

EXECUTIVE SUMMARY

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This executive summary presents a synopsis of the findings, recommendations, and conclusions resulting from the disparity study conducted for the City of Hampton (City) and Hampton City Schools (HCS) to determine whether there was a compelling interest in expanding the minority and woman-owned business enterprise (M/WBE) program for the City. The study was designed to determine whether existing City efforts had eliminated active and passive discrimination; to analyze city procurement trends and practices for a four-year interval beginning July 1, 1999, through June 30, 2003; and to evaluate various options for future program development.

Findings on Utilization and Disparity in Prime Contracts

The following subsection presents findings based on information presented in Chapters 2.0 through 7.0 of this report. Although this Executive Summary provides a summary of major findings and recommendations, we highly recommend reading the complete report in order to place this overview into proper context.

FINDING 1.1: Disparity in M/WBE Utilization

The analysis presented in this study shows that the City spent just over 3 percent of its total procurement dollars with M/WBEs during the study period. Additionally, we noted that 60 percent of the M/WBE contract and procurement dollars were awarded to woman-owned firms. **Exhibit 1** presents a synopsis of the spending activity discussed in more detail in the body of the report.

EXHIBIT 1 CITY OF HAMPTON AND HAMPTON CITY SCHOOLS PRIME CONTRACTOR UTILIZATION ANALYSIS FISCAL YEARS 1999 THROUGH 2003

Business Category	MBE Util.	WBE Util.	M/WBE Util.	Total
Construction	\$1.9 m	\$ 3.2 m	\$ 5.1m	\$ 146.2 m
Architecture and Engineering	0 m	.7 m	.7 m	17.8 m
Professional Services	.4 m	1.2 m	1.6 m	23.5 m
Other Services	1.3 m	.8 m	1.7 m	60.8 m
Goods and Supplies	.4 m	.6 m	1.0 m	83.7 m
Subtotal	\$ 4.0 m	\$ 6.5 m	\$ 10.1 m	\$ 332.0 m
Relative % to Total Spending	1.2%	2.0%	3.2%	100.0%

The percentage of dollars spent with M/WBEs was higher than the level of spending by the Commonwealth of Virginia¹, but still resulted in substantial levels of underutilization for firms in the relevant market area.

**EXHIBIT 2
BUSINESS SECTOR COMPARISONS TO OTHER ENTITIES**

Minority Business Enterprise

City, State	Construction		Services		Goods		Professional Services	
	\$	%	\$	%	\$	%	\$	%
Hampton, VA	\$ 1,925,974.00	1.32%	\$ 1,280,854.00	2.11%	\$ 403,569.00	0.48%	\$ 411,608.00	1.75%
Commonwealth of Virginia	\$ 3,469,966.00	0.32%	\$14,886,548.92	0.86%	\$ 7,997,363.01	0.25%	\$10,854,318.80	0.58%
Charlotte, NC*	\$ 1,701,399.50	8.18% ¹	\$24,541,201.11	5.95%	\$ 9,708,375.17	4.42%	\$ 6,677,507.99	7.29%
Charlotte, NC*	\$90,132,462.47	10.46% ²	\$0	0.00%	\$0	0.00%	\$0	0.00%
Tallahassee, FL	\$13,053,381.35	16.51%	\$ 5,278,788.03	7.58%	\$ 2,786,582.56	10.62%	\$ 9,000.00	0.17%
Orange County, FL	\$68,748,552.00	9.00%	\$ 6,417,979.92	6.51%	\$ 1,483,800.50	0.54%	\$ 993,139.90	1.27%
Columbia, SC	\$ 1,390,499.00	1.18%	\$ 1,266,588.00	22.28%	\$ 126,319.00	0.52%	\$ 1,079,215.00	5.57%

*Utilization numbers from SBE program.

¹Construction contracts less than \$30,000.

²Construction contracts equal to or greater than \$30,000.

Woman-Owned Business Enterprise

City, State	Construction		Services		Goods		Professional Services	
	\$	%	\$	%	\$	%	\$	%
Hampton, VA	\$ 3,219,262.00	2.20%	\$ 841,317.00	1.39%	\$ 629,888.00	0.75%	\$ 1,180,983.00	5.02%
Commonwealth of Virginia	\$12,460,020.00	1.17%	\$22,323,424.90	1.29%	\$32,306,558.78	0.99%	\$ 2,291,400.64	0.12%
Charlotte, NC*	\$ 2,174,080.98	10.46% ¹	\$24,731,142.54	5.99%	\$ 5,749,246.45	2.62%	\$ 8,004,452.81	8.75%
Charlotte, NC*	\$73,870,288.09	6.65% ²	\$0	0.00%	\$0	0.00%	\$0	0.00%
Orange County, FL	\$34,860,136.00	4.60%	\$4,247,827.00	4.30%	\$1,557,664.00	0.56%	\$382,631.00	0.49%
Tallahassee, FL	\$ 9,317,018.00	11.78%	\$ 2,016,398.68	2.89%	\$ 1,538,098.06	5.86%	\$ 73,250.00	1.41%
Columbia, SC	\$ 326,131.00	1.21%	\$ 82,168.00	1.45%	\$ 286,229.00	1.18%	\$ 8,363.00	0.04%

*Utilization numbers from SBE program.

¹Construction contracts less than \$30,000.

²Construction contracts equal to or greater than \$30,000.

¹ See *A Procurement Disparity Study of the Commonwealth of Virginia*, 2004.

As shown in **Exhibit 2**, the percentage of dollars spent with M/WBEs in the City of Hampton in most business categories was frequently less when compared with other municipal entities. However, the percentage was generally above the Commonwealth of Virginia's experience.

As shown in **Exhibit 3**, M/WBEs were underutilized by the City in most business categories in relation to the availability of firms to do business with the City. The exception is seen in procurement activity with Asian American-owned firms for goods and supplies.

The exhibit shows that substantial disparity exists for the following underutilized M/WBE groups, which means that there are opportunities for the City to take proactive steps to increase participation in the following areas:

- Construction Prime Contractors – African Americans, Hispanic Americans, Asian Americans, and women.
- Architecture and Engineering Consultants – African Americans, Hispanic Americans, Asian Americans, and women.
- Professional Service Consultants – African Americans and Asian Americans.
- Other Services Vendors – African Americans, Hispanic Americans, Asian Americans, Native Americans, and women.
- Goods and Supplies Vendors – African Americans, Native Americans, and women.

**EXHIBIT 3
CITY OF HAMPTON
SUMMARY OF DISPARITY ANALYSIS FOR EACH BUSINESS CATEGORY BY
RACE/ETHNICITY/GENDER CLASSIFICATIONS
FISCAL YEARS 1999 THROUGH 2003**

Business Category by Business Owner Classification	% of Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
Construction Prime Contractors				
African Americans	0.79%	4.38%	18.11	* Underutilization
Hispanic Americans	0.06%	0.39%	14.51	* Underutilization
Asian Americans	0.47%	0.64%	72.57	* Underutilization
Native Americans	0.00%	0.00%	0.00	Not Meaningful
Nonminority Women	2.20%	5.03%	43.81	* Underutilization
Nonminority Firms	96.48%	89.56%	107.73	Overutilization
Architecture and Engineering Consultants				
African Americans	0.00%	2.38%	0.00	* Underutilization
Hispanic Americans	0.00%	0.60%	0.00	* Underutilization
Asian Americans	0.00%	0.60%	0.00	* Underutilization
Native Americans	0.00%	0.00%	0.00	Not Meaningful
Nonminority Women	4.16%	5.95%	69.91	* Underutilization
Nonminority Firms	95.84%	90.48%	105.93	Overutilization
Professional Services Consultants				
African Americans	1.75%	2.65%	66.02	* Underutilization
Hispanic Americans	0.00%	0.00%	0.00	Not Meaningful
Asian Americans	0.00%	0.35%	0.00	* Underutilization
Native Americans	0.00%	0.00%	0.00	Not Meaningful
Nonminority Women	5.02%	5.88%	85.43	Underutilization
Nonminority Firms	93.23%	91.13%	102.31	Overutilization
Other Services Vendors				
African Americans	2.01%	3.72%	53.99	* Underutilization
Hispanic Americans	0.00%	0.33%	0.00	* Underutilization
Asian Americans	0.10%	0.47%	20.73	* Underutilization
Native Americans	0.00%	0.07%	0.00	* Underutilization
Nonminority Women	1.39%	4.12%	33.57	Underutilization
Nonminority Firms	96.51%	91.30%	105.71	Overutilization
Goods and Services Vendors				
African Americans	0.23%	1.01%	22.32	* Underutilization
Hispanic Americans	0.00%	0.00%	0.00	Not Meaningful
Asian Americans	0.21%	0.24%	88.04	Underutilization
Native Americans	0.04%	0.16%	4.36	* Underutilization
Nonminority Women	0.75%	2.55%	29.58	* Underutilization
Nonminority Firms	98.76%	96.04%	102.84	Overutilization

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

¹ The percentage of construction related contract dollars awarded to firms within the relevant market area.

² The percentage of available firms in the relevant market area.

³ The disparity index is the ratio of % utilization to % availability times 100.

FINDING 1.2: Private Sector Utilization in the Hampton Construction Industry

Our research showed that M/WBE underutilization in the private sector construction industry was less than the level of utilization in the public sector. **Exhibit 4** provides a summary of the utilization of M/WBEs in private commercial construction in the Hampton relevant market area in comparison with M/WBE utilization by the public sector. Thirty-two M/WBE prime contractors won 126 prime contracts from the City versus eight M/WBE prime contractors on 98 building permits in the building permit data.

**EXHIBIT 4
CITY OF HAMPTON AND HAMPTON CITY SCHOOLS PRIME CONTRACTOR
UTILIZATION ANALYSIS FOR PRIVATE SECTOR CONSTRUCTION**

BUSINESS CATEGORY / DATA SOURCE	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBEs	Nonminority Firms
Prime Contractors							
City of Hampton Construction Prime Contractors	0.79%	0.06%	0.47%	0.00%	2.20%	3.52%	96.48%
Private Construction Prime Contractors (Building Permits)	0.05%	0.39%	0.11%	0.00%	0.02%	0.57%	99.42%

Sources: City of Hampton building permits, Utilization Analysis in Chapter 4.0

These building permit analyses yielded findings of M/WBE underutilization in the private sector. Similar results are shown in **Exhibit 5**.

**EXHIBIT 5
CITY OF HAMPTON
DISPARITY ANALYSIS OF PRIVATE SECTOR PRIME CONTRACTORS
BASED ON CENSUS DATA**

MBE Classification	% of Permit Dollars ¹	% of Available Firms ²	Disparity Index ³	Disparate Impact of Utilization
African Americans	0.05%	7.15%	0.76	* Underutilization
Hispanic Americans	0.39%	0.77%	50.51	* Underutilization
Asian Americans	0.11%	0.00%	N/A ⁴	N/A ⁴
Native Americans	0.00%	0.29%	0.00	* Underutilization
Nonminority Women	0.58%	7.44%	7.81	* Underutilization
Nonminority Firms	99.42%	84.35%	117.87	Overutilization

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown.

² The percentage of available contractors is taken from the availability exhibit previously shown.

³ The disparity index is the ratio of % utilization to % availability times 100.

⁴ Census data showed zero availability for Asian Americans.

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

FINDING 1.3: Disparities in Self-Employment and Revenue Earnings

In general, findings from the U.S. Bureau of the Census Public Use Micro Sample (PUMS) 2000 data indicate that there were disparities in entry into and earnings from self-employment by women and minorities after controlling for education, age, wealth, and other variables.

FINDING 1.4: Regression Analysis

The key findings from the regression analysis were as follows:

- In terms of minority race and gender effects on 2003 earnings, African American-owned and nonminority woman-owned firm earnings were significantly reduced as a function of their minority status, with the most egregious effect experienced by African Americans.
- Lower levels of education (less than college degree) also negatively impacted earnings for the sample.
- Variables with a statistically significant positive impact on earnings, holding all other variables in the equation constant, included owner's years of experience and the business category equipment and supplies.

Anecdotally, few firms attributed their negative experiences with the City and HCS to discrimination. Only 6 percent of firms surveyed believed that discrimination was a factor. However, of those firms that complained of discriminatory experiences, more were likely to cite gender discrimination than racial discrimination as the cause. All of the discrimination was reported to be post-contract award.

There were reports of inadequate pre-bid information on projects. Some key concerns reported in the survey were:

- availability and accessibility of information about pending projects (18 percent of 338 M/WBE respondents); and
- limited information received on contracting policies and procedures (11 percent of 338 M/WBE respondents).

The following recommendations are suggested to remedy the problems noted above.

RECOMMENDATION 1.1: Narrowly Tailoring of M/WBE Program

Recent developments in court cases involving federal DBE programs provide important insight regarding 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). In the course of several cases involving the DBE program, the courts found the new DBE regulations to be narrowly tailored.² The federal DBE program features listed in **Exhibit 6** are important to this characterization of a narrowly tailored remedial procurement preference program.

² *Adarand v. Slater*, 228 F.3d 1147 (10th Cir 2000), *Sherbrooke Sodding v. MDOT* (2001 US Dist Lexis 19565) (November 14, 2001), *Gross Seed v. Nebraska Department of Roads*, Case No. 4:00CV3073 (NB 2002), *Western States Paving v. Washington DOT*, Case No. C00-5204-RBL (WA 2003).

**EXHIBIT 6
NARROWLY TAILORED M/WBE AND DBE PROGRAM FEATURES**

	Narrowly Tailored Goal-Setting Features	DBE Regulations
1.	The City should not use M/WBE quotas.	49 CFR 26(43)(a)
2.	The City should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
3.	The City should meet the maximum number possible of M/WBE goals through race-neutral means.	49 CFR 26(51)(a)

Source: Department of Transportation, 49CFR Part 26.

RECOMMENDATION 1.2: Annual Aspirational M/WBE Goals

This study provides evidence to support the establishment of a moderate program to promote M/WBE utilization. This conclusion is based primarily on substantial statistical disparities in current M/WBE utilization, substantial disparities in the private marketplace, evidence of discrimination in business formation and revenue earned from self-employment, and some anecdotal evidence of discrimination. The City should tailor its minority participation programs to remedy each of these specific disparities. **Exhibit 7** provides guidance on setting initial annual goals for an M/WBE program. Aspirational goals can be phased in over time to allow the City and HCS to implement necessary program changes in order to reach highest percentage goal.

**EXHIBIT 7
CITY OF HAMPTON
RECOMMENDED RACE & GENDER ASPIRATIONAL GOALS
BY BUSINESS CATEGORY AND M/WBE CLASSIFICATION**

by Business Owner Classification	% of Dollars	% of Available Firms	Goal (.8 * avail.)
<i>Construction Prime Contractors</i>			
African Americans	0.79	4.38	3.50
Hispanic Americans	0.06	0.39	0.31
Asian Americans	0.47	0.64	0.51
Native Americans	0.00	0.00	0.00
Nonminority Women	2.20	5.03	4.02
<i>Architecture and Engineering Consultants</i>			
African Americans	0.00	2.38	1.90
Hispanic Americans	0.00	0.60	0.48
Asian Americans	0.00	0.60	0.48
Native Americans	0.00	0.00	0.00
Nonminority Women	4.16	5.95	4.76
<i>Professional Services Consultants</i>			
African Americans	1.75	2.65	2.12
Hispanic Americans	0.00	0.00	0.00
Asian Americans	0.00	0.35	0.28
Native Americans	0.00	0.00	0.00
Nonminority Women	5.02	5.88	4.70
<i>Other Services Vendors</i>			
African Americans	2.01	3.72	2.98
Hispanic Americans	0.00	0.33	0.26
Asian Americans	0.10	0.47	0.38
Native Americans	0.00	0.07	0.06
Nonminority Women	1.39	4.12	3.30
<i>Goods and Supplies Vendors</i>			
African Americans	0.23	1.01	0.81
Hispanic Americans	0.00	0.00	0.00
Asian Americans	0.21	0.24	0.19
Native Americans	0.04	0.16	0.13
Nonminority Women	0.75	2.55	2.04

RECOMMENDATION 1.3: SBE Program for Prime Contracts

A strong SBE program is at the center of maintaining a narrowly tailored program to promote M/WBE utilization. Guidance on SBE programs can be found in features of other SBE programs around the United States.

RECOMMENDATION 1.4: HUBZones

Another variant of an SBE program 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 percent of its employees must reside in a HUBZone; and (3) its principal place of business must be located in a HUBZone.³

RECOMMENDATION 1.5: Bidder Rotation

Several governmental entities use bid rotation to encourage M/WBE utilization. This system selects a group of bidders from the list of vendors registered to participate in open market procurements. Bidder rotation affords M/WBEs an increased number of bid opportunities than would ordinarily be the case with a sequential selection process.

RECOMMENDATION 1.6: M/WBE Utilization on Commonwealth Contracts

The City should consider instituting a policy of encouraging purchasing staff to use M/WBEs that are on Commonwealth of Virginia contracts and identified as such when the City uses Commonwealth contracts in purchasing.

RECOMMENDATION 1.7: Performance Reviews

The City should also require employees with procurement authority to be evaluated on their M/WBE and SBE utilization as part of their performance review. Furthermore, the City should also ensure that all personnel with purchasing power are fully trained concerning the City's M/W/SBE program and conform with the program requirements when they solicit bids and make purchases.

COMMENDATION and RECOMMENDATION 1.8: M/WBE and SBE Outreach

The City should be commended for providing M/WBE and SBE outreach workshops and seminars in conjunction with the local Small Business Development Center (SBDC), participating in the Tidewater Regional Minority Purchasing Council, advertising in the minority press, requiring mandatory outreach to M/WBEs on informal bids, posting bid information on the Web, and targeting business visits to M/WBEs. There are several vehicles by which City outreach efforts can be strengthened.

- The City should provide more forecasts of business opportunities to SBE and M/WBE vendors.

³ 13 C.F.R. 126.200 (1999). The State of California provides a 5 percent preference for a business work site located in state enterprise zones and an additional 1-4 percent preference (not to exceed \$50,000 on goods and services contracts in excess of \$100,000) for hiring from within the enterprise zone (Cal Code Sec 4530 *et seq.*). Minnesota's bid preferences are limited to small businesses operating in high unemployment areas.

- The City should partner with federal, state and regional procurement efforts to market to M/WBE firms in the region.
- City agencies can feature M/W/SBEs in employee newsletters to promote firm awareness.
- The City should establish performance measures and track the effectiveness in M/WBE business development as a result of its outreach activities.

The effectiveness of M/W/SBE outreach can be also improved by classifying businesses into three categories:

- Category A: Firms that are new to government contracting. These firms should be directed to the Procurement Technical Assistance Center (PTAC), the SBDC, and the Minority Business Development Center (MBDC). The City should not duplicate PTAC, SBDC, or MBDC services.
- Category B: Firms that are familiar with government contracting in general but not with the particular agency. These firms should be handled via an enhanced Web site that answers routine questions and quarterly group seminars.
- Category C: Firms that already have government contracts and are looking for more specific assistance. Some agencies allow for new businesses to make 15-minute presentations of corporate capabilities to program managers. The City can also provide unsuccessful bidders with feedback and brief M/W/SBEs on quality assurance standards.

Procurement Findings and Recommendations

Our review of the City's procurement practices yielded the following findings pertaining to M/WBE participation:

FINDING 2.1: M/WBE Utilization and Contract Size

M/WBE utilization was stronger for smaller size contracts than for larger size contracts. Contract size and related issues were also mentioned in the survey of and interviews with M/WBEs as barriers to doing business with the City.

We suggest the following measures as remedies:

RECOMMENDATION 2.1: Contract Sizing

The City should concentrate its efforts on issuing contracts in smaller dollar amounts, thus expanding the opportunities that smaller M/WBE firms have to do business with the City of Hampton. Suggested criteria to be utilized and reviewed in determining whether projects can be divided included multiple locations within one project, size and complexity of the procurement, similarity of goods and services procured, and safety.

RECOMMENDATION 2.2: Promoting M/WBE Collaboration

If contract size cannot be reduced to match M/WBE capacity, the City should look for instances in which M/WBE capacity can be increased to match contract size. The City may also cautiously encourage joint ventures between M/WBEs and nonminority firms on large-scale projects.

COMMENDATION AND RECOMMENDATION 2.3: Informal Purchases

While M/WBE utilization was stronger on smaller purchases, there was still underutilization in some areas, such as goods. Small purchases secured through informal procurement methods are an area in which buyers can become particularly comfortable with incumbent vendors. The City should be commended for provisions requiring the solicitation of small and M/WBE firms for small purchases. Additional measures can be taken to increase M/WBE participation in informal purchases.

FINDING 2.2: Purchasing Card

The City Purchasing Card can be used for transactions under \$1,500. The purchasing card does provide reports of procurement card spending with minority vendors for the City.

COMMENDATION and RECOMMENDATION 2.4: Purchasing Card

The City should be commended for tracking M/WBE utilization through its Purchasing Card transactions. These records should be integrated with annual reports of M/WBE utilization. In addition, the City should provide departments with lists of M/WBEs that accept the City Purchasing Card (e.g., membership lists from local minority and female chambers of commerce), in addition to existing certification lists.

Findings on Utilization and Disparity in Subcontracts

This section summarizes the results of our analysis of subcontractor and subconsultant utilization on City projects during the study period.

FINDING 3.1: M/WBE Subcontractor Utilization

Substantial disparity exists for the following underutilized M/WBE groups:

- Construction Subcontractors – African Americans, Hispanic Americans, Asian Americans; and women.
- Architecture and Engineering Subconsultants – African Americans, Hispanic Americans, Asian Americans, and women.
- Professional Service Subconsultants – African Americans and Native Americans.

Exhibit 8 shows the comparison of subcontractor and subconsultant utilization to the availability of firms in the relevant market area.

**EXHIBIT 8
CITY OF HAMPTON
SUMMARY OF DISPARITY ANALYSIS FOR SUBCONTRACTORS
BY BUSINESS CATEGORY BY RACE/ETHNICITY/GENDER CLASSIFICATIONS
FISCAL YEARS 1999 THROUGH 2003**

Business Category by MBE/WBE Classification	% of Dollars ¹	% of Available Firms ²	Disparity Index ³	Disparate Impact of Utilization
Construction Subcontractors				
African Americans	0.00%	4.38%	0.08	* Underutilization
Hispanic Americans	0.00%	0.39%	0.00	* Underutilization
Asian Americans	0.00%	0.64%	0.00	* Underutilization
Native Americans	0.00%	0.00%	0.00	Not Meaningful
Nonminority Women	0.00%	5.03%	0.00	* Underutilization
Architecture and Engineering Subconsultants				
African Americans	0.00%	2.38%	0.00	* Underutilization
Hispanic Americans	0.19%	0.60%	31.54	* Underutilization
Asian Americans	0.00%	0.60%	0.00	* Underutilization
Native Americans	0.00%	0.00%	0.00	Not Meaningful
Nonminority Women	0.53%	5.95%	8.84	* Underutilization
Professional Services Subconsultants				
African Americans	0.00%	2.65%	0.00	* Underutilization
Hispanic Americans	0.00%	0.00%	0.00	Not Meaningful
Asian Americans	0.00%	0.35%	0.00	* Underutilization
Native Americans	0.00%	0.01%	0.00	Not Meaningful
Nonminority Women	24.76%	5.88%	421.34	Overutilization

Source: Chapter 5.0.

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

¹ The percentage of construction related contract dollars awarded to firms within the relevant market area.

² The percentage of available firms in the relevant market area.

³ The disparity index is the ratio of % utilization to % availability times 100.

FINDING 3.2: M/WBE Subcontractor Utilization in Private Sector Commercial Construction

Exhibit 9 provides a summary of prime contractor utilization of M/WBEs in private commercial construction in the Hampton relevant market area in comparison with M/WBE utilization by the public sector. M/WBE subcontractor utilization measured in this report was negligible in both the private and the public sector.

**EXHIBIT 9
CITY OF HAMPTON AND HAMPTON CITY SCHOOLS
SUBCONTRACTOR UTILIZATION ANALYSIS FOR PRIVATE SECTOR
CONSTRUCTION**

Subcontractors	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBEs	Nonminority Firms
City of Hampton Construction Subcontractors	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	99.99%
Private Construction Subcontractors (Building Permits)	0.01%	0.00%	0.00%	0.00%	0.34%	0.35%	99.65%

Sources: City of Hampton building permits, Utilization Analysis in Chapter 4.0, Private Sector Section, Chapter 7.0.

FINDING 3.3: Subcontractor Anecdotal Perceptions

The major concerns in anecdotal testimony regarding experience as a subcontractor were bid shopping and inadequate good faith efforts by prime contractors. Among the 337 M/WBEs who responded to our telephone questions about their experiences as subcontractors, the key issues were as follows:

- no response to bid/quote (57% of M/WBE respondents);
- pressure to lower bid/quote (23%);
- regularly dropped from a project after the contract had been awarded to a prime contractor (43%);
- held to higher standards than other firms (25%); and
- a group of payment issues: payment delayed (20%), untimely release of retainage (18%), completed the job but never paid (17%), and not paid per contract (12%).

FINDING 3.4: Passive Participation

There remains significant disparity between the utilization and availability of M/WBE subcontractors. MGT concluded from the statistical analysis in Chapter 4.0 that available M/WBE subcontractors in the relevant market area are significantly underutilized. Moreover, based on the qualitative evidence in Chapter 6.0 and the quantitative private sector evidence in Chapter 7.0, an inference of discriminatory exclusion from private sector construction can be drawn. Detailed econometric evidence also supports the claim that customer discrimination against M/WBEs persists even after controlling for both individual and firm characteristics. This combined evidence suggests that absent affirmative measures the City would be a passive participant in a pattern of exclusion of M/WBE subcontracting firms.

Our recommendations to assist M/WBEs that desire to do business with the City and schools include the following:

RECOMMENDATION 3.1: Narrow Tailoring of M/WBE Subcontractor Program

The federal DBE program features listed in **Exhibit 10** are important to this characterization of a narrowly tailored remedial procurement preference program for subcontracting.

**EXHIBIT 10
NARROWLY TAILORED M/WBE PROGRAM FEATURES**

	Narrowly Tailored Goal-Setting Features	DBE Regulations
1.	The City should use M/WBE project goals only where race-neutral means are not sufficient.	49 CFR 26(51)(d)
2.	The City should use M/WBE project goals only where there are subcontracting possibilities.	49 CFR 26(51)(e)(1)
3.	If the City estimates that it can meet all M/WBE aspirational goals with race-neutral means, then the City should not use M/WBE project goals.	49 CFR 26(51)(f)(1)
4.	If it is determined that the City is exceeding its M/WBE aspirational goals, then the City should reduce the use of M/WBE project goals.	49 CFR 26(51)(f)(2)
5.	If the City exceeds M/WBE aspirational goals with race-neutral means for two years, then the City should not set M/WBE project goals the next year.	49 CFR 26(51)(f)(3)
6.	The City should use net worth requirements to determine social and economic disadvantage.	49 CFR 26(67)
7.	If the City exceeds M/WBE aspirational goals with project goals for two years, then the City should reduce use of M/WBE project goals the next year.	49 CFR 26(51)(f)(4)
8.	If the City uses M/WBE project goals, then the City should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
9.	The City should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

Source: OS Department of Transportation, 49CFR, Part 26.

RECOMMENDATION 3.2: Annual Aspirational M/WBE Subcontractor Goals

This study provides evidence to support the establishment of a moderate program to promote M/WBE utilization. This conclusion is based primarily on substantial statistical disparities in current M/WBE utilization, substantial disparities in the private marketplace, evidence of discrimination in business formation and revenue earned from self-employment, and some anecdotal evidence of discrimination. The City should tailor its minority participation programs to remedy each of these specific disparities.

The City should also establish annual aspirational goals for M/WBE subcontracting. Goals should be adjusted each year according to the utilization of M/WBEs by business category, gradually reducing race- and/or gender-conscious goals and increasing race- and gender-neutral goals. The ultimate objective is to eliminate the need for a race- and/or gender-based program and to replace that program with race- and gender-neutral options.

Exhibit 11 provides guidance on setting initial annual goals for an M/WBE program. These M/WBE goals by business category are annual goals, not rigidly set project goals.

**EXHIBIT 11
CITY OF HAMPTON
RECOMMENDED RACE & GENDER ASPIRATIONAL GOALS
BY BUSINESS CATEGORY AND M/WBE CLASSIFICATION**

Goal Determination by MBE/WBE Classification	% of Dollars	% of Available Firms	Goal (.8 * avail.)
<i>Construction Subcontractors</i>			
African Americans	0.00	4.38	3.50
Hispanic Americans	0.00	0.39	0.31
Asian Americans	0.00	0.64	0.51
Native Americans	0.00	0.00	0.00
Nonminority Women	0.00	5.03	4.02
<i>Architecture and Engineering Subconsultants</i>			
African Americans	0.00	2.38	1.90
Hispanic Americans	0.19	0.60	0.48
Asian Americans	0.00	0.60	0.48
Native Americans	0.00	0.00	0.00
Nonminority Women	0.53	5.95	4.76
<i>Professional Services Subconsultants</i>			
African Americans	0.00	2.65	2.12
Hispanic Americans	0.00	0.00	0.00
Asian Americans	0.00	0.35	0.28
Native Americans	0.00	0.01	0.01
Nonminority Women	24.76	5.88	4.70

Source: Chapter 8.0.

Findings and Recommendations for Race-Neutral Alternatives

In this section, we present our findings pertaining to race- and gender-neutral procurement assistance along with corresponding recommendations.

FINDING 4.1: Commercial Antidiscrimination Rules

The City passed a nondiscrimination ordinance in 1991 (revised July 5, 1995) that mirrors the Commonwealth of Virginia nondiscrimination statute.

FINDING 4.2: Business Development Assistance

The City provides business development assistance to SBEs and M/WBEs through support for the local business incubators and the Hampton Small and Minority Business Loan program established in 1986. Local area loan programs have provided some contract financing.

COMMENDATION AND RECOMMENDATION 4.1: Commercial Antidiscrimination Rules

The City should be commended for having a commercial antidiscrimination ordinance in place. Some courts have noted that putting in place antidiscrimination rules is an important component of race-neutral alternatives.⁴ A complete antidiscrimination policy

⁴ *Engineering Contractors v. Dade County*, 943 F.Supp. 1546 (SD Fla 1996).

following examples from other agencies (e.g., Seattle, Washington; Jackson, Mississippi; Miami-Dade County, Florida; and Atlanta Public Schools, Georgia)⁵ would provide for:

- 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; and
- imposition of sanctions, including:
 - disqualification from bidding with the agency for up to five years;
 - termination of all existing contracts; and
 - referral for prosecution for fraud.

COMMENDATION AND RECOMMENDATION 4.2: Outsourcing Management and Technical Services

The City should be commended for its current efforts in providing management and technical assistance through its support for local incubators. These efforts could be strengthened by contracting with an outside management and technical assistance provider to provide needed technical services related to business development and performance, particularly in the area of loans and bonding. Such a contract should be structured to include providing incentives to produce results, such as the number of M/WBEs being registered as qualified vendors with the City, the number of M/WBEs graduating from subcontract work to prime contracting, and rewarding firms that utilize M/WBEs in their private sector business activities.

COMMENDATION and RECOMMENDATION 4.3: Access to Capital

The City should be commended for its efforts to improve the access to capital to M/WBEs. Local area loan programs have provided some contract financing. Other examples of lending assistance programs include linked deposit programs. Agencies use linked deposit programs to subsidize lower rates for business and housing loans by accepting a lower rate on their deposits with participating financial institutions.

⁵ Seattle Fair Contracting Practices Ordinance 119601, Jackson Equal Business Opportunity Program, Dade County, Administrative Order No.: 3-23, Atlanta Public Schools M/FBE Policy.

Organizational Findings and Recommendations

FINDING 5.1: M/W/SBE Certification

At present, the City has no size standard for accepting M/WBE certification.

FINDING 5.2: M/WBE Program Data

At present, prime contractors are required to list all subcontractors and the value of their subcontracts, including M/WBE firms, in their bid submissions. The City is still behind in some aspects of its tracking of M/WBE spending. In particular, the City does not have a good source of subcontractor utilization and availability data.

FINDING 5.3: M/W/SBE Program Oversight

The City established the Purchasing and Procurement Oversight Committee (PPOC) in 1989, composed of members appointed by the City Council.

FINDING 5.4: DBE Requirements

The City has no DBE program at present. However, as the City accepts more responsibility for transportation projects with federal funding, it will need to satisfy federal DBE requirements.

FINDING 5.5: M/WBE Web site

The City of Hampton includes the following information on its Web site: directory of certified firms, bid opportunities, vendor application, and information on the loan programs.

FINDING 5.6: Office of Minority Programs

The City closed the Office of Minority Programs in 2001 and distributed its functions to other offices.

FINDING 5.7: M/WBE Office Performance Measures

At present, the City provides limited tracking of M/WBE utilization and certification.

RECOMMENDATION 5.1: Two-Tier Size Standard

The federal case law and the DOT DBE regulations point to the use of size standards and net worth requirements as one factor in the narrow tailoring of remedial procurement programs. However, size standards for remedial procurement programs face a dilemma. If the size standard is too high, large firms crowd out new firms. If the size standard is too low, then too many experienced firms lose the advantages of the remedial program. One solution to this dilemma is to adopt a two-tier standard and a net worth requirement

for M/WBE and SBE certification.⁶ Thus, for example, contracts could be set aside for small firms and for very small firms.

RECOMMENDATION 5.2: Personal Net Worth Limits

The City should also consider establishing a personal net worth limit for M/WBE certification. The federal DOT DBE personal net worth limit of \$750,000 is a standard net worth requirement. The DOT net worth limit excludes the owner's home and business equity in determining net worth.

RECOMMENDATION 5.3: M/WBE Program Data Management

It is imperative for the City to closely monitor the utilization of all businesses by race, ethnicity, and gender. Availability analysis requires a good data source, such as in centralized bidder registration systems for prime vendors and contractors. These are becoming increasingly common. For future availability analysis, it is equally important to identify not only the number of prime vendors but also the number of subcontractors available. Because the City does not collect these data, it is limited in the type of availability analysis it can conduct. In order to accurately monitor an SBE program and enhance future availability analyses, the City should require all contractors to submit a list of all subcontractors contacted in preparation of their bid package. The list of potential subcontractors should include the proposed service and bid amount. The data will allow the City to identify with accuracy the number of actual subcontractors available. These data should be analyzed and reviewed at least annually, and the M/WBE program adjusted according to review results.

Ideally, the City data management should rest upon Internet-based data tracking. The services and software should help monitor utilization, availability, and disparity of M/W/SBEs in the clients' procurement process while adhering to current case law. There are a number of software and service providers that offer a Web-based application developed for the management, tracking and reporting of an agency's awards/commitments and payments to small, minority, woman-owned, and disadvantaged business enterprises. Such a system would assist in the acquisition of subcontracting data, reduce the costs of disparity analysis, facilitate time management of staff, and allow the staff to focus on contract compliance.

COMMENDATION AND RECOMMENDATION 5.4: PPOC

The City should be commended for establishing the PPOC for its M/WBE program. The necessity of closely monitoring the narrow tailoring of the City M/WBE program may lead to difficult discussions of the future of M/WBE utilization by the City. It is essential that major stakeholders (including representatives of general contractors and M/WBE contractors) are a part of discussions about the City M/WBE program. Consequently, the City should continue the work of the PPOC and provide vehicles for public input into the deliberations of the PPOC in the review of any reforms of the City M/WBE program.

⁶ Both the State of New Jersey and the federal government use a two-tier size standard. In this scheme there are separate size standards for small businesses and emerging small businesses. For large projects, the State of New Jersey carves out portions of the contract for both tiers of small business. Thus, a single solicitation requires that the prime spend a certain percentage of the contract with small firms and another percentage with emerging small firms. Along related lines the federal government sets aside contracts for bidding only among small firms, and other contracts may be set aside for bidding only by emerging small firms.

RECOMMENDATION 5.5: Additional Features for M/WBE Web Site

Other agencies have put the following information on their M/WBE Web sites: uniform certification application, M/WBE program description, SBE program description, M/WBE ordinance, how to do business information, bid tabulations, status of certification applications, direct links to on-line purchasing manuals, capacity and experience data on certified firms, and forecasts of business opportunities to M/WBE vendors.

RECOMMENDATION 5.6: Assign DBE Liaison Officer

The City will need to adopt a DBE plan, along with DBE goals, and monitor and report compliance with that plan. The City will need to assign a staff person to this task.

RECOMMENDATION 5.6: Reestablish an M/WBE Office

There are a number of tasks proposed in these recommendations that would justify reestablishing an M/WBE office, including but not limited to:

- setting M/WBE aspirational goals;
- setting M/WBE project goals;
- drafting an M/WBE policy manual;
- sitting in on selection committees for RFPs;
- establishing an SBE program;
- reporting M/WBE utilization to the highest levels of City management;
- overseeing business assistance;
- improving outreach;
- setting aside contracts under an SBE program; and
- setting DBE goals and monitoring DBE compliance.

RECOMMENDATION 5.7: Balanced Scorecard

A reconstituted M/WBE office should develop additional measures to gauge the effectiveness of its efforts. Possible measures include:

- growth in the number of M/WBEs winning their first award from the City;
- growth in percentage of M/WBE utilization by the City;
- growth in M/WBE prime contracting;
- growth in M/WBE subcontractors to prime contractors;
- number of firms that receive bonding;
- number of firms that successfully graduate from the M/WBE program;
- number of graduated firms that successfully win City projects;

- percentage of M/WBE utilization for contracts not subject to competitive bidding requirements;
- growth in the number of M/WBEs utilized by the City;
- number of joint ventures involving M/WBEs; and
- largest contract won by an M/WBE.

These measures should be integrated into a balanced scorecard. The balanced scorecard model of management engineering seeks to align an organization with its strategy by identifying key initiatives necessary to realize that strategy and mobilize the organization's staff. Using measures and targets, the scorecard creates feedback loops that evaluate an agency's progress against that strategy.