
8.0 FINDINGS AND RECOMMENDATIONS

8.1 Introduction

In May 2011, MGT of America, Inc. (MGT), was retained to conduct a Minority and Women Business Enterprise Disparity Study for the City of Greensboro (City) to provide current data on the Greensboro Minority and Women Business Enterprise (M/WBE) Program. The city established an M/WBE program in February 1986 and conducted its first disparity study in 1997.

In this chapter, MGT provides findings, commendations, and recommendations for the City of Greensboro. This study consisted of fact-finding to analyze the City's procurement trends and practices for the study period from Fiscal Year 2006 through Fiscal Year 2010; to evaluate the impact of race- and gender-neutral and race- and gender-based remedial efforts of any past discrimination; and to evaluate various options for future program development.

The results of this study and conclusions drawn are presented in detail in **Chapters 2.0** through **7.0** of this report. In addition, we have included an overview of the program design and practices of federal, state and local government minority, women, and disadvantaged business enterprise (M/W/DBE) programs in **Appendix M – Selected Policies of Other M/W/DBE Programs..**

8.2 Findings for Prime Contracting

FINDING 8-1: Historical M/WBE Utilization

Results from the first Greensboro disparity study (1997) are reported in **Exhibit 8-1** below. MBEs receive \$24.2 million across all categories, 6.1% of total spending. WBEs received \$29.1 million, 7.3% of total spending. The strongest utilization in dollar and percentage terms for MBEs was in construction (\$14.4 million). The strongest utilization in dollars and percentage terms for WBEs was in procurement (\$13.0 million).

**EXHIBIT 8-1
GREENSBORO M/WBE SPENDING
DOLLAR AND PERCENTAGE UTILIZATION
FY 1990-91 THROUGH FY 1995-96**

	Construction		Professional Services		Procurement	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
MBE	\$14,478,278	7.3%	\$4,011,837	4.7%	\$5,752,439	5.1%
WBE	\$14,616,924	7.3%	\$1,482,141	1.7%	\$13,079,798	11.6%
M/WBE	\$29,095,202	14.6%	\$5,493,978	6.4%	\$18,832,236	16.7%
Total	\$199,517,872		\$85,420,656		\$112,579,455	

Source: North Carolina Institute of Minority of Economic Development, City of Greensboro, Minority and Women's Business Enterprise Program, Disparity Study Update, 1997

FINDING 8-2: Greensboro M/WBE Prime Utilization and Availability

The dollar value of M/WBE prime utilization by Greensboro over the current study period in the relevant market was as follows as shown in **Exhibit 8-2**:

- MBEs won prime construction contracts for \$193,310 (0.21% of the total). WBEs won prime construction contracts for \$2.63 million (2.85% of the total). There was substantial disparity for African American- and Nonminority Women-owned firms.
- One MBE won a single prime construction contract for \$8,688 (0.03% of the total) through the DBE program. WBEs won prime construction contracts for \$783,461 (2.54% of the total) through the DBE program. There was substantial disparity for African American- and Nonminority women-owned firms.
- MBEs won professional services contracts for \$262,283 (0.80% of the total). WBEs won professional services contracts for \$394,677 (1.20 % of the total). There was substantial disparity for African American, Hispanic American Native American and Women-owned firms (there was no availability for Asian American–owned firms).
- MBEs won procurement contracts for \$4.87 million (3.75% of the total). WBEs were awarded \$1.59 million (1.23% of the total). There was substantial disparity for African American, Hispanic American, Native American and Women-owned firms.

Overall, Greensboro spent \$10.8 million with M/WBE prime contractors over the study period in the relevant market area, 3.76% of the total. Of this amount, \$5.41 million was spent with WBEs, 1.89% of the total, and \$5.34 million with MBEs, 1.87 % of the total.

**EXHIBIT 8-2
CITY OF GREENSBORO
M/WBE PRIME CONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY
FY 2006 THROUGH FY 2010**

Business Category by Business Owner Classifications	\$ Dollars	% of Dollars	% of Available Firms	Disparity Index	Disparate Impact of Utilization
Non-DBE Construction at the Prime Level					
African Americans	\$198,310	0.21%	12.37%	1.74	* Underutilization
Hispanic Americans	\$0	0.00%	0.00%	NA	N/A
Asian Americans	\$0	0.00%	0.00%	NA	N/A
Native Americans	\$0	0.00%	0.00%	NA	N/A
Nonminority Women	\$2,637,505	2.85%	10.75%	26.55	* Underutilization
Total MWBE Firms	\$2,835,814	3.07%	23.12%		
DBE Construction at the Prime Level					
African Americans	\$8,688	0.03%	12.37%	0.23	* Underutilization
Hispanic Americans	\$0	0.00%	0.00%	NA	N/A
Asian Americans	\$0	0.00%	0.00%	NA	N/A
Native Americans	\$0	0.00%	0.00%	NA	N/A
Nonminority Women	\$783,461	2.54%	10.75%	23.67	* Underutilization
Total MWBE Firms	\$792,149	2.57%	23.12%		
Professional Services Firms					
African Americans	\$262,283	0.80%	8.58%	9.33	* Underutilization
Hispanic Americans	\$0	0.00%	0.27%	0.00	* Underutilization
Asian Americans	\$0	0.00%	0.00%	NA	N/A
Native Americans	\$0	0.00%	0.27%	0.00	* Underutilization
Nonminority Women	\$394,677	1.20%	6.17%	19.54	* Underutilization
Total MWBE Firms	\$656,960	2.01%	15.28%		
Procurement Firms					
African Americans	\$3,958,129	3.04%	6.72%	45.25	* Underutilization
Hispanic Americans	\$90,706	0.07%	0.43%	16.38	* Underutilization
Asian Americans	\$393,394	0.30%	0.09%	355.30	Overutilization
Native Americans	\$432,176	0.33%	0.34%	97.58	Underutilization
Nonminority Women	\$1,596,735	1.23%	3.83%	32.05	* Underutilization
Total MWBE Firms	\$6,471,140	4.97%	11.40%		

Source: MGT developed a prime contract and payment database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010. MGT developed an availability database based on vendor availability.

¹ The percentage of dollars is taken from prime utilization shown in **Chapter 4.0**.

² The percentage of available firms is taken from availability shown in **Chapter 4.0**.

³ The disparity index is the ratio of % of dollars (utilization) to % available firms times 100.

* An asterisk is used to indicate a substantial level of disparity – disparity index below 80.00.

N/A denotes constraint of division by zero. This occurred because there is zero availability in this category. However, the existence of disparity can be inferred due to the evidence of low utilization levels.

FINDING 8-3: Anecdotal Findings for Prime Contracting

Among the M/WBEs who responded to questions about barriers to doing business, the biggest concern was competing with large firms (71 M/WBE respondents, 30.7 % of respondents). Other key issues noted were as follows:

- Selection process (46 M/WBE respondents, 19.9%).
- Restrictive contract specifications (36 M/WBE respondents, 15.6%).
- Limited knowledge of purchasing contracting policies and procedures (41 M/WBE respondents, 17.7%).

Four M/WBEs (1.7%) reported discriminatory experiences in dealing with Greensboro.

8.3 *Findings for Subcontracting*

FINDING 8-4: M/WBE Subcontractor Utilization, Availability, and Disparity

The dollar value of M/WBE subcontractor utilization by Greensboro over the current study period in the relevant market is shown in **Exhibit 8-3**:

- MBEs won construction subcontracts for \$6.39 million (9.47% of the total). WBEs won construction subcontracts for \$5.91 million (18.76% of the total). There was substantial disparity for African American, Asian American, Native American-owned firms and Women-owned firms.
- MBE won construction subcontracts for \$2.07 million (9.57% of the total) through the DBE program. WBEs won construction subcontracts for \$2.07 million (9.57% of the total) through the DBE program. There was substantial disparity for all ethnic/gender groups.
- Overall Greensboro spent \$16.47 million with M/WBE subcontractors over the study period.

**EXHIBIT 8-3
CITY OF GREENSBORO
M/WBE SUBCONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY
FY 2006 THROUGH FY 2010**

Business Category by Business Owner Classifications	\$ Dollars	% of Dollars	% of Available Firms	Disparity Index	Disparate Impact of Utilization	Statistical Significance
Non-DBE Construction Firms at the Subcontractor Level						
African Americans	\$2,853,070	4.22%	15.15%	27.89	* Underutilization	**
Hispanic Americans	\$3,540,468	5.24%	2.52%	207.67	Overutilization	**
Asian Americans	\$0	0.00%	0.39%	0.00	* Underutilization	**
Native Americans	\$3,500	0.01%	0.97%	0.53	* Underutilization	**
Nonminority Women	\$5,918,819	8.76%	16.31%	53.73	* Underutilization	**
Total M/WBE Firms	\$12,315,857	18.24%	35.34%			
DBE Construction Firms at the Subcontractor Level						
African Americans	\$1,766,410	8.15%	15.15%	53.78	* Underutilization	**
Hispanic Americans	\$265,140	1.22%	2.52%	48.44	* Underutilization	**
Asian Americans	\$0	0.00%	0.39%	0.00	* Underutilization	**
Native Americans	\$43,262	0.20%	0.97%	20.55	* Underutilization	**
Nonminority Women	\$2,076,273	9.57%	16.31%	58.70	* Underutilization	**
Total M/W/DBE Firms	\$4,151,085	19.14%	35.34%			

Source: MGT developed a subcontract database for the City of Greensboro covering the period between July 1, 2005 and June 30, 2010. MGT developed an availability database based on vendor availability.

¹ The percentage of dollars is taken from prime utilization shown in **Chapter 4.0**.

² The percentage of available firms is taken from availability shown in **Chapter 4.0**.

³ The disparity index is the ratio of % of dollars (utilization) to % available firms times 100.

* An asterisk is used to indicate a substantial level of disparity – disparity index below 80.00.

** Two asterisks are used to indicate that the ratio of utilization to availability is statistically significant at a 0.05 level.

Finding 8.5: Regression Analysis

In a statistical analysis of survey data in the Greensboro area that controlled for the effects of variables related to company demographics (such as, company capacity, ownership level of education, and experience), M/WBE status had a negative effect on 2010 company earnings of African American owned firms.

FINDING 8-6: Anecdotal Findings for Subcontracting

Key findings from M/WBE survey respondents are as follows:

- Firms were used in the M/WBE program, but seldom or never, solicited for other contracts outside of the M/WBE program – 54 respondents (23.4% of M/WBE respondents).

- An informal network excluded firms – 44 respondents (19.0% of M/WBE respondents).
- An informal network excluded firms in the private sector– 19 respondents (9.1% of M/WBE respondents).
- Firms were included for good faith efforts then dropped after contract award – 25 respondents (10.8% of M/WBE respondents).
- Firms experienced private sector discrimination – 31 respondents (13.4% of M/WBE respondents).
- Firms experienced bid shopping – 21 respondents (9.1% of M/WBE respondents).
- Firms experienced unequal treatment – 22 respondents (9.5% of M/WBE respondents).
- Firms experienced unfair denial of contract award – 19 respondents (8.2% of M/WBE respondents).
- Firms experienced double standards of performance – 17 respondents (7.4% of M/WBE respondents).
- Firms experienced discrimination as a subcontractor on Greensboro projects – 19 respondents (8.2% of M/WBE respondents).
- Firms experienced unfair termination – 8 respondents (3.5% of M/WBE respondents).

African Americans ranked first in reporting disparate treatment and discrimination across all the categories of questions. Over 34.4% of African Americans reported not being solicited in the absence of M/WBE goals.

8.4 Findings for Private Sector Analysis

FINDING 8-7: Disparities in Self-Employment and Revenue Earnings

Econometric analysis using data from 2010 American Community Survey data for the Greensboro area found statistically significant disparities for entry into self-employment: African Americans in professional services; Women in professional services; and Hispanic Americans in all categories. There were statistically significant disparities in earnings from self-employment for Women in all categories

FINDING 8-8: Private Sector Commercial Construction

M/WBE utilization in private sector commercial construction in the Greensboro Metropolitan Statistical Area (MSA) was very low, as measured by data from building permits. From 2006 through 2010 permits issued to M/WBE, prime contractors were valued at \$155,375, representing 0.03% of construction values and 0.1% of the number

of building permits. M/WBE subcontractors were issued 0.1% of all subcontracting permits). Only one MBE and four WBEs were used as subcontractors in the commercial permits data, as compared to 73 M/WBE subcontractors on Greensboro projects (and 29 on Greensboro DBE projects), with an estimated 18.2% of the construction subcontractor dollars used on Greensboro projects.

There was a link between this low private sector M/WBE subcontractor utilization and Greensboro. There were a total of 46 contractors on both the Greensboro projects and private sector commercial projects. Of these 46 firms, 23 used M/WBE subcontractors on Greensboro projects. Of the 23 prime contracting firms that used M/WBE subs on City projects, only two used WBEs subcontractors on commercial construction projects, and none used MBE subcontractors on private sector commercial projects. These results seem consistent with the survey results discussed in **Finding 8-6** above.

Finding 8-9: Access to Capital

Approval and denial rates on commercial loans in the survey sample between nonminority males and women and minorities were similar, but the number of respondents was very small. An econometric analysis of data in the 2003 National Survey of Small Business Finance (NSSBF) found a statistically significant positive relationship between the probability of loan denial and African American ownership. The data also found that African American-owned businesses pay approximately 30% to 150% (the average interest rate charged on approved loan is about 4.5%) more in interest than non-African American-owned firms.

These results are consistent with data in the local survey. About 7.5% of non-M/WBEs loan applicants reported being denied commercial bank loans, as compared to 52.9% of African American-owned firms and 11.1% of nonminority woman-owned firms.

8.5 Findings for Greensboro Programs and Policies

FINDING 8-10: Greensboro M/WBE Goals

Greensboro has set the following aspirational M/WBE goals as shown in **Exhibit 8-4**:

**EXHIBIT 8-4
GREENSBORO
M/WBE GOALS**

Demographic Groups	Construction Goals	City Procurement	Professional, Consultative Services
African Americans	10%	10%	10%
Hispanic Americans	2%	2%	2%
Native Americans	2%	2%	2%
Women	10%	10%	10%
Total	24%	24%	24%

Source: Greensboro M/WBE Plan

In a review of forty construction projects from FY 2008-09 through FY 2008-10 the median M/WBE project goal was 12.4%. Greensboro does not place project specific goals on professional services contracts, but does encourage the solicitation of M/WBEs for professional services contracts. Greensboro has also set goals on private contracts using Greensboro funds.

Greensboro uses a “Rule of 3,” in which if there are at least three M/WBEs available for a commodity then Greensboro solicits them.

FINDING 8-11: M/WBE Certification

Greensboro no longer certifies M/WBEs, but uses the State of North Carolina Historically Underutilized Business (HUB) list. In October 2011 there were 449 certified firms listed in the North Carolina HUB database from counties covered by the Greensboro M/WBE program.¹

FINDING 8-12: Disadvantaged Business Enterprise (DBE) Program

The current Greensboro Transit Authority DBE goal is 24%. The 2008-10 M/WBE Annual Report indicated that there were six projects for \$10.1 million with state and federal funding. Five of the six projects had DBE goals, which ranged from 5% to 12%. Total DBE subcontract awards on these projects totaled \$826,056.

FINDING 8-13: Program Data Management

Greensboro’s Protrack system collects data on utilization of M/WBEs, contract names and numbers, dollar amounts, total project costs, change orders and payments. The Lawson procurement system used by Greensboro does not track subcontractor utilization. Greensboro only tracks information on M/WBE subcontractors for the prime contractor that was awarded the contract.

FINDING 8-14: Greensboro M/WBE Program Website

Greensboro’s website contains the Greensboro M/WBE plan, links to state HUB certification, e-procurement, bid opportunities, links to business development programs, including the Greensboro Partnering with Business (PWB) initiative.

FINDING 8-15: Business Development Assistance

Greensboro does not offer direct management and technical assistance, but does collaborate with local providers of those services, including Nussbaum Center for Entrepreneurship and the Guilford Technical Community College (GTCC) Small Business Center.

FINDING 8-16: Access to Capital, Bonding, and Insurance

The Targeted Loan Pool (TLP) for small business was formed in 2005 with \$400,000 in Community Development Block Grant funds and \$600,000 from nine area banks. The

¹ <https://www.ips.state.nc.us/ips/vendor/searchvendor.aspx?t=h>.

TLP program made loans from \$25,000 to \$200,000 and focused on businesses in the Greensboro Empowerment Zone. From 2005 through 2010, the program made eight loans for \$1.3 million. The TLP program is currently being revamped. Consequently, Greensboro does not currently maintain a lending assistance program for small or M/WBE firms

FINDING 8-17: Commercial Nondiscrimination Ordinance

Greensboro does not have a formal commercial nondiscrimination policy, such as the one adopted by the City of Charlotte. However, the Greensboro M/WBE Ordinance provides that “(i)t is the policy of the city to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion or national origin.”²

FINDING 8-18: Outreach

Greensboro’s M/WBE outreach efforts have included establishing a long standing M/WBE Advisory Committee, posting bids on the State of North Carolina Interactive Purchasing System (IPS), maintaining M/WBE program information on the Greensboro website, advertising in minority publications, such as *The Challenger*, planning pre-bid conferences, holding small business briefings and sponsoring small business breakfast meetings.

FINDING 8-19: Performance Measures

Greensboro currently provides tracking of M/WBE utilization at the prime and subcontractor level.

FINDING 8-20: Comparison of Greensboro M/WBE Utilization to Other Agencies in the Greensboro Area

Another means to assess the impact of Greensboro’s M/WBE Program, and its possibilities, is to look at M/WBE utilization by M/WBE programs operating in the same market. These comparisons are not exact. Data from other agencies are based on reports and not disparity studies, and the time periods differ. Methods of data collection, definition of procurement categories, geographical scope, and reporting of subcontracting also differed as well. Results from prime contractors and subcontractors are combined below as well, because the other agencies generally did not report prime and sub utilization separately.

- University of North Carolina at Greensboro: \$72.3 million, 29.3% of total spending from FY 2007 through FY 2010.
- City Of Greensboro: \$27,223,005, 9.5% of spending in the relevant market from FY 2006 through FY 2010;

² Greensboro Code of Ordinances, Chapter 2, Article IV, Division 2, Section 2-117.

8.6 Commendations and Recommendations

Commendations and recommendations that follow are broken into race- and gender-neutral and M/WBE policy proposals. Most of the following commendations and recommendation are based on multiple findings and do not necessarily tie to one finding.

Commendations and Recommendations for Race- and Gender-Neutral Alternatives

COMMENDATION AND RECOMMENDATION 8-1: Outreach

Greensboro should be commended for the outreach activities that it undertakes. Based on the survey results more information should be distributed on how to do business with Greensboro.

RECOMMENDATION 8-2: Professionals Services and Other Services

Greensboro should consider the selective use of vendor rotation to expand utilization of underutilized M/WBE groups. Some political jurisdictions use vendor rotation arrangements to limit habitual repetitive purchases from incumbent majority firms and to ensure that M/WBEs have an opportunity to bid along with majority firms. Generally, a diverse team of firms is prequalified for work and then teams alternate undertaking projects. A number of agencies, including the Port Authority of New York and New Jersey; the city of Indianapolis; Fairfax County, Virginia; and Miami-Dade County, Florida use vendor rotation to encourage utilization of underutilized M/WBE groups, particularly in professional services.

RECOMMENDATION 8-3: Goods

State Contracts, Master Contracts, and Cooperative Agreements

Greensboro should institute a policy of encouraging purchasing staff to use M/WBEs that are on state contracts and identified as such when Greensboro uses state term contracts in purchasing. Greensboro should also ask vendors on state contracts, master contracts and cooperative contracts, to report their M/WBE utilization.

RECOMMENDATION 8-4: Construction

Construction Management, Requests for Proposals, and Design-Build

One method of debundling in construction is to use multi-prime construction contracts in which a construction project is divided into several prime contracts that are then overseen by a construction manager. For example, this approach has been used on projects where each prime contractor is responsible for installation and repair in particular areas. The construction manager is responsible for obtaining materials at volume discounts based upon total agency purchases. If one contractor defaults, a change order is issued to another prime contractor working in an adjacent area.

Construction management also facilitates the rotation of contracts within an area of work. For example, if several subcontractors have the capacity to bid on an extended

work activity (e.g., concrete flat work, traffic control, hauling), the construction manager can rotate contracting opportunities over the duration of the activity.

Using a request for proposal (RFP) process can provide the flexibility for including M/WBE participation in prime contractor requirements and selection. One of the nonfinancial criteria can be the proposer's approach to and history with M/WBE subcontractor utilization as well as female and minority workforce participation. A number of universities around the country, the Charlotte-Mecklenburg School System in North Carolina, and the Tri-County Metropolitan Transportation District of Oregon have had success with this approach.³

Joint Ventures

Greensboro should adopt a joint venture policy similar to the one implemented by the city of Atlanta, which requires establishment of joint ventures on projects of over \$10 million.⁴ Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to female and minority firms as well as nonminority firms. It has resulted in tens of millions of dollars in contract awards to female and minority firms.

Fully Operated Rental Agreements

Under these arrangements, a firm may bid an hourly rate for using certain equipment and the necessary staff. In these field-let contracts, engineers select the firm with the appropriate equipment and the lowest bid rate. If that firm is not available, the engineers select the next lowest hourly rate. This rental agreement technique is used primarily to supplement agency equipment in the event of agency equipment failure or peak demand for agency services. The rental agreement technique is attractive to small contractors because the typical small firm has much better knowledge of its own hourly costs than it does of the costs to complete an entire project.

RECOMMENDATION 8-5: Small Business Enterprise (SBE) Program

A strong SBE program is central to maintaining a narrowly tailored program to promote M/WBE utilization. In particular, Greensboro should focus on increasing M/WBE utilization through an SBE program. Greensboro does not face constitutional restrictions on its SBE program, only those procurement restrictions imposed by State law. Specific suggestions for a Greensboro SBE program can be found in features of other SBE programs around the United States, including:

- Setting aside contracts for SBEs. The North Carolina Department of Transportation (DOT) sets aside contracts up to \$500,000 for SBEs.
- Granting financial incentives for prime contractors using SBEs that have never worked on an agency project (Colorado DOT).

³ Federal Transit Administration, *Lessons Learned #45* (May 2002).
www.fta.dot.gov/library/program/ll/man/ll45.html

⁴ City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

- Setting aside small financial consulting projects (Port Authority of New York and New Jersey SBE Program).
- Granting financial incentives for training SBEs (Colorado DOT).
- Providing bid preferences to SBEs in bidding on contracts (Port Authority of New York and New Jersey SBE Program; Miami-Dade County, Florida, Community SBE Program; East Bay Municipal Utility District Contract Equity Program, Port of Portland).⁵
- Financial incentives for a prime that waives bonding requirements for a SBE (Colorado DOT).
- Setting SBE goals on formal and informal contracts (City of Charlotte, North Carolina, SBE Program).
- Setting department goals for SBE utilization (City of Charlotte, North Carolina, SBE Program).
- Funding access to low cost insurance on small projects (City of San Diego, California, Minor Construction Program).
- Providing bid preferences to SBEs on tax-assisted projects (City of Oakland, California, Local Small Business Enterprise Program, and Port of Portland Emerging Small Business Program).
- Making SBE utilization part of department performance reviews (City of Charlotte, North Carolina, SBE Program).
- Establishing mentor-protégé programs for small businesses (Port of Portland Emerging Small Business Program).

RECOMMENDATION 8-6: SBE Program for Subcontracts

Small business programs are an important component of race- and gender-neutral alternatives to address identified disparities in purchasing. Greensboro should consider imposing mandatory subcontracting clauses on contracts where there are subcontracting opportunities and such clauses would promote M/WBE utilization.⁶

RECOMMENDATION 8-7: Geographical Preferences and HUBZones

The federal HUBZone program is another variant of an SBE program that provides incentives for SBEs located in distressed areas. For example, under the 1997 Small Business Reauthorization Act, the federal government started the federal HUBZone program. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and controlled by U.S. citizens; (2) at least 35% of its employees must reside in a HUBZone; and (3) its principal place of business must be

⁵ The Port of Portland found that 10% bid preferences were more effective than 5% bid preferences.

⁶ San Diego as part of its Subcontractor Outreach Program (SCOPE) has mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has subcontracting is determined by the engineer on the project.

located in a HUBZone.⁷ The same preferences that can be given to SBEs can be given to HUBZone firms, such as contract set-asides. The New York Locally Based Enterprise program is similar in that there is a preference for subcontractors (with less than \$2 million in revenue) that perform 25% of their work in disadvantaged areas, or whose workforce is made up of at least 25% disadvantaged persons.

There are presently 19 firms that are, or were previously, certified HUBZone firms in the Greensboro MSA. Of these firms, 10% are MBEs and five are WBEs.

RECOMMENDATION 8-8: Commercial Anti-discrimination Rules

The Greensboro needs to establish a commercial anti-discrimination policy. Some courts have noted that establishing anti-discrimination rules is an important component of race-neutral alternatives. Features of a complete anti-discrimination policy selected from other entities include:

- Submission of a business utilization report on M/WBE subcontractor utilization.
- Review of the business utilization report for evidence of discrimination.
- A mechanism whereby complaints may be filed against firms that have discriminated in the marketplace.
- Due process, in terms of an investigation by agency staff.
- A hearing process before an independent hearing examiner.
- An appeals process to the agency manager and ultimately to a court.
- Imposition of sanctions, including:
 - Disqualification from bidding with the agency for up to five years.
 - Termination of all existing contracts.
 - Referral for prosecution for fraud.

COMMENDATION AND RECOMMENDATION 8-9: Business Development Assistance

Greensboro should be commended for its partnerships with North Carolina A&T, North Carolina State University, and the Small Business and Technology Development Center. Greensboro should consider devoting more resources to business development assistance. Greensboro should review examples of other agencies with substantial business development initiatives. Greensboro should evaluate the impact of these initiatives on M/WBE utilization. In particular, Greensboro should follow the example of the Port Authority of New York and New Jersey, for which management and technical assistance contracts have been structured to include incentives for producing results, such as increasing the number of M/WBEs being registered as qualified vendors with the Port Authority, and increasing the number M/WBEs graduating from subcontract work to prime contracting.

⁷ 13 C.F.R. 126.200 (1999).

M/WBE Policy Commendations and Recommendations

RECOMMENDATION 8-10: Narrowly Tailored M/WBE Program

This study provides evidence to support continuing the Greensboro M/WBE program. This conclusion is based primarily on statistical disparities in current M/WBE utilization, particularly in subcontracting; substantial disparities in the private marketplace; evidence of discrimination in business formation and revenue earned from self-employment; evidence of passive participation in private sector disparities; credit disparities; and anecdotal evidence of discrimination. Greensboro should tailor its women and minority participation policy to remedy each of these specific disparities.

The case law involving federal Disadvantaged Business Enterprise (DBE) programs provide important insight into the design of local M/WBE programs. In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). The federal courts have consistently found the DBE regulations to be narrowly tailored.⁸ The federal DBE program has the features in **Exhibit 8-5** that contribute to this characterization as a narrowly tailored remedial procurement preference program. Greensboro should adopt these features in any new narrowly tailored M/WBE program.

**EXHIBIT 8-5
NARROWLY TAILORED M/WBE PROGRAM FEATURES**

Narrowly Tailored Goal-Setting Features	DBE Regulations
Greensboro should not use quotas.	49 CFR 26(43)(a)
Greensboro should use race- or gender-conscious set-asides only in cases where other methods are inadequate to address the disparity.	49 CFR 26(43)(b)
Greensboro should meet the maximum amount of its M/WBE goals through race-neutral means.	49 CFR 26(51)(a)
Greensboro should use M/WBE contract goals only where race-neutral means are not sufficient.	49 CFR 26(51)(d)
Greensboro should use M/WBE goals only where there are subcontracting possibilities.	49 CFR 26(51)(e)(1)
If Greensboro estimates that it can meet the entire M/WBE goal with race-neutral means, then Greensboro should not use contract goals.	49 CFR 26(51)(f)(1)
If it is determined that Greensboro is exceeding its goal, then Greensboro should reduce the use of M/WBE contract goals.	49 CFR 26(51)(f)(2)
If Greensboro exceeds goals with race-neutral means for two years, then Greensboro should not set contract goals the next year.	49 CFR 26(51)(f)(3)
If Greensboro exceeds M/WBE goals with contract goals for two years, then Greensboro should reduce use of contract goals the next year.	49 CFR 26(51)(f)(4)
If Greensboro uses M/WBE goals, then Greensboro should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
Greensboro should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

⁸ *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *Gross Seed. v. City of Nebraska*, 345 F.3d 968 (8th Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004), *Northern Contracting v. Illinois DOT*, 2005 U.S. Dist. LEXIS 19868 (ND IL 2005).

RECOMMENDATION 8-11: Annual Aspirational M/WBE Goals

The study provides strong evidence to support the setting of annual aspirational goals by business category, not rigid project goals. To establish a benchmark for goal setting, aspirational goals should be based on relative M/WBE availability. The primary means for achieving these aspirational goals should be an SBE program, race-neutral joint ventures, outreach, and adjustments in City procurement policy. As in the DOT DBE program goals on particular projects should, in general, vary from overall aspirational goals.

Possible revised aspirational goals based on M/WBE availability are proposed below in **Exhibit 8-6**. These proposed goals are similar in structure to the DBE goal setting process in that the goals are a weighted average of estimated M/WBE availability and prior M/WBE utilization.

**EXHIBIT 8-6
CITY OF GREENSBORO
PROPOSED M/WBE ASPIRATIONAL GOALS
BY PROCUREMENT CATEGORY**

Procurement Category	MBE Goal	WBE Goal	Total M/WBE Goal	Current M/WBE Utilization %
Construction Prime Contracting	7%	7%	14%	2.95%
Professional Services	6%	5%	11%	2.01%
Goods & Services	5%	3%	8%	4.97%
Construction Subcontracting*	8%	7%	15%	13.37%

Source: Availability estimates are based on a 50/50 weighted average of current utilization and census availability data in **Chapter 6.0**.

*Subcontractor goals and utilization percentage are the percentage of the total construction prime contract dollars, not the percentage of subcontract dollars.

RECOMMENDATION 8-12: M/WBE Subcontractor Plans

The basis for reestablishing good faith efforts for M/WBE subcontractor requirements is disparities in construction subcontracting, the very low utilization in private sector commercial construction and other evidence of private sector disparities, even after controlling for capacity and other race-neutral variables. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs that were the low-bidding subcontractors. Accordingly, the following narrow tailoring elements must be considered:

1. Good faith effort requirements should apply to both M/WBE and non-M/WBE prime contractors.
2. Project goals should vary by project and reflect realistic M/WBE availability for particular projects.
3. A documented excessive subcontractor bid can be a basis for not subcontracting with an M/WBE.

4. A documented record of poor performance can be a basis for not subcontracting with an M/WBE.⁹

A stronger M/WBE subcontractor program will require more resources for monitoring contract compliance.

RECOMMENDATION 8-13: RFP Language

Greensboro should put in their RFPs, particularly for large projects, language asking proposers about their strategies for M/WBE inclusion on the project. A number of agencies, including the Port Authority of New York and New Jersey and the car rental component of the federal DBE program, have had success in soliciting creative responses to these requests, even in areas such as large-scale insurance contracts.

COMMENDATION AND RECOMMENDATION 8-14: Economic Development Projects

Greensboro should be commended for seeking and achieving inclusion of M/WBEs on private sector projects. At this point data tracking of M/WBE utilization on economic development projects has been limited. This study provides a basis for more aggressive subcontractor goal setting on economic development projects subsidized by Greensboro.

COMMENDATION AND RECOMMENDATION 8-15: M/WBE Program Data Management

Greensboro should be commended for tracking M/WBE prime and subcontractor awards and payments and issuing regular reports. It is important for Greensboro to monitor closely the utilization of all businesses by race, ethnicity, and gender, and by prime and subcontractor utilization, over time to determine whether Greensboro's M/WBE program has the potential to eliminate race and gender disparities. Along these lines, Greensboro should provide improved tracking of nonminority male subcontractor utilization.

Greensboro should consider implementing a centralized vendor registration database that tracks ethnicity data and telephone numbers in addition to the address information currently kept for all vendors and bidders. This database should be updated regularly to verify business existence, phone numbers, emails, and other pertinent information. Greensboro should also consider installing a unique linking field between the vendor table and contracts. This vendors system should ideally use structured codes, such as the NAICS codes.

COMMENDATION AND RECOMMENDATION 8-16: M/WBE Information on City Website

Greensboro should be commended for having important information relevant to M/WBEs on its website. A survey of agencies has found the following additional information on their M/WBE websites: information on the loan programs, comprehensive contracting guides, M/WBE ordinance, status of certification applications, data on SBE and M/WBE utilization, annual M/WBE program reports, direct links to online purchasing manuals, capacity, bonding, qualifications and experience data on certified firms, and 90-day forecasts of business opportunities. Greensboro should consider incorporating some of this information into its website.

⁹ The last two elements were adopted by the North Carolina Department of Transportation (NCDOT). 19A NCAC 02D.1110(7). These and other elements of the NCDOT M/WBE program were found to be narrowly tailored in *H.B. Rowe v. Tippett*, 615 F.3d 233(4th Cir 2010).

RECOMMENDATION 8-17: M/WBE Liaisons

Greensboro should establish M/WBE liaisons for its departments with major procurement opportunities. This approach should lead to greater accountability from departments based on the new Greensboro organizational model. These liaisons should pay particular attention to opportunities in the area of professional services.

RECOMMENDATION 8-18: Procurement Cards (P-card)

Greensboro should consider creating a directory to include firms that are more likely to be vendors for P-card transactions and highlighting these additional firms to Greensboro staff that use the P-card.

COMMENDATION AND RECOMMENDATION 8-19: Prompt Payment

Greensboro should be commended for supplementing North Carolina State rules on prompt payment. Survey and interview evidence suggests a prompt payment is still a major issue with some vendors, which may require further monitoring.

RECOMMENDATION 8-20: Performance Measures

Greensboro should consider additional performance measures other than S/M/WBE percentage utilization. Possible measures that are relevant include:

- Increase in S/M/WBE prime contract awards.
- Growth in the number of S/M/WBE winning their first prime or subcontract on Greensboro projects.
- Increase in the number of S/M/WBE successfully graduating from the program.