

9/12 Action Review:

On Monday, September 12, 2022, Colette Holt, principle of Colette Holt and Associate (“CHA”) will present the findings in the City of Charlotte’s 2022 Disparity Study. Ms. Holt is a nationally recognized expert in designing, implementing, and defending affirmative action programs. She has broad experience in conducting legally defensible disparity studies, expert witness consulting and testimony. She has concentrated her practice in these areas for over 30 years, after serving in senior legal and management government positions. Ms. Holt is also a frequent media commentator and author on these issues.

On Monday, August 1, 2022, Colette Holt presented the Disparity Study findings to the Economic Development Council Committee. The committee by a vote of 4 to 1 approved and recommended that the study move forward to full City Council for presentation. Council Members Graham, Ajmera, Watlington and Phipps voted in favor. Council Member Driggs voted against this recommendation.

Background:

Definition of Disparity Study:

A Disparity Study is a determination of whether disparity exists between the number of minority-owned business enterprises (MBEs) and/or women-owned business enterprises (WBEs) available to perform on city contracts and the city’s utilization of these firms. (availability/utilization). It is also a determination of the extent to which any disparity is attributable to discrimination.

Need for Disparity Study:

In January of 2023, the city’s current disparity study is set to expire (there is no court-mandated expectation of time between studies, the standard is typically every five to seven years). In the Fall of 2020, the city conducted a request for proposal procurement process (RFP) and in December, selected CHA to conduct a new study (studies generally require 12-18 months to complete.) Specifically, CHA was contracted to perform a disparity study examining the city’s Minority-owned Business Enterprise (“MBE”) and Woman-owned Business Enterprise (“WBE”, collectively, “M/WBE”) Program.

Methodology:

The CHA approach has been specifically upheld by the federal courts when challenged and embodies the constitutional principles established in City of Richmond v. J.A. Croson Co., Rowe v. North Carolina Department of Transportation, and best practices for designing race-conscious and gender-conscious programs. CHA’s approach was developed for the National Academy of Sciences and is the recommended standard for designing legally defensible disparity studies.

Using the most current city data (2015-2020), CHA determined the city’s utilization of M/WBEs; the availability of these firms as a percentage of all firms in the city’s geographic and industry market areas; and any disparities between the city’s utilization of M/WBEs and M/WBE availability for city contacts.

In addition, CHA analyzed disparities in the Charlotte Metropolitan Area and the wider North Carolina economy to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention like goal setting is not imposed.

CHA also gathered qualitative data from surveys and interviews of multiple stakeholders about the experiences of M/WBEs in obtaining city contracts and associated subcontracts. Based on its findings, CHA evaluated the Charlotte Business INClusion (“CBI”) Program for conformance with constitutional standards and national best practices.

Next Steps:

Moving forward the following steps must occur:

1. On September 26, 2022, City Council will be asked to take action to accept the disparity study as recommended by the Economic Development Committee,
2. Staff in collaboration with the Economic Development Committee and the CBI Advisory Committee will develop policy revisions,
3. Council adopts a revised CBI policy that incorporates study recommendations, and
4. Staff implements Council’s revised policy.

Charlotte Business Inclusion Results:

It has been a banner year for CBI. Some of the more notable areas of success include:

- 15% increase in spending with MWSBEs from the previous year during the COVID-19 pandemic,
- A 38% increase in spending with MBEs, and
- Spending of over \$1 million with 12 different MBE firms during the FY2021.

If you are interested in more details about the program’s performance, please visit the following web link:
<https://1charlotte-bus-res-staging.k31u286g-liquidwebsites.com/cbrdashboard/annual-report-fy-2021>.

Attachments

- Letter from the City Attorney’s Office answering questions from Committee members
- CHA Presentation provided to the Economic Development Committee on August 1, 2022
- CBI Presentation provided to the Economic Development Committee on August 1, 2022

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Economic Development Committee

FROM: Patrick Baker, City Attorney
Thomas E. Powers III, Senior Assistant City Attorney

DATE: July 1, 2022

RE: 2022 Disparity Study

QUESTION

Is the proposed 2022 Disparity Study for the City of Charlotte (“City”) legally defensible?

ANSWER

Yes, the City Attorney’s Office believes the 2022 Disparity Study is legally defensible and that it provides a legally sufficient basis for the City to implement race-conscious and gender-conscious measures for the Charlotte Business INCLUSION (“CBI”) program. A more detailed explanation of specific items in the 2022 Disparity Study is set forth below.

EXPLANATION

Aspiration Goal.

The Consultant recommended an aspirational goal of 13.1% based on the “aggregated weighted availability” of MBEs and WBEs in the 2022 Disparity Study. See below for an illustration of “aggregated weighted availability:”

$$\frac{\text{Number of each MBE or WBE in one category}}{\text{Total number of all firms in one category}} \times \frac{\text{Total City spend in one category}}{\text{Total City spend}}$$

The City Attorney’s Office believes that the aspirational goal for the 2022 Disparity Study is legally defensible. It is important to note that CBI may establish an MBE goal or a WBE goal on an individual City contract that is higher or lower than the recommended aspirational goal. If this occurs, it is due to the availability of MBEs or WBEs for that specific contract and the legal ability to enforce that contract specific goal.

Disparity Ratios

The Consultant identified the following disparity ratios for the 2022 Disparity Study:

Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE
61.9%	100.8%	521.5%	135.8%	106.1%	80.5%	92.0%	97.9%

The Consultant stated that any disparity ratio below the eighty percent (80%) threshold supports the inference that the disparity may be caused by the disparate impacts of discrimination. One category, Black-owned businesses, was below the eighty percent (80%) threshold.

For businesses that are Hispanic-owned, Asian-owned, Native-American-owned, and White Woman-owned, the Consultant conducted an additional analysis. This additional analysis examined whether an abnormal pattern of MBE/WBE concentration accounts for disparity ratios above eighty percent (80%) or whether the presence of a few successful firms was causing high disparity ratios. The Consultant concluded that there was evidence of an overconcentration of MBEs/WBEs in certain City spend categories and that a few successful firms were causing high disparity ratios.

The City Attorney's Office believes that disparity ratios identified in the 2022 Disparity Study are legally defensible.

Relevant Market.

The Consultant identified the City's relevant market to include all one hundred (100) counties in the State of North Carolina and York County, South Carolina. The City spent seventy-four percent (74%) of its funds during 2015-2020 in the identified relevant market.

The City Attorney's Office believes that the relevant market identified in the 2022 Disparity Study is legally defensible.

Small Business Enterprise.

The Consultant recommended that the City avoid setting a Small Business Enterprise ("SBE") goal on the same City contract that has an MBE goal or a WBE goal. The City can set a SBE goal on a City contract if no MBEs or WBEs are available.

The City Attorney's Office believes this recommendation is legally defensible because the City's current local act, codified in Section 8.88 of the City's Charter, prioritizes an MBE and a WBE goal setting program over a SBE goal setting program. The specific language in subsection (b) states:

The small business enterprise program authorized by this section is intended to supplement and not replace the requirements of G.S. 143-128.2, 143-131, or 143-135.5. Any goals or efforts established to achieve minority and women business participation consistent with said provisions of law shall take precedence over goals for small business enterprise participation established under the program authorized by this section.

CC: Mayor Vi Lyles

City of Charlotte Disparity Study 2022

Colette Holt & Associates
Paradigm 360 Coach Training, LLC
Apex Business Group LLC
Viridian Marketing

Disparity Study Legal Standards

- In 1989, US Supreme Court held race- and gender-conscious programs are subject to “strict scrutiny”, the highest level of judicial review

- M/W/DBE programs must meet two tests
 - Agency must prove it has a “compelling interest” based on “strong” statistical and anecdotal evidence of current discrimination or the effects of past discrimination in using race or gender in decision-making
 - Any remedies must be “narrowly tailored” to the evidence relied upon and regularly reviewed

Recent Legal Developments

- USDA “socially and economically disadvantaged” farmers program under American Rescue Plan struck down by three trial courts and class status granted
- Priority for grants to small restaurants owned by “socially and economically disadvantaged” persons, women and veterans struck down
- Oregon’s COVID relief fund for Blacks and Colorado’s fund for MBEs challenged and enjoined

Disparity Study Objectives

- Provide a legal defense for a government program if the new program is challenged
- Meet constitutional requirements
- Provide policy and program recommendations
- Educate policy makers and stakeholders about the legal and economic issues to build consensus

Disparity Study Data and Methods

- Quantitative data sources
 - City contract and vendor records
 - Contract information from prime vendors
 - M/W/DBE/HUB Directories
 - Hoovers/Dun & Bradstreet
 - U.S. Census Bureau
 - Scholarly research

- Qualitative data sources
 - Business owner and stakeholder interviews
 - City staff

Disparity Study Elements

- Legal review and analysis
- CBI Program review
- Utilization, availability and disparity analyses
 - Determination of City's geographic and industry markets
 - Determination of M/WBE utilization in these markets
 - Estimation of M/WBE availability in these markets
 - Calculation of disparity ratios
- Economy-wide disparity analysis
- Anecdotal data collection and analysis
- Recommendations

Disparity Study Findings: CBI Program

- Interviewed 93 individuals and obtained 490 survey responses
 - Generally, the Program works well and creates opportunities
 - Contract goals remain necessary to ensure equal opportunities
 - Prime vendors usually were able to meet goals
 - Some scopes were more difficult than others
 - Engineering firms faced challenges
 - Credit limited to CSA restricts the pool

Disparity Study Findings: CBI Program

- Unbundling contracts would increase opportunities
- More technical support is needed
- M/WBEs want to be prime vendors
- Electronic system is effective, but more monitoring is needed
- M/WBEs requested additional networking events with City staff and large vendors
- Mentor-protégé program received strong support
- Assistance with obtaining capital, bonding and insurance was suggested

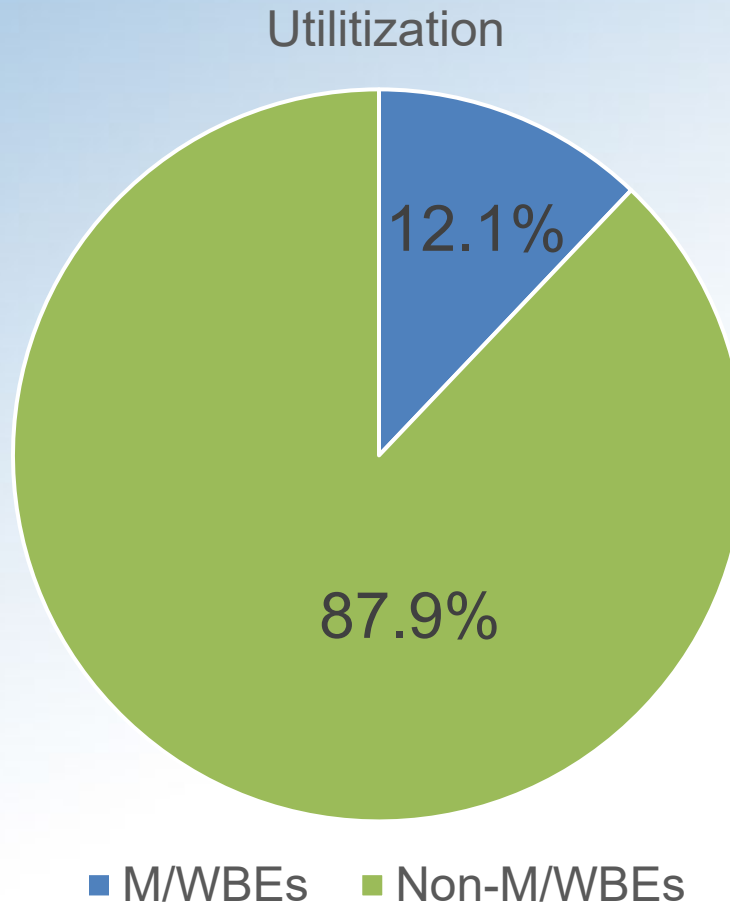
Disparity Study Findings: Utilization

- Study analyzed FYs 2015-2020 contracts \$50,000 or greater
 - Final Contract Data File
 - 751 prime contracts totaling \$1,344,064,359
 - 1,105 subcontracts totaling \$322,929,868
- Geographic market
 - State of North Carolina and York County, South Carolina captured 74.0% Final Contract Data File
- Product market
 - 137 NAICS codes in Final Contract Data File

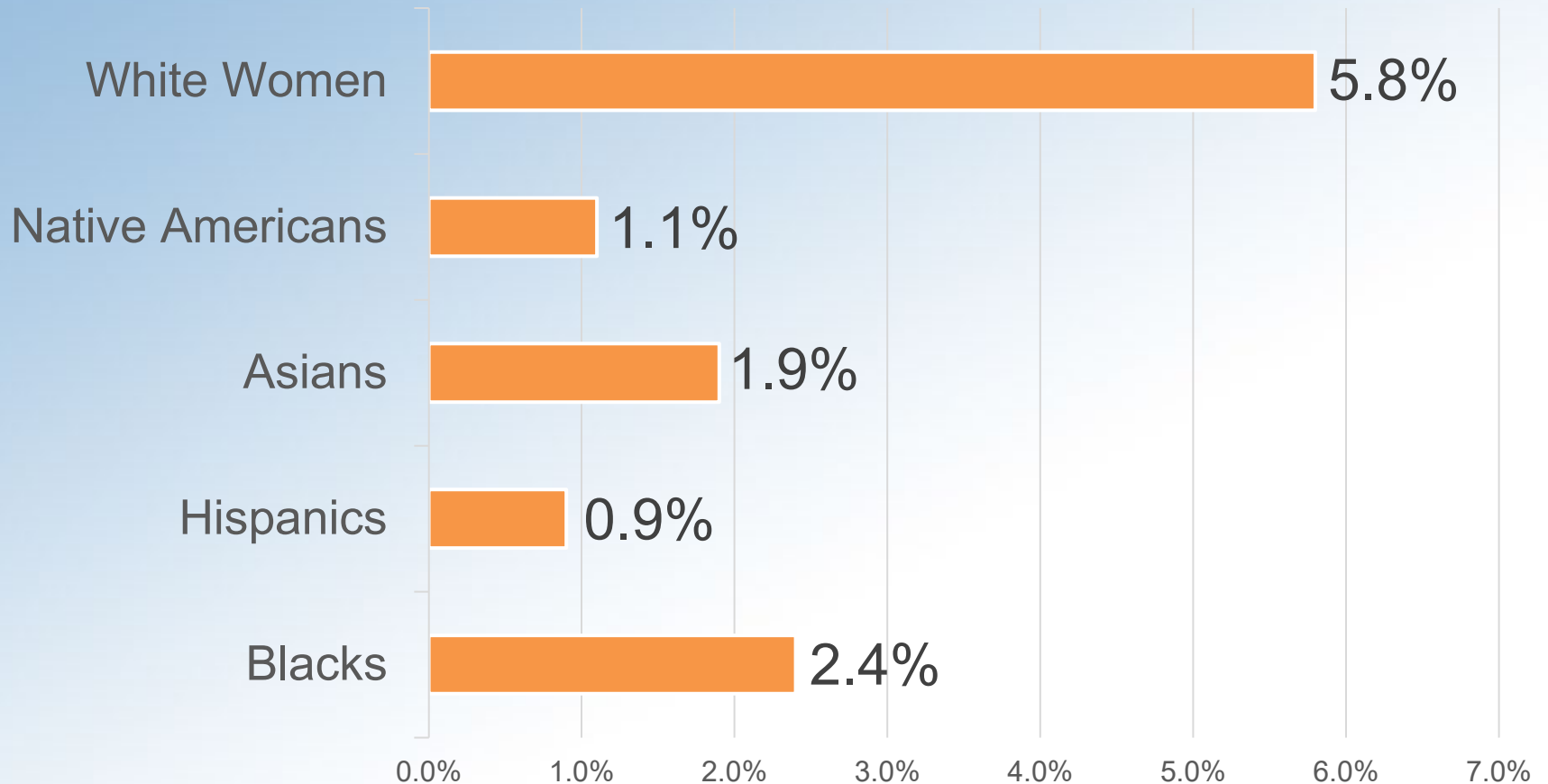
Disparity Study Findings: Utilization

- City's utilization of M/WBEs
 - M/WBEs: 12.1%
 - Blacks: 2.4%
 - Hispanics: 0.9%
 - Asians: 1.9%
 - Native Americans: 1.1%
 - White women: 5.8%
 - Non-M/WBEs: 87.9%

Disparity Study Findings: Utilization



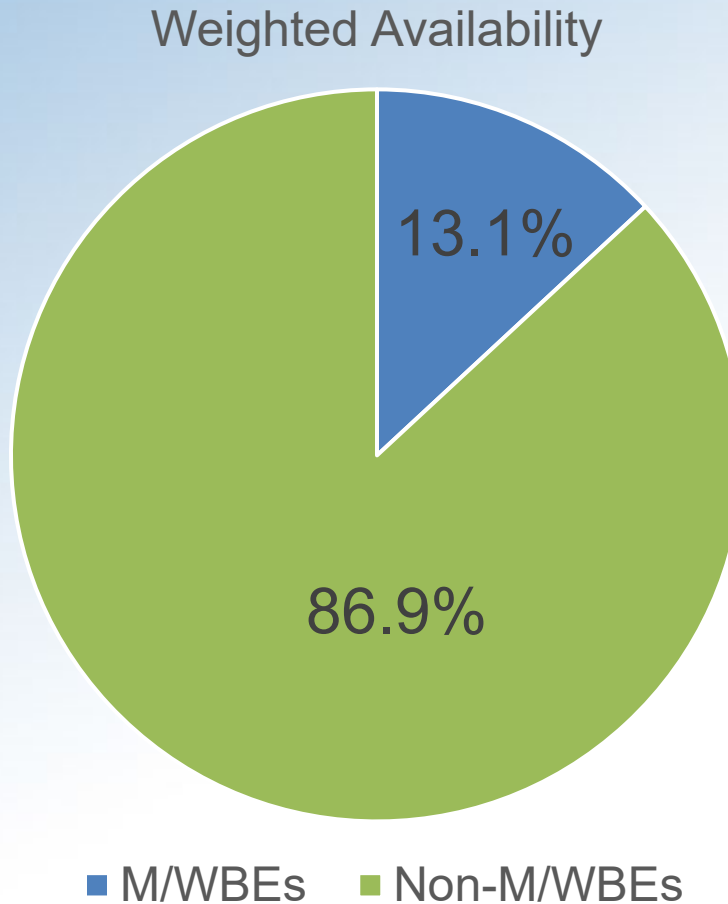
Disparity Study Findings: Utilization



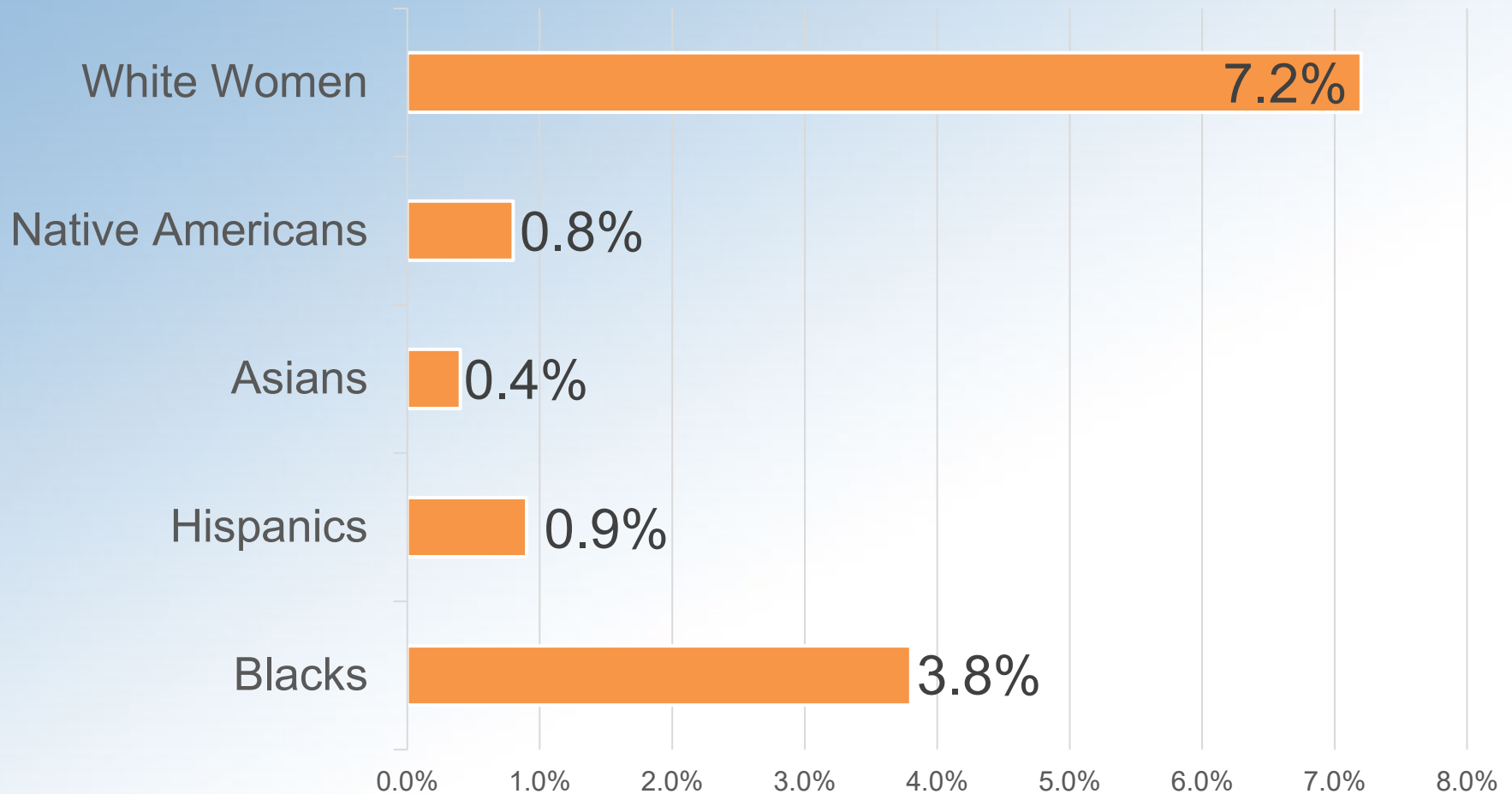
Disparity Study Findings: Availability

- Weighted availability in City's marketplace
 - M/WBEs: 13.1%
 - Blacks: 3.8%
 - Hispanics: 0.9%
 - Asians: 0.4%
 - Native Americans: 0.8%
 - White women: 7.2 %
 - Non-M/WBEs: 86.9%

Disparity Study Findings: Weighted Availability



Disparity Study Findings: Weighted Availability



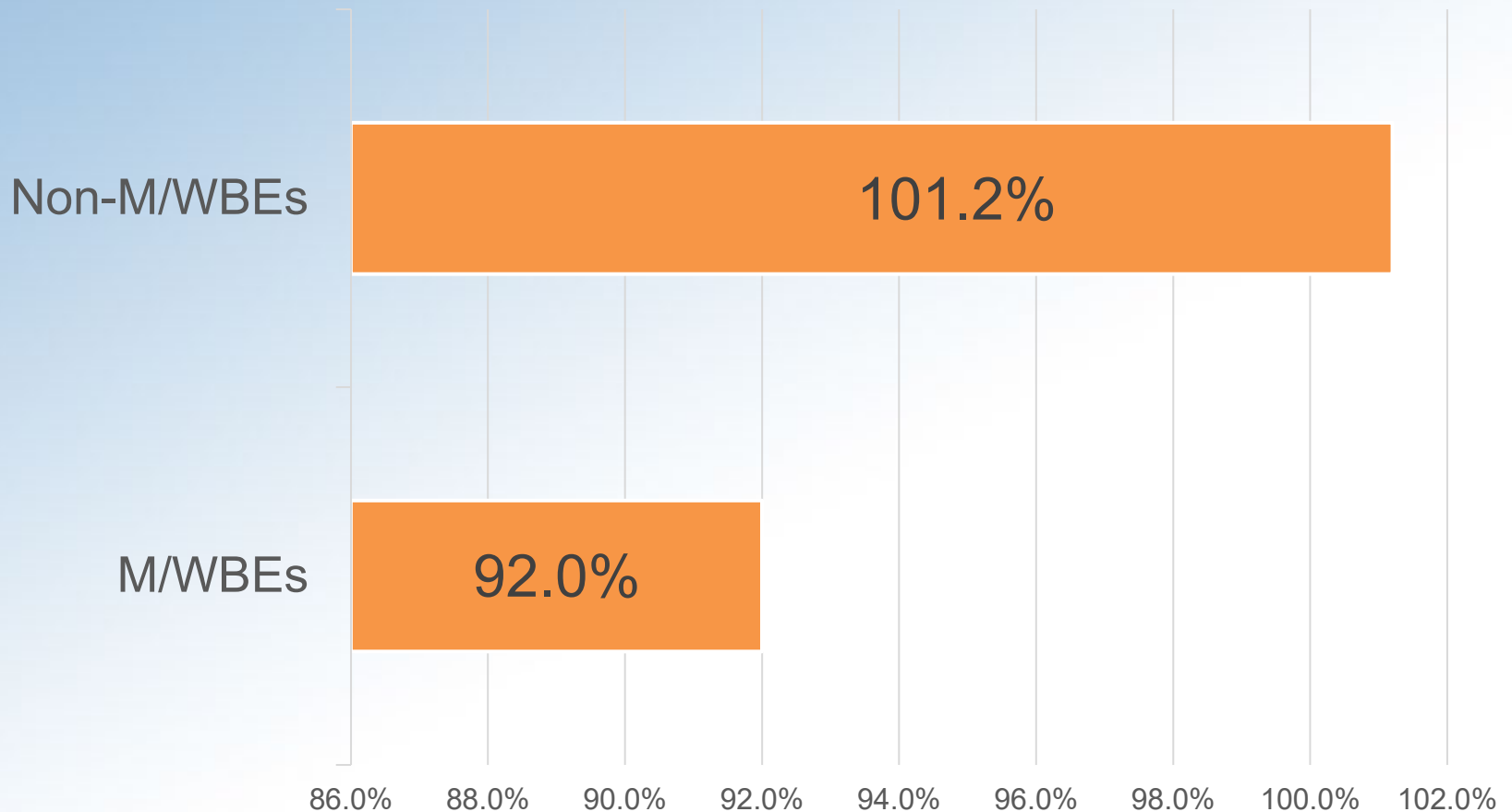
Disparity Study Findings:

Disparity Ratios

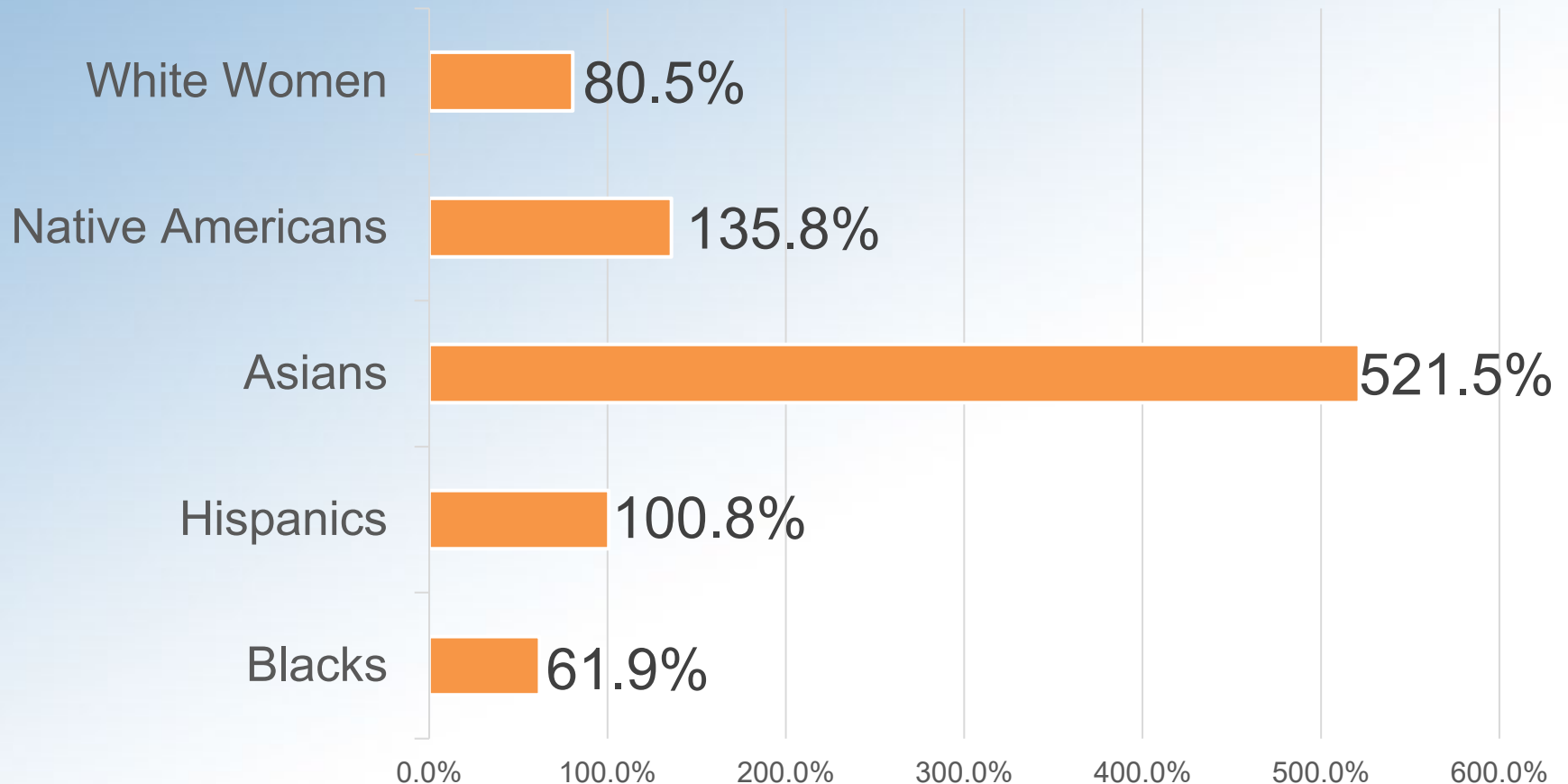
- Disparity ratio = M/WBE utilization ÷ availability
 - M/WBEs: 92.0%
 - Blacks: 61.9%‡
 - Hispanics: 100.8%
 - Asians: 521.5%
 - Native Americans: 135.8%
 - White Women: 80.5%
 - Non-M/WBEs: 101.2%

‡ Indicates substantive significance

Disparity Study Findings: Disparity Ratios - Everyone



Disparity Study Findings: Disparity Ratios – M/WBEs



Disparity Study Findings: NAICS Code Importance- M/WBEs and Non-M/WBEs

- Contract dollars received by M/WBEs are much more concentrated in a small subset of codes than non-M/WBEs
- If there was parity:
 - The share of contract dollars that any NAICS code contributes to a M/WBE group would be approximately the same as the share of contract dollars contributed to non-M/WBEs.
 - The subsequent ratio of the two shares would be approximately 1:1
- Ratios ranged from 0.5:1 for Asian firms (heavy civil) to 263.3:1 for Black firms (trucking)

Disparity Study Findings: Economy-Wide Analysis

- Useful to evaluate the effectiveness of race-neutral measures
- American Community Survey
 - Minorities and White women earned less from their businesses and formed fewer businesses than White males
- Annual Business Survey
 - Very large disparities in firm sales receipts between M/WBE and non-M/WBE firms
- Credit discrimination barriers remain high
- Human capital constraints continue to impede success

Disparity Study Findings: Anecdotal Findings

- Business owner interviews of 93 individuals
 - M/WBEs suffer from biased perceptions and negative stereotypes about qualifications and capabilities
 - Some M/WBEs experienced barriers to industry networks
 - Some minority owners encountered blatantly hostile environments
 - Some women experience gender bias

Disparity Study Findings: Anecdotal Findings

- 490 electronic survey responses
 - Demeaning comments, stereotyping and harassment continue to constrict opportunities to compete
 - Many M/WBEs encounter barriers to contracting and networking opportunities; access to information; and capital, surety bonding and insurance on the basis of race or gender
 - M/WBEs were not often solicited for contracts without goals
 - M/WBEs could perform more work if it became available

Disparity Study Recommendations

- Implement race- and gender-neutral measures
 - Develop a long-term procurement forecast
 - Extend the Quick Pay Program to firms that meet goals and for all industries and incentivize primes by faster payments from the City
 - Expand supportive services offerings
 - Provide classes on estimating and paperwork
 - Support the needs of mature M/W/SBEs
 - Develop financing programs
 - Implement a technical assistance, capital access and bonding program for construction firms

Disparity Study Recommendations

- Continue to implement narrowly tailored race- and gender-conscious measures
- Quantitative and qualitative data supports the ability to set annual and contract M/WBE goals
 - Use the study availability results to set annual, overall aspirational goal of 13.1% and contract goals; do not include SBEs
 - Expand the M/WBE pool to State of North Carolina and York County, South Carolina

Disparity Study Recommendations

- Clarify and update CBI Program administration policies and procedures
 - Use NAICS codes for goal setting and reporting, not NIGP goals
 - Count M/WBEs' self-performance towards goals
 - Only credit participation for work in certified firm's codes
 - Revise the good faith efforts standards
 - Adopt flexible remedies for Program violations
- Adopt a Mentor- Protégé Program

Disparity Study Recommendations

- Develop CBI Program performance measures
- Continue to conduct regular CBI Program reviews



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2022 Disparity Study

Impact and Timeline

CITY OF CHARLOTTE
CHARLOTTE BUSINESS INCLUSION OFFICE

“As wealth inequality increases and communities work to overcome racial disparities, the City of Charlotte will be a leader in providing equal access and opportunity for all businesses to grow.”

~Charlotte City Manager, Marcus Jones~

Past 3-Years - MWSBE Total Spend

☐ **FY2019** **\$133,268,593**

☐ **FY2020** **\$163,624,540**

☐ **FY2021** **\$188,816,194**

I. What are some major changes from the 2017 study?

☐ **Adopt the recommended MWBE aspirational goal**

- 2022 study recommends an MWBE goal of 13.1%

☐ **Charlotte Statistical Area (CSA) expands**

- 100 North Carolina Counties and York County in South Carolina

☐ **Set MWBE goals only**

- 2022 study recommends goals for minority and women owned firms only.

II. Has the city implemented any 2022 study recommendations?

Yes, the city is currently:

- ☐ Providing \$800,000 to implement a bonding program
- ☐ Unbundling contracts
- ☐ Providing technical support to firms
- ☐ Helping firms become prime contractors
- ☐ Providing more networking events for firms
- ☐ Using the B2G system to monitor contracts for compliance

III. Are there additional recommendations the city may adopt?

Yes, the city may implement:

- ☐ Access to capital programs for firms
- ☐ Quick pay for firms in all work categories
- ☐ Comprehensive technical assistance program
- ☐ CIP project procurement forecast for firms
- ☐ Mentor-protegee program
- ☐ Insurance Program for firms

IV. What are the next steps?

DATE	ACTION
June 22, 2022	ED Committee recommends Council adopt the 2022 Disparity Study
July 11, 2022	2022 Disparity Study is presented to full Council
August 22, 2022	2022 Disparity Study adopted by Council
Summer 2022	CBI Advisory Committee receives presentation of 2022 Disparity Study
Fall 2022	CBI Staff, the CBI Advisory Committee, and ED Council Committee will review and recommend changes to the policy and procedures
Fall 2022	Staff to do the work to craft policy changes in anticipation of 2023 implementation
Spring 2023	Staff to implement a communication and marketing plan for 2022 Disparity Study

Questions



2021 Annual Report

Minority, Women, and Small Business Enterprises

CHARLOTTE BUSINESS INCLUSION OFFICE

FY2021 Reporting Highlights

15%

increase in spending with MWSBEs

135

new certified minority businesses

38%

increase in spending with minority business enterprises

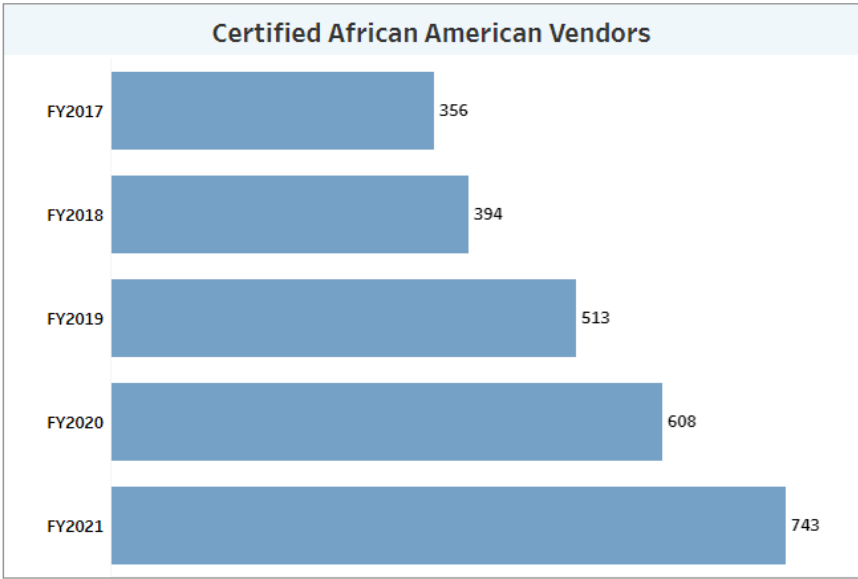
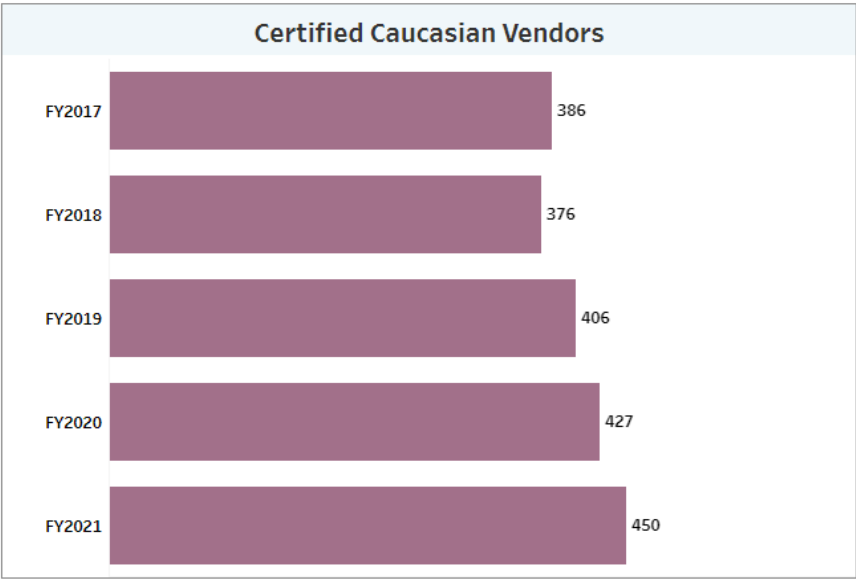
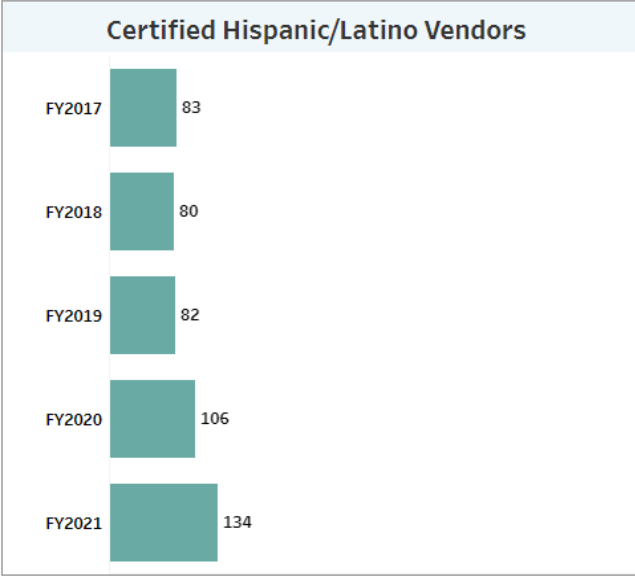
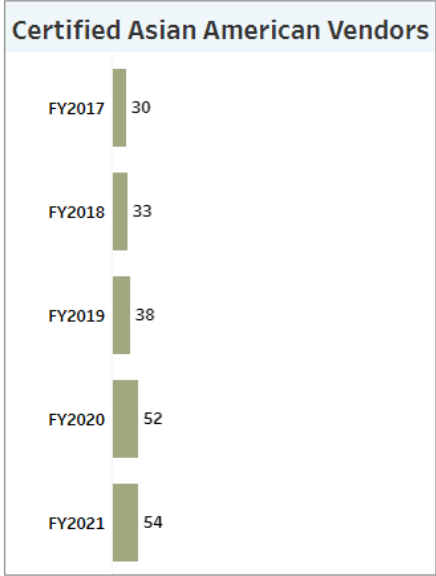
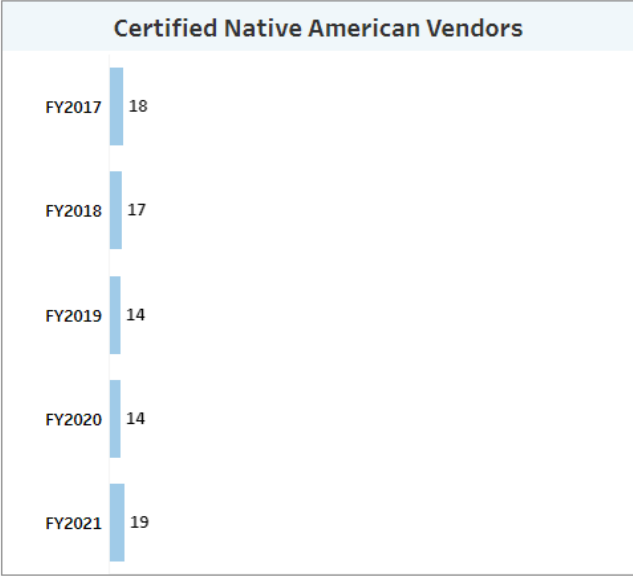
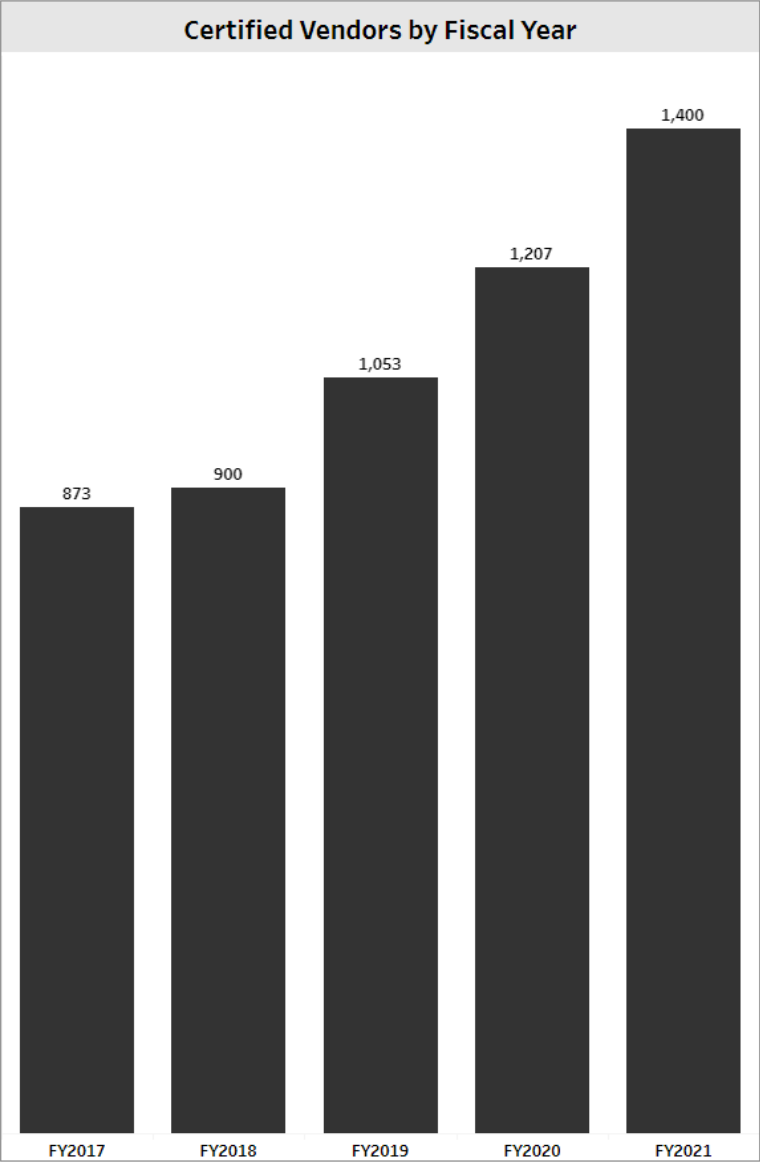
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MBEs with spending over **\$1 MILL** in FY2021

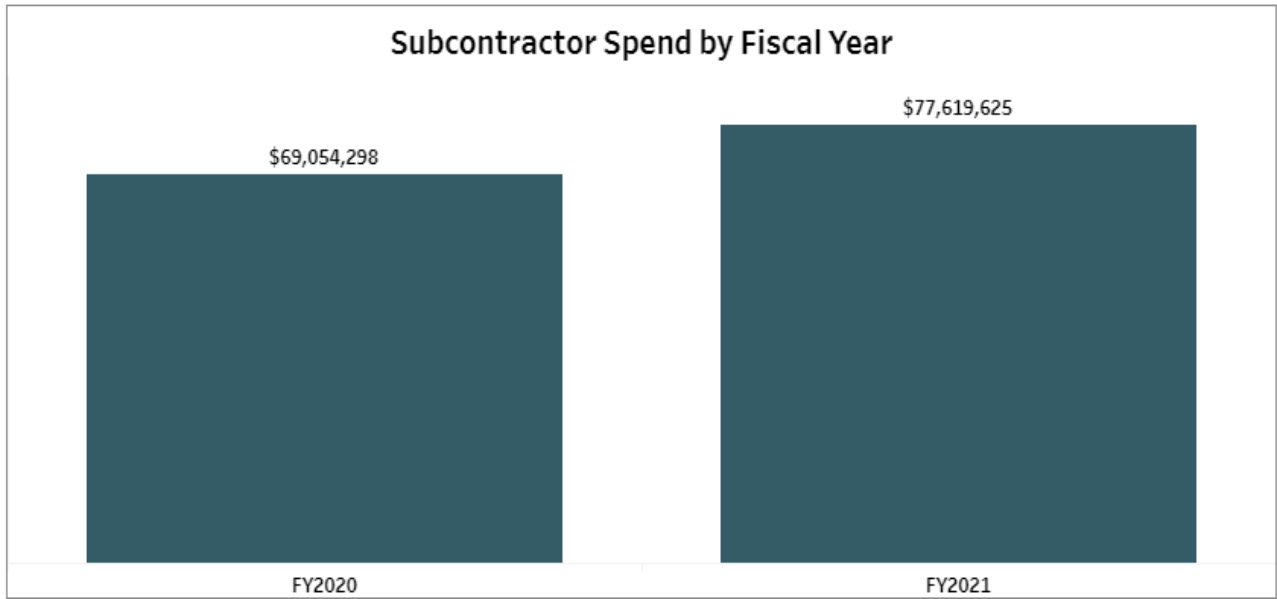
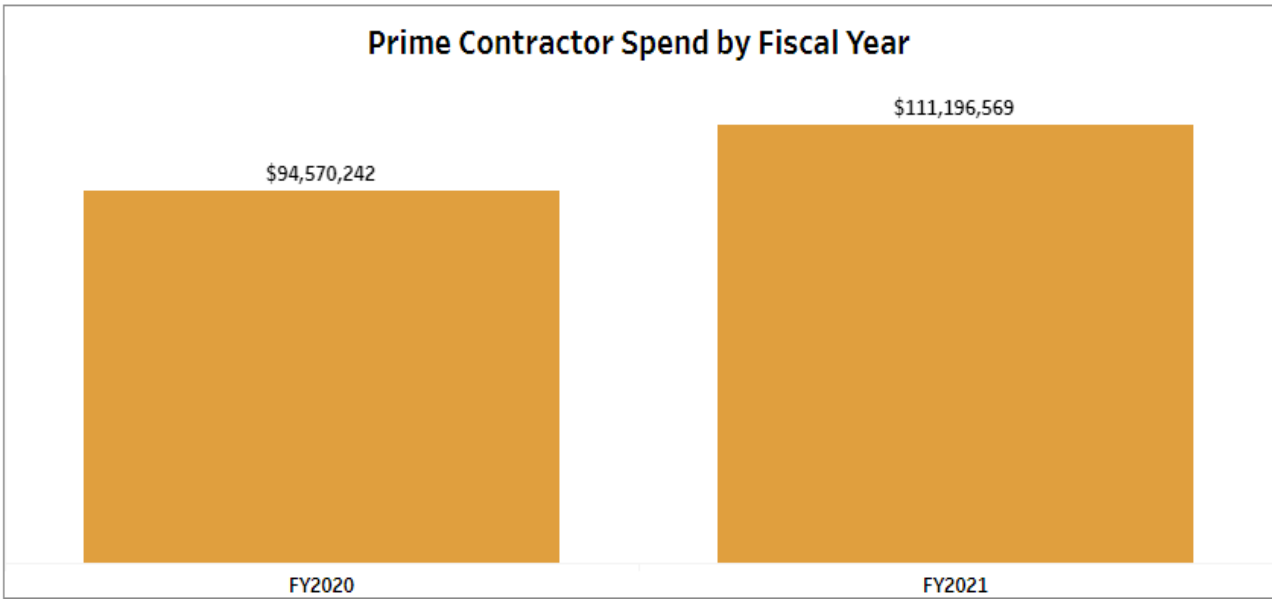
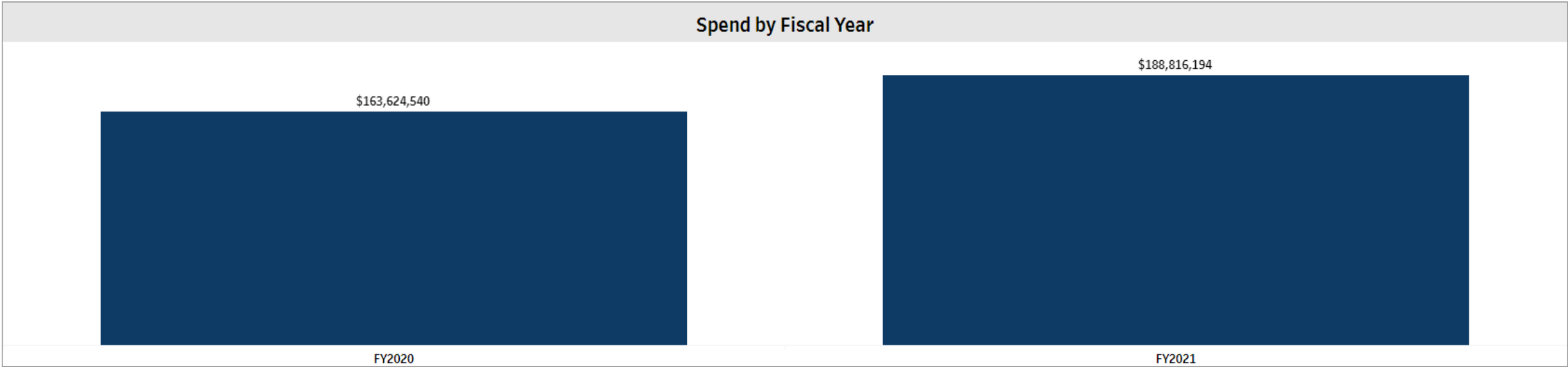
10,000+

pageview increase in **EARLYBIRD** views by vendors

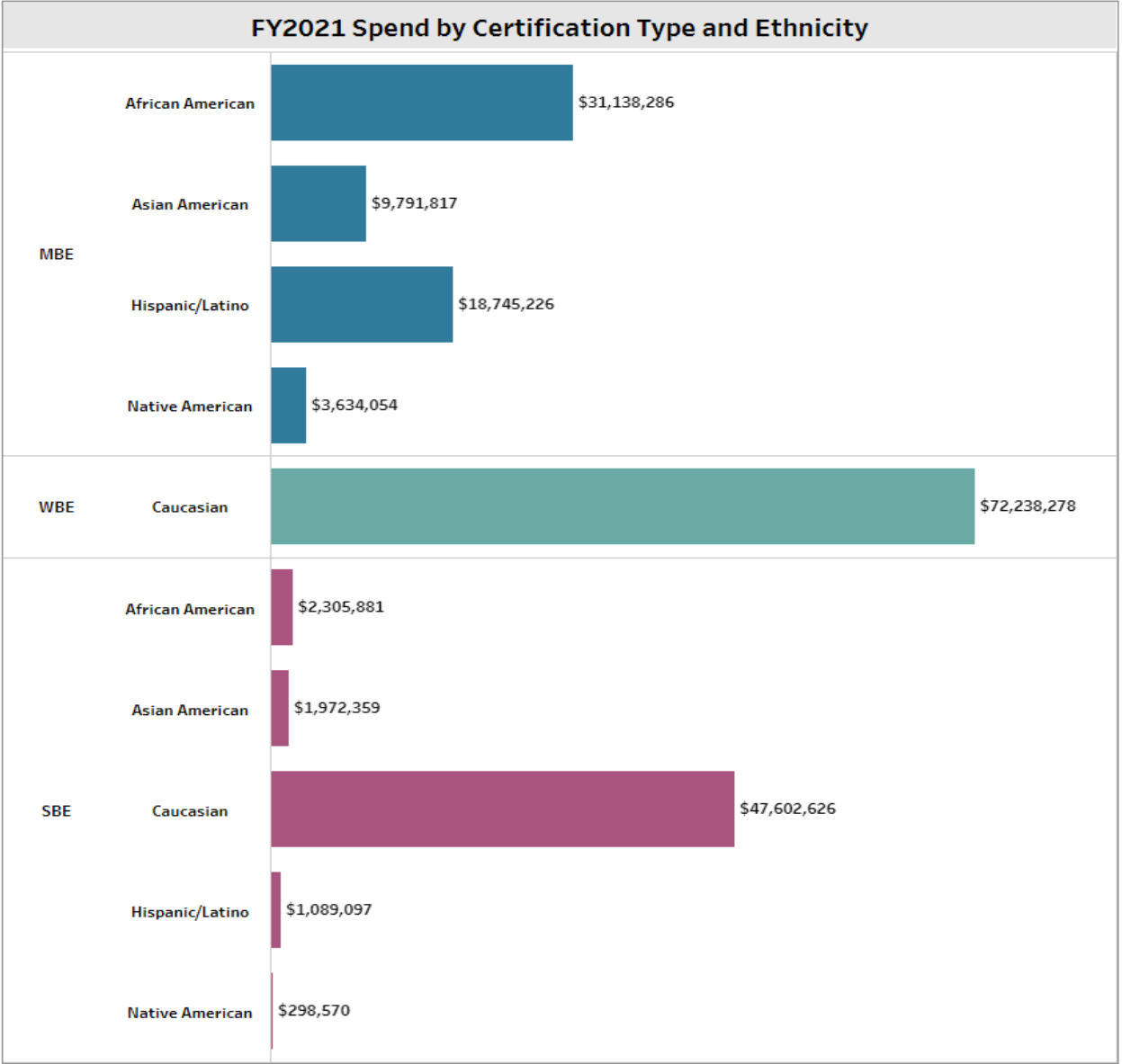
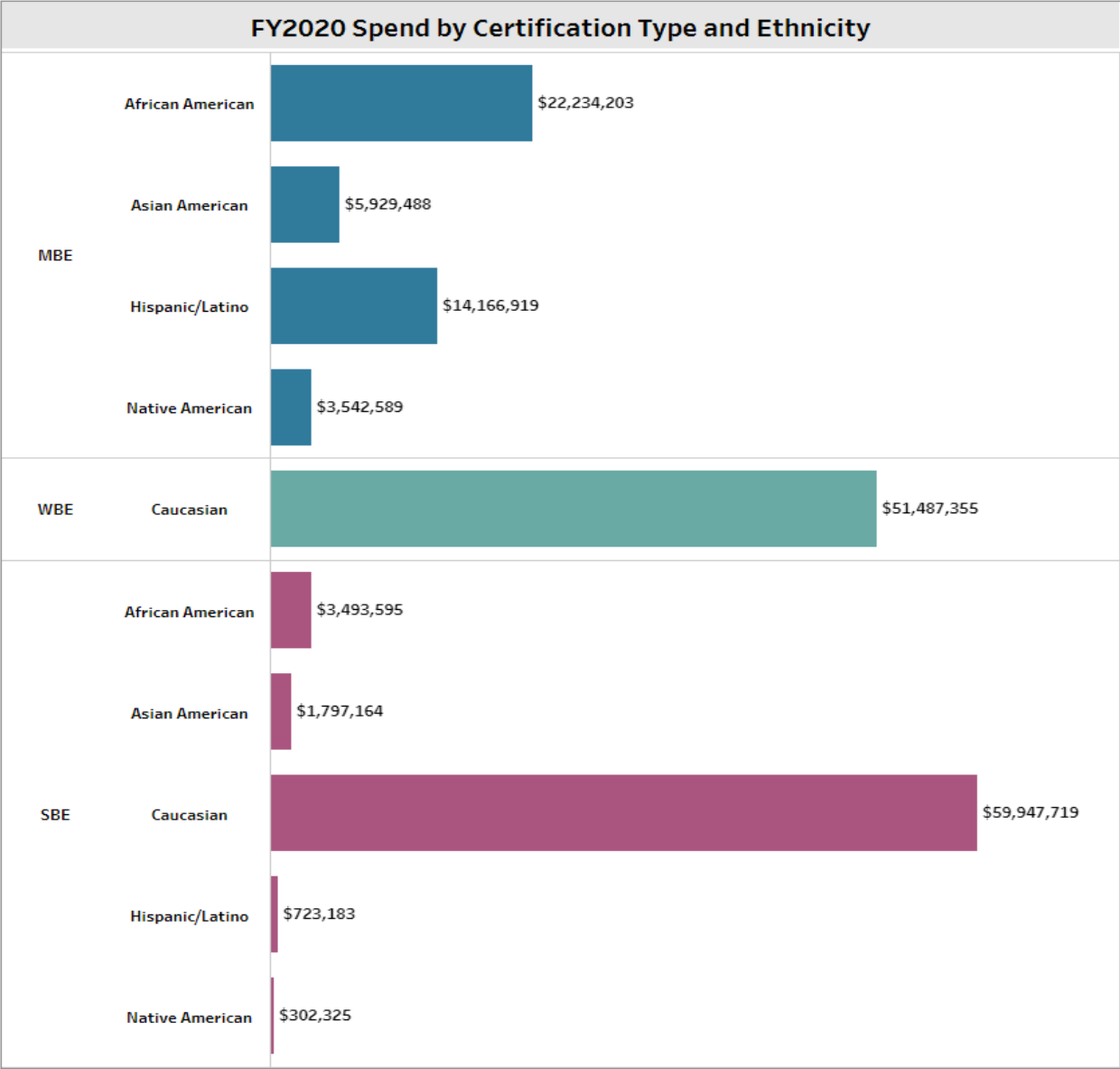
Vendors By Ethnicity & Fiscal Year



YEAR OVER YEAR MWSBE SPEND



MWSBE SPEND BY CERTIFICATION TYPE & ETHNICITY



CERTIFIED VENDORS OVER \$1MILLION

Vendors over \$1 MILLION!

MWSBE Spend by Certification

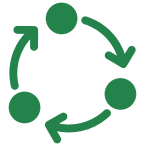
↑ **17%**
increase
COMPARED TO FY20.



In FY2021, the city spent more than \$1million with 29 certified MWSBEs highlighted in the table below.

WBE	\$42,310,000 SANDERS UTILITY CONSTRUCTION CO, INC.	SBE	\$2,920,000 AXIOM FOUNDATIONS	WBE	\$1,580,000 ON TIME CONSTRUCTION, INC.	SBE	\$1,280,000 RRC CONCRETE, INC.
MBE	\$7,530,000 SHI INTERNATIONAL CORP	WBE	\$2,820,000 AMP UTILITY DISTRIBUTION SERVICES, LLC.	WBE	\$1,520,000 SMART ELECTRICAL COMPANY, INC.	MBE	\$1,270,000 DOT CONSTRUCTION, INC.
SBE	\$5,960,000 DALLAS 1 CONSTRUCTION LLC	SBE	\$2,510,000 FULLER & CO CONSTRUCTION, LLC.	MBE	\$1,410,000 RJ LEEPER CONSTRUCTION, LLC.	MBE	\$1,200,000 EXPRESS LOGISTICS SERVICES, INC.
MBE	\$4,090,000 SUPERIOR MENCHANICAL SYSTEMS, INC.	WBE	\$2,160,000 EAST COAST CONSTRUCTION SERVICES, LLC.	WBE	\$1,330,000 THE JOHNSON GROUP	MBE	\$1,190,000 BERNARD IRBY, INC.
MBE	\$3,660,000 CAROLINA STRUCTURAL WELDING & STEEL ERECTION, INC.	MBE	\$1,950,000 A-1 QUALITY INSULATING SERVICE	WBE	\$1,320,000 EAGLE WOOD, INC.	WBE	\$1,110,000 C DESIGN, INC.
WBE	\$3,310,000 NASSIRI DEVELOPMENT, LLC.	MBE	\$1,870,000 CITI, LLC.	WBE	\$1,320,000 PROFESSIONAL POLICE SERVICES	WBE	\$1,100,000 MV MOMENTUM CONSTRUCTION, LLC.
MBE	\$3,120,000 BESCO ELECTRIC CORPORATION	SBE	\$1,630,000 GAVEL & DORN ENGINEERING PLLC	MBE	\$1,290,000 ROUNDTREE COMPANIES, LLC.	SBE	\$1,060,000 DE BROWN CONSTRUCTION, INC.
						SBE	\$1,010,000 ARMSTRONG MECHANICAL SERVICES, INC.

Reporting Strategies



Continuous data accuracy improvement



Debut a spend dashboard for transparency



Reduce paper reports for sustainability



Increase MWBE spend

Questions

