MURIEL BOWSER
MAYOR

JAN 13 2020

OFFICE OF THE SECRETARY
2021 JAN 13 PM 2:25

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

Dear Chairman Mendelson:

We are releasing the Disparity Report: Framework and Recommendations produced by Dr. Carolyn Rudd and Associates, LLC, a District certified business enterprise (CBE). This report is in response to legislation introduced by Councilmember Kenyan McDuffie, Chair of the Committee on Business and Economic Development, that was included as part of the Fiscal Year 2019 Budget Support Act of 2018.

Per the legislation, the District was to commission a disparity study. A disparity study is a critical tool in assessing whether discrimination exists towards minority and women-owned businesses when competing for government agency contracts in the marketplace. The legislation required the following:

- Evaluate if there is a specific evidentiary foundation against minority and women-owned businesses;
- Assess if there are disparities between the availability and utilization of minority and women-owned prime contractors and subcontractors; and
- Determine if there are statistically significant disparities in the utilization of minority and women-owned businesses by prime contractors on government-assisted projects/contracts awarded.

The contractor helped the District determine that we do not currently have the data to complete a disparity study, and identified what would be needed to complete this important undertaking. The attached report outlines the process of how this document transitioned from a disparity study to a report with high-level recommendations for how the District should align its data collection among independent and non-independent agencies in a way that will better position the District for a future disparity study.

Since the completion of this report, the City Administrator Young has convened a working group consisting of Department of Small and Local Business Development (DSLBD), Office of the Chief Technology Officer (OCTO), Office of Contracting and Procurement (OCP), and Department of General Services (DGS) to develop a realistic timeline for standardization of data collection. As of

today, this working group has closed the data gaps possible with existing data and systems. This group will now begin to collect the new data needed to complete the disparity study.

Since day one of the Bowser Administration, I have made data transparency and system efficiency a high priority for the District. Under my leadership, the District has implemented initiatives that are pushing the District forward, some of which are recommended in this report. Such improvements include:

- Creating the District's Contracts and Procurement Transparency Portal;
- Making enhancements to the District Enterprise System's (DES) user interface and overall experience while expanding data collection across all District agencies; and
- Advancing the systems and infrastructures the District uses to monitor and award contracts.

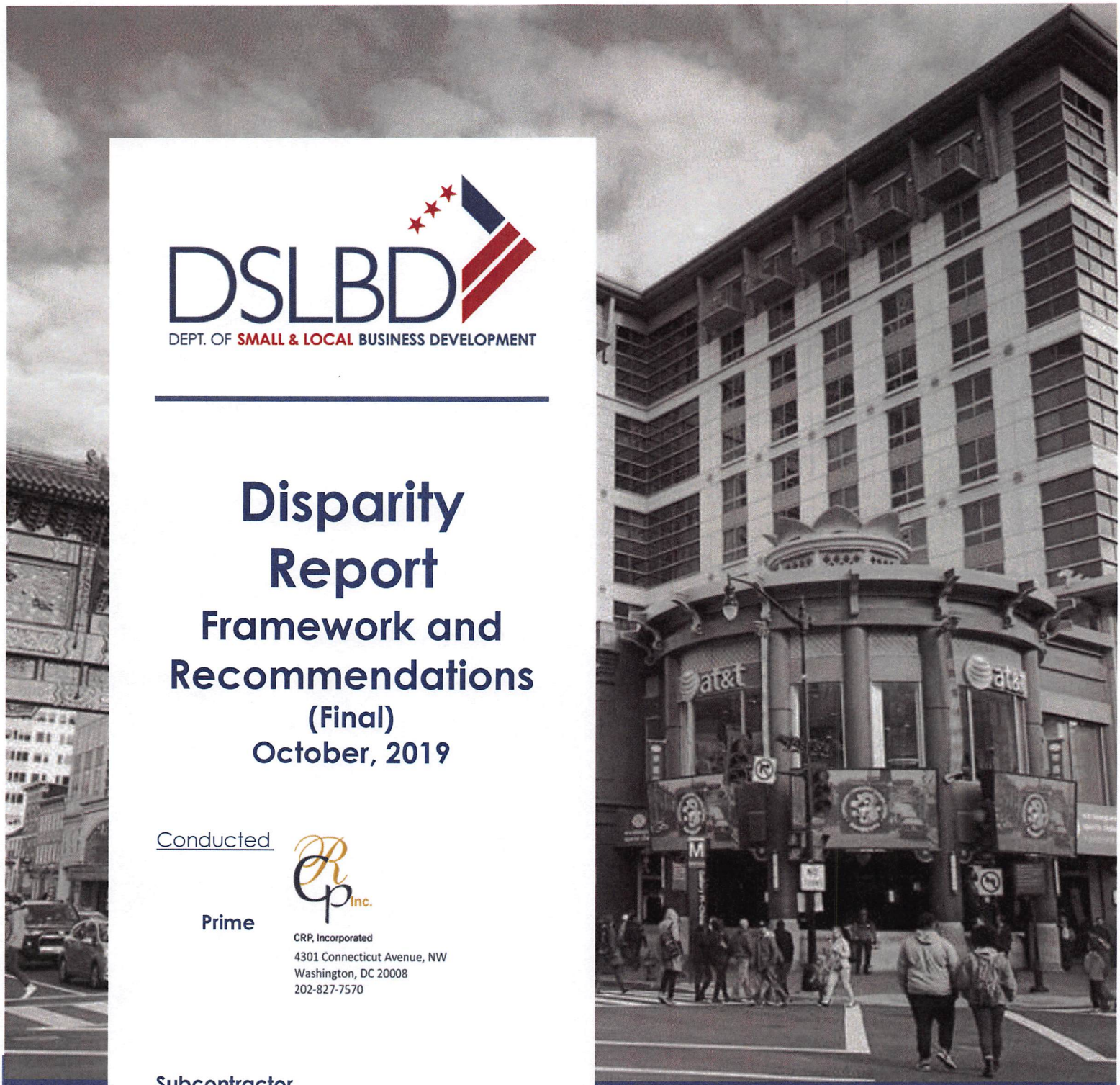
In keeping with my commitment of propelling District residents and businesses towards their fair shot at prosperity, my Administration continues to use technology and innovation to further the District's transparency and efficiency in all District government services delivered in our great city.

We look forward to continuing to keep the District's robust business community engaged as we advance together.

Sincerely,

Muriel Bowser

Enclosures



DSLBD

DEPT. OF SMALL & LOCAL BUSINESS DEVELOPMENT

Disparity Report

Framework and Recommendations

(Final)

October, 2019

Conducted

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EXECUTIVE SUMMARY

In fulfilment of a legislative mandate pursuant to the authority set forth in D.C. Code 2-214.01 (Establishment of the Minority- and Women-Owned Business Assessment Program), the District of Columbia's Department of Small and Local Business Development (DSLBD) commissioned CRP, Incorporated (CRP) to conduct a study to determine if statistically significant disparities exist in the utilization of minority and women business enterprises (M/WBEs) by District government agencies.

The study, in particular, sought to:

- Evaluate if there is a specific evidentiary foundation against minority- and women-owned businesses;
- Assess if there are disparities between the availability and utilization of minority- and women-owned prime contractors and subcontractors and, if there are, describe and analyze the most relevant causal factors; and
- Determine if there are statistically significant disparities in the utilization of minority- and women-owned businesses by prime contractors on government-assisted projects awarded pursuant to D.C. Code 2-214.01.

The study deployed industry best practices in disparity research and emphasized the collection and analysis of spend data in assessing whether disparities, if any, existed in District government procurement and contracting. However, over the course of the study's planning and data collection phase, it was determined that the spend data (preferred industry standard) were inadequate by industry standards [e.g., missing National Institute of Government Purchasing (NIGP) codes and demographic variables] and therefore, contract award data were used. However, incomplete and inconsistent data across various government agencies did not meet the threshold necessary to draw substantive conclusions based on industry standards for either spend or contract award data. Therefore, it was ultimately determined that the District of Columbia government was not prepared to undertake a scientific statistically significant disparity study.

Due to these data roadblocks, this report ceased to focus on whether a disparity existed, and was repurposed to highlight policy recommendations, based on industry best practices. The recommendations focus on the steps the District should take to produce the data required for a complete, scientifically sound, and legally defensible disparity study.

Highlights of these recommendations include:

- Ensuring that all procurement contracts are accounted for in a central database;
- Ensuring that standardized policies and procedures are implemented governing how both independent agencies and those under the Mayor's authority collect and report spend/contract data;
- Including the option of self-identifying demographic information in the collection of data across all procurement agencies in a standardized and legal manner;
- Creating contract data collection systems that allow the tracking and synchronization of contract value and actual expenditures;

- Ensuring proper and consistent use of National Institute of Government Purchasing (NIGP) codes across all agencies to better track procurement by industry; and
- Ensuring that agencies under the Mayor's authority and all independent agencies attest to the accuracy, completeness and integrity of the award and spend data for both prime contractors and subcontractors for an agreed upon time frequency (e.g., monthly, quarterly, or annually).

These recommendations reflect policy and practice strategies that can serve as a roadmap to the District of Columbia government in informing and preparing for the planning and implementation of a comprehensive, legally defensible disparity study. Implementation of these recommendations, coupled with administrative support, will provide the District with an actual gauge of the state of procurement in the city, particularly related to the equitable participation of minority- and women-owned businesses in procurement and contracting transactions.

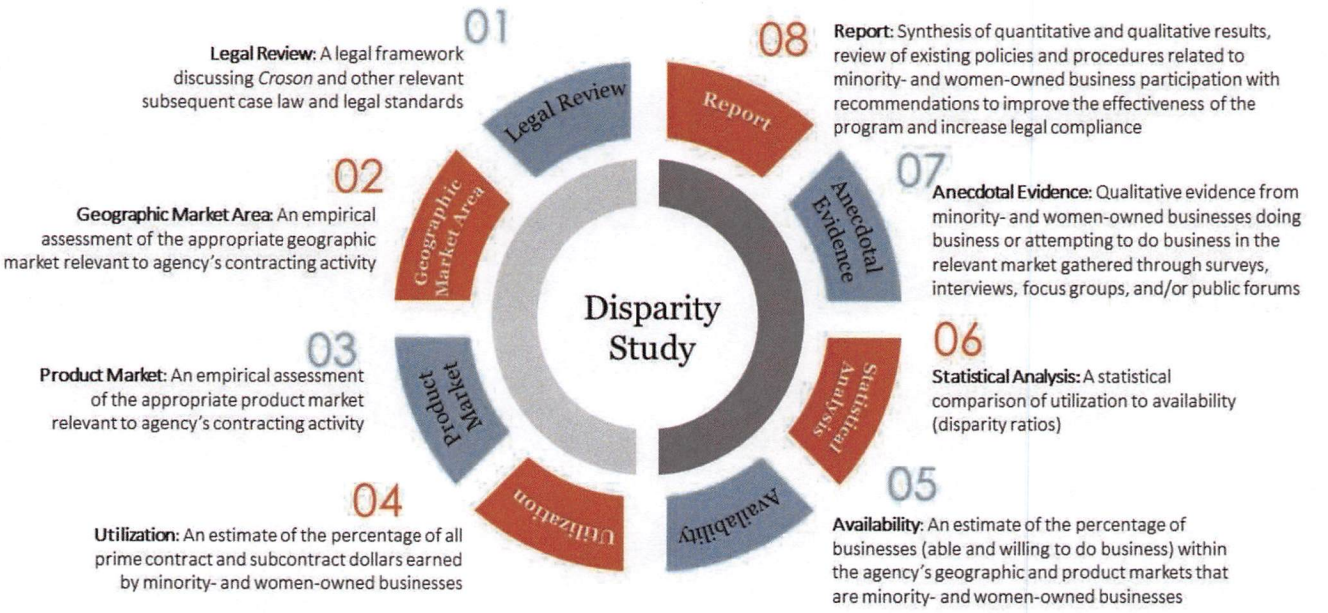
Disparity Study

In fulfilment of a legislative mandate pursuant to D.C. Code 2-214.01 (Establishment of the Minority-and Women-Owned Business Assessment Program), the District of Columbia's Department of Small and Local Business Development (DSLBD) commissioned a study to determine if statistically significant disparities exist in the utilization of M/WBEs by prime contractors on DC government contracts. Comprehensive disparity studies are multi-faceted reports detailing whether there is an absence of barriers that create disparities in the utilization or spending with businesses owned by minorities and women. To identify if there is a disparity, the study contains several elements that work cohesively to tell a story. **Figure 1** shows the overview of a disparity study.

The lack of available data (spend/contract) made it impossible for CRP to appropriately complete the steps described in **Figure 1** in a way that would meet the industry standards for a disparity study. Thus, this *repurposed report* contains the following elements:

(1) An explanation of a disparity study's components;
(2) An exploration of the challenges that CRP faced with the available data from the District of Columbia; and
(3) Steps that the District of Columbia would need to engage in to conduct a disparity study by industry standards.

Figure 1. Disparity Study Overview



DISPARITY STUDY COMPONENTS

As shown in **Figure 1**, specific and necessary steps comprise a complete disparity study. This disparity study was planned and conducted using a model proven and tested by industry standards and best practices. The steps, which are described in greater detail in this section, included the following components: legal framework, relevant geographic market area, utilization, availability, disparity analysis, anecdotal evidence, and reporting.

Through the rigorous completion of the process, CRP determined that the available data were incomplete and insufficient for the purposes of a scientifically significant disparity study; therefore, this study was ultimately repurposed to provide the District with recommendations on how to assemble the data necessary so that a statistically significant disparity study could be conducted.

Legal Framework

The legal framework does not constitute a legal memorandum or legal advice on the District's CBE program. Rather, it provides the legal contextual background to the report, with a focus on principal cases governing the use of race-specific and/or gender-specific programs and how courts evaluate their constitutionality. Legal framework examines relevant judicial decisions, particularly from the U.S. Supreme Court and the District of Columbia (D.C.) Circuit Court. The Supreme Court, in City of Richmond v. J.A. Croson Company (Croson)[1] and subsequent cases, established and construed constitutional standards for government-contracting affirmative action programs. Race-conscious affirmative action programs are subject to a judicial test of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. To survive a constitutional challenge under a strict scrutiny standard, a race-conscious governmental procurement program must be: (1) justified by a compelling governmental interest in remedying identified discrimination or the present effects of past discrimination in the marketplace; and (2) narrowly tailored to remedy that discrimination.

In applying this strict scrutiny framework to race-conscious governmental procurement programs, courts have focused on the following key principles and standards:

- A remedial race-conscious program must be based on a compelling government interest.
  - "Compelling interest" means the government must prove past or present racial discrimination requiring remedial attention.
  - There must be a specific "strong basis in the evidence" for the compelling governmental interest.
  - Statistical evidence is preferred, and possibly necessary as a practical matter. Anecdotal evidence is permissible and can offer substantial support but likely is insufficient on its own.
- A race-conscious program designed to address the compelling governmental interest must also be narrowly tailored to remedy the identified discrimination.
  - "Narrowly tailored" means the remedy must fit the findings.

[1] City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989).

- The evidence showing compelling interest must very closely guide the tailoring.
- Race-neutral alternatives must be considered first.

A lesser standard, intermediate judicial scrutiny, applies to programs that establish gender preferences. To survive the intermediate scrutiny standard, a remedial gender-conscious program must: (1) serve important governmental objectives and (2) be substantially related to the achievement of those objectives.

Standards of Review for Race-Conscious Programs

The Unites States Supreme Court's Croson decision established the framework for evaluating the constitutionality of affirmative action government procurement programs designed to counteract racial discrimination. In that case, the Court found that race-conscious affirmative action procurement programs are subject to strict scrutiny under the Equal Protection Clause, and that the Minority Business Utilization Plan (the "Plan") adopted by the Richmond City Council could not survive such strict scrutiny.

The Richmond City Council established the Plan in 1983 following a public hearing in which seven citizens testified about historical societal discrimination. In adopting the Plan, the Council relied on a study indicating that "while the general population of Richmond was 50 percent African American, only 0.67 percent of the city's prime construction contracts had been awarded to minority businesses in the five-year period from 1978 to 1983."[2] The evidence before the Council also established that a variety of state and local contractor associations had little or no minority business membership. The Council relied on a council member's statement that "the general conduct of the construction industry in this area, the state, and around the nation, is one in which race discrimination and exclusion on the basis of race is widespread."[3] However, there was no direct evidence of racial discrimination by the city in its contracting activities and no evidence that the city's prime contractors had discriminated against minority-owned subcontractors.[4]

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

J. A. Croson Company, a non-MBE mechanical, plumbing, and heating contractor, filed a lawsuit against the City of Richmond alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. On appeal, the Fourth Circuit struck down the Richmond Plan and the U.S. Supreme Court affirmed the decision.[5] The Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for state and local MBE procurement programs. Under this standard, a race-conscious program: (1) must be based on a compelling governmental interest and (2) be narrowly tailored to achieve its objectives.[6] A plurality of the Court stated that this standard requires a "firm evidentiary basis" for concluding that the underutilization of minorities is a product of past discrimination.[7]

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[2] Ibid. at 469-70.
[3] Ibid. at 480.
[4] Ibid.
[5] Ibid. at 511.
[6] Ibid. at 505, 507.
[7] Ibid. at 493.

Under the first prong of this standard, the Court found that "none of the evidence presented by the city points to any identified discrimination in the Richmond construction industry," and therefore the city had "failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race."[8]

Regarding the second prong, the Court found that it was "almost impossible" to determine whether the Plan was "narrowly tailored to remedy prior discrimination since it [was] not linked to identified discrimination in any way."[9] The Court went on to discuss factors that could show a program is appropriately narrowly tailored, such as a consideration of race-neutral means to increase minority participation in contracting and a lack of "rigid numerical quota[s]."[10]

While the Richmond Plan was struck down as unconstitutional, the Court concluded that its decision would not "preclude a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction."[11] The plurality stated that "[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."[12]

Standards of Review for Gender-Conscious Programs

While Croson evaluated the constitutionality of an MBE program, the Supreme Court has not specifically addressed the constitutionality of a gender-based classification in the context of a Women-Owned Business Enterprise (WBE) Program. In evaluating gender-based classifications in other contexts, the court has applied what some term "intermediate scrutiny," a less stringent standard of review than the "strict scrutiny" applied to race-based classifications. Intermediate scrutiny requires that programs classifying persons on the basis of gender "must carry the burden of showing an exceedingly persuasive justification for the classification."[13] In order to meet this burden, the proponent of the classification must show: (1) "that the classification serves important governmental objectives" and (2) "that the discriminatory means employed are substantially related to the achievement of those objectives."[14]

Courts have uniformly applied intermediate scrutiny to WBE programs. In Coral Construction v. King County (Coral Construction), for example, the Ninth Circuit upheld a WBE program under the intermediate scrutiny standard at the same time that it remanded for further factual development a similar race-conscious program under the strict scrutiny standard.[15] In that case, the court held that under intermediate scrutiny, "a gender-based classification must serve an important governmental objective, and there must be a direct, substantial relationship between the objective and the means chosen to accomplish the objective."[16] To that end, the court found that

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[8] Ibid.
[9] Ibid. at 507.
[10] Ibid.
[11] Ibid. at 509.
[12] Ibid.
[13] Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982) (quoting Kirchberg v. Feenstra, 450 U.S. 455, 461 (1981)); see also United States v. Virginia, 518 U.S. 515, 531 (1996); Nguyen v. United States, 533 U.S. 53, 60 (2001).
[14] Mississippi Univ. for Women v. Hogan , 458 U.S. 724 (quoting Wengler v. Druggists Mutual Insurance Company, 446 U.S. 142, 150 (1980)); see also Virginia, 518 U.S. 533; Nguyen, 533 U.S. 60.
[15] Coral Construction v. King County, 941 F.2d 910 (9th Cir. 1991).
[16] Ibid. at 931.

some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be applied and that "[t]he mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny."[17] Accordingly, many courts have held gender-conscious programs unconstitutional under the intermediate scrutiny standard when the record does not include sufficient evidence that remedial action was necessary.[18]

Given that the Supreme Court has not yet interpreted intermediate scrutiny in the context of WBE procurement preferences, it is unclear exactly how much easier it is as a practical matter to establish and defend a WBE program than an MBE program. In Coral Construction, the Ninth Circuit held that "intermediate scrutiny does not require any showing of governmental involvement, active or passive, in the discrimination it seeks to remedy."[19] Other courts, however, have not provided a significant distinction between the evidence required to uphold a WBE program and that required to uphold a MBE program.[20] The Tenth Circuit, on the second appeal in Concrete Works of Colorado v. City and County of Denver (Concrete Works IV), stated in dicta that while the Ninth and Eleventh Circuits have held WBE programs could be constitutional even without evidence of governmental involvement in gender discrimination, it did not need to resolve the issue because the WBE program at issue would also survive the strict scrutiny standard.[21]

A governmental entity designing and implementing an affirmative action program must navigate complex legal issues for that program to survive court challenge. Fortunately, a significant body of case law that has developed in the wake of Croson provides guidance.

Those decisions have made several principles clear. Most fundamentally, programs involving racial classifications will be subject to strict scrutiny, requiring a showing of a compelling government interest and a narrowly tailored remedy. The first part of this test—a compelling interest—requires evidence of past or present discrimination. Statistical evidence (based on sound methodology) of discrimination has been considered most persuasive, but anecdotal evidence may also be introduced. For the second prong of the strict scrutiny analysis, narrow tailoring, the government must show that race-neutral remedies were considered, and the remedial program must be closely tied to the evidence of discrimination. While strict scrutiny imposes a high bar for constitutionality, it is not insurmountable if programs are designed and maintained with this legal framework in mind.

Data Collection

The collection of complete and detailed quantitative data is the foundation of a comprehensive study. Ideally, data are received from the District's financial system for purchase/spend data; business registration system; certification databases that house certification of minority, women, small, or disadvantaged businesses; and subcontract data. **Figure 2** outlines the ideal data elements and the sources of those data. To fully analyze the District's purchasing

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[17] Ibid. at 932.

[18] See, e.g., Associated Util. Contractors of Maryland, Inc. v. Mayor & City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000); Eng'g Contractors Ass'n of S. Florida Inc. v. Metro. Dade Cnty., 122 F.3d 895 (11th Cir. 1997).

[19] Coral, 941 F.2d at 932.

[20] See, e.g., Builders Ass'n of Greater Chicago v. Cnty. of Cook, 256 F.3d 642 (7th Cir. 2001); W. States Paving Co., Inc. v. Washington State Dept. of Transp., 407 F.3d 983, 991 n.6 (9th Cir. 2005).

[21] Concrete Works of Colorado v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003).

impact, all industries should be included in the requested data sets. This will provide a full picture of where dollars are spent and with whom.

Figure 2. Data Fields Required for Spend/Contract Award Data

Prime	Subcontract
a. Vendor Name	a. Vendor Name
b. Vendor ID Number	b. Vendor ID Number
c. County/State	c. County/State
d. Industry Classification	d. Industry Classification
e. NIGP/NAICS Code(s)	e. NIGP/NAICS Code(s)
f. Contract or Payment Amount	f. M/WBE Classification
g. Funding Source (Federal, State, Local)	g. Prime Contract/Purchase Order Number
h. M/WBE Classification	h. Award/Payment Date
i. Contract/PO Number	i. Award/Payment Amount
j. Payment Type (e.g., direct pay, purchase order, etc.)	
k. Award/Payment Date	
l. Award/Payment Amount	

The data provided to CRP did not contain the required elements to provide the firm with a full picture of where District dollars are spent and with whom.

Relevant Market Area

As prescribed by Croson and its progeny, a disparity study requires definition of a market area to ensure that a relevant pool of vendors is considered in assessments regarding which firms have been utilized versus which were available. If these boundaries are stretched too far, the universe of vendors becomes diluted with firms that have no interest or history working with the District, and thus, their demographics and experiences have little relevance to contracting activity or policy. On the other hand, a boundary set too narrowly risks the opposite circumstance of excluding a high proportion of firms who have contracted with, or bid for work with, the District, and thus may also skew prospective analyses of disparity.

Market area is an empirical assessment of the appropriate geographic market relevant to an agency's contracting activity. This assessment is essential to establishing the universe of available vendors and spending that will be considered in the identification of any disparate treatment of assorted classifications of firms. To establish a relevant geographic market area, the study can follow Croson guidelines regarding whether the relevant market area should be defined as the area from which a specific percentage of purchases are made, the area in which a specific percentage of willing and able contractors may be located, or the area determined by a fixed geopolitical boundary.

Utilization

Utilization is an estimate of the percentage of all prime contract and subcontract dollars earned by minority- and women-owned businesses. This estimate is central to defining the market area, and thus is first presented as a means of identifying the market area for consideration, and then is examined within that market area to assess levels of contracting activity as the first step in the quantitative determination of disparity. This process involves examining dollars spent in the relevant market area for each procurement category during each fiscal year of the study and calculating utilization by business ownership classification and industry type.

Availability

Availability is an estimate of the proportion of firms willing and able to provide services to the relevant market area. Availability is defined by courts as whether a firm is *willing and able* to work with the agency in question, as a method of constructing the universe of firms that might be considered in that agency's procurement activities. In a disparity study:

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

The two methods of calculating availability are: custom census and vendor approach. There are flaws in each method, however, the custom census adjusts for gaps that the vendor approach creates. At the same time, custom census is time consuming and costly, whereas the vendor approach uses the list of business firms that tend to be readily available. Neither the U.S. Supreme Court nor circuit courts have addressed a single appropriate data source for establishing availability. Both approaches for estimating availability have been upheld in federal court.[22]

Disparity Analysis

Disparity is the analysis of the differences between the utilization of minority- and women-

[22]H.B. Rowe v. North Carolina DOT, 589 FSupp.2d 587 (ED NC 2008).

owned firms and the availability of those firms. The process to calculate disparity entails dividing the percentage of utilization by the availability estimates of firms and then multiplying by 100. This provides an index that demonstrate an evidentiary basis for enacting a race-conscious program. To satisfy Croson's compelling interest prong, governmental entities must present evidence of underutilization of M/WBEs that would give rise to an inference of discrimination in public contracting.

As prescribed by the Equal Employment Opportunity Commission's "80 percent rule,"[23] a disparity index below 80 indicates a "substantial disparity." The Supreme Court has accepted the use of the "80 percent rule" in Connecticut v. Teal.[24] Therefore, firms are considered substantially underutilized (substantial disparity) if the disparity indices are 80 or less. In addition, t-test statistics are conducted to analyze if disparity indices are statistically significant. In instances of many contracts, the disparity indices may be significant, but not substantive. Similarly, if there are a small number of contracts, the disparity indices may be substantive, but not significant. Therefore, the combination of disparity indices and t-test statistics allows determination of substantive and statistically significant disparities.

There are several reasons for using the disparity index methodology. First, the use of disparity indices for disparity calculations is supported by several post-Croson cases, most notably Contractors Association of Eastern Pennsylvania v. City of Philadelphia.[25] Second, disparity index methodology yields a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within minority- and women-owned firms can be assessed with reference to the utilization of nonminority-owned firms. Finally, disparity indices can be paired with a statistical significance test to address whether a given disparity could have arisen due to random chance alone.

Anecdotal Evidence

Anecdotal or qualitative data collection is equally important as quantitative data. Anecdotal data capture the "reality" of firms trying to do business with the agency based on their experiences. It is extremely important to cast a broad net in terms of sources of qualitative data and from different individuals to determine if trends in experiences are identified. Qualitative data collection can occur through interviews, surveys, focus groups, community meetings, or online platforms. The gathering of anecdotal information and/or evidence will conform to current case law and will provide support for statistical findings of disparity (if any), as well as help to explain and lend credence to statistical results.

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[23]Equal Employment Opportunity Commission, Uniform Guidelines on Employee Selection Procedures.

[24] Connecticut v. Teal, 457 U.S. 440 (1982). In Teal and other affirmative action cases, the terms "adverse impact," "disparate impact," and "discriminatory impact" are used interchangeably to characterize values of 80 and below.

[25]Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia, 91 F 3d 603.

FURTHER ELABORATION OF CHALLENGES FACED WITH THE DISTRICT OF COLUMBIA DISPARITY STUDY

Data Collection

Over the course of the study's planning and data collection phases, CRP determined that the District of Columbia government's readiness to undertake a scientifically sound disparity study was questionable. While the completeness, quality, and accuracy of the data varied across agencies, the tracking and reporting of procurement and contract data by District agencies, overall, indicated inadequate capacity to meet the quantitative data requirements for a disparity study, as prescribed by industry standards.

Initially, CRP requested spend data (an industry best and preferred practice) for fiscal years 2016, 2017, and 2018. However, the data received by CRP did not include NIGP codes and demographics; thus, contract award data were used for this study. Spend data capture actual payment data or dollars expended. In contrast, contract award data are funds obligated to be paid or disbursed. The initial data set CRP received only included contracts under the Office of Contract and Procurement (OCP) and was missing vital information such as addresses, demographic information, and NIGP codes. CRP was informed that OCP does not maintain spend/contract data for independent agencies, and therefore they were missing from the data set. An additional request was made to obtain contract award data for all DC agencies (under the Mayor's authority and independent agencies). However, discussions with DSLBD staff revealed difficulties in obtaining data from all independent agencies. Thus, CRP recommended obtaining data from at least three independent agencies that have the largest number of construction and professional services-related contract awards: Department of General Services (DGS), District of Columbia Public Schools (DCPS), and District of Columbia Public Library (DCPL).

Upon receipt of the contract awarded data, CRP compiled and reconciled the data and developed a master contract database. The database included contracts under OCP and contracts from DGS, DCPS, DCPL, and an additional independent agency—University of the District of Columbia (UDC).

Data Cleaning/Missing Data

- **Demographics**: The contract award data obtained from OCP and independent agencies did not include demographic variables. However, DSLBD extracted demographic variables for available CBEs from their CBE application data file. Furthermore, CRP staff researched and recorded demographic information for the remaining firms.
- **Address**: The address information for the master contract database was extracted from the CBE application and spend data files. Many of the addresses listed in the spend data file were for banks whom OCP sent payments rather than the actual company location. CRP conducted research to identify the actual location of those firms.
- **NIGP Codes**: NIGP codes are essential for categorizing contracts by industry. However, some of the data received from independent agencies did not contain NIGP codes. For those contracts, the description of the contract and available documents were reviewed. Then, the best matching NIGP code was provided. For the contracts with multiple NIGP codes, industry type was categorized based on the primary NIGP code. There were several outdated NIGP codes that were reviewed based on their parent code (first three digits of

the NIGP code). The contract award data obtained from OCP only included NIGP codes, but no NIGP descriptions, which are essential in reviewing if appropriate NIGP codes have been assigned to the contracts.

- **Missing Contracts**: Not all contracts had been published on the transparency portal for the study period. In addition, no statistics were available on the overall percent of contract awards published in the OCP portal for the study timeframe. Therefore, for analysis purposes CRP could not verify if the data set included at least 75 to 95 percent of contract award data, which is the industry standard.

Data Integrity

CRP encountered the following roadblocks during the data collection and preliminary analysis phase of the study, which hindered our ability, based on industry best practices, to prepare an accurate, reliable, and complete disparity analysis:

1. **Incomplete data**
    a. Spend data received by CRP did not include NIGP codes, and there were multiple variables for which information was missing such as address, race, gender, etc. Due to the inadequacy of spend data, as noted, CRP requested contract award data as an alternate industry standard practice for conducting a disparity study. The contract award data received included NIGP codes but were missing most of the required demographic variables.
    b. The contract award data only included prime contracts for the OCP and four independent agencies: DGS, DCPS, DCPL, and UDC.
    c. Requiring at least 75 to 95 percent of overall spend and/or contract award data is considered an industry standard and best practice for a disparity study. It is uncertain what proportion of overall DC contracts is included in the dataset.
2. **Inaccurate data**
    a. Preliminary analysis of the contract award data revealed an appalling finding—only 2% of the contracts awarded were in construction (a very unrealistic result, if one is looking at the full landscape of expenditures for the District and unrealistic based on studies of other jurisdictions with similar characteristics as DC).
    b. Even after adjusting and reviewing for inaccuracy in NIGP codes, less than 5% of the contract awarded dollars were in construction.
3. **Decentralized data**
    a. DC has a decentralized procurement and contracting system.
    b. The procurement process appeared to vary across agencies for tracking and reporting of data.
4. **Lack of uniformity in data**
    a. There is no uniform way of capturing contractual information (such as demographic, self-identifying data for contract awardees to track M/WBEs).
    b. Contract data from independent agencies are not organized by award date; some agencies are missing NIGP codes; and other agencies do not have addresses of the businesses receiving contract awards.

RECOMMENDATIONS FOR THE DISTRICT OF COLUMBIA

CRP's research and methodology have afforded great insight on the steps and readiness the District needs to consider in standardizing the collection of spend and contract data. Standardization will facilitate the District's ability to not only perform a comprehensive disparity study but will also enhance the government's capability to analyze the impact of overall government expenditures broadly across agencies and industries.

CRP offers the District government the following additional recommendations to inform planning and implementation of a future comprehensive and legally defensible disparity study based on industry best practices and standards:

- Collect most of the spend data (75-95 %) for all District agencies, or at least the data from the agencies that procure the large projects.
- Provide payment/spend data from all agencies for a given time frame (study period). The data should include fields outlined in **Figure 2** (see page 8) for prime contractors and subcontractors.
- Ensure that the OCP Transparency Portal contains data on all contracts awarded over the past three to five years for both agencies under the Mayor's authority and ALL independent agencies.
- Ensure that standardized policies and procedures are implemented governing how both independent agencies and those under the Mayor's authority collect and report contract data.
- Ensure that all spend/contract data collected and reported by agencies include NIGP codes and demographic data.
- Ensure that all spend/contract data include NIGP codes and demographic data for CBEs and non-CBEs.
- Ensure that purchase order data include addresses and demographic information for CBEs and non-CBEs.
- As data are the foundation of the study, the appropriate authorities (agencies under the Mayor's authority and all independent agencies) should attest to and verify the accuracy, completeness, and integrity of the data for both prime contractors and subcontractors. This relates to both contract award data and spend data.

Building on Current Data Collection Efforts

While data issues and challenges were encountered during this study, CRP acknowledges foundational steps the District has already taken to build and enhance its data infrastructure around contracting and procurement. These steps or practices, spanning both policy and operational dimensions, begin at the highest levels of the District government with the Mayor's unswerving commitment to transparency and accountability in the District's contracting and procurement processes. This commitment has been demonstrated by a dedicated and unparalleled investment of resources into existing and new contract and procurement data systems, notably the DSLBD Enterprise System (DES) and the OCP Transparency Portal.