a number of years (and eventually graduated) began the meeting by citing their experiences in watching growing opportunities for minority firms, particularly in Atlanta, citing the "revenue generated by Black Americans at the airport in the last twenty years" creating "multimillionaires several times over" (ATL-FG-1).

The same participant expressed a concern that "others see the impact (of their successes) and are trying to turn it back," eliciting an emphatic "Yes!" from the other graduated DBE participant in the room. The gentleman who concurred went on to describe his familiarity with the disparity study process and his dissatisfaction with the current participation on GDOT projects by DBE firms. In engineering, he finds, the lack of DBE participation is partially attributable to the prequalification requirements. ATL-FG-2 describes these requirements as similar to a "poll tax," stating that "if you can't answer the questions, you don't get to pass the ballot" (ATL-FG-2). He notes that, as a registered civil engineer, he understands the utility of some of the questions but "it has gotten out of control" and, after his experiences managing \$10 billion

programs elsewhere, he knows that many of the requirements are not “relevant or germane” and that the “issue is not whether we are qualified, we went to the same schools with all of these people” (ATL-FG-2).

Those new to the program expressed different concerns, all three noting that their issue with the program was a lack of support after obtaining DBE certification. One marketing professional, certified only a couple of years ago, is seriously considering not renewing her certification because she “has not done a thing with it” (ATL-FG-4). ATL-FG-3 has recently relocated to Atlanta to help a family member restructure his business and noted that he has not used his certification so far, though he has been certified for quite some time. The final participant, ATL-FG-5, expressed her frustration that, though she has “done my due diligence,” her firm continues to work only as a subcontractor because she is unable to find out where contracts are being let in her area. “We want our own contracts” she says, shaking her head, “but it’s always a closed door” (ATL-FG-5). Though she continues to renew her certification every couple of years, she states that she often gets “transferred to other lines” when she calls to inquire about opportunities and to find out about smaller dollar (\$1-5 million) contracts. “The counties will refer you back to GDOT” and vice versa, she states, feeling that she gets “the run-around” from GDOT and the local entities (ATL-FG-5). ATL-FG-2 states that he was prepared to “defend DOT” by arguing that those small contracts might not be in their purview, perhaps in the Department of Health and Human Services, but it is “hard to do when you say they are sending you back and forth” (ATL-FG-2).

This conversation brought up issues for ATL-FG-4, who stated that there has been “no onboarding process, no education” coming from GDOT’s DBE team, and that it has been “incumbent upon me with limited time to pick up the phone and figure out how this system works” and where there might be work in her area. She notes that she can easily do private sector work and that she is “going to fish where the fish are.” ATL-FG-4 provided several practicable solutions, including more workshops and opportunities to meet contractors and develop the relationships. Pointing to ATL-FG-5’s dilemma, she states that “no one has helped connect her” to businesses with whom she could build relationships. (ATL-FG-4). Though ATL-FG-5 only went through with certification and got advice from her attorney, she feels that it would be helpful to have a

“fundamental education” training on the website to translate from “government language” to something that business owners can understand.

ATL-FG-3 notes that in her hometown of Cleveland, Turner Construction works with the City to “help smaller MBE’s” by conducting classes, that allow “different people to come in and talk about the process, what certification means, and develop a network of businesses.” She states that she did get a call to participate with this major firm after completing this course and that it might be beneficial for GDOT to support the implementation of something similar, such as an “orientation or webinar that talks about how to actually go from being certified to getting the first job” (ATL-FG-3).

ATL-FG-1, quiet until this point, notes that the DBE program might benefit from networking or mentorship opportunities for their vendors, stating that he has thought of it for airport concessionaires: creating an “advisory group of senior concessionaires” to assist newcomers. He notes that there is often an attitude of “I’ve got it and you guys that are trying to get it, I’m not going to put energy and effort into making sure that you understand the process,” but GDOT may overcome this by providing straightforward ways for successful former DBEs to mentor newly certified firms. If the program was in place, ATL-FG-1 and ATL-FG-2 agree, experienced firms would participate. On the topic of a mentor-protégé program, ATL-FG-4 suggests that even allowing a forum for firms to “share success stories” would be helpful and pointed to some of the programs offered by the Georgia Minority Supplier Development Council (GMSDC) and the Greater Women’s Business Council as examples.

Key Points

- Some believe that there should be networking opportunities for DBE firms with prime contractors, to help them build relationships
- It was suggested that a mentor-protégé program would be useful to help new DBEs learn the ins and outs of the program
- Again, some believe that prequalification requirements in engineering continue to be a problem

2. Augusta, GA

The Augusta, Georgia focus group was held at the Augusta Public Library on Telfair Street in Historic Downtown Augusta and had six attendees total, all local DBEs of diverse backgrounds. Each of the contractors appeared to know one another and their familiarity indicated the close-knit DBE business community Augusta holds. Initially, a DBE construction contractor with an established business in Augusta introduced Ms. Strong to the various procurement departments in the City, the Board of Education, Augusta Development, the City of Augusta, before saying that after bidding in Augusta for twenty years, he has concluded that “there is no way we can compete” (AU-FG-1). This gained nods of agreement around the table and, from an Information Technology consultant, concurrence that it is “slim pickings” in the city of Augusta (AU-FG-2).

AU-FG-1 states that “because of my background and a lot of prayer,” he will not give up on contracting, though he feels that large firms have attempted to “suffocate” him and other small businesses. Citing an early-2000 school building project, he states that he had obtained an \$800,000 bonding capacity and won a \$450,000 job, then a quarter million-dollar job, then a sixty-thousand-dollar job, and was told at a bid meeting by a larger contractor that his firm would not get any more work in that arena. “And we didn’t” he said, laughing. “The firms I bid against have a capacity of ten to twenty-five million dollars” and they bid so low that he could not outbid them “and work comfortably.” He stopped trying in that instance, but has continued on with private work.

AU-FG-3, a woman owner of a local flooring company, stated that “it works on your head” to spend “all that time bidding on work and not get paid.” AU-FG-3 stated that he has survived on private work. AU-FG-2 stated that if competition were equal “based on experience, past performance, and skill set,” firms would win based on the best proposal and the best price. However, he asserts “there’s always somebody that knows somebody better than you know them” (AU-FG-3). AU-FG-1 agrees, stating that the “specs are written so that small companies can’t qualify” in Augusta. For a job at the County, he says, he won and they put out a “Best and Final Offer” which he won, then they said that they did not have enough money, put the bid out again, raised the budget and changed the specifications to require a performance and payment bond and

a line of credit of \$300,000. Though he could have met those requirements, he “let it go...it was the fact that these people will go this far to keep you out of a job” (AU-FG-1).

AU-FG-2 stated that he sometimes wonders who designs the specifications to be so specific regarding location and past performance, claiming that it is “even worse” at the state and federal level. “They hide so many things down here” (in Augusta), AU-FG-1 stated, but he noted that the typical method should be to do “value engineering” or to negotiate with the lowest bidder, but that local officials “hide behind so many governmental curtains...you can’t go to an attorney and make things right for yourself...everybody here is making money from local government here and they don’t want to touch it” (AU-FG-1).

AU-FG-3 stated that she has not gotten an invitation to bid with Augusta or Richmond County in ten years. GDOT certification, she contended, is a “waste” of her time. AU-FG-2 questioned why firms “get GDOT certifications statewide and no benefit for it,” to which AU-FG-3 and AU-FG-4 concurred with an emphatic “yes!” AU-FG-3 stated that, as small business owners, they “wear a lot of hats,” and “don’t have time to go and look for bid opportunities.” To these business owners, the purpose of certification was to provide them with notices of when bid opportunities are available. However, AU-FG-3 said, there is “no communication about where the bids are or how to go about them.” AU-FG-5 stated that there are online resources to find bids, such as Georgia Team Marketplace, which allows firms to search by work codes.

AU-FG-3 and AU-FG-2 stated that small firms cannot seem to grow “unless you put yourself into debt” and that it can be difficult for woman to get loans, with AU-FG-3 stating that she “had to use credit cards for a long time” when starting her business. The expense of bidding, AU-FG-3 believes, is not met by the chances of actually obtaining the work. She stated that she is currently bidding a job and will “worry about the funding” once she gets the job. Some prime contractors, she says, will “not work with you on purpose” and use funding and bonding capacity as an excuse.

AU-FG-1 argues for small business “set-asides,” noting that “USDOT has to follow FAR but when they fund state organizations like GDOT, they do away with set asides” with a result, he argues, of less monitoring, enforcement and outreach. “The contract compliance arm is short,” AU-FG-5 said. She stated that there is no program in place in Augusta to monitor or enforce compliance, even on contracts that come down through the federal government. AU-FG-3 bemoaned the lack of contact from GDOT to those outside of Atlanta who are certified, suggesting a periodic survey or some other mechanism to “find out what’s going on with them.”

AU-FG-2 stated that “GDOT doesn’t monitor primes and subs at local level” even with DBE certification. He believes that not all SBEs and MWBEs are GDOT certified because “some are too lazy to go through the process,” and feels that, by going through the process, he has been “vetted as far as experience and potential” and can do the work. Still, AU-FG-2 did not feel that he has been given the opportunity to show what he can do. Many of the emails sent are not relevant to a professional services firm such as his and he feels that the subcontract work that is put out is focused in one or two areas, overlooking his areas and others.

AU-FG-5 stated that the system seems to operate at “two extremes,” arguing that if she cannot compete to have her own prime contract, that GDOT must require something more stringent than a good faith effort, “because it doesn’t work” (AU-FG-5). AU-FG-2 argues that one should “have to submit a subcontracting plan” but “primes don’t want to give up any of those pennies.”

Breaking out contracts so that different types of firms have an opportunity to work as primes was just one suggestion that came out of the meeting, as well as an increased monitoring of the letting of local contracts with state and federal dollars. It was also suggested that they provide a debriefing or feedback after an unsuccessful bid. In addition, they suggest monitoring the “tailoring” of contracts for certain firms and other evidence of favoritism at every level. AU-FG-2 stated that “the contracting and procurement officers have their favorites. They’re human just like everybody else,” but that qualifications cannot be made to reflect that.

As for Augusta in particular, AU-FG-2 stated that he “feels sorry” for companies starting up here. What the city really needs is a “forensic audit” avenue for them. “There’s a big tax base here and the people who pay taxes here are not getting the business. They go outside of the state” (AU-FG-2).

Key Points

- It was argued GDOT needs to have more of a hand in monitoring the letting of state contracts.
- Some state that more streamlined system for bid notification would be useful.
- Business owners contended that more transparency about the bid process is necessary to instill confidence.
- It might be necessary to break out contracts, according to some business owners

3. Columbus, GA

The focus group held in Columbus was at the public library and, despite 7 RSVPs, was attended only by one firm. The “group” commenced as an interview and GSPC was able to gain significant insight into the contracting arena in the area from this forthcoming African-American construction contractor. CO-FG-1 stated that work is available in Columbus “but it’s closed,” meaning that, “you don’t hear about it unless you know somebody.” He stated that he knows the “going price” for undocumented immigrant labor, and that firms would “rather use them than me” (CO-FG-1). Though the City of Columbus has a 10% goal, according to CO-FG-1, he still obtains most of his work through a major contractor with whom he was previously employed. He credited GSPC’s arrival in Columbus with another job he just obtained “out of the blue” when they “found out y’all were coming down” (CO-FG-1). He obtains mostly subcontracting work on private projects, and the public sector jobs in the area with GDOT are scarce. He attends GDOT classes, and loves them. He views the major obstacle in Columbus/Muscogee County as the fact that many firms will utilize DBE truckers to obtain their goals but are not looking to contract with a small construction firm. “If I didn’t know [the major construction firm], my company would have been shot down by now.” CO-FG-1 asserted that often other major contractors do not solicit DBE participation. “They do what they want to do,” says CO-FG-1.

Key Points

- This business owner believes that there is a lack of roadwork opportunities with the public sector in Columbus
- It was argued that there is an overconcentration in trucking
- It was also argued that there exists discrimination, favoritism for illegal immigrants

4. Albany, GA

In Albany, the focus group, held in a meeting room at Albany State University, had two attendees of the eight firms that RSVP'd. The two attendees were both certified DBEs, one with a background in contract compliance work and the other, a construction contractor. AL-FG-1 was very frank about the issues facing minority business owners in Albany, in particular, while AL-FG-2 was silent for the majority of the meeting, until the very end. "All studies show that there is still discrimination," AL-FG-1 began, "and not enough compliance monitoring and enforcement to build capacity." He, like the gentleman in Augusta, was aware of the previous GDOT study results and stated that the reason that GDOT was "missing the goal" is "primarily because there is no enforcement of the regulations at the state level" (AL-FG-1). In the South Georgia area in particular, he stated that he has seen a \$2 million Local Maintenance and Infrastructure Grant (LMIG) let with no DBE goal and believes that "this happens all over the state."

AL-FG-1 believes that there is "no way to get anything done because they know the city (of Albany) won't do anything, GDOT won't do anything, so they (prime contractors) are not going to do anything." He pointed to a new bridge built in Albany for \$12 million, stating that he placed himself in front of both a GDOT representative and the construction firm out of Florida and asked about opportunities for minorities and DBEs to have work on the project. According to AL-FG-1, after four meetings that included talks regarding the DBEs available in the area to work on the project in various areas, he "never heard anything." The same was true for a "GDOT-funded overpass, then the bypass, all this in the last two years and no prime ever put anything in the papers for small and local business participation" (AL-FG-1). As far as this business owner is concerned, GDOT is "just aiding and abetting the discrimination" at the local level by not monitoring LMIG grants and state-funded contracts. There is just "no effort" he said, "to do

anything about DBE participation...it's a nonissue with them because GDOT doesn't send signals that they are serious about this" (AL-FG-1).

AL-FG-1 asserts that there are three major companies in Albany that repeatedly get work as primes for road construction and "never" solicit DBE participation. They might, he contends, use the same DBE every time "to say they have a minority." After a long silence, AL-FG-2 spoke up to state that when you call this DBE firm, the "lady that answers for {the majority company} is the same lady that answers for the DBE," who is supposed to be a minority male. AL-FG-2 stated that the firms will send the files back to GDOT and "get it signed off" without GDOT actually verifying or confirming DBE participation. If primes are "forced" to bring in a DBE, AL-FG-2 states, they try to "force you out with delays and change orders, things that eat up your money." Both participants expressed concern that the population of minorities in Albany, compared to a city like Tifton, is quite high (they claim that it is approaching 80%). Despite these demographics, "money is coming down from the federal government to the state and some of that ought to be returned to us in contracts in a community like this" (AL-FG-1). AL-FG-2 stated that it's "almost like a joke" to get certified, as there are so few opportunities available in their area. "How are we going to afford to go to MARTA (Metropolitan Atlanta Rapid Transit Authority) if we're not getting opportunities here?" AL-FG-2 asked. He asserted that the concept of "good faith efforts" is not one that he buys into because "it only says what could happen," leaving contractors open to not utilize firms that they have attempted to contact. In addition to putting in place provisions for monitoring state funds, both participants encouraged GDOT to do more "meaningful outreach" in the form of notifying local DBEs of projects, such as road resurfacing, and having DBE liaisons hold workshops to get more people in Albany certified.

Key Points

- It was stated, again, GDOT needs to do more to monitor the letting of state contracts.
- One business owner argued that good faith efforts are not effective.
- DBEs in Albany, the attendees believe, are being passed over for work on various projects throughout the city.

5. **Savannah, GA**

The focus group in Savannah, Georgia was held at the Coastal Georgia Center and was attended by seven business owners from the area, though 14 firms RSVP'd. The first, a certified DBE and disabled veteran, cut right to the chase as he sat down. "If [majority contractors] really don't want to play in the program, the folks in Savannah will call DBEs in Atlanta and the folks in Atlanta call down to GDOT" claimed SA-FG-1, asserting that one way to skirt the program is to attempt to utilize DBEs that are too far away to do the work. He went on to state that he could not take a small dollar contract (less than \$40,000) as far away as Atlanta due to the expense in paying a crew. But this, he argues, is what they want. "They want me to say I can't do it so then they can come back and say they can't find nobody" (SA-FG-1). He is referring to the GDOT DBE program requirement of a "good faith effort," which, in his experience, has been exploited by majority contractors to avoid utilizing DBEs and smaller firms. SA-FG-1 claims that he regularly receives calls from firms in Atlanta and, since becoming GDOT certified over ten years ago, has only done work on three GDOT projects. He only got the certification, he asserts, because if he did not have it, "that's just another reason for them to say why they're not using me" (SA-FG-1). When asked if he feels that certification is worth it, he says "no, not what you have to go through, bare yourself to the world, all your financial and personal information" (SA-FG-1).

with the focus group in Augusta, many of the contractors appeared to know one another, and as they entered the room, each greeted SA-FG-1, and a majority nodded as he continued his discussion of the issues surrounding contracting with GDOT and in Savannah, in particular. There is, SA-FG-1 believes, still quite a bit of "institutional bias." For instance, the fact that to build for the school board, a firm is required to have built five schools like that one...it's a catch-22, just like the old poll tax" but he stated that he has been busy in the private sector despite a lack of work on the public side. Two women business owners, one in urban planning and another in construction, introduced themselves as well, stating that their "encounters with DOT" have been unsuccessful (SA-FG-2). SA-FG-3 stated that on the professional services side, the prequalification requirements with GDOT have been onerous. Networking events, SA-FG-3 said, don't tend to be geared toward her area of work, so she does not participate in many GDOT events, but has found that having the DBE certification has "made it easier" to get certified in other jurisdictions. In comparison to GDOT, SA-FG-2 states that the South Carolina Department of Transportation

sends notices several times a week, workshops, and classes; in short, according to SA-FG-2, “they do way more” than GDOT. SA-FG-4, a DBE certified construction contractor, said that his experience has been that GDOT provides several meetings and trainings and contractors will notify DBEs for major contracts. SA-FG-1 states that GDOT should provide more training about certification to let people know about reciprocal certifications and the like.

SA-FG-3 stated that it would cost her at least \$5,000 to get prequalified because GDOT requires three courses, two of which are in-person in Boulder, Colorado, which would be very costly to attend, besides the \$800 course fee. “There is no way that any small business could justify that expense,” she stated. She stated that she and other consultants she knows have had to pass on contracts as a result. SA-FG-1 stated that “that’s another trick with GDOT” and that a firm “can be certified and not prequalified, but you get prequalified then they tell you how much you can bid on” before moving on to state that he was prequalified up to two and a half million dollars. SA-FG-2 stated that “it was complicated” and that her firm had a hard time understanding what prequalification was and why it was necessary. SA-FG-1 stated that “it’s how you can become the prime, but it doesn’t get the big bomb out of the way...bonding.”

At the mention of bonding, everyone in the room, even those who had not spoken, began to laugh. “You sell your first born child...do whatever you have to do” to get bonding, SA-FG-2 stated. “Bonding is a big boy game” she claimed, and it “doesn’t do anything to help a small, woman or minority owned company.” “It’s how they keep you under their thumb” SA-FG-1 asserted in agreement. Several stated that the profit margin is too small on GDOT projects to justify the expense. SA-FG-1 said that “ever since 2008 the profit has been murder.”

Of local transportation projects with state funds, SA-FG-2 recounted a bid for a welcome center outside of Savannah a year and a half ago. The center would be built “in our back yard” she said, as it is only ten miles from her office. She said that she met all of the criteria, but was excluded from the bid and told that “it’s not that you weren’t qualified, just that the other big national guys are more qualified” (SA-FG-2). “I wasn’t even allowed to come to the planning table,” she stated. As a result, a ten-million-dollar facility is being built by an out of state contractor when, according to those present, there were qualified contractors in their community. “Why not let me bid? Let

me play,” SA-FG-2 said in frustration, noting that her lower overhead would result in lower bids than the larger contractors, leading her to wonder what the procurement staff is evaluating.

To add to this, bids are costly. SA-FG-3 said that bidding is time consumptive and can cost several hundred dollars in copies, printing and the like. SA-FG-2 said that it is down to “who wines and dines them the best,” and that she has seen that in GDOT and in Atlanta. SA-FG-1 stated that the major Florida contractors “got their hands on the thumb,” garnering SA-FG-2’s agreement “North Carolina, Florida, and way up north.”

But in terms of getting work with GDOT, SA-FG-2 stated that “everything happens up in Atlanta.” SA-FG-1 stated that a firm called him about bidding with them on a contract “four or five times” and he “went all the way to Atlanta, smiling, thinking I had it,” but he never heard back from them. This prompted SA-FG-2 to question “if the requirement for minority participation is lip service.” Some contractors, SA-FG-1 states, are just “blatant” in their lack of desire to work with DBE firms. “They just put your name down. They put me down to take out the conveyor belt at the airport. GDOT called and asked me if I was on that project. I called the company and they said ‘we changed our minds, we’re not doing it’” (SA-FG-1).

This prompted SA-FG-5 to speak up, noting that “GDOT has been doing business the way they do business in this geographical area for a long time and they have no plans of changing,” citing “people who repetitiously get contracts over and over” as a prime example. He stated that though he has been certified for over five years and is qualified, he has bid on “a lot of projects and never got one” (SA-FG-1). He blamed this on relationships firms have with “politicians.”

The conversation then shifted to a woman who arrived a couple of years ago and “gave a great spiel that it was going to change” but then it “just died out” (SA-FG-1). SA-FG-1 stated that he does not know “whether she’s gone or somebody calmed her down or what.” SA-FG-5 said that this same GDOT representative came to his office to interview him to talk about minority participation, but that “she got bogged down” and it was a shame because “she would be a great resource.” SA-FG-5 went on to say that the GDOT representative “was so frustrated because she

couldn't do nothing, nobody was listening. They put money into diversity but no people, so the people that have to implement the programs don't believe in them." Or, stated SA-FG-2, "when they do get someone that cares, they (GDOT) run them off or they get frustrated and leave because they're not allowed to do their job." The participants spoke of "their little place up under that bridge" (the local GDOT office) where the people are unwelcoming and "there's a feeling that comes over you" (SA-FG-5, SA-FG-1). "What do they do there," SA-FG-2 wondered. The participants noted that, "as the Harbor deepens, transportation will increase and we are asking that it not be bought and sold in Atlanta...that (GDOT) have local participation" (SA-FG-2).

As the meeting concluded, SA-FG-5 stated that "a good thing would be to take all this information and bring us back some information on what they think can help the program."

Key Points

- Various accounts of prime contractor fraud, attempts to skirt the DBE program requirements.
- There is a belief that all of GDOT's staff may not be appropriately invested in the program and its success.
- It was stated, again, that bonding and prequalification requirements continue to be a hurdle for small firms.
- Some advocate for more outreach to the coastal area.
- Outsourcing to out-of-state firms is considered unfair and many feel that those firms are preferred to their small and local counterparts.
- Good faith efforts and their monitoring is not proving effective for some.

E. Public Hearings

GSPC conducted three attended public hearings in Atlanta, Augusta, and two in Columbus, GA.

1. **Atlanta, GA**

The Atlanta hearing was held in the Georgia Department of Transportation’s boardroom. After a brief explanation of the purpose and format of the hearings and introductions of the three officials present, the Commissioner, Russell McMurry, Deputy Commissioner Mike Dover and Director of the DBE program, Kimberly King, the floor was opened for individuals to provide their experiences in doing business or attempting to do business with GDOT on the record.

Much of the focus of the hearing was not on GDOT’s internal operations but on majority primes, none of whom were present. This lack of attendance did not go unnoticed. PH-ATL-4, directing his comments at GSPC, argued that “if you’re here and you’re discussing the disparity study, I think it’s pretty obvious the audience that you have here is one-sided” (PH-ATL-4). He went on to argue that “if the program was one where there was a serious commitment to it, I think the persons who you’ve charged to be part of the program, being a prime contractor, should be here to more or less express their opinion as to how they feel about the program, because it’s obvious” (PH-ATL-4). PH-ATL-3 spoke about his attempts to subcontract with primes who failed to provide feedback about why they were not awarded the work “as far as our numbers.”

Corroborating that at least some of the focus needs to be on the attitudes of those hiring subcontractors and on public buy-in to the DBE program, PH-ATL-6 stated that many view the program as a “handout.” “I am a taxpayer,” PH-ATL-6 went on to say, “I pay all my money every year to the government, federal government and state government, and I see work year after year, billions of dollars and I can’t get an opportunity to do anything with it.” PH-ATL-6 stated that some project managers are cooperative, but that some can be difficult “if they think the whole DBE program is a handout.”

In a related point, PH-ATL-11 advocated “quarterly meetings” with prime contractors, a networking event where subcontractors may present themselves and the work that they can offer. The subcontractors might lack visibility, so the event would allow the primes to “stumble upon a gem of a company” (PH-ATL-11). But it was raised later in the meeting that even such neutral measures might not assist in creating actual contracts without requirements. In PH-ATL-7’s view,

primes have already decided what work categories they want to use for their DBE percentage “prior to anything hitting the street.” Though PH-ATL-7 attends all the outreach programs, she asserts that “all these primes have the same work...hauling, traffic control” and that these primes are not “utilizing the opportunity of the program for the integrity in which it was put in place.”

PH-ATL-5 requested that contracts be broken down “so that we can meet the bond requirements and the insurance requirements” which, in her industry of information technology, can be quite steep. PH-ATL-12 made a similar point, stating, “Take a portion of these projects and say ‘let the DBEs handle it on their own’” rather than having firms subcontract with primes.

Several business owners spoke about the classification of White woman as DBEs, alluding to the use of “fronts.” PH-ATL-8 stated that at outreach meetings “I don’t see White woman in the room...they’re not there. So I’m trying to understand how a Caucasian woman can get certified as a disadvantaged business, but you never see that person. Who is it?” PH-ATL-6 argued that some project managers, given “the opportunity to choose who they give the work to” will choose a Caucasian woman owned firm over a minority owned firm.

PH-ATL-9 recounted his experience working on a project at the airport, claiming that the prime contractor wanted to review the financials of subcontractors annually. “Their requirements are more stringent than the certification process,” PH-ATL-9 asserted, and stated that the prime contractors should be required to “use the list that is afforded them” and, if they use this list of DBEs, “that company has already been certified” (PH-ATL-9).

PH-ATL-4, an engineer, closed out the meeting with his insights. Though he has moved on to private contracting, he had a perspective on the internal “culture” at GDOT before and after they began to “outsource” engineering, stating that previously “everything was done in house.” “If DOT wants to get the DBEs involved,” PH-ATL-4 stated, “they do not have to go through a prime as a surrogate.” He stated that “everybody knows that there is one company that gets all the DOT work on a guaranteed contract” and that DBEs are put in a position of having to “go asking” primes

for work, when “the solution is within GDOT” as they have the power to make these policy decisions (PH-ATL-4).

Key points

- Some firms argue that there is an overconcentration of DBEs in hauling.
- Some suggest breaking out contracts so that DBEs can obtain bonding and bid directly with GDOT.
- White woman owned firms are perceived by some to receive preferential treatment in the DBE program by prime contractors.

2. Augusta, GA

The Augusta public hearing was held at the Augusta Public Library on Telfair Street at 6pm on August 19, 2015. Some twenty firms were in attendance, though not all chose to speak. After a brief introduction of the topic by Attorney Strong, the floor was opened for participants to speak on the record. Most of the focus was on the future of the disparity study and the participants were very inquisitive about the study process. Of those that spoke, the largest concerns were around monitoring and contract size. PH-AUG-1, an African-American firm owner, stated that “de-bundling...would be appropriate for the Georgia DOT to look at” because it is difficult for small businesses to qualify for bonding for multi-million dollar contracts. He went on to state that, once a contract is let, he has had difficulty getting paid the full amount. “Is anybody monitoring the amount of money that’s being paid to the sub?” PH-AUG-1 asked.

Coming up to speak after a series of questions about the disparity study, PH-AUG-2, an African-American woman business owner stated that she has been in trucking for over 13 years. She felt that prime contractors “take the DBE program as a joke...they’ve learned ways to manipulate the DBE program” (PH-AUG-2). She stated that they “put their companies in their wife’s name” (PH-AUG-2). She confirmed that she was referring to fronts when asked. She closed out by stating that “everyone knows that Augusta is a good old boy system.” Several similar accounts of informal networks were met with agreement and nods by those in the audience.

PH-AUG-3 stated that “so much of what GDOT tries to do with DBEs is centered in Atlanta.” However, he stated, more educational materials and “more input from the local residents would be helpful” (PH-AUG-3). This echoed a concern amongst Augusta business owners heard in the focus groups that there is not enough in Augusta and focused locally from GDOT.

Key Points

- It is believed that some White woman owned businesses might be fronts.
- It is stated, again, that bonding and contract size continue to be a barrier for small businesses.
- There are some accusations of contract fraud surrounding the DBE program that should be examined.

3. Columbus, GA

A public hearing was held in Columbus in September 2015, after an August hearing was held with only State Representative Calvin Smyre and one other in attendance. Though email blasts were sent to all of GDOT’s registered, prequalified, and DBE vendors, organizations and newspapers were contacted with the information, and personal phone calls were made to firms on GDOT’s list by GSPC’s team, there were a total of two firms at the second hearing at Columbus State University. Though it was less formal, GSPC interviewed the two participants, one having driven two hours from Valdosta to be in attendance.

The first attendee, PH-C-1, is a woman owned DBE construction subcontractor. Her observation has been that there are not many contracts available in Columbus for roadwork and that, when contracts do arrive in the area, they are often let to non-local subcontractors. PH-C-2, is a woman owned manufacturing DBE and has owned her business for thirty years. Her biggest concern is that, as a second-tier manufacturer, firms are not encouraged to utilize her services as a DBE. For instance, she said, a contractor that does roadwork and hires a DBE firm to install road structures will get the credit for utilizing a DBE “regardless of where he buys the product.”

One solution she suggested is that there be a column for DBE certification on the QPL (Qualified Providers List), to let firms know what small and disadvantaged businesses there are available for them to use.

Key Points

- The attendees state that there needs to be more roadwork in the area for Columbus businesses to thrive.
- It was suggested that specifying DBEs on supplier’s lists would help firms to gain visibility and possibly business.

F. Email Comments

Griffin & Strong PC advertised at every meeting, hearing, email blast, and on the website, www.gdotdisparitystudy2015.com, that the firm urges stakeholders to provide their comments by email for inclusion in the disparity study at the email address GDOTStudy@gspclaw.com. The email address was managed by the Deputy Project Manager and each firm that submitted comments received a response stating that the firm would incorporate their perspective into the overall qualitative analysis.

The majority of the emails that came in to the GDOT study email account were regarding the prequalification requirements and certification process. Firms emailed to inquire about the breadth of GSPC’s study for the Department and to prompt the firm to look into pre-qualification requirements. EC-3’s concern was “specifically (GDOT’s) decisions to require multiple (Professional Engineers) in key Area Classes” (EC-3). According to EC-6, GDOT does not take into consideration the size of firms when assigning staffing requirements and, as the “sole employee” of her DBE-certified business, she finds herself restricted by the prequalification requirements for two engineers.

Several emails discussed difficulties in the prequalification process with GDOT. EC-5 suggested that while they understand the “need for requirements” pertaining to building and

construction projects, the process “should be less daunting for consultants.” One firm noted that overhead audit costs are “too high for small firms to compete” (EC-1). Two firms claimed overconcentration, one stating that the “primes use the same DBE firms” too often and another outright stating that “there’s lots of DBE work for truck drivers and the like, but no DBE white collar opportunities” (EC-1, EC-8). Another contributor suggested “making part of the DBE percentage for suppliers only” due to the difficulties in competing with other types of subcontract work.

The email comments were consistent with the other types of evidence gathered throughout the process. The key points included:

- The need for re-evaluation of the prequalification requirements for engineers was reiterated
- Overconcentration of DBEs in trucking was also mentioned
- And it was argued that there is a need to cater more to the needs of DBE suppliers.

G. **Organization Meetings**

GSPC also solicited input from various community and business organizations through calls, emails, and letters sent through regular post. The organizations were notified of the study at the outset and were tapped again for their input during the study process. A few organizations chose to speak with or provide email comments to GSPC with regards to the study. A full list of the organizations contacted can be found in Appendix J. Amongst them was the Hispanic Contractor’s Association (“HCA”), whose representative, Ms. Paula Henao, had a phone conversation with GSPC’s Deputy Project Manager to express concerns about GDOT’s lack of outreach efforts to bring more Hispanic and minority businesses into the DBE program. Though the HCA assists its members in obtaining GDOT DBE certification, many of their members are “not satisfied” with the program after having been invited to bid with primes but “never used,” referring to the use of “good faith efforts” forms as a way around the program. She states that members are “discouraged” by the length, effort, and lack of results from the process. Ms. Henao asserts that the program would be much improved by making the application process more straightforward and faster. In addition, she feels that it would help prime contractors and DBE

subcontractors to be able to meet prior to bid documents being released. She suggests networking events that will allow firm owners to get to know one another as more than just “names on a list.”

Ms. Janice Mathis, president of the Rainbow PUSH Coalition (“RPC”), which is based in Chicago, Illinois, sent a statement to the firm, stating that their organization conducted interviews with various other groups, including the NAACP, the Georgia Legislative Black Caucus, and the Urban League, among others. Though Griffin & Strong P.C. reached out to these other organizations, none of them responded or provided comment. The RPC identifies the certification and prequalification standards as “not rationally related to ability to safely and effectively provide services to GDOT, though they do praise GDOT’s previous analysis and revision of its standards. Like the HCA, the RPC contends that many contractors find the certification process “costly, time consuming, and onerous.” In addition, the RPC asserts that there is a “culture of exclusion” wherein contractors feel that “no matter how experienced, minority owned contracting firms are less likely to obtain work with GDOT than Caucasian male owned or woman owned firms.” “Some DBE contractors and advocates believe,” the letter states, “that there is rank prejudice against black contractors among prime contractors and some GDOT staff,” citing the account of one firm owner whose firm was “excluded from actually performing services after being included in the winning bid.” The RPC does note that GDOT is taking a “more proactive role” towards inclusion, pointing to the DBE resolution of April, 2015 and outreach from the DBE program staff.

Key Points

- The certification process is considered daunting and long for many contractors.
- There might not be “buy-in” to the program amongst all of GDOT’s staff.
- Some believe that good faith efforts are not proving to be effective in ensuring participation.

H. Survey Results

Griffin & Strong, PC, along with Kennesaw State University’s AL Burruss Institute, administered an online survey completed by 333 business owners across the state of Georgia. The survey was administered in September 2015 and asked questions regarding business owners’ ethnicity, gender, and contracting history, as well as for information on their financial backgrounds. Most pertinent to this analysis, however, are the responses to questions seeking to ascertain business owners’ opinions and perceptions of contracting with GDOT. Question 45, below, illustrates that over 50% of business owners in every ethnic and gender category (except Asian/Pacific Islanders) believe that there is an informal network of prime and subcontractors that “monopolize” public contracting with GDOT. The question which followed asked those who responded in the affirmative if the “informal network” discourages them from bidding on contracts. The majority responded that it did, again in every category, but the highest rates of “strong” agreement, were from African-Americans, Asian Indians, and Hispanic business owners.

Table 53
 GDOT Disparity Study
 Response to Question #45 of GSPC Survey of Business Owners

Q45 Do you believe there is an informal network of prime and subcontractors doing business with GDOT that monopolize the public contracting process?

	Caucasian Male	Caucasian Female	Black American	Asian or Pacific Islander	Subcontinent Asian	Hispanic	American Indian or Alaska Native	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Yes	35	34	116	3	8	4	0	1	6	207
	50.7%	61.8%	73.9%	42.9%	88.9%	57.1%	0.0%	50.0%	66.7%	65.5%
No	15	9	8	2	1	1	0	1	3	40
	21.7%	16.4%	5.1%	28.6%	11.1%	14.3%	0.0%	50.0%	33.3%	12.7%
Don't know	19	12	33	2	0	2	1	0	0	69
	27.5%	21.8%	21.0%	28.6%	0.0%	28.6%	100.0%	0.0%	0.0%	21.8%
Total	69	55	157	7	9	7	1	2	9	316
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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Table 54
 GDOT Disparity Study
 Response to Question #46 of GSPC Survey of Business Owners

Q46 My company's exclusion from this network has discouraged or prevented us from bidding on contracts with GDOT.										
		Caucasian		Black	Asian	Subcontinent	Hispanic	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
		Male	Female	American	Islander	Asian	Hispanic	(specify)	(specify)	Total
Strongly agree		6	7	54	0	4	2	1	5	79
		17.1%	20.6%	47.0%	0.0%	50.0%	50.0%	100.0%	83.3%	38.3%
Agree		16	14	27	2	2	0	0	0	61
		45.7%	41.2%	23.5%	66.7%	25.0%	0.0%	0.0%	0.0%	29.6%
Neither agree nor disagree		8	10	27	1	1	1	0	1	49
		22.9%	29.4%	23.5%	33.3%	12.5%	25.0%	0.0%	16.7%	23.8%
Disagree		4	3	6	0	0	1	0	0	14
		11.4%	8.8%	5.2%	0.0%	0.0%	25.0%	0.0%	0.0%	6.8%
Strongly disagree		1	0	1	0	1	0	0	0	3
		2.9%	0.0%	0.9%	0.0%	12.5%	0.0%	0.0%	0.0%	1.5%
Total		35	34	115	3	8	4	1	6	206
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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Question 49 inquires as to the nature of public contracting solely for minority and woman owned businesses, and asks if these firms are held to “double standards” in qualifications that make it more difficult for them to do business with GDOT. 66% of African-American respondents answered that they strongly agreed, whereas only 28% of Caucasian woman owned firms agreed or strongly agreed, and no Caucasian male owned firms strongly agreed. Question 50 deals with subcontracting with GDOT, asking if prime contractors will include DBEs only to meet the “good faith effort” requirement, then will not use the firm upon award. Again, a very low percentage of

Caucasian males agreed or strongly agreed, at 15%, and a large percentage of Black Americans, Caucasian Females, and Subcontinent Asians replied affirmatively, at 66%, 51%, and 77% respectively.

Table 55
 GDOT Disparity Study
 Response to Question #49 of GSPC Survey of Business Owners

Q49 Double standards in qualification and performance make it more difficult for minority and woman owned businesses to win bids or contracts.

	Caucasian Male	Caucasian Female	Black American	Asian or Pacific Islander	Subcontinent Asian	Hispanic	American Indian or Alaska Native	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	0	4	64	1	3	2	0	1	4	79
	0.0%	7.3%	40.8%	14.3%	33.3%	28.6%	0.0%	50.0%	50.0%	25.1%
Agree	5	12	41	1	2	2	0	0	0	63
	7.2%	21.8%	26.1%	14.3%	22.2%	28.6%	0.0%	0.0%	0.0%	20.0%
Neither agree nor disagree	29	26	41	4	2	3	0	1	0	106
	42.0%	47.3%	26.1%	57.1%	22.2%	42.9%	0.0%	50.0%	0.0%	33.7%
Disagree	20	11	10	1	1	0	1	0	2	46
	29.0%	20.0%	6.4%	14.3%	11.1%	0.0%	100.0%	0.0%	25.0%	14.6%
Strongly disagree	15	2	1	0	1	0	0	0	2	21
	21.7%	3.6%	0.6%	0.0%	11.1%	0.0%	0.0%	0.0%	25.0%	6.7%
Total	69	55	157	7	9	7	1	2	8	315
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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Table 56
 GDOT Disparity Study
 Response to Question #50 of GSPC Survey of Business Owners

Q50 Sometimes, a prime contractor will include a DBE subcontractor on a bid to meet the “good faith effort” requirement, then drop the company as a subcontractor after winning the award.										
	Caucasian Male	Caucasian Female	Black American	Asian or Pacific Islander	Subcontinent Asian	Hispanic	American Indian or Alaska Native	Bi-Racial or Multi-Racial (specify)	Other (specify)	Total
Strongly agree	1	13	63	2	6	1	1	1	2	90
	1.4%	24.1%	40.1%	28.6%	66.7%	14.3%	100.0%	50.0%	25.0%	28.7%
Agree	10	15	41	1	1	1	0	0	1	70
	14.5%	27.8%	26.1%	14.3%	11.1%	14.3%	0.0%	0.0%	12.5%	22.3%
Neither agree nor disagree	40	22	49	4	2	4	0	1	2	124
	58.0%	40.7%	31.2%	57.1%	22.2%	57.1%	0.0%	50.0%	25.0%	39.5%
Disagree	8	4	3	0	0	1	0	0	1	17
	11.6%	7.4%	1.9%	0.0%	0.0%	14.3%	0.0%	0.0%	12.5%	5.4%
Strongly disagree	10	0	1	0	0	0	0	0	2	13
	14.5%	0.0%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	25.0%	4.1%
Total	69	54	157	7	9	7	1	2	8	314
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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I. Summary

From its information-gathering efforts through informational meetings, public hearings, focus groups, anecdotal interviews, organization meetings, and email comments, Griffin & Strong, P.C. has discovered that DBE firms across the State of Georgia are adversely affected by GDOT’s policies, the policies of their local governments in the letting of state contracts, the decisions and actions of general contractors, and financial conditions. The most frequently heard complaint amongst small firms of all races and genders, was that there is a difficulty with the size of contracts and it was recommended numerous times that contracts be broken down. As one firm owner noted at the Atlanta hearing, this would also give small and minority owned firms the opportunity for participation directly with GDOT without the intermediary of a prime contractor or consultant. In addition, there is a need for more educational and networking outreach in areas outside of Atlanta and for firms that are not traditionally utilized as subcontractors, such as professional consultants. The call for education about the DBE program and networking opportunities emergent from the Atlanta focus group and Augusta public hearing in particular revealed a gap in the process of getting from DBE certification to bidding on (and possibly winning) their first contract.

Specifically, male and woman business owners from racial minority groups expressed a belief that discrimination is a factor in their relationship with prime contractors and the opportunities to obtain business. The assertion that “fronts,” businesses that purport to be owned by a woman to obtain DBE status but are in fact operated by their husbands or male partners, are still prevalent in GDOT’s marketplace, raised concerns among those who provided commentary. Many expressed the belief that GDOT is not properly monitoring the operations of these firms.

There was also a push for GDOT to take more of a monitoring role in the letting of LMIG contracts throughout the state. In Augusta and Albany in particular, several firm owners claimed that opportunities are not fairly provided for firms in their jurisdictions to compete.

Though it is recognized that GDOT has made strides to improve and streamline the process, certification is still considered costly and time-consuming by many business owners and,

for DBEs, there is a strong dissatisfaction with the amount of work received in relation to the effort expended. Prequalification requirements continue to be an issue for both construction and professional services firms and those that came forward to provide commentary in all forums felt keenly that GDOT's DBE program was not designed to assist professional services firms. A re-evaluation of the prequalification requirements, especially the "two PE's on staff" requirement of engineering firms, as well as more DBE assistance, in the form of an informative webinar or online introductory course, might be ways to address these issues.

The recurrent themes throughout the qualitative evidence-gathering process were as follows:

- Many DBEs and small firms feel that the prequalification requirements warrant evaluation, especially for engineering.
- Bonding continues to be a problem for smaller firms and many feel that GDOT could break out contracts into smaller pieces to make room for wider participation.
- Monitoring state contracts was a huge issue, especially outside of Atlanta where GDOT's dollars are being let without goals attached.
- Continued monitoring of White woman owned firms to prevent "fronts" was considered necessary by participants at two hearings.
- It was argued that GDOT should implement further outreach efforts to areas outside of Atlanta as well as DBE-program specific training, perhaps with a networking component.
- Suppliers and professional consultants feel left out of the program and find that many of the resources are not geared to their needs.
- Overconcentration of DBEs in trucking and hauling was a recurrent theme
- The certification process is considered unnecessarily lengthy and invasive by some.
- Many feel that DBE certification has not been of benefit.

- There is a lack of buy-in to the program on the part of majority firms interviewed and who submitted comments. It should be noted that these were both semi-anonymous forums and no majority firms decided to speak at hearings. GDOT may consider further outreach to primes to help them understand the DBE program and see its benefits.
- There is a perceived lack of buy-in to the program by GDOT staff and some feel that the procurement process is riddled with favoritism.
- It is widely recognized that GDOT has been making efforts toward the program's success and there was praise for the program staff in every city.

IX. DBE GOAL-SETTING 2015

The Georgia Department of Transportation (“GDOT”) is required by 49 CFR §26.45(a)(1) to set an overall goal for DBE (“Disadvantaged Business Enterprise”) participation for its federally-assisted contracts every three (3) years. The Methodology for the goal-setting is set out in 49 CFR §26.45 and followed below:

A. Step One – Base Figure 49 CFR §26.45(c)

In Step One, GSPC attempted to measure actual relative availability of DBE and potential DBEs to perform the types of contracts that GDOT intends to let.

1. Method Selected- GSPC utilized the availability data file from the current on-going disparity study as its method for determining the base availability figure. This method is permitted in accordance with 49 CFR §26.45(c)(3).

2. Data Files Utilized

GSPC conducted the FY2015-17 GDOT goal-setting as part of the Study process which includes an Availability analysis of firms within a determined geographical and product market. Within the Study, GSPC determined, using award and bidder data, that the relevant geographical market for construction, professional services, and manufacturing for GDOT contracting was the entire State of Georgia. (See Chapter IV).

GSPC then compiled a “Master Vendor File” which is a compilation of firms (each counted only once) made up of the following governmental data files:

- GDOT current Construction Prequalified Contractors & Registered Subcontractors;
- GDOT current DBE List;
- City of Atlanta Prime and Subcontractor Awardees (7/1/2011-6/30/2014);

- City of Augusta, GA awards (2014);
- City of Savannah Bidders (2009-2014);
- Fulton County Current Registered Vendors;
- SAM (U.S. Federal Contractor Registration);
- GDOT Prequalified Consultants (for Professional Services only);
- GDOT Selection Packages (for Professional Services only); and
- GDOT QPL list (for Construction Materials only).

GSPC undertook to match as many firms as possible in the Master Vendor File to GDOT Item Codes for construction. Item Codes were consolidated into the groupings identified in Table 57 for Construction. Professional Services were combined into one category.

3. Refining and Matching Data

- a) GSPC matched and cleaned each data file and then combined the files.
- b) GSPC then related all of the data files and attempted to match the files to pick up addresses (to identify firms within the relevant geographical market) and work types (to identify firms within the relevant product market). In most cases, GSPC was able to successfully cross reference and match the firms by one of the foregoing identifiers. In some cases, GSPC had to search for firms through Google in order to find certain information. However, GSPC did not determine the area of work performed by a firm by Googling. All work categories were taken from the governmental database. If a work category was not provided, GSPC excluded that firm from its analysis. Firms were deemed available in every category that they were identified as doing work in.
- c) GSPC used each data source to determine the MWBE/DBE status of firms and cross referenced each data source to verify the MWBE/DBE status. GSPC individually researched any firm that had conflicting information regarding MWBE/DBE Status (which were relatively few).
- d) Once all the data was related, GSPC began to translate, where necessary, NAICS codes, and narrative work descriptions into item codes and other work categories.
- e) Finally GSPC deleted duplicates electronically in each work category.

The goal setting methodology that GSPC utilized in setting the FY2015-17 goal is based upon the requirements set forth in 49 CFR §26.45, along with the “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program,” which was published on the U.S. Department of Labor website (and approved by the General Counsel of the DOT). 49 CFR 26.45(b) requires GDOT to “set overall goals based on demonstrative evidence of availability of ready, willing and able DBEs relative to all businesses ready, willing, and able to participate in DOT-assisted contracts.” (“Relative Availability”).

4. Weighted Availability

According to The Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program issued by the US Department of Transportation, weighting should be used wherever possible to ensure accuracy. GDOT provided GSPC with 378 of the 601 construction projects that have a specific letting date between 2016 and 2017. This is about 63% of all of the letting that will occur during that period and is reasonably representative of all construction letting. Professional Services availability was combined into one category.

Since the utilization analysis for the disparity study found that the award dollars, in the relevant markets, between construction and professional services were substantially similar, the two availability figures were averaged to determine the baseline availability percentage.

GSPC determined a baseline availability figure using the process set forth in Table 57 below:

**Table 57
GDOT WEIGHTED AVAILABILITY – CONSTRUCTION**

GDOT WORK CLASS GROUPS	GDOT ITEM CODES	# DBE/MWBE FIRMS	# ALL FIRMS	RELATIVE AVAILABILITY OF DBE FIRMS	EST. % OF 2016-17 BUDGET	WEIGHTED RELATIVE AVAILABILITY
Asphalt Concrete Paving	400,402	24	77	31.17%	27.47%	9%
Bituminous Surface Treatment	318, 413, 424	8	27	29.63%	0.80%	0%
Brick Masonry	500a, 607, 608	105	180	58.33%	0.05%	0%
Clearing and Grubbing	201, 202	220	443	49.66%	3.16%	2%
Drainage	522, 544, 550	57	153	37.25%	2.65%	1%
Earthwork	204, 205, 206, 207, 208, 209, 210, 211, 212, 215, 217, 218	65	218	29.82%	10.58%	3%
Fence	643	16	37	43.24%	0.20%	0%
Graded Aggregate Construction	222, 301, 310	22	111	19.82%	8.47%	2%
Grassing	700, 701, 702, 710, 713	210	336	62.50%	0.83%	1%
Guardrail	620, 622, 635, 641, 642	14	32	43.75%	1.10%	0%
Highway Signs	624, 634, 636, 638, 639	25	57	43.86%	2.01%	1%
Miscellaneous Concrete	441	90	207	43.48%	3.39%	1%
Miscellaneous Erosion Control	163, 170, 171, 716	52	128	40.63%	2.56%	1%
Pavement Markings	652, 653, 654, 655, 656, 657, 659	17	39	43.59%	1.91%	1%
Piling	520, 523	0	0	0.00%	0.26%	0%
Portland Cement Concrete Pvmt.	430, 431, 439, 452, 453	19	50	38.00%	3.51%	1%
Reinforcing Steel	511	15	38	39.47%	0.32%	0%
Structural Steel & Precast Concrete Structures	433, 451, 501, 507, 509, 518, 519, 534, 540, 541, 617, 621, 626, 627, 630	84	173	48.55%	4.49%	2%
Temporary Traffic Control	150, 632, 633	23	81	28.40%	3.91%	1%
Traffic Signal Installation	631, 647, 664, 680, 681, 682, 683, 687, 936, 937, 940	38	72	52.78%	3.17%	2%
Utility Construction	660, 665, 670, 766, 935	165	367	44.96%	0.34%	0%
Timber Structure	502	1	23	4.35%	0.01%	0%
Bridge Foundation	524, 525	3	13	23.08%	0.26%	0%
Poured Concrete Foundation	500	133	285	46.67%	2.86%	1%
Painting	535	162	260	62.31%	0.29%	0%
Drain Pipes	573, 576, 577, 668	36	90	40.00%	1.12%	0%
Monitoring/Testing	154, 167	1	18	5.56%	0.11%	0%
Cracks & Seals	449, 461, 528	7	20	35.00%	0.09%	0%
Milling	432	6	17	35.29%	0.76%	0%
Jack & Boring	615	6	45	13.33%	0.13%	0%
Concrete Structures	500b, 513, 521	5	20	25.00%	0.10%	0%
Hauling (All)	109, 205, 206a, 310a, 400a, 400b, 432a, 603s, 800a	319	525	60.76%	1.74%	1%
Other Construction	99	0	0	0.00%	0.24%	0%
Misc. Materials	From Master Materials (not otherwise included)	10	238	4.20%	7.60%	0%
CONSTRUCTION & MATERIALS						31.92%
PROFESSIONAL SERVICES		266	730	36.44%	100.00%	36.44%
BASELINE AVAILABILITY						34.18%

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The resulting baseline availability is 34.18%.

B. Step Two – Adjust Base Figure 49 CFR §26.45(d)

With the Baseline Availability figure calculated, the next step is to determine whether any adjustments are needed, based upon the uniqueness of the way GDOT does business. GSPC has conducted a utilization analysis of construction subcontractors in the relevant markets for the period 2012 through 2014. The total construction attainment over those three (3) years was 18.37% for MWBE/DBEs as shown in Table 58 below.

Table 58

Georgia Department of Transportation
 MWBE/DBE Subcontractor Participation
 FY2012-2014 (Construction in the Relevant Market of the State of Georgia)

	Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	#	%
2012	\$ 7,670,168	16.51%	\$ 38,792,184	83.49%	\$ 46,462,352	100.00%
2013	\$ 47,116,158	18.40%	\$ 208,881,111	81.60%	\$ 255,997,269	100.00%
2014	\$ 48,606,335	18.68%	\$ 211,651,624	81.32%	\$ 260,257,959	100.00%
Total	\$ 103,392,663	18.37%	\$ 459,324,919	81.63%	\$ 562,717,582	100.00%

GSPC adjusted the baseline availability by finding the average between the total MWBE/DBE subcontractor attainment of 18.37% and the Weighted Baseline Availability of 34.18%. The adjusted goal would be 26.28%. This figure represents the percentage of DBEs or potential DBEs in the subcontracting market. FHWA limits subcontracting to 70% with 30% required to be self-performed by the prime. The effective goal on these projects would therefore be 70% of the 26.28 adjusted goal, or 18.40%.

On resurfacing, the maximum subcontracting percentage is 30%, which presents an effective goal of 7.88% on these projects. Certain other GDOT projects have zero subcontracting opportunities and therefore have zero subcontracting goals. The projected budgetary balance between these construction projects has been prepared by GDOT as well as the appropriate determination of the effective weighted goals.

C. Race and Gender – Neutral and Conscious Measures 49 CFR §26.51

GSPC determined that the race/gender neutral goal should be set at 5% because GDOT's contract goals were typically set at 12% as a race conscious goal for construction. In fact, when we average the participation of MWBEs in each of the three (3) study years, the average has been more than 5 percentage points higher at 17.86%. Therefore, the 5% that GDOT exceeded past goals may be utilized as the race/gender neutral portion of the goals set by GDOT. The remaining portion or 13% should be the race/gender conscious goal.

X. FINDINGS AND RECOMMENDATIONS

A. Findings

This chapter presents the findings and conclusions resulting from the disparity study conducted for the Georgia Department of Transportation related to procurement of construction, professional services, and manufacturing in both federal and state-funded contracts. As GSPC set out in the Chapter II, Legal Analysis, the U.S. Supreme Court in the Croson and Adarand decisions, and their progeny review any race-based program with strict scrutiny and any gender-based program with at least intermediate scrutiny. These levels of judicial scrutiny require that a compelling state interest is established through a factual predicate, such as findings of a disparity study like this one that indicate an inference of discrimination; and that any resulting remedy be narrowly tailored to the findings. The courts have also indicated that for a race-based or gender-based preference program to be maintained there must be a clear evidentiary foundation established for the continuation of such programs.

As the detailed findings below will demonstrate, GSPC found sufficient statistically significant underutilization of minority and woman owned firms as prime contractors and consultants, and subcontractors in federal contracting to indicate an inference of discrimination which may be present or the present effects of past discrimination. Further, from GSPC's analysis of the Private Sector in the State of Georgia, an inference of discrimination can be made in the relevant construction, professional services, and manufacturing industries.

FINDING 1: MWBE/DBE Prime and Subcontractor Utilization

As the table below shows, GDOT spent \$3,066,334,607 with prime contractors in the Relevant Market during the Study Period with 2.25% of this amount, or \$69,044,066 spent with MWBE/DBE firms as primes. GDOT prime contractors spent \$122,736,937 on subcontracting with MWBE/DBE firms, roughly 17% of all subcontracting dollars.

Table 59
GDOT Disparity Study
Summary of Utilization

GDOT Disparity Study Utilization Totals				
	Construction	Professional Services	Manufacturing	Totals
Prime				
Asian Pacific	\$0.00	\$0.00	\$0.00	\$0.00
Subcontinent Asian	\$29,187,916.00	\$0.00	\$0.00	\$29,187,916.00
Black American	\$585,545.00	\$3,159,101.71	\$0.00	\$3,744,646.71
Hispanic American	\$1,958,403.00	\$34,550.00	\$0.00	\$1,992,953.00
Native American	\$0.00	\$0.00	\$0.00	\$0.00
Women	\$24,047,574.00	\$10,070,977.01	\$0.00	\$34,118,551.01
Total MWBE/DBE	\$55,779,438.00	\$13,264,628.72	\$0.00	\$69,044,066.72
Non-MWBE/DBE	\$2,482,223,561.00	\$515,066,979.45	\$0.00	\$2,997,290,540.45
Total	\$2,538,002,999.00	\$528,331,608.17	\$0.00	\$3,066,334,607.17
Sub				
Asian Pacific	\$2,971,822.00	\$0.00	\$368,479.00	\$3,340,301.00
Subcontinent Asian	\$0.00	\$331,664.46	\$0.00	\$331,664.46
Black American	\$26,779,551.00	\$7,147,665.00	\$1,141,064.00	\$35,068,280.00
Hispanic American	\$4,019,915.00	\$0.00	\$0.00	\$4,019,915.00
Native American	\$205,012.00	\$0.00	\$0.00	\$205,012.00
Women	\$69,416,363.00	\$7,968,039.51	\$2,387,363.00	\$79,771,765.51
Total MWBE/DBE	\$103,392,663.00	\$15,447,368.97	\$3,896,906.00	\$122,736,937.97
Non-MWBE/DBE	\$459,324,919.00	\$101,191,846.85	\$37,028,682.00	\$597,545,447.85
Total	\$562,717,582.00	\$116,639,215.82	\$40,925,588.00	\$720,282,385.82

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FINDING 2: Disparity Analysis of MWBE/DBEs as Primes

The statistical chapter of the study has revealed that GDOT issues a number of large contracts in Construction and Professional Services. The unutilized capacity of DBE firms reveals that, except for Subcontinent Asian American owned firms, every MWBE/DBE group had at least 24% more capacity than they have received. Also, with the exceptions of Native American owned firms where there was no availability and no utilization and one Subcontinent Asian firm that received a percentage of prime awards in Construction prime contracting in excess of the 1% availability of Subcontinent Asian firms in the Relevant Market, every other ethnic minority group was substantially and statistically significantly underutilized as primes during the Study Period.

Table 60
 GDOT Disparity Study
 Summary of Statistically Significant MWBE/DBE
 Disparity Analysis in Prime Contracting

CONSTRUCTION	PROFESSIONAL SERVICES
Black American	Black American
Asian or Pacific Islander	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian
Hispanic	Hispanic
Native American	
Woman	Woman

Bolded in **blue**=statistically significant underutilization
 Bolded in **red**=statistically significant overutilization
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FINDING 3: Summary of Statistically Significant MWBE/DBE Disparity Analysis in Subcontracting

Non-MWBE/DBEs were overutilized in every category of subcontracting and, although woman owned firms were overutilized as subcontractors in Construction, it was not statistically significant. Each every other MWBE/DBE group represented was underutilized to a statistically significant degree in every category of subcontracting work.

Table 61
 GDOT Disparity Study
 Summary of Statistically Significant MWBE/DBE
 Disparity Analysis in Subcontracting

CONSTRUCTION	PROFESSIONAL	MANUFACTURING
Black American	Black American	Black American
Asian or Pacific Islander	Asian or Pacific Islander	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian	Subcontinent Asian
Hispanic	Hispanic	Hispanic
Native American	Native American	Native American
	Woman	Woman

Bolded in **blue**=statistically significant underutilization
 Bolded in **red**=statistically significant overutilization
 Griffin & Strong, P.C. 2016

FINDING 4: Overconcentration of MWBE/DBE Haulers

GSPC found a dramatic overutilization of MWBE/DBE haulers with an availability of 60.76% and a utilization 92.59% in the Relevant Market. In contrast, Non-MWBE/DBE haulers were dramatically underutilized in hauling with a 39.24% availability, but only 7.41% utilization. This indicates overconcentration of MWBE/DBE haulers in hauling, particularly when overall, MWBE/DBEs are generally underutilized in Construction subcontracting.

FINDING 5: Summary of Statistically Significant MWBE/DBE Disparity Analysis in State Funded Contracts

In total, MWBE/DBEs were statistically significantly underutilized as both prime and subcontractors throughout the Study Period in all districts.

Table 62
 GDOT State Funded
 Summary of Statistically Significant MWBE/DBE Disparity Analysis
 (Using LMIG Data)

CONSTRUCTION PRIME CONTRACTORS	CONSTRUCTION SUBCONTRACTORS
Black American	Black American
Asian or Pacific Islander	Asian or Pacific Islander
Subcontinent Asian	Subcontinent Asian
Hispanic	Hispanic
Native American	Native American
Woman	Woman

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FINDING 6: Private Sector Analysis

GSPC’s analysis explicitly links a business firm owner’s race/ethnicity/gender to public contracting and related outcomes in the GDOT market area. Our focus on minority firm owners’

success likelihoods relative to non-minority firm owners in entering the market as new business owners, realizing public contracting and subcontracting opportunities, provides a framework to rationalize observed simple disparity indexes.

The results suggest that in the GDOT market area, race/ethnicity/gender matter for public contracting outcomes. Indeed, we find that in general, a firm owner’s race, ethnicity, and gender all have statistically significant effects in the GDOT market area with respect to the likelihood of securing financing, public contracting, and subcontracting opportunities relative to non-minority or non-woman owned firms. We also find that being a minority or woman owned firm increases the likelihood of a having a perception that the process by which bids are selected by GDOT is not fair and transparent, which could discourage participation from minority or woman owned firms in the public contracting process—exacerbating racial/ethnic/gender disparities in public contracting outcomes for GDOT.

FINDING 7: Anecdotal Evidence

Anecdotal evidence is gathered from the impressions and experiences of firms throughout the State of Georgia. It was gathered from:

- Informational Meetings
- Focus Groups
- Public Hearings
- Anecdotal Interviews
- Survey of Business Owners
- Emailed Comments

The findings of anecdotal evidence are as follows:

- As was noted by GSPC in the purchasing practices analysis, many MWBE/DBEs and small firms feel that the prequalification requirements warrant evaluation, especially for engineering, and might be a barrier to entry. Bonding continues to be a problem for smaller firms and many feel that GDOT could break out contracts into smaller pieces to make room for wider participation.

- Many MWBE/DBE's outside of Atlanta especially were concerned with the lack of monitoring of State Contracts. Continued monitoring of White woman owned firms to prevent "fronts" was considered necessary by participants at two hearings.
- It was argued that GDOT should implement further outreach efforts to areas outside of Atlanta as well as DBE-program specific training, perhaps with a networking component. To this point, suppliers and professional consultants feel left out of the program and find that many of the resources are not geared to their needs. Overconcentration of MWBE/DBEs in trucking and hauling was a recurrent theme.
- The certification process is considered unnecessarily lengthy and invasive by some and many feel that DBE certification has not been of benefit. There was a notable lack of buy-in to the program on the part of majority firms interviewed and who submitted comments. It should be noted that these were both semi-anonymous forums and no majority firms decided to speak at hearings. There is also perceived lack of buy-in to the program by GDOT staff and some feel that the procurement process is colored by favoritism.

FINDING 8: Purchasing Practices Policies and Procedure Findings

GSPC's purchasing practices, policies, and procedures analysis revealed that some aspects of GDOT's requirements do present unique barriers to MWBE firms. These include the department's prequalification requirements, the lack of diversity language in the Official Code of Georgia, only conducting pre-bid conferences on design build projects, not involving the EEO office in the DBE goal setting process for professional services, and not including that office in the evaluation of DBE submittals for either construction or professional services contracts.

Furthermore, the DBE Program is a responsibility that is outside of the user departments' performance mandates. This position, although not ideal, is why goal setting and good faith efforts should be evaluated at the committee level by an EEO officer. This change would also bring GDOT into compliance with the requirements of the Office of Procurement and the Office of Construction Bidding Administration to challenge the scope, specifications, and experience requirements as drafted by the user agencies to ensure underutilized classes of businesses are not systemically prohibited from competing for contracts.

GDOT should also review the weight that is given to the award of contracts based upon past performance for GDOT. This could be a barrier for any new entrants that are otherwise qualified because firms who have already done business with GDOT will continue to carry more weight than firms attempting to do business with GDOT. Historically, these types of barriers particularly affect underutilized classes.

Also, not having pre-bid conferences on other construction projects is may prevent the successful engagement of historically underutilized firms. Pre-bid conferences are often used by small, minority, woman owned and disadvantaged businesses as an opportunity, to network and share their skill set with prime contractors interested in bidding on GDOT projects, thus increasing the prime contractors' chances of developing robust small, minority, woman owned or disadvantaged participation plan on GDOT projects.

Finally, 49 CFR 26 allows GDOT to create business development initiatives, such as a mentor protégé program, at their discretion. A mentor-protégé program would give firms the opportunity to continue to participate in the program once they have graduated.

B. Recommendations

GSPC makes the following recommendations based upon the findings of the Study. It should be noted that these recommendations make take legislative action and may not be able to be implemented by GDOT until such legislative action is taken.

Commendation & Recommendation 1: Continue the current federal DBE Program

The EBO Program taken great strides in developing and supporting DBE firms through its increased commitment to supportive services since the Study Period was completed. However, during the Study Period, GSPC found that the evidence presented in the Study indicates an inference of discrimination that supports the continuation of the federal DBE Program as an appropriate and narrowly tailored remedy to address such a finding.

Commendation and Recommendation 2: Extend the current DBE Program to State-Funded Projects Administered by GDOT

Again, GDOT has instituted a new State Supportive Services Program in 2016, after the completion of the Study Period. However, during the Study Period, an Inference of discrimination can be drawn from the statistically significant disparity in LMIG contracting which is supported by the regression analysis performed in Chapter V – Private Sector. Although the federal DBE Program is only required for federally funded projects, GSPC recommends that GDOT extend the DBE Program to cover state funded programs in that:

1. GDOT require DBE certification for state funded projects in the same manner as federally funded projects.
2. GDOT administer and monitor DBE participation in the same manner
3. Administer goals in the same manner as the federal DBE Program.
4. In setting goals however, GDOT has used a weighted availability in each of the Work Class Group categories (which is then adjusted) to determine its DBE goal. The weighting uses GDOT’s budget and not the weighting that would be applicable to LMIG or perhaps other state funded projects. Therefore, GDOT should set a separate unweighted goal for state-funded contracts (subject to adjustment) based upon overall availability factors which may be adjusted.

By utilizing the same administration and methods for both DBE Programs, each Program is likely to operate most effectively, rather than attempting to establish two separate programs.

Commendation and Recommendation 3: If State-Funded Contracts Are Administered by Local Governmental Authorities, Institute a Robust Non-Discrimination Program

The Title VI Program already assures that no person shall be excluded from participation in, or is denied the benefits of, or is subjected to discrimination under any program or activity

receiving federal financial assistance from the Department of Transportation on the grounds of race, color, age, sex, disability or national origin.”

In addition to adherence to this policy, GSPC recommends enhancing the policy with uniform requirements in the administration of contracts receiving state funding:

1. Written agreement to adhere to DBE guidelines as a condition to receiving state funds. (A legislative change would likely be necessary to implement this element).
2. Outreach to DBE firms, so that all certified DBEs throughout the state are notified and given an opportunity to bid. DBE’s should be able to bid contracts in all districts.
3. Set up SSFP Eligible Firm guidelines in all state-funded bid packages and contracts.
4. Require SSFP Eligible Firm reporting on every contract to EBO.

Recommendation 4: If State Funded Contracts Are Administered by Local Governmental Authorities, Institutes a Small Business Preference Program

Almost half of the prime contractors that were identified as receiving LMIG contracts were on the GDOT prequalified list and approved for performing on projects over \$2 Million. Since the projects administered by local governmental authorities’ average well under \$200,000, GDOT should consider requiring small business preferences in the awards of LMIG and other locally administered contracts using state funding. Since most DBE firms are small businesses, this would be a race- and gender-neutral remedy that could increase DBE participation. It should be noted that this recommendation would be subject to additional legislation in order to implement.

Commendation and Recommendation 5: DBE-to-DBE Mentor-Protégé Program

GDOT already encourages Mentor-Protégé relationships. In addition, GDOT should consider the development of a DBE-to-DBE mentor-protégé program (a suggestion that has considerable support from anecdotal evidence gathered for this study). In such a program, veteran and mid-size DBEs who have graduated from the program serve as mentors for smaller and newer DBE firms.

Recommendation 6: Joint Venture Contracts/DBE Teams

In order to encourage participation on high-dollar contracts, GDOT should look for instances in which DBE capacity can be increased to match contract size. DBE capacity can be increased by encouraging joint ventures. For example, in Oregon, the Northeast Urban Trucking Consortium, an organization composed of seven DBE independent trucking firms with 15 trucks, joined together to win a \$2 million trucking contract. DBE collaboration can be encouraged by citing consortium examples in newsletters and increasing outreach for projects where such collaboration may be effective.

GDOT may also cautiously encourage joint ventures between DBEs and non-minority firms on large-scale projects. It must be noted that this type of joint venture poses potential illicit “front” risks, and GDOT must examine these joint ventures carefully.

Commendation and Recommendation 7: Adjust Prequalification Requirements

GDOT has already made changes since the Study Period in not requiring more than one engineer on staff in order for firms to bid Professional Services Contracts. For some engineering firms, having two professional engineers (PE’s) on staff, was required for prequalification with GDOT. From our anecdotal research, we found that many firms felt that they were reasonably qualified with one PE on staff and that this requirement has been exclusionary for their firms from an economic standpoint. Lowering the requirement for engineering firms from two professional engineers on staff to one on staff and on on-call, would encourage more engineering firms to come to the table and would ease the path of those smaller firms seeking to become prequalified. Still there is a perception that, although more than one staff engineer may not be required, firms that do not have more than one staff engineer may be at a disadvantage. Even with the new changes, GDOT should continue to review this area of prequalification requirement.

Recommendation 8: Contract Sizing

GDOT should consider issuing contracts in small dollar amounts to expand the opportunities that small DBEs have to do business with the Department.

Commendation and Recommendation 9: Performance Reviews and Evaluations

GDOT already considers civil rights aspects in its performance reviews. GSPC recommends additional measures for GDOT staff to be evaluated regularly based on the quality, transparency, and effectiveness of their attempts to reach procurement goals and achieve the overall goals of the DBE programs in place.

Commendation and Recommendation 10: Bonding Assistance Programs

GDOT currently provides information on bonding through its supportive services program. However, due to the results of the private sector analysis, as well as an overwhelming concern heard from DBE firms through anecdotal evidence, GSPC believes that it is important for GDOT to provide additional resources to SBE and DBE firms by utilizing non-profit organizations for loans and bonding, and forming agreements with local banks to provide funding to small, minority, and woman owned businesses recognized by GDOT's program. GDOT may also consider providing information for small businesses and DBE's on the Small Business Administration's bonding assistance program. It should also consider exploring sequential bonding in lieu of project bonding.

Recommendation 11: Mandatory Pre-Bid Conferences

Mandatory pre-bid conferences are important for participation because they are an opportunity for DBE and majority firms to interact. They encourage teaming and partnering and, importantly, allow firms to clarify questions that they have in a setting that gives everyone an

opportunity to receive the same response. Instituting mandatory pre-bid conferences will enable GDOT's bidders to express their interest and to network in a setting that might not otherwise be afforded to them, particularly on large contracts with substantial subcontracting opportunities.

Recommendation 12: Continued Monitoring of Woman owned DBE firms

Unfortunately, the use of woman owned firms as "fronts" is a relevant aspect of contract compliance monitoring in a great many jurisdictions. In these scenarios, some woman who may not actually run a firm on a day-to-day basis will put the firm in their name, while a male relative conducts regular operations. It is important to do a careful certification review of any firms that may be suspected of engaging in such a practice.

The overutilization of woman owned firms in some categories in this study suggest that there may be a problem in that regard. GDOT is encouraged to review its certification practices to enhance monitoring in this sphere and to take careful note in future of any suspicious activity.

Commendation and Recommendation 13: Address Overconcentration of DBE firms in Hauling

GSPC applauds GDOT for already undertaking an aggressive, multi-pronged approach to addressing overconcentration of DBE firms in hauling. In addition to the existing and planned efforts, GSPC recommends that contract-specific goals based on GDOT's weighted availability of firms in each work category should be instituted to ensure that any issues of overconcentration will be alleviated. This will allow the user department to issue goals on a contract-by-contract and category basis, in essence identifying those areas of work that are available to fulfill the DBE goals based on the percentage of availability in that area. GSPC has demonstrated that there is sufficient availability for DBE subcontractors to be used in many areas other than hauling.

In addition, GDOT should develop a mentor-protégé program for DBEs who are heavily concentrated in trucking and hauling so that they can begin to find work in other categories. Such

a program may help DBEs navigate networking and bidding processes as well as build relationships that can help them to obtain work in other areas.

XI. CONCLUSION

GSPC found substantial underutilization by GDOT of all minority and woman owned firms as prime contractors, with the exception of Subcontinent Asian owned firms. In all aspects of the anecdotal evidence, GSPC heard complaints from MWBE/DBE firms, especially Black American owned firms, that their capabilities were being underutilized by GDOT as primes. The statistical data bore out that only a relatively small number of firms were getting prime contracts from GDOT. Similarly, with the exception of non-minority woman, all minority groups were underutilized as subcontractors.

The consistent conclusion that can be taken from this Study is that GDOT should consider narrowly tailored ways to provide more contracting opportunities for minority and woman owned firms. This may include revisiting prequalification requirements, as well as increasing supportive services, and reducing contract sizing. This would assist in not only rectifying the disparities found in GDOT's own contracting, but also assist with remedying the marketplace discrimination found in the Private Sector Analysis.

GSPC believes that the institution of a parallel state-funded DBE Program may present an opportunity for GDOT to increase the participation of minority and woman owned firms through race-and gender-neutral means by using small business preferences and creating more outreach to participate in smaller contracts. In addition, an active attempt by GDOT to break up the overconcentration in hauling which would give Non-MWBE/DBE haulers more opportunities in hauling, while focusing more efforts on spreading out MWBE/DBE participation into every other work category where there is unutilized DBE capacity.

Griffin & Strong, P.C.

April, 2016

XII. APPENDICES

APPENDIX A

GEORGIA DEPARTMENT OF TRANSPORTATION

2015 DISPARITY STUDY

DATA ASSESSMENT REPORT

Griffin & Strong, P.C. (“GSPC”) conducted data assessment meetings during the week of March 2, 2015, regarding the Georgia Department of Transportation (“GDOT”) Disparity Study. This report summarizes those meetings and sets forth action items and preliminary questions to be answered. A data assessment report is necessary to issue prior to completing the data collection plan in order to confirm that GSPC has the correct understanding of how and where data is kept by GDOT.

I. Scope Statement

Purpose of this disparity study (“Study”) is to examine the extent of participation of minorities and women in the race and gender conscious programs of GDOT’s DBE Program. Since the DBE Program is a federal program the Study only includes federally funded projects.

The Study will collect and analyze relevant data to determine if there is a disparity between the number of minority and women owned businesses that are “ready, willing and able” as vendors in the areas of:

1. construction services
2. professional services
3. manufacturing/suppliers¹.

The dollars spent² with these same types of businesses (whether as prime contractors or subcontractors³) will also be collected and analyzed.

Issue: The study period for the disparity, is to be determined. Although GSPC proposed a five (5) year study period, GDOT is considering whether there is any

¹ Initially this was the area of “goods and services”. However, this term may be confused with other ways in which this term is utilized at GDOT, so “manufacturing and suppliers” was an much more accurate descriptions of the vendor area, particularly since there are no services performed under federal contracts other than construction and professional services.

² Initially the scope was to determine the number of firms utilized through awards. Although GSPC will also provide the number of firms, the critical comparison for purposes of disparity analysis is the dollars awarded and spent with these firms.

³ Initially there was to be a separate analysis of primes, subcontractors, and suppliers, however suppliers will be included as a major work categories, along with manufacturers and prime contractors and subcontractors will be separately reviewed for suppliers/manufacturers.

benefit to overlapping with the previous study and also whether it is advantageous to study just the period when the old system was replaced. GDOT and GSPC agreed to do a 3-year study for FY 2012 to FY 2015.

II. Data Assessment Meetings

On March 4, 2015 Griffin & Strong, P.C.'s ("GSPC") staff met with the Director of Equal Employment Opportunity ("EEO") at the Georgia Department of Transportation ("GDOT"), Kimberly King and EEO's Assistant Administrator, Betty Mason, to ascertain the location, types, and constraints to the data needed for the disparity study.

On March 5, 2015, GSPC met with GDOT's Procurement Administrator, Treasury Young, who provided information particular to professional services/consultant services for GDOT and on March 7, 2015, GSPC met with K. Joe Carpenter, Director of P3/Program Delivery and Assistant Director, Genetha Rice Singleton to gain insight into construction contracts.

I. Preliminary Purchasing Practices

GSPC's team will examine through the purchasing practices, policies, and procedures analysis how prequalification is determined by GDOT and if it can be construed as a barrier to participation. This analysis must be done before GSPC determines availability.

II. Data Assessment

A. General Data

GDOT emphasized to GSPC the importance of data accuracy in conducting the Study and focused on mechanisms that would ensure accuracy in reporting. GSPC assured GDOT that the firm would, before beginning the analysis phase, schedule a time to present the data collected to GDOT's EEO team for them to "eyeball" the databases, in addition to GSPC's other processes of cross-referencing and verifying data. In addition, GSPC discussed its method of maintaining data files as a "chain of evidence" so that GSPC can demonstrate the process and accuracy of data by being able to "peel back the onion skin" to show how original data was transformed into the data used for any analysis.

GDOT informed GSPC that the data it will need is stored on a server and not in a database system, therefore, GSPC will be able to access the data and field of information it needs directly from the server. This will shortcut any delays in the data collection process.

Challenges/Resolutions:

The consultant database is run through CMIS. In matching CMIS listings to GDOT's payment data, there may not be a direct match in the names of firms (off by dashes, periods, capitalization) as these names are entered separately in each system. The solution is to run algorithms that can find firms with similar names and match them.

It was determined in this meeting that GSPC will need from GDOT:

- Solicitations (issued during Study Period)
- Awards and P.O.s (made during Study Period)
- Payments (made during Study Period) Bidders list (during the Study Period)
- Registered subcontractors (current)
- Prequalified Consultants (CMIS) (current)
- Prequalified Contractors (current)
- Suppliers/Manufacturers (QPL) (current)
- Certified DBE list (current)
- Graduated/decertified DBE list (current)
- Work code keys and descriptions (obtained)
- SOQ Area Class Checklist

B. Certified DBEs

GDOT had an immediate concern that GSPC make sure that Disadvantaged Business Enterprises ("DBEs") are properly identified. Ms. Mason noted that the EEO department keeps track of ethnicity and gender in their own data and that the department can provide this information to GSPC's project team. It was also established that the only Caucasian-owned firms in the DBE database were women-owned. In order to pick up the MBE status of DBEs, query the ethnicity and gender of the firm's CEO/President.

A question for purchasing practices analysis will be how DBE or potential DBE certified firms become aware of the EEO office and know to get certified and then prequalified. It was stated that there are roughly 50 new certifications in EEO daily, which are routinely sent to supportive services and firms are then encouraged to go through the prequalification process. It is more frequent that a DBE firm is not prequalified primarily because they have not undertaken to be prequalified, rather than a denial.

Issue: Any certified DBE that has been denied prequalification or has not registered for it could appear on a subcontractor list for GSPC's availability analysis but not as a prime. This should be discussed with Senior Economist, Dr. Gregory Price, to see if these firms can be excluded on this basis. It is likely that GSPC will have to include DBEs that have not applied for prequalification in availabilities for primes if other aspects of qualification seem to be satisfied, e.g., they appear on other roadwork or airport qualified lists.

EEO's DBE report is in hard copy.

C. Commodity Code System

GDOT's internal commodity code system in the form of "work codes" was discussed and provided in hard copy to GSPC. Only DBEs register under their NAICS codes. For all other purposes, GDOT firms are assigned work codes. It was agreed that the Study would be conducted using GDOT's work codes and GSPC would bridge from NAICS codes (or any other outside codes) to GDOT's internal work codes. The work codes are more specific than NAICS codes and they will also speak more efficiently to the community about where and how their tax dollars are spent. Work codes are also more descriptive to a layperson than NAICS codes.

The following areas can be combined: 402 and 400 (regular asphalt) under 400; 205 and 210 under 205;

D. Prequalification of Prime Construction Contractors

Firms desiring to do work as primes with GDOT must prequalify and register according to GDOT work codes, which assess capability. Prime contractors have to do at least 30% of the work on an award.

Although the DBE Program is concerned with making opportunities available to firms that are identified and certified as disadvantaged per federal regulations, the rest of the agency is concerned about roadway construction and the like; they “want it done right and on time and EEO adds an extra layer.” While EEO ensures that people are who they say they are in order to participate in the DBE program, prequalification ensures that firms have the capabilities that they claim to have. Firms could be DBE certified and denied prequalification.

E. Prequalified Consultants

CMIS data for consultants is set up separately from other GDOT data. Unlike the work codes used for construction, consultants must be prequalified in “area classes.” There are 8 major categories of area classes. They are strictly assigned and are determined by the relevant departments. The prequalifications committee is chaired by the division director of engineering as engineering has the vast majority of area classifications. GDOT is required by federal law to have requirements but may determine internally what they will be. All 7 regions within DOT follow the same requirements set at the state level.

Mr. Young presented GSPC’s team with a “Selection package,” a file maintained in hard copy and PDF by GDOT that shows all respondents to requests for proposals and bids, as well as the subcontractors. The procurement manual contains area classes and their criteria and will be reviewed by GSPC. It was determined that GSPC would hire data entry personnel to enter the data from selection packages manually. GSPC will provide GDOT an external drive on which to put all of the selection packages. There are roughly 112 selection packages with an average of 30 bidders each, with perhaps an average of 3 subcontractors. That would be about 10,000 records to be entered.

Issue: Right of Way Services – Demolition, appraisals, and acquisitions are not designated as construction or professional services. GDOT will let us know how they should be categorized. They are listed at the bottom of the board reports as low bid awards. The data for them comes out of the Peoplesoft Financial System.

The prequalified consultant list can be pulled in excel from the GDOT website.

Insurance is not generally a part of the prequalification process but becomes an issue at the time of award. Professional licensure is typically at issue in prequalification and the system was just revised so that they no longer require

professionals with multiple licenses on certain projects (this limited the firms that could bid).

All on-call contracts have minimums (\$25,000) but may not result in an awarded amount. Task orders are issued or phase orders with a dollar amount.

F. Bidders List

Since all prime bidders must be prequalified, if the list cannot be isolated, GSPC may use the prequalified lists to determine the relevant market.

G. Registered Subcontractors

Subcontractors are tracked in construction, except for hauling. GDOT does not track any non-DBE haulers, GSPC has no way to know that they exist except in 205a, which is “Hauling within its project limits” because a subcontractor form 485 is required. Note that haulers are always subcontractors.

Hauling is indicated under several categories for certain types of hauling. For purposes of analysis, 310A Graded Aggregate Base Hauling should be combined with 310 Hauling.

Subcontractors must fill out a 485 form, “Request for approval of subcontract.” The form does not ask whether the applicant is a DBE or for any race/ethnicity/gender information because, at that stage, it is “not at issue.”

All potential subcontractors must be registered and unsuccessful bidder data for particular bids is only kept for a short period after the project is awarded.

Any manufacturer or suppliers, whether primes or subs must be on the QPL list in order to provide materials for GDOT.

Issue: Since only DBE haulers are tracked, along with work category 205a for all haulers, GSPC has two options to obtain data on haulers:

1. Utilize the data from an ongoing small business study being conducted through GA Tech, which has a list of haulers, because part of its focus is an overconcentration in trucking. This list should include non-DBE haulers. It is anticipated that this data could be available as early as May, 2015.

2. If this data is not available, GSPC will have to conduct a prime vendor questionnaire that would asked prime contractors about the haulers and other subcontractor awards that they made.
3. GSPC will endeavor to determine the specific kind of hauling, but if not, hauling categories may have to be combined (except 205a that can be segmented out).

Issue: All subcontractors except for hauling and suppliers are tracked in GDOT's system; however, it was stated that contractors do not tend to report payments made to DBEs on race neutral contracts where there are no goals, even though they are supposed to. Therefore, for these no goal projects, a subcontractor award file would not necessarily show DBE status because it is "a lot of paperwork" for the primes. It was decided that GSPC would match the subcontractor database to the DBE list to identify those firms that are not listed as DBE on zero goal projects.

GDOT tracks subcontractor payments through prime reporting on invoices. Before the department "went electronic" there was a DBE payments tab in the system. Data now comes from electronic invoicing (since 2009) and it is modeled after the previous manual system. GSPC was advised to inform the Information Technology department at GDOT that the firm needs prime and subcontractor payment data, because it is available in the system. Contract numbers are tracked with payments and contract supplements (modifications) as well as the project number are maintained throughout. Subcontractors are listed under the same contract ID as the prime.

Issue: DBE subcontractors are included in other subcontractor electronic data. In order to see if there were any changes in the DBE subcontractor awards, GSPC can run the subcontract awards against the current sub list to see if there were any change in DBEs.

Subcontractors have a 7 digit item code; the work code is the first three digits.

Issue: Do not trust the DBE designation on subcontractor awards. Instead match all firms to the DBE list.

H. Suppliers/Manufacturers

All suppliers or manufacturers, will be on the Qualified Products List (QPL). The department staff was not aware of any certified DBE manufacturers. Eliminate

supplier code 425120 because it is only brokers who are pass-throughs and not actual vendors.

I. Availability

It was agreed that the determination of available firms must be not only fair, but also accurate and reasonable.

Issue: A firm that has experience painting houses might list itself as qualified for roadway striping, but it might not be. It is important in determining availability to make these distinctions. It was agreed that GSPC utilize other road work and airport lists from various regions of the State of Georgia to supplement GDOT's internal lists. The goal is to state all firms that could (are "ready, willing, and able") do work with GDOT, not just to capture who the department is already utilizing and prequalifying.

GSPC intends to secure the following lists to supplement GDOT's lists:

- Atlanta's Hartsfield-Jackson Airport
- Other, smaller airports in the state
- Cobb, Gwinnett, Muscogee, Chatham, Augusta, and Fulton Counties roadwork

GSPC has made a note to include a thorough description of the process for determining availability in the final report as well as the reasoning and justification for the method. It was determined that a threshold analysis would not be necessary because GSPC is bypassing the capacity question by only looking at GDOT prequalified firms and firms that have done the same work elsewhere.

J. Utilization

GSPC will use primarily payment data to determine utilization. Only payments from awards made during the study period will be counted.

Issue: Some payments for awards made during the Study Period will not have been made yet. Therefore, GSPC will compare payment data to award data and use award data for contracts where payments are incomplete.

For awards under \$25,000, GDOT obtains 3 quotes; over \$25,000, the bids are posted on the Georgia Procurement Registry.

APPENDIX B

GEORGIA DEPARTMENT OF TRANSPORTATION DISPARITY STUDY

DATA COLLECTION PLAN

The data collection plan utilizes the information gathered in the Data Assessment Report and sets forth a preliminary plan for actual retrieval of the data.

A. Prime Vendor Questionnaire

It is yet to be determined whether GSPC will need to undertake a prime vendor questionnaire (sent to all prime contractors during the Study Period to gather award/payment data on subcontractors). It appears that GDOT may have all subcontractor data except, perhaps non-DBE haulers. If a prime vendor questionnaire is determined to be necessary, it would be sent out at the beginning of June 1, 2015 with a return date of June 26, 2015.

B. Telephone Survey of Business Owners in Georgia

Assigned	Task	Start	Finish	Completed
Igs/price/ Morehouse	Prepare questions for Survey of Business Owners primary use is for Private Sector Analysis and Anecdotal Evidence	5/1/15	7/31/15	
Igs/mcj	Create Master Vendor File (combined list of unique firms to be used for availability and query only for firms in the Relevant Market	6/15/15	6/19/15	
tj/mcj	Clean data files and prepare to pull sample	6/22/15	7/3/15	
tj/price	Take a random stratified sample of firms in each of the major procurement category construction, professional services, and manufacturing/suppliers	7/6/15	7/8/15	
Oppenheim	Send questions and sample information to Oppenheim Research to conduct the telephone survey of 500 firms in the relevant market	8/3/15	8/5/15	
	ALL SURVEYS RECEIVED BY GSPC		9/18/15	

C. Collection of Manual Data

Consultant prime and subcontractors from Selection Packages

Assigned	Task	Start	Finish	Completed
mcj	Obtain Selection Packages from Treasury Young by providing him with an external drive	3/16/15	3/20/15	
Tj/mcj	Attempt to convert hard copies to Excel spreadsheets (attempted 3/9/15, but would not convert without corruption...try again)	3/10/15	3/20/15	
Tj/mcj	Develop data input form, both in hard copy and in Access.	3/23/15	4/3/15	
Mcj/pc	Train data collection supervisor and hire and train temporary data entry personnel	4/6/15	4/10/15	
Pc/ams	Enter data using temporary entry data personnel. Estimated 10,000 records to be entered. If 40 entries an hour, would take approx 250 manhours to enter.	4/13/15	5/29/15	
	ALL MANUAL DATA ENTERED		5/29/15	

D. Collect Electronic Data

Assigned	Task	Start	Finish	Completed
mcj	Obtain password to GDOT data. GSPC can pull its own electronic data	3/10/15	3/18/15	
Tj/mcj	Pull all electronic data	3/19/15	5/29/15	
	ALL ELECTRONIC DATA COLLECTED		5/29/15	

E. Purchasing Practices, Policies & Procedures Interviews

Assigned	Task	Start	Finish	Completed
ig/ho	Through Kimberly King - Contact Procurement personnel and user departments to make appoints to be interviewed	3/11/15	3/23/15	
ig/ho	Conduct approx. 60 minute interviews with each department or persons to ascertain their understanding of both policy and practices	3/23/15	4/6/15	
ig/ho	Interviews will be written up, but not recorded	4/6/15	4/20/15	
	PURCHASING PRACTICES INTERVIEWS COMPLETED		4/20/15	

F. Anecdotal Interviews

Assigned	Task	Start	Finish	Completed
Kw	Take random sample (stratified by region) of GDOT Prequalified Vendors and Certified DBEs, ask Kimberly King if there are any particular firms or civil leaders to interview in addition to the sample.	6/15/15	7/3/15	
Kw	Set up and conduct approximately 60 in-person or by phone interviews using a script but receiving information not on script as well	7/3/15	8/3/15	
Kw	Write up summary of interviews, particularly documenting any accounts of marketplace discrimination	7/20/15	9/21/15	
	ANECDOTAL EVIDENCE			

G. Informational Meetings & Public Hearings & Focus Groups

Assigned	Task	Start	Finish	Completed
Igs	Set up informational meetings in Atlanta, Macon and Jessup by contacting Betty Mason to set up meetings through the district offices	3/10/15	4/3/15	
igs	Draft letter for the districts for GDOT	4/3/15	4/10/15	
Igs	Email blast and other PR about informational meetings, including post on GDOT website and GSPC Disparity Study website	4/3/15	4/10/15	
Igs/mcj/rks	Conduct informational meeting	4/20/15	5/8/15	
Igs	Set up public hearings in Atlanta, Savannah, and Tifton, Georgia by contacting Betty Mason to set up meetings through the district offices	8/1/15	8/15/15	
Igs	Draft letter for the districts for GDOT	8/1/15	8/15/15	
Igs	Email blast and other PR about public hearings, including post on GDOT website and GSPC Disparity Study website	8/16/15	9/1/15	
igs	Take random sample from Prequalified Vendors and Certified DBEs for focus groups	8/1/15	8/15/15	
Igs	Call and email sample to secure 10-15 focus group participants (same day and geographical location as the public hearing)	8/16/15	9/1/15	
Igs/rks	Conduct public hearings and focus groups	9/17/15	9/21/15	
	Informational Meetings & Public Hearings & Focus Groups Conduct public h		9/21/15	

H. Private Sector Analysis

Assigned	Task	Start	Finish	Completed
Price	Collect publicly available data e.g. census and economic data as useful	6/1/15	10/31/15	
	PRIVATE SECTOR DATA COLLECTED		10/31/15	

I. External Data

Assigned	Task	Start	Finish	Completed
Igs/mcj	Request electronic prequalified lists/contractors lists from Hartsfield Jackson Atlanta International Airport, Augusta Regional Airport, Columbus Metropolitan Airport, Valdosta Regional Airport and from counties of Cobb, Dekalb, Gwinnett, Muscogee, Chatham, Augusta, and Fulton Counties	3/10/15	5/29/15	
Mcj	Research and request recent disparity studies from nearby jurisdictions	3/10/15	5/29/15	
	EXTERNAL DATA COLLECTED		5/29/15	

J. Miscellaneous Reports & Data

Assigned	Task	Start	Finish	Completed
Mcj	Request all procurement annual reports from Kimberly King	3/10/15	3/30/15	
	MISCELLANEOUS REPORTS & DATA COLLECTED		3/30/15	

Key to assigned personnel

Mcj – Michele Clark Jenkins (Project Manager)

Lgs – Imani Griffin Strong (Deputy Project Manager)

Rks – Rodney K. Strong (Project Executive)

Price – Dr. Gregory Price (Sr. Economist)

Ho – Hubert Owens (Purchasing Practices subconsultant)

Kw – Ken Weeden (Anecdotal Interview subconsultant)

Tj – Tanesha Jones (Data analyst)

Pj – Paul Cheng (Data Entry)

Ams – Andrea Marquita Stokes (Data Entry)

Respectfully submitted this 10th day of March, 2015

By Michele Clark Jenkins
Project Manager
Griffin & Strong, P.C.

APPENDIX C

QP#	PRODUCT	CATEGORY
1	Fine Aggregate Sources	Aggregate
2	Coarse Aggregate Sources	Aggregate
3	Portland Cement Manufacturers	Concrete
4	Concrete Pipe, Precast Manhole and Miscellaneous	Concrete
5	Electrical Conduit	Miscellaneous
6	Stud Shear Connectors	Steel & Metal
7	Bituminous Materials	Asphalt
8	Guardrail Products	Steel & Metal
9	Certified Prestressed And/Or Precast Concrete Plants	Concrete
10	Ready-Mix Concrete Plants (District 1)	Concrete
10	Ready-Mix Concrete Plants (District 2)	Concrete
10	Ready-Mix Concrete Plants (District 3)	Concrete
10	Ready-Mix Concrete Plants (District 4)	Concrete
10	Ready-Mix Concrete Plants (District 7)	Concrete
10	Ready-Mix Concrete Plants (District 6)	Concrete
10	Ready-Mix Concrete Plants (District 5)	Concrete
11	Foundries Supplying Gray Iron Drainage Castings	Steel & Metal
12	Reinforcement Steel Fabricators	Steel & Metal
13	Air-Entraining Admixtures	Concrete
14	Chemical Admixtures For Concrete	Concrete
15	Epoxy Resin Adhesives	Miscellaneous
16	Membrane Curing Compounds	Concrete
17	Special Surface Coatings For Concrete	Concrete
18	Special Protective Coatings	Concrete
19	Bar Supports	Concrete
20	Preformed Joint Filler	Concrete
21	Pipe Joint Sealers and Gaskets	Pipe
22	Composite Waterproofing Membrane	Miscellaneous
24	Bituminous Treated Roving	Erosion Control
25	Fiber Mulch	Erosion Control
26	Heat Stable Anti-Stripping Additives	Asphalt
27	Rapid Setting Patching Material	Concrete
28	Filter Fabric	Miscellaneous
29	Reflective Sheeting	Traffic Control/Pavement Markings
30	Fly Ash & Slag Suppliers	Asphalt
31	Manhole Steps	Miscellaneous
32	Soil Sterilants	Erosion Control
33	Tackifiers	Erosion Control
34	Work Zone Traffic Control Devices	Traffic Control/Pavement Markings
35	Drive Type Galvanized Steel Sign Posts	Traffic Control/Pavement Markings
36	Silt Fence Fabrics	Erosion Control
37	Cast Steel H-Pile Points	Steel & Metal
38	Epoxy Powders For Coating Steel Reinforcing Bars &	Steel & Metal
39	Asphalt Releasing Agents	Asphalt
40	Paving Reinforcing Fabric	Asphalt
41	Hydrated Lime	Asphalt

42	Anti-Graffiti Coatings	Concrete
43	Fusion Bonded Coaters	Miscellaneous
44	Steel Pile Producers and Suppliers	Steel & Metal
45	Hot Mix Asphaltic Concrete Plant	Asphalt
46	Traffic Markings Producers	Traffic Control/Pavement Markings
47	Geocomposite Wall Drains	Miscellaneous
48	Traffic Signal & ITS Equipment	ITS Systems
49	Turf Reinforcement Matting	Erosion Control
50	Approved Wood Preserving Plants	Miscellaneous
51	Polyethylene (PE) Plastic and Polyvinyl Chloride	Pipe
52	Overhead Signs Supports, Strain Poles, and Lighting	Traffic Control/Pavement Markings
53	Galvanizers	Steel & Metal
55	Welded Steel Wire Fabric for Concrete Reinforcement	Steel & Metal
56	Corrugated Metal Pipe	Pipe
57	High Mast Lowering Systems	Traffic Control/Pavement Markings
58	Filter Fabric Adhesives	Miscellaneous
59	Miscellaneous Metal Fabricators	Steel & Metal
60	Bridge Fabricators	Steel & Metal
61	Reinforcement Steel Rolling Mills	Steel & Metal
62	Organic & Synthetic Material Fiber Blanket	Erosion Control
63	Ground Mounted Breakaway Sign Supports	Traffic Control/Pavement Markings
64	Guardrail Impact Attenuator Units	Traffic Control/Pavement Markings
65	Emulsified Latex	Asphalt
66	Silicone Joint Sealants	Miscellaneous
67	Non-Chlorinated Asphalt Extractants	Asphalt
68	Low Dusting Blast Cleaning Abrasives	Miscellaneous
69	Flexible Delineator Post	Miscellaneous
71	Glass Beads	Traffic Control/Pavement Markings
72	Guy Wire/ Span Cable	Traffic Control/Pavement Markings
73	Waterborne Bridge Paint Systems	Miscellaneous
74	Preformed Plastic Markings	Traffic Control/Pavement Markings
75	Polyurethane Sealant for Inductive Loops	Traffic Control/Pavement Markings
76	Raised Pavement Markers and Channel Markers	Traffic Control/Pavement Markings
77	Fiber Stabilizing Additives	Asphalt
78	Junction Boxes	Miscellaneous
79	Portable Arrow Boards	Traffic Control/Pavement Markings
80	Highway Sign Manufacturers	Traffic Control/Pavement Markings
81	Mineral Fillers	Asphalt
82	Portable Changeable Message Signs	Traffic Control/Pavement Markings
83	Center Mount Reflector Delineators	Miscellaneous
84	Anionic Polyacrylamide (PAM)	Erosion Control
86	Macro-Synthetic Fibers for Concrete Reinforcement	Concrete
87	Detectable Warning Systems	Miscellaneous
88	Approved Material Transfer Vehicles	Miscellaneous
90	Sound Barrier Walls	Miscellaneous
91	Approved Non-contacting Laser and Sonar-type	Asphalt
92	Sources for Asphalt Joint and Crack Sealant Material	Asphalt

92	Sources of Asphalt Joint and Crack Sealant Materials	Asphalt
97	Reinforcement Fiber	Asphalt

APPENDIX D

Russell R. McMurry, P.E., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

April 13, 2015

Dear Georgia Business Owner or Community Member:

As you may be aware, the Georgia Department of Transportation (GDOT), as a recipient of federal funds, is subject to certain mandates regarding the expenditure of those funds. Part of our mandate requires a percentage of all federal dollars to be spent with certified Disadvantaged Business Enterprises (DBEs). To ensure that the DBE Program utilized by the GDOT is compliant with federal regulation, the Program's participation goals are reviewed every three years. 2015 marks the most recent three year period for such a review. In order to ensure that our review is fundamentally sound, we have contracted the firm of Griffin & Strong, P.C. ("GSPC") to conduct a comprehensive disparity study.

The disparity study's objective is to examine the extent of participation of minorities and women in contracting with GDOT through its DBE Program. The study will collect and analyze relevant data to determine if there is a disparity between the availability and utilization of minority and women owned businesses that are "ready, willing and able" to provide goods and services to GDOT and whether that disparity is likely caused by race or gender factors.

One aspect of the study is to interview local business owners and community members with regard to their experiences in doing business with GDOT. There may also be questions related to the general business environment in Georgia.

This letter of introduction for GSPC seeks your assistance and cooperation with the firm in responding to their inquiries regarding your experiences. We believe that the more information GDOT has about your experiences, the better we can serve all businesses in our marketplace.

Thank you for your cooperation in this most important effort.

Sincerely,

A handwritten signature in blue ink, appearing to read "Russell R. McMurry", is written over the typed name.

Russell R. McMurry, P.E.
Commissioner
Georgia Department of Transportation

GRIFFIN & STRONG, P.C.

ATTORNEYS-AT-LAW AND PUBLIC POLICY CONSULTANTS
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235 PEACHTREE STREET, N.E.
SUITE 400
ATLANTA, GEORGIA 30303-1406
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September 18, 2015

Dear Contractor:

The Georgia Department of Transportation (GDOT) has contracted with our firm, Griffin & Strong, P.C. ("GSPC") to conduct a comprehensive disparity study. A letter of introduction from the GDOT Commissioner is enclosed. You have been contacted because GDOT's records show that your firm has had one or more contract awards between July 1, 2011 and June 30, 2014 (Study Period). The participation and feedback of firms that were awarded contracts with GDOT is a very important part of this study.

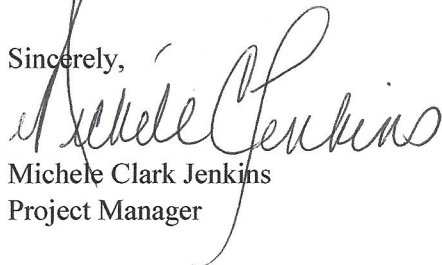
We are requesting your assistance in providing information on the participation of hauling subcontractors on your GDOT projects and to verify our information regarding your firm. Please complete the attached questionnaire for each GDOT contract(s) you were awarded during the study period. Your feedback will greatly assist our efforts to accurately calculate the spending patterns of GDOT with businesses who have received contracts. For more details on how to fill out the questionnaire, as well as responses to frequently asked questions, please go to the study webpage at <http://www.gdotdisparitystudy2015.com>.

Please note, it is important that the information provided is accurate and reliable and obtained from documentation, including but not limited to: accounts receivable/payable reports, invoices, canceled checks, etc. After the questionnaire has been reviewed, your firm may be contacted for additional documentation should any conflicts in information arise.

The completed form should be returned via regular mail, fax or e-mail no later than October 5, 2015, to the address on the questionnaire. PLEASE DO NOT RETURN THE QUESTIONNAIRE TO GDOT, but to the address listed at the bottom of the questionnaire.

Thank you in advance for your participation and immediate attention to this matter. If you have any questions or would like more information, please contact: Griffin & Strong, P.C. by phone at (678)-608-4551 or email us at GDOTStudy@gspclaw.com.

Sincerely,



Michele Clark Jenkins
Project Manager

Hauling Subcontracting Activity By Project/Contract Number GDOT Disparity Study - 2015

Prime Vendor Name _____ Prime Vendor Georgia Department of Transportation ID# _____

Prime Vendor Address _____ City _____ ST _____ Zip _____

Prime Vendor Phone _____ Prime Vendor Email _____

Prime Vendor MWBE/GDOT DBE Status (Circle all applicable) Non-Minority Male Non-Minority Female African American Asian American

Hispanic American Native American If certified MWBE/DBE – List one current Certifying Agency(ies) _____

Project/Contract Number _____ Project/Contract Description _____ Project/Contract Date _____

Prime Vendor Project/Contract NAICS Code (GDOT) _____ Contract Work Category (circle one) Construction or Professional services

Did you have any **hauling/trucking** subcontractors? Yes or No. If no, stop here and send us your questionnaire. If yes, please fill out below. Please make sure you enter both DBE and Non-DBE Haulers.

Hauling Subcontractor/ Subconsultant Name	Hauling Subcontractor City, State, Zip	MWBE Status of Subcontractor (see list above)	Type of Hauling work (enter number) 109-Hauling Fuel 205a-Hauling Soil within the Project 206a-Hauling Soil to the Project 310a-Hauling GAB 400a-Hauling Asphaltic Concrete Mix 400b-Hauling Liquid AC 432a-Hauling Millings 603a-Hauling Rip Rap to Project, All Sizes 800a-Hauling Aggregate	Total Amount Paid to Subcontractor (\$)	Estimated Remaining Amount to be paid to Subcontractor	If amounts remaining to be paid to Subcontractor, provide estimated date of final payment (mm/yy)	If an amount remaining to be paid to Subcontractor is such amount fixed or on an as-needed basis	Full Prime Contract amount, including amendments

Please return questionnaire by October 5, 2015, to: GDOT Study Questionnaire Response, c/o Griffin & Strong, P.C., Box 368, Kennesaw, GA 30144, or email to gdotstudy@gspclaw.com, or fax to 404-584-9730.

APPENDIX E



Georgia Department of Transportation Disparity Study 2015 Survey Instrument

Q1 Which one of the following is your company's primary line of business?
(SELECT ONLY ONE)

Construction Services
Professional Services
General Services
Goods & Materials
No Response

Q.1A What is your primary NAICS code?_____

Q2 In what year range was your company established?

Before 1961
1960-1979
1980-1989
1990-1999
2000-2009
2012-2015

Q3 Is your company a sole proprietor, partnership, corporation, or other?

Sole proprietor
Corporation
Limited Liability Corporation
Partnership
Limited Liability Partnership
Non-Profit Organization
Governmental Agency
Other



Q4 On average, how many employees does your company keep on the payroll, including full-time and part-time staff? (Number of Employees)

- 1-10
- 11-30
- 31-50
- 51-75
- 76-100
- Over 100

Q5 On average, how many racial or ethnic minority employees does your company keep on the payroll, including full-time and part-time staff? (Minority Employees)

- 1-5
- 6-10
- 11-15
- 16-20
- 21 or More

Q6 On average, how many women employees does your company keep on the payroll, including full-time and part-time staff? (Women Employees)

- 1-5
- 6-10
- 11-15
- 16-20
- 21 or More

Q7 Which of the following categories would you consider to be the race or ethnic origin that the person or persons that own at least 51% of the company identify as? Would you say:

Caucasian Male
Caucasian Female
African American
Asian American
Hispanic American
Native American
Bi-Racial or Multi-Racial (specify)
Other (specify)

Q8 Is at least 51% percent of your company owned and controlled by a woman or women?

Yes
No

Q9 What is the highest level of education completed by the owner of your company? Would you say:

Some High School
High School graduate
Some College
College Graduate
Post Graduate Degree
Trade or Technical Certificate
DK

Q10 How many years of experience in your company's business line does the primary owner of your company have?

1-5
6-10
11-15
16-20



More than 20

Q11 Which of the following categories best approximates your company's gross revenues for calendar year 2015. Your best estimate will suffice.

- \$100,000 or less
- \$100,001 - \$500,000
- \$500,001 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 to \$10,000,000
- \$10,000,001 to \$25,000,000
- \$25,000,001 to \$36,500,000
- Over \$36,500,000
- DK

Q12 Which of the following categories best approximates your company's public sector gross (government) revenues for calendar year 2015. Your best estimate will suffice.

- \$100,000 or less
- \$100,001 - \$500,000
- \$500,001 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 to \$10,000,000
- \$10,000,001 to \$25,000,000
- \$25,000,001 to \$36,500,000
- Over \$36,500,000
- DK

Q13 Are you required to have bonding for the type of work your company bids?

- Yes
- No (Skip to Q16)
- DK (Skip to Q16)

Q14 What is your current aggregate bonding limit?

- Below \$500,000



\$500,001 to \$1,000,000
\$1,000,001 to \$2,000,000
\$2,000,001 to \$5,000,000
\$5,000,001 to \$10,000,000
\$10,000,001 to \$25,000,000
Over \$25,000,001
DK

Q15 What is your current single project bonding limit?

Below \$500,000
\$500,001 to \$1,000,000
\$1,000,001 to \$2,000,000
\$2,000,001 to \$5,000,000
\$5,000,001 to \$10,000,000
\$10,000,001 to \$25,000,000
Over \$25,000,001
DK

Q16

This study is to capture information over a three-year period from 2012 to 2015. The next set of questions I will ask refer to that time frame and concern your company's attempts to do business with GDOT, other public sector (government) entities, and private sector (non-government) entities.

From 2012-2015, how many times has your company submitted bids or proposals for projects as prime contractor on:



	None	1-10	11-25	26-50	51-100	Over 100	DK/NA
GDOT Public Projects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private Sector Projects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other Public Sector (non-GDOT Projects)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q17 From 2012-2015, has your company performed any work as a prime contractor for:

[SHOW ONLY categories for which vendor has submitted proposals IN QUESTION 16]

	Yes	No	DK/NA
GDOT Public Projects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private Sector Projects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other Public Sector (non-GDOT projects)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q18 From 2012-2015, has your company used a subcontractor or sub-consultant on projects in:

[SHOW ONLY categories for which vendor has performed work as designated in QUESTION 17]

	Yes	No	DK/NA
GDOT Public Projects			
Private Sector Projects			
Other Public Sector (non-GDOT Projects)			



Q19 How frequently do you use minority or women owned firms as subcontractors or sub-consultants on:

[SHOW ONLY categories for which vendor indicated they have used subcontractors in QUESTION 18]

	Very Often	Often	Seldom	Never	DK/NA
GDOT Public Projects	1	2	3	4	5 (886)
Private Sector Projects	1	2	3	4	5 (887)
Other Public Sector (non-GDOT Projects)	1	2	3	4	5 (888)

All go to Q20

Q20 Did you serve as a subcontractor on a GDOT project between 2012 and 2015?

- Yes
- No (Skip to Q22)
- DK (Skip to Q22)

Q21 How often have you served as a subcontractor on a GDOT project from 2012-2015?

- 1-10
- 11-25
- 26-50
- 51-100
- Over 100
- DK

Q22 Have you been invited to participate in bids for public contracts with prime contractors that you may have worked with in the private sector?

- Yes
- No
- DK



Ask Q23 only if Q17a = YES; others skip to Q24

Q23 What is the amount of time that it typically takes to receive payment from GDOT for your services on GDOT projects?

Less than 30 days

30-60 days

60-90 days

90-120 days

Over 120 days

DK/NA

(everyone should get this question)

Q24 How would you rate the quality of interaction with GDOT on contract opportunities?

Extremely Satisfied

Satisfied

Somewhat Satisfied

Neutral

Somewhat Dissatisfied

Dissatisfied

Extremely Dissatisfied

DK/NA

Q25 The following is a list of things that may prevent companies from bidding or obtaining work on a project. In your experience, have any of the following been a barrier to obtaining work on projects for GDOT?

Pre-qualification requirements

Performance bond requirements



- Bid bond requirements
- Financing
- Insurance requirements
- Bid specifications
- Limited time given to prepare bid package or quote
- Limited knowledge of purchasing / contracting policies and procedures
- Lack of experience
- Lack of personnel
- Contract too large
- Contract too expensive to bid
- Informal networks
- Selection process
- Competing with large companies

Ask Q26 only if owner(s) is NOT white male; if owner is white male, skip to Q32

Q26 Is your company a certified Minority, Woman, or Disadvantaged Business Enterprise?

- Yes
- No (Skip to Q28)
- DK (Skip to Q29)

Q27 What is your certification?

	Yes	No	DK
MBE (Minority Business Enterprise)	1	2	3
WBE (Women Business Enterprise)	1	2	3
DBE (Disadvantaged Business Enterprise)	1	2	3

Go to Q41

Q28 Why is your company not certified?

Please check all that apply

We do not meet one or more of the requirements for certification



- The process of certification is confusing
- Certification is too expensive
- I do not want GDOT to have information about my company
- I have not had time to get certified/the process is too time-consuming
- Certification does not benefit and/or will negatively impact my company

All respondents

Q29 Do you believe that there is favoritism or disparate treatment in the certification process?

- Yes
- No
- DK

Those who responded “no” or “dk” in Q26 should skip to Q31

Q30 Are you certified with any of the following agencies?

	Yes	No	DK
Georgia Department of Transportation	1	2	3
City of Atlanta, GA	1	2	3
Federal Small Business Administration	1	2	3
Women's Business Enterprise National Council	1	2	3
Hartsfield Jackson Atlanta International Airport	1	2	3
State of Georgia	1	2	3
Other State DOTs	1	2	3

Q31 Do you feel as though you experienced discriminatory behavior from the private sector (i.e., non-governmental entities) from 2012-2015?

- Yes
- No
- DK

Q32 Did you applied for a commercial (business) bank loan between 2012-2015?



Yes

No (Skip to Q37)

DK (Skip to Q37)

Q33 How many times did you applied for a commercial (business) bank loan from 2012-2015?

1-10

11-25

26-50

51-100

Over 100

DK/NA

Q34 How many times were you approved for a commercial (business) bank loan from 2012-2015?

None (Skip to Q37)

1-10

11-25

26-50

51-100

Over 100

DK/NA

Q35 What was the largest commercial loan you received from 2012-2015?

\$50,000 or less

\$50,001 - \$100,000

\$100,001 - \$300,000

\$300,001 - \$500,000



- \$500,001 - \$1,000,000
- \$1,000,001 - \$3,000,000
- \$3,000,001 - \$5,000,000
- \$5,000,001 to \$10,000,000
- over \$10,000,000
- DK/NA

Q36 How many times have you been denied a commercial (business) bank loan from 2012-2015?

- None
- 1-10
- 11-25
- 26-50
- 51-100
- Over 100
- DK/NA

Q37 How many times have you sought venture capital from 2012-2015?

- None
- 1-10
- 11-25
- 26-50
- 51-100
- Over 100
- DK/NA

Q38a-d

Between 2012-2015, did your company apply and receive any of the following?

	Never Applied	Applied, Never Approved	Applied, Some Approved	Applied, All Approved
Business start-up loan?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Operating capital loan?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



- Equipment loan?
- Commercial/Professional liability insurance?

Q39a-d only for those who said “Applied, never approved” or “Applied, some approved” in Q38a-d. If all four in Q39a-d = “never applied” or “all approved”, skip to Q41

Q39a-d

Of the items your company was denied, what was the denial reason?

Please check all that apply.

	Insufficient Documentation	Insufficient Business History	Confusion about Process	Credit History	DK
a. Business start-up loan?	1	2	3	4	7
b. Operating capital loan?	1	2	3	4	
c. Equipment loan?	1	2	3	4	7
d. Commercial/Professional liability insurance?	1	2	3	4	7

Q40 Do you believe that your race, gender, or ethnicity was a factor in any of those denials?

Yes

No

Q41a-c

From 2012-2015, have you experienced discriminatory behavior from GDOT due to:

(each yes/no)

gender

race,

ethnicity



of the owner?

[S - IF THE ANSWER IS “NO” FOR ALL THREE 41a-c, SKIP TO Q43]

Q42

How often has your company experienced this racial, gender, or ethnicity discriminatory behavior from GDOT?

Never

Seldom

Often

Very Often

DK

Q. From 2012-2015, was it expressed to you by GDOT that you could not bid or would not be awarded a contract because your company did not have enough experience in your trade?

Yes

No (Skip to Q45)

DK (Skip to Q45)

Q. How often have you experienced discrimination by GDOT based on your supposed lack of experience in your trade?

Never

Seldom

Often

Very Often

DK

Q43 From 2012-2015, was it expressed to you by GDOT that you could not bid or would not be awarded a contract because your company did not have enough contracting experience with GDOT?

Yes

No (Skip to Q45)



DK (Skip to Q45)

Q44 How often have you experienced discrimination by GDOT based on your supposed lack of contracting experience with GDOT?

Never

Seldom

Often

Very Often

DK

(all respondents)

Q45 Do you believe there is an informal network of prime and subcontractors doing business with GDOT that monopolize the public contracting process?

Yes

No (*Skip to Q49*)

Please tell us if you strongly agree, agree, neither agree or disagree, disagree or strongly disagree with each of the following statements:

Q46 My company's exclusion from this network has prevented us from bidding on contracts with GDOT.

Q47 My company's exclusion from this network has prevented us from winning contracts with GDOT.

Q48 Exclusion from this informal network has a disproportionate impact on women and minority-owned businesses.



(all respondents get the following questions) Please tell us if you strongly agree, agree, neither agree or disagree, disagree or strongly disagree with each of the following statements:

Q49a Double standards in qualification and performance make it more difficult for minority and women-owned businesses to win bids or contracts.

Q49b The amount of experience required by a firm in order to bid or win contracts with GDOT is unnecessary and makes it more difficult for minority and women-owned businesses to win bids or contracts.

Q50 .Sometimes, a prime contractor will include a DBE subcontractor on a bid to meet the “good faith effort” requirement, then drop the company as a subcontractor after winning the award.

Q51 In general, DBE’s tend to be viewed by the general public as less competent than non-minority male-owned businesses.

Q52 I believe that some non-minority prime contractors only utilize DBE companies when required to do so by GDOT

Q53 What is your title?

Owner/CEO/President
Manager/Financial Officer
Other

That completes the survey. On behalf of the research team we thank you for your participation and valuable comments. Additional comments and questions regarding the study may be sent to GDOTStudy@gspclaw.com

APPENDIX F

GRIFFIN & STRONG, P.C.

ATTORNEYS-AT-LAW AND PUBLIC POLICY CONSULTANTS
A Professional Corporation
235 PEACHTREE STREET, N.E.
SUITE 400
ATLANTA, GEORGIA 30303-1406
TELEPHONE 404.584.9777 FACSIMILE 404.584.9730

Via U.S. Mail

February 10, 2016

Re: Georgia Department of Transportation Disparity Study – LMIG Grants Data Collection

Dear,

Griffin & Strong, P.C. (“GSPC”) has been contracted by the Georgia Department of Transportation (“GDOT”) to include the LMIG grants as part of a disparity study of state funded contracting. The participation of LMIG grantees is crucial to the disparity study and we have determined that you were a LMIG grantee for at least one of the FY2012 through FY2014 years.

By this letter, GSPC is requesting your assistance in providing information on contractors that you hired using LMIG dollars and, if you maintain subcontractor data, we would also like to obtain that data as well. The specific data requested is attached. For more information about the GDOT Disparity Study, please visit us at GDOTDisparityStudy2015.com.

The data can be sent to GSPC in several ways: PLEASE DO NOT SEND ANY DATA TO GDOT

By email to GDOTStudy@gspclaw.com

Uploaded to a cloud account (please email us to obtain a link)

Faxed to: 678-960-7861

Sent by mail to: GDOT Disparity Study c/o Griffin & Strong, P.C. P.O. Box 368, Kennesaw, GA 30144

Thank you in advance for your participation and immediate attention to this matter. We would like to have all of the data delivered to us no later than **February 26, 2016**. If you are unable to meet that deadline or if you should have any other questions or comments, please email us at GDOTStudy@gspclaw.com or call the Project Manager, Michele Clark Jenkins at 678-608-4551.

Sincerely,
GRIFFIN & STRONG, P.C.



Michele Clark Jenkins
Sr. Director
Consulting Group



GEORGIA DEPARTMENT OF TRANSPORTATION
DISPARITY STUDY
STATE FUNDED – LMIG
DATA REQUEST
(February 10, 2016)

Below we have listed the data Griffin & Strong, P.C. needs to complete the state-funded portion of the Georgia Department of Transportation Disparity Study (“Study”). This data request is for information on the bidders and contractors of LMIG funded contracts. If you maintain subcontractor data, we also need the same information regarding those subcontractors. Below are the fields of information most desirable for the Study. If you do not have all of the information we are requesting, just provide us with what you do have.

Electronic spreadsheets are the preferable form in which we would like to receive the data. Our second preference is PDF or Word documents, but we will also accept hard copies mailed to us.

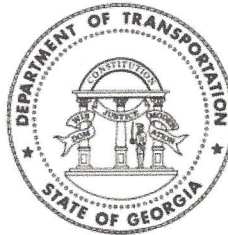
We would like to receive as much of the data as possible **by February 26, 2016.**

1. Please indicate whether your jurisdiction has a preference or remedial program of any type. E.g. Minority, Women, Local, Veteran, Disabled or Small Business. Please attach a copy of the program policy or an Internet link to it.
2. Bidder, Awardee, and Subcontractor (if maintained) Data: Parameters: Only for LMIG grants for FY2012-2014

Fields Requested- (Please label data file with the name of the LMIG Grantee)

Contractor Name
Contractor Vendor# (your number assigned to the firm, if any)
Contractor Street Address
Contractor City
Contractor State
Contractor Zip
Contractor Contact
Contractor Email
Contractor Phone
Contractor Race or Ethnicity
Contractor Gender
Project Name
Project Number
Project Description
Project Commodity Code (NIGP, NAICS, etc.)
Award or Bid Date
Award or Bid Amount
LMIG Application Grant Date
LMIG Application Road Name or Description

Russell R. McMurry, P.E., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

February 10, 2016

TO: Local Government Partners and Subject Matter Experts

The Georgia Department of Transportation (GDOT) has contracted with the firm Griffin & Strong, P.C. to conduct a comprehensive disparity study in support of our Disadvantaged Business Enterprise (DBE) Program. GDOT is conducting this study to understand the current utilization of DBE/WBE/MBE on non-federal projects. Please note that GDOT is not requiring DBE goals for the LMIG Program.

The disparity study will examine the extent of participation of minorities and women in state contracting with GDOT. The study will collect and analyze relevant data to determine if there is a disparity between the availability and utilization of minority and women owned businesses that are "ready, willing and able" to provide goods and services to GDOT and whether that disparity is likely caused by race or gender factors.

Griffin & Strong, P.C. will be contacting you to collect data regarding State-funded Local Maintenance and Infrastructure Grant (LMIG) projects for 2013 and 2014. GDOT requests your assistance and cooperation in working with Griffin & Strong P.C. to timely respond to their inquiries and requests for information.

Thank you in advance for your assistance in furthering this most important effort.

Sincerely,

A handwritten signature in blue ink that reads "Russell R. McMurry". The signature is written in a cursive style.

Russell R. McMurry, P.E.
Commissioner

RRM:KAK

cc: Kimberly A. King, EEO Director
Terry Gable, Local Grants Administrator

APPENDIX G

APPENDIX G

GDOT DISTRICTS 1-7

LMIG UTILIZATION

Table G-1
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 1
By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	1	8.33%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	1	3.45%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	1	8.33%	1	8.33%	2	16.67%	10	83.33%	12	100.00%
2013	0	0.00%	1	4.55%	1	4.55%	21	95.45%	22	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	10	100.00%	10	100.00%
TOTAL*	1	3.45%	1	3.45%	2	6.90%	27	93.10%	29	100.00%

Griffin & Strong, P.C. 2016

Table G-2
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 1
By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$213,018	0.71%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$213,018	0.31%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$213,018	0.71%	\$1,045,178	3.49%	\$1,258,196	4.20%	\$28,732,011	95.80%	\$29,990,207	100.00%
2013	\$0	0.00%	\$300,895	1.36%	\$300,895	1.36%	\$21,789,157	98.64%	\$22,090,052	100.00%
2014	\$0	0.00%	0	0.00%	\$0	0.00%	\$15,788,825	100.00%	\$15,788,825	100.00%
TOTAL*	\$213,018	0.31%	\$1,346,073	1.98%	\$1,559,091	2.30%	\$66,309,993	97.70%	\$67,869,084	100.00%

Griffin & Strong, P.C. 2016

Table G-3
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 2
 By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	1	33.33%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	1	10.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	1	100.00%	1	100.00%
2013	1	33.33%	0	0.00%	1	33.33%	2	66.67%	3	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	8	100.00%	8	100.00%
TOTAL*	1	10.00%	0	0.00%	1	10.00%	9	90.00%	10	100.00%

Griffin & Strong, P.C. 2016

Table G-4
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 2
 By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$40,000	5.44%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$40,000	0.91%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$3,523,574	100.00%	\$3,523,574	100.00%
2013	\$40,000	5.44%	\$0	0.00%	\$40,000	5.44%	\$695,083	94.56%	\$735,083	100.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$136,652	100.00%	\$136,652	100.00%
TOTAL*	\$40,000	0.91%	\$0	0.00%	\$40,000	0.91%	\$4,355,309	99.09%	\$4,395,309	100.00%

Griffin & Strong, P.C. 2016

Table G-5
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 3
 By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	4	100.00%	4	100.00%
2013	0	0.00%	0	0.00%	0	0.00%	9	100.00%	9	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	4	100.00%	4	100.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	11	100.00%	11	100.00%

Griffin & Strong, P.C. 2016

Table G-6
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 3
 By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$1,366,220	100.00%	\$1,366,220	100.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$4,804,257	100.00%	\$4,804,257	100.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$2,543,564	100.00%	\$2,543,564	100.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$8,714,041	100.00%	\$8,714,041	100.00%

Griffin & Strong, P.C. 2016

Table G-7
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 4
By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	6	100.00%	6	100.00%
2013	0	0.00%	0	0.00%	0	0.00%	6	100.00%	6	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	3	100.00%	3	100.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	9	100.00%	9	100.00%

Griffin & Strong, P.C. 2016

Table G-8
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 4
By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$3,150,018	100.00%	\$3,150,018	100.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$4,098,993	100.00%	\$4,098,993	100.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$1,576,248	100.00%	\$1,576,248	100.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$8,825,259	100.00%	\$8,825,259	100.00%

Griffin & Strong, P.C. 2016

Table G-9
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 5
 By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	3	100.00%	3	100.00%
2013	0	0.00%	0	0.00%	0	0.00%	7	100.00%	7	100.00%
2014	0	0.00%	1	14.29%	1	14.29%	6	85.71%	7	100.00%
TOTAL*	0	0.00%	1	9.09%	1	9.09%	10	90.91%	11	100.00%

Griffin & Strong, P.C. 2016

Table G-10
 GDOT Disparity Study
 LMIG Prime Utilization
 Construction Firms in Ga in District 5
 By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$4,241,050	100.00%	\$4,241,050	100.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$2,425,410	100.00%	\$2,425,410	100.00%
2014	\$0	0.00%	\$65,950	5.82%	\$65,950	5.82%	\$1,067,597	94.18%	\$1,133,547	100.00%
TOTAL*	\$0	0.00%	\$65,950	0.85%	\$65,950	0.85%	\$7,734,058	99.15%	\$7,800,008	100.00%

Griffin & Strong, P.C. 2016

Table G-11
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 6
By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	1	14.29%	1	14.29%	6	85.71%	7	100.00%
2013	0	0.00%	3	42.86%	3	42.86%	4	57.14%	7	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	1	100.00%	1	100.00%
TOTAL*	0	0.00%	3	30.00%	3	30.00%	7	70.00%	10	100.00%

Griffin & Strong, P.C. 2016

Table G-12
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 6
By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$0	0.00%	\$25,946	3.39%	\$25,946	3.39%	\$740,184	96.1%	\$766,130	100.00%
2013	\$0	0.00%	\$258,039	17.31%	\$258,039	17.31%	\$1,232,463	82.69%	\$1,490,502	100.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$690,669	100.00%	\$690,669	100.00%
TOTAL*	\$0	0.00%	\$283,986	9.64%	\$283,986	9.64%	\$2,663,346	90.36%	\$2,947,332	100.00%

Griffin & Strong, P.C. 2016

Table G-13
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 7
By Number of Firms (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	#	%	#	%	#	%	#	%	#	%
2012	0	0.00%	0	0.00%	1	14.29%	0	0.00%	0	0.00%
2013	0	0.00%	0	0.00%	2	28.57%	2	28.57%	0	0.00%
2014	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL*	0	0.00%	0	0.00%	2	15.38%	2	15.38%	0	0.00%

*TOTAL represents the number of unique firms during the Study Period

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	#	%	#	%	#	%	#	%	#	%
2012	1	14.29%	0	0.00%	1	14.29%	6	85.17%	7	100.00%
2013	4	57.14%	0	0.00%	4	57.14%	3	42.86%	7	100.00%
2014	0	0.00%	0	0.00%	0	0.00%	3	100.00%	3	100.00%
TOTAL*	4	30.77%	0	0.00%	4	30.77%	9	69.23%	13	100.00%

Griffin & Strong, P.C. 2016

Table G-14
GDOT Disparity Study
LMIG Prime Utilization
Construction Firms in Ga in District 7
By Award Dollars (from Sample)

FY	Asian Pacific		Subcontinent Asian		Black American		Hispanic American		Native American	
	\$	%	\$	%	\$	%	\$	%	\$	%
2012	\$0	0.00%	\$0	0.00%	\$117,600	0.35%	\$0	0.00%	\$0	0.00%
2013	\$0	0.00%	\$0	0.00%	\$357,950	2.78%	\$343,166	2.67%	\$0	0.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$0	0.00%
TOTAL*	\$0	0.00%	\$0	0.00%	\$475,550	0.99%	\$343,166	0.72%	\$0	0.00%

FY	Total MBE		Women		Total MWBE/DBE		Non-MWBE/DBE		TOTAL	
	\$	%	\$	%	\$	%	\$	%	#	%
2012	\$117,600	0.35%	\$0	0.00%	\$117,600	0.35%	\$33,160,700	99.65%	\$33,278,300	100.00%
2013	\$701,116	5.45%	\$0	0.00%	\$701,116	5.45%	\$12,153,157	94.55%	\$12,854,273	100.00%
2014	\$0	0.00%	\$0	0.00%	\$0	0.00%	\$1,775,202	100.00%	\$1,775,202	100.00%
TOTAL*	\$818,716	1.71%	\$0	0.00%	\$818,716	1.71%	\$47,089,059	98.29%	\$47,907,775	100.00%

Griffin & Strong, P.C. 2016

APPENDIX H

GRIFFIN & STRONG, P.C.

ATTORNEYS-AT-LAW AND PUBLIC POLICY CONSULTANTS
A Professional Corporation
235 PEACHTREE STREET, N.E.
SUITE 400
ATLANTA, GEORGIA 30303-1406
TELEPHONE 404.584.9777 FACSIMILE 404.584.9730

Dear

As part of the Georgia Department of Transportation's ("GDOT") ongoing effort to evaluate whether all groups have equal access to their procurement process, GDOT has contracted with the firm of Griffin & Strong, P.C. ("GSPC") to conduct a disparity study, including an analysis of its Local Maintenance Improvement Grants ("LMIG"). The participation and feedback of firms that were awarded contracts by local jurisdictions using LMIG dollars is a very important part of this study. We have determined that you were a prime contractor on one or more locally awarded contracts using LMIG dollars between July 1, 2011 and June 30, 2014, which is the study period.

Specifically, our records show that you performed services for:

[PROJECT DESCRIPTION]

We are requesting your assistance in providing information on the participation of subcontractors on your LMIG projects and to verify our information regarding your firm. Please complete the attached questionnaire for each LMIG contract(s) you were awarded during the Study Period. Your feedback will greatly assist our efforts to accurately calculate the spending patterns of City agencies/departments with businesses that have received contracts. For more details on how to fill out the questionnaire, as well as responses to frequently asked questions, please go to the study webpage at www.memphisdisparitystudy2016.com.

The completed form should be returned via regular mail, fax or e-mail no later than April 22, 2016 to the address on the questionnaire. PLEASE DO NOT RETURN THE QUESTIONNAIRE TO THE GDOT or the local jurisdiction, but to the address listed at the bottom of the questionnaire.

Thank you in advance for your participation and immediate attention to this matter. If you have any questions or would like more information, please contact: Griffin & Strong, P.C. by phone at (678)-608-4551 or email us at GDOTStudy@gspclaw.com.

Sincerely,



Michele Clark Jenkins
Project Manager

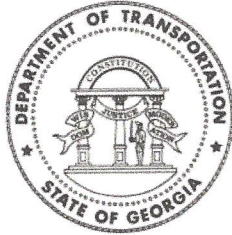
**Prime Vendor Questionnaire
 GDOT Disparity Study – 2016
 LMIG Contracts**

Prime Vendor Name _____ performing services under contract with _____
 Prime Vendor Address _____ City _____ ST _____ Zip _____
 Prime Vendor Phone _____ Prime Vendor Email _____
 Prime Vendor 51% or More Ownership: Caucasian Man Caucasian Woman Black American Asian or Pacific Islander Subcontinent Asian
Hispanic American Indian or Alaska Native Bi-Racial or Multi-Racial Other (specify) _____ If certified, list one certifying agency _____
 Project/Contract Number _____ Project/Contract Description _____ Project/Contract Date _____
 Prime Vendor NAICS Code _____ Contract Work Category (circle one) Construction A/E Other (specify) _____

Subcontractor/ Subconsultant Name	Subcontractor City, State, Zip	MWBE/DBE Status of Subcontractor (see list above) If non-DBE, please indicate as non- DBE	Scope of Work Performed (Description)	Subcontractor NAICS code or Work Category (Const. A/E, other (specify))	Actual Subcontractor Award \$, including modifications	Actual Prime Contract Award \$, including modifications

Please return questionnaire by April 22, 2016 to: GDOT Disparity Study, c/o Griffin & Strong, P.C., Box 368, Kennesaw, GA 30144 or email to
 GDOTStudy@gspclaw.com, or fax to 404-584-9730

Russell R. McMurry, P.E., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

February 10, 2016

TO: Local Government Partners and Subject Matter Experts

The Georgia Department of Transportation (GDOT) has contracted with the firm Griffin & Strong, P.C. to conduct a comprehensive disparity study in support of our Disadvantaged Business Enterprise (DBE) Program. GDOT is conducting this study to understand the current utilization of DBE/WBE/MBE on non-federal projects. Please note that GDOT is not requiring DBE goals for the LMIG Program.

The disparity study will examine the extent of participation of minorities and women in state contracting with GDOT. The study will collect and analyze relevant data to determine if there is a disparity between the availability and utilization of minority and women owned businesses that are "ready, willing and able" to provide goods and services to GDOT and whether that disparity is likely caused by race or gender factors.

Griffin & Strong, P.C. will be contacting you to collect data regarding State-funded Local Maintenance and Infrastructure Grant (LMIG) projects for 2013 and 2014. GDOT requests your assistance and cooperation in working with Griffin & Strong P.C. to timely respond to their inquiries and requests for information.

Thank you in advance for your assistance in furthering this most important effort.

Sincerely,

A handwritten signature in blue ink that reads "Russell R. McMurry".

Russell R. McMurry, P.E.
Commissioner

RRM:KAK

cc: Kimberly A. King, EEO Director
Terry Gable, Local Grants Administrator

APPENDIX I

DISTRICT 1 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.71%	4.08%	0.17	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.71%	35.76%	0.02	Underutilized
Women	3.49%	11.18%	0.31	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	4.20%	47.36%	0.09	Underutilized
Non-MWBE/DBE	85.80%	52.64%	1.63	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	1.36%	11.18%	0.12	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	1.36%	47.36%	0.03	Underutilized
Non-MWBE/DBE	98.64%	52.64%	1.87	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.31%	4.08%	0.08	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.31%	35.76%	0.01	Underutilized
Women	1.98%	11.18%	0.18	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	2.30%	47.36%	0.05	Underutilized
Non-MWBE/DBE	97.70%	52.64%	1.86	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 2 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	5.44%	4.08%	1.33	Overutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	5.44%	35.76%	0.15	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	5.44%	47.36%	0.11	Underutilized
Non-MWBE/DBE	94.56%	52.64%	1.80	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.91%	4.08%	0.22	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.91%	35.76%	0.03	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.91%	47.36%	0.02	Underutilized
Non-MWBE/DBE	99.09%	52.64%	1.88	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 3 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 4 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 5 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	5.82%	11.18%	0.52	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	5.82%	47.36%	0.12	Underutilized
Non-MWBE/DBE	94.18%	52.64%	1.79	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.85%	11.18%	0.08	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.85%	47.36%	0.02	Underutilized
Non-MWBE/DBE	99.15%	52.64%	1.88	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 6 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	3.39%	11.18%	0.30	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	3.39%	47.36%	0.07	Underutilized
Non-MWBE/DBE	96.61%	52.64%	1.84	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	17.31%	11.18%	1.55	Overutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	17.31%	47.36%	0.37	Underutilized
Non-MWBE/DBE	82.69%	52.64%	1.57	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	9.64%	11.18%	0.86	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	9.64%	47.36%	0.20	Underutilized
Non-MWBE/DBE	90.36%	52.64%	1.72	Overutilized
Griffin & Strong, P.C. 2015				

DISTRICT 7 – LMIG DISPARITY INDICES

ETHNICITY/RACE AND GENDER GROUP	UTILIZATION % (U)	AVAILABILITY % BASED ON MASTER VENDOR FILE (AMV)	DISPARITY INDEX (U/AMV)	DISPARATE IMPACT OF UTILIZATION FOR U/AMV
FY 2012				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.35%	27.98%	0.01	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.35%	35.76%	0.01	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.35%	47.36%	0.01	Underutilized
Non-MWBE/DBE	99.65%	52.64%	1.89	Overutilized
FY 2013				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	2.78%	27.98%	0.10	Underutilized
Hispanic American	2.67%	4.08%	0.65	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	5.45%	35.76%	0.15	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	5.45%	47.36%	0.12	Underutilized
Non-MWBE/DBE	94.55%	52.64%	1.80	Overutilized
FY 2014				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.00%	27.98%	0.00	Underutilized
Hispanic American	0.00%	4.08%	0.00	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	0.00%	35.76%	0.00	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	0.00%	47.36%	0.00	Underutilized
Non-MWBE/DBE	100.00%	52.64%	1.90	Overutilized
TOTALS				
Asian Pacific American	0.00%	0.75%	0.00	Underutilized
Subcontinent Asian Americans	0.00%	1.39%	0.00	Underutilized
Black American	0.99%	27.98%	0.04	Underutilized
Hispanic American	0.72%	4.08%	0.18	Underutilized
Native American	0.00%	1.48%	0.00	Underutilized
Unidentified MBE	0.00%	0.07%	0.00	Underutilized
Total MBE	1.71%	35.76%	0.05	Underutilized
Women	0.00%	11.18%	0.00	Underutilized
Unidentified DBE	0.00%	0.41%	0.00	Underutilized
Total MWBE/DBE	1.71%	47.36%	0.04	Underutilized
Non-MWBE/DBE	98.29%	52.64%	1.87	Overutilized

APPENDIX J

Joe Jackson, President/CEO
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Atlanta, GA 30303

Georgia Highway Contractors Assoc.
David Moellering, Executive Director
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Duluth 30097

*Ms. Guiomar Obregon, Chairwoman
Georgia Hispanic Contractors Assoc.
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Interviewed by IGS*

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Received letter/commentary

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Stone Mountain, GA 30087
bradhubbert@att.net
Interviewed by RKS

Concerned Black Clergy - Atlanta

1065 Ralph David Abernathy Blvd SW Ste
C
Atlanta, Georgia 30310

Savannah Area Chamber of Commerce

101 E. Bay Street
Savannah, GA 31401

GA Black Chamber of Commerce

1599-A Memorial Dr.
Atlanta, Ga. 30317

US Black Chambers, Inc.

1156 15th Street NW, Suite 1100
Washington, DC 20005

Greater Savannah Black and Minority Chamber
of Commerce

P.O. Box 5034
Savannah, GA 31414

Urban League

229 Peachtree Street NE, Suite 300 Atlanta,
GA 30303-1600

100 Black Men
World Headquarters

141 Auburn Avenue
Atlanta, GA 30303

Charleston Trident Urban League

1064 Gardner Road
Suite 216
Charleston South Carolina 29407

Urban League of Greater Columbus, Inc.

802 First Avenue
Columbus Georgia 31901

Latin American Association
Latinas' Economic Empowerment Program

National Black and Latino Council

Georgia Hispanic Chamber of Commerce

Address: 99 West Paces Ferry Rd NW,
Atlanta, GA 30327

Metropolitan Savannah Area Hispanic Chamber
of Commerce

105 Blueberry Ct.
Savannah, GA 31419

