



2017 Disparity Study

City of Charlotte

FINAL REPORT

Final Report

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2017 Disparity Study

Prepared for

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SECTION ES.

Executive Summary

CHAPTER ES.

Executive Summary

The City of Charlotte (the City) retained BBC Research & Consulting (BBC) to conduct a *disparity study* to help inform the agency's implementation of the Charlotte Business INclusion (CBI) Program. The primary objective of the CBI Program is to increase contracting opportunities for small businesses as well as minority-owned businesses and woman-owned businesses in City contracting and procurement.¹To do so, the program comprises various measures to encourage the participation of minority-owned businesses and woman-owned businesses including both *race-neutral and gender-neutral* measures and, when appropriate, *race-conscious and gender-conscious* measures. Race-neutral and gender-neutral measures are measures that are designed to encourage the participation of all small businesses in the City's contracting. In contrast, race-conscious and gender-conscious measures are designed to specifically encourage the participation of minority-owned businesses and woman-owned businesses in the City's contracting.

As part of the disparity study, BBC assessed whether there were any disparities between:

- The percentage of contracting dollars (including subcontract dollars) that minority-owned businesses and woman-owned businesses received on construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracts that the City awarded between July 1, 2011 and June 30, 2016 (i.e., *utilization*); and
- The percentage of construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracting dollars that minority-owned businesses and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of City prime contracts and subcontracts (i.e., *availability*).

The disparity study also examined other quantitative and qualitative information related to:

- The legal framework surrounding the City's implementation of the CBI Program;
- Local marketplace conditions for minority-owned businesses and woman-owned businesses; and
- Contracting practices and business assistance programs that the City currently has in place.

The City could use information from the study to help refine its implementation of the CBI Program including setting an overall goal for the participation of minority-owned businesses and woman-owned businesses in its contracting; determining which program measures to use to

¹ "Woman-owned businesses" refers to non-Hispanic white woman owned businesses. Information and results for minority woman-owned businesses are included along with their corresponding racial/ethnic groups.

encourage the participation of minority-owned businesses and woman-owned businesses; and, if appropriate, determining which groups would be eligible to participate in race-conscious and gender-conscious program measures.

BBC summarizes key information from the 2017 City of Charlotte Disparity Study in three parts:

- A. Analyses in the disparity study;
- B. Availability analysis results;
- C. Utilization analysis results;
- D. Disparity analysis results; and
- E. Program implementation.

A. Analyses in the Disparity Study

Along with measuring disparities between the participation and availability of minority-owned businesses and woman-owned businesses in City contracts, BBC also examined other quantitative and qualitative information related to the City's implementation of the CBI Program:

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal, state, and local requirements related to minority-owned business and woman-owned business programs (see Chapter 2 and Appendix B).
- BBC conducted quantitative analyses of the success of minorities, women, minority-owned businesses, and woman-owned businesses throughout the Charlotte combined statistical area (CSA).² In addition, the study team collected qualitative information about potential barriers that minority-owned businesses and woman-owned businesses face in the local marketplace through in-depth interviews, telephone surveys, public meetings, and written testimony (see Chapter 3, Appendix C, and Appendix D).
- BBC analyzed the percentage of relevant City contracting dollars that minority-owned businesses and woman-owned businesses are available to perform. That analysis was based on telephone surveys that the study team completed with nearly 800 businesses that work in industries related to the specific types of construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracts that the City awards (see Chapter 5 and Appendix E).
- BBC analyzed the dollars that minority-owned businesses and woman-owned businesses received on more than 40,000 construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracts that the City awarded between July 1, 2011 and June 30, 2016 (i.e., the *study period*) (see Chapter 6).

² The Charlotte CSA includes Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union counties in North Carolina as well as Chester, Lancaster, and York counties in South Carolina.

- BBC examined whether there were any disparities between the participation and availability of minority-owned businesses and woman-owned businesses on the construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracts that the City awarded during the study period (see Chapter 7).
- BBC reviewed the City's current contracting practices and CBI program measures and provided guidance related to additional program options and refinements to those practices and measures (see Chapter 8 and Chapter 9).

B. Availability Analysis Results

BBC used a *custom census* availability analysis to analyze the availability of minority-owned businesses and woman-owned businesses that are ready, willing, and able to perform on City construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services prime contracts and subcontracts. BBC's approach relied on information from extensive surveys that the study team conducted with potentially available businesses located in the Charlotte CSA that perform work within relevant subindustries. That approach allowed BBC to develop a representative, unbiased, and statistically-valid database of potentially available businesses and estimate the availability of minority-owned businesses and woman-owned businesses in an accurate, statistically-valid manner.

Overall results. Figure ES-1 presents overall dollar-weighted availability estimates by racial/ethnic and gender group for the construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services prime contracts and subcontracts that the City awarded between July 1, 2011 and June 30, 2016. Overall, the availability of minority-owned businesses and woman-owned businesses for those contracts is 20.9 percent. In other words, one would expect minority-owned businesses and woman-owned businesses to receive 20.9 percent of the contracting dollars that the City awards based on their availability for that work. Non-Hispanic white woman-owned businesses (11.4%) and Black American-owned businesses (5.4%) exhibited the highest availability among all groups.

Figure ES-1.
Availability estimates by racial/ethnic and gender group

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

The study team analyzed 40,443 prime contracts and subcontracts.

For more detail and results by group, see Figure F-2 in Appendix F.

Availability analysis results are based on a representative, unbiased, and statistically-valid subset of the relevant business population.

Source:

BBC Research & Consulting availability analysis.

Business group	Availability %
Non-Hispanic white woman-owned	11.4 %
Asian American-owned	0.9
Black American-owned	5.4
Hispanic American-owned	1.9
Native American-owned	1.1
Total Minority- and Woman-owned	20.9 %

Results by industry. Figure ES-2 presents availability estimates for minority-owned businesses and woman-owned businesses for each relevant industry. As shown in Figure ES-2, the availability of minority-owned businesses and woman-owned businesses considered together is highest for the City's other professional services contracts (37.0%) and lowest for the City's goods and commodities contracts (12.8%). However, the majority of contracting dollars that the City awarded during the study period were in construction. The availability of minority-owned businesses and woman-owned businesses for the City's construction contracts is 19.6%.

Figure ES-2.
Availability estimates by relevant industry

Business group	Industry				
	Construction	Architecture, Engineering, and Surveying	Other Professional Services	Goods and Commodities	Other Services
Non-Hispanic white woman-owned	10.3 %	9.2 %	23.3 %	9.6 %	17.5 %
Asian American-owned	0.4	1.2	7.8	0.3	1.2
Black American-owned	5.3	5.6	5.5	1.6	12.2
Hispanic American-owned	2.1	2.9	0.0	1.4	1.7
Native American-owned	1.3	1.8	0.4	0.0	1.1
Total Minority- and Woman-owned	19.6 %	20.8 %	37.0 %	12.8 %	33.7 %

Note: The study team analyzed 19,975 construction contracts; 3,424 architecture, engineering, and surveying contracts; 2,745 other professional services contracts; 9,179 goods and commodities contracts; and 5,120 other services contracts.

For more detail, see Figures F-5, F-6, F-7, F-8, and F-9 in Appendix F.

Availability analysis results are based on a representative, unbiased, and statistically-valid subset of the relevant business population.

Source: BBC Research & Consulting availability analysis.

Results by contract role. Figure ES-3 presents availability estimates for minority-owned businesses and woman-owned businesses separately for prime contracts and subcontracts. As shown in Figure ES-3, the availability of minority-owned businesses and woman-owned businesses considered together is lower for City prime contracts (18.9%) than for City subcontracts (29.8%). However, the vast majority of contracting dollars that the City awarded during the study period were associated with prime contracts.

Figure ES-3.
Availability estimates by contract role

Note:

The study team analyzed 31,400 prime contracts and 9,043 subcontracts.

For more detail, see Figures F-10 and F-11 in Appendix F.

Availability analysis results are based on a representative, unbiased, and statistically-valid subset of the relevant business population.

Source:

BBC Research & Consulting availability analysis.

Business group	Contract Role	
	Prime contracts	Subcontracts
Non-Hispanic white woman-owned	10.2 %	16.5 %
Asian American-owned	1.0	0.7
Black American-owned	5.1	6.6
Hispanic American-owned	1.5	4.0
Native American-owned	1.0	1.6
Total Minority- and Woman-owned	18.9 %	29.8 %

C. Utilization Analysis Results

BBC measured the participation of minority-owned businesses and woman-owned businesses in City contracting in terms of *utilization*—the percentage of prime contract and subcontract dollars that minority-owned businesses and woman-owned businesses received on City prime contracts and subcontracts during the study period..

Overall results. Figure ES-4 presents the percentage of contracting dollars that minority-owned businesses and woman-owned businesses considered together received on construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services contracts and procurements that the City awarded during the study period (including both prime contracts and subcontracts). As shown in Figure ES-4, overall, minority-owned businesses and woman-owned businesses considered together received 14.8 percent of the relevant contracting dollars that the City awarded during the study period. Non-Hispanic white woman-owned businesses (9.1%) and Black American-owned businesses (2.9%) exhibited higher levels of participation on City contracts than all other groups.

Figure ES-4.
Overall utilization results

Note:

The study team analyzed 40,443 prime contracts and subcontracts.

Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals.

For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting utilization analysis.

Business group	Utilization %
Non-Hispanic white woman-owned	9.1 %
Asian American-owned	0.9
Black American-owned	2.9
Hispanic American-owned	1.7
Native American-owned	0.2
Total Minority- and Woman-owned	14.8 %

Results by goal status. The City used subcontracting goals on many contracts during the study period to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses. For some contracts, the City used small business enterprise (SBE) goals to encourage the participation of all small businesses as subcontractors. For other contracts, the City used minority-owned business enterprise (MBE) and woman-owned business enterprise (WBE) goals to specifically encourage the participation of minority-owned businesses and woman-owned businesses as subcontractors.

It is useful to compare the participation of minority-owned businesses and woman-owned businesses between contracts to which subcontracting goals applied and did not apply. Examining participation in contracts to which goals did not apply provides useful information about outcomes for minority-owned businesses and woman-owned businesses on contracts that the City awarded in a race-neutral and gender-neutral environment. Figure ES-5 presents utilization results separately for contracts that the City awarded with the use of MWSBE goals (goals contracts) and contracts that the City awarded without the use of goals (no-goals contracts). As shown in Figure ES-5, minority-owned businesses and woman-owned businesses considered together showed higher participation in goals contracts (18.3%) than in no-goals contracts (11.3%). Those results indicate the effectiveness of MWSBE goals in encouraging the participation of minority-owned businesses and woman-owned businesses in City contracts.

Figure ES-5.
Utilization results by
contract goal status

Note:

The study team analyzed 8,695 contract elements—representing 653 prime contracts—to which subcontracting goals applied. The study team analyzed 2,375 contract elements—representing 1,450 prime contracts—to which no subcontracting goals applied.

For more detail, see Figures F-14 and F-15 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Goal Status	
	Goals contracts	No-goals contracts
Non-Hispanic white woman-owned	11.4 %	7.6 %
Asian American-owned	0.7	0.7
Black American-owned	3.8	2.2
Hispanic American-owned	2.0	0.6
Native American-owned	0.3	0.3
Total Minority- and Woman-owned	18.3 %	11.3 %

Results by industry. Figure ES-6 presents utilization results for minority-owned businesses and woman-owned businesses by relevant industry—construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services. As shown in Figure ES-6, the participation of minority-owned businesses and woman-owned businesses considered together was highest in the City’s other professional services contracts (23.7%) and lowest in the City’s goods and commodities contracts (7.0%). However, the majority of contracting dollars that the City awarded during the study period were in construction.³ The participation of minority-owned businesses and woman-owned businesses in the City’s construction contracts was 16.7 percent.

Figure ES-6.
Utilization results by relevant industry

Business group	Industry				
	Construction	Architecture, Engineering, and Surveying	Other Professional Services	Goods and Commodities	Other Services
Non-Hispanic white woman-owned	10.6 %	7.0 %	8.9 %	4.9 %	7.9 %
Asian American-owned	0.6	0.7	7.8	0.0	1.5
Black American-owned	3.5	2.3	2.0	0.0	3.5
Hispanic American-owned	1.8	0.3	5.0	2.0	0.0
Native American-owned	0.2	0.9	0.0	0.0	0.2
Total Minority- and Woman-owned	16.7 %	11.1 %	23.7 %	7.0 %	13.2 %

Note: The study team analyzed 19,975 construction contracts; 3,424 architecture, engineering, and surveying contracts; 2,745 other professional services contracts; 9,179 goods and commodities contracts; and 5,120 other services contracts.

For more detail, see Figures F-5, F-6, F-7, F-8, and F-9 in Appendix F.

Source: BBC Research & Consulting availability analysis.

Results by contract role. Figure ES-7 presents utilization results for minority-owned businesses and woman-owned businesses separately for prime contracts and subcontracts. As shown in Figure ES-7, the participation of minority-owned businesses and woman-owned businesses considered together was much higher in the City’s subcontracts (38.4%) than in the

³ North Carolina State statutes require the City to award construction and commodities contracts to the lowest responsive and responsible bidder.

City's prime contracts (9.5%). It is important to note that the City used MWSBE subcontracting goals to award many contracts during the study period and participation results for subcontracts reflect the effectiveness of those measures to encourage the participation of minority-owned businesses and woman-owned businesses.

Figure ES-7.
Utilization results by contract role

Note:

The study team analyzed 31,400 prime contracts and 9,043 subcontracts.

For more detail, see Figures F-10 and F-11 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Contract Role	
	Prime contracts	Subcontracts
Non-Hispanic white woman-owned	5.7 %	24.3 %
Asian American-owned	0.8	1.4
Black American-owned	2.1	6.5
Hispanic American-owned	0.8	5.5
Native American-owned	0.2	0.6
Total Minority- and Woman-owned	9.5 %	38.4 %

D. Disparity Analysis Results

Although information about the participation of minority-owned businesses and woman-owned businesses in City contracts is useful on its own, it is even more useful when it is compared with the level of participation that might be expected based on the availability of minority-owned businesses and woman-owned businesses for City work. As part of the disparity analysis, BBC compared the participation of minority-owned businesses and woman-owned businesses in City prime contracts and subcontracts with the percentage of contract dollars that those businesses might be expected to receive based on their availability for that work. BBC calculated disparity *indices* for each relevant business group and for various contract sets by dividing percent utilization by percent availability and multiplying by 100. A disparity index of 100 indicates an exact match between participation and availability for a particular group for a particular contract set (referred to as *parity*). A disparity index of less than 100 indicates a disparity between participation and availability. A disparity index of less than 80 indicates a *substantial* disparity between participation and availability.

Overall results. Figure ES-8 presents disparity indices for all relevant prime contracts and subcontracts that the City awarded during the study period. The line down the center of the graph shows a disparity index level of 100, which indicates parity between participation and availability. For reference, a line is also drawn at a disparity index level of 80, because some courts use 80 as the threshold for what indicates a substantial disparity. As shown in Figure ES-8, overall, the participation of minority-owned businesses and woman-owned businesses in contracts that the City awarded during the study period was substantially lower than what one might expect based on the availability of those businesses for that work. The disparity index of 71 indicates that minority-owned businesses and woman-owned businesses received approximately \$0.71 for every dollar that they might be expected to receive based on their availability for City contracts. Disparity analysis results by individual group indicated that:

- Three groups exhibited disparity indices substantially below parity—non-Hispanic white woman-owned businesses (disparity index of 80), Black American-owned businesses (disparity index of 53), and Native American-owned businesses (disparity index of 21). In

addition, Hispanic American-owned businesses exhibited a disparity that did not meet the threshold of being considered substantial (disparity index of 86).

- Asian American-owned businesses (disparity index of 157) did not exhibit a disparity.

Figure ES-8.

Disparity indices by group

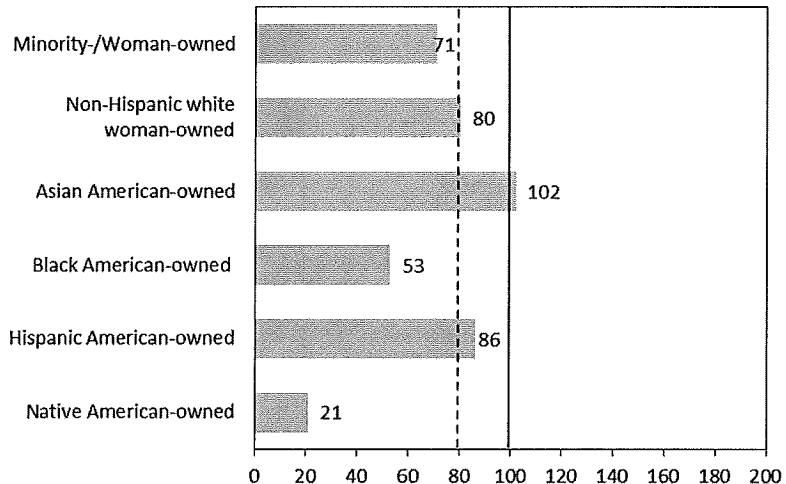
Note:

The study team analyzed 40,443 prime contracts/subcontracts.

For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting disparity analysis.



Results by goals status. The City used subcontracting goals on many contracts during the study period to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses. For some contracts, the City used SBE goals to encourage the participation of all small businesses as subcontractors. For other contracts, the City used MWBE goals to specifically encourage the participation of minority-owned businesses and woman-owned businesses as subcontractors. It is useful to compare disparity analysis results between goals contracts and no-goals contracts. Examining participation in no-goals contracts in particular provides useful information about outcomes for minority-owned businesses and woman-owned businesses on contracts that the City awarded in a race-neutral and gender-neutral environment. It provides important information about potential outcomes for minority-owned businesses and woman-owned businesses if the City decided to stop using subcontracting goals and whether there is evidence that certain groups face any discrimination or barriers as part of the City's contracting.^{4, 5, 6}

Overall results. Figure ES-9 presents disparity analysis results separately for goals contracts and no-goals contracts. Note that the results presented in Figure ES-9 include both prime contracts and subcontracts associated with projects that the City awarded with and without the use of goals. As shown in Figure ES-9, overall, minority-owned businesses and woman-owned businesses showed better outcomes on goals contracts than on no-goals contracts. Whereas minority-owned businesses and woman-owned businesses showed a substantial disparity on

⁴ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, 1192, 1196 (9th Cir. 2013).

⁵ *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 985, 987-88 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027, 124 S. Ct. 556 (2003).

⁶ *H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al.*, 615 F.3d 233,246 (4th Cir. 2010).

no-goals contracts (disparity index of 47), they did not show a disparity on goals contracts (disparity index of 99). Results for individual groups indicated that:

- Only Black American-owned business (disparity index of 80) and Native American-owned businesses (disparity index of 27) showed substantial disparities on goals contracts.
- All relevant groups showed substantial disparities on no-goals contracts.

Taken together, the results presented in Figure ES-9 show that the City's use of MWSBE goals is effective in encouraging the participation of minority-owned businesses and woman-owned businesses in its contracts. Moreover, those results indicate that when the City does not use such measures, relevant business groups suffer from substantial underutilization in City contracting.

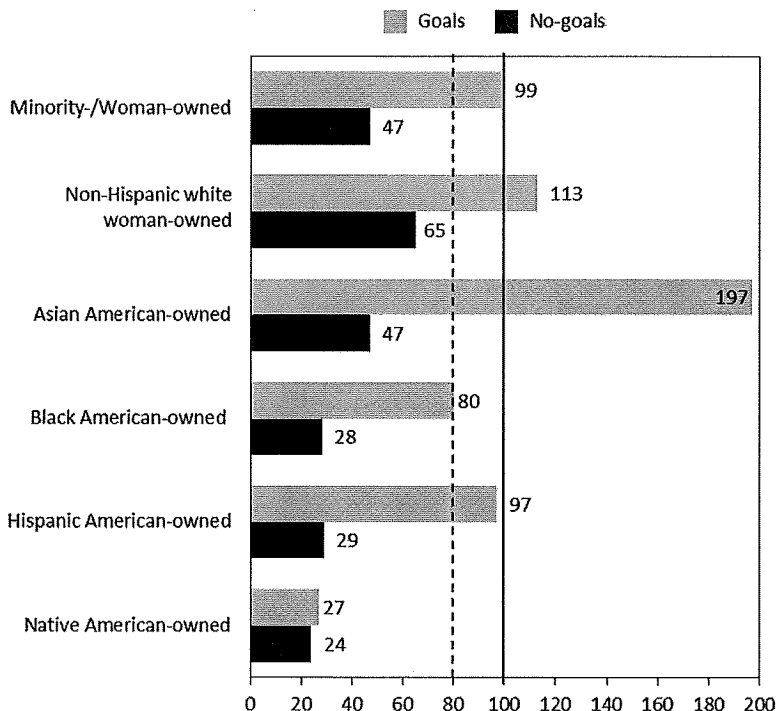
Figure ES-9.
Disparity indices for goals
and no-goals contracts

Note:

The study team analyzed 8,695 contract elements—representing 653 prime contracts—to which subcontracting goals applied. The study team analyzed 2,375 contract elements—representing 1,450 prime contracts—to which no subcontracting goals applied.

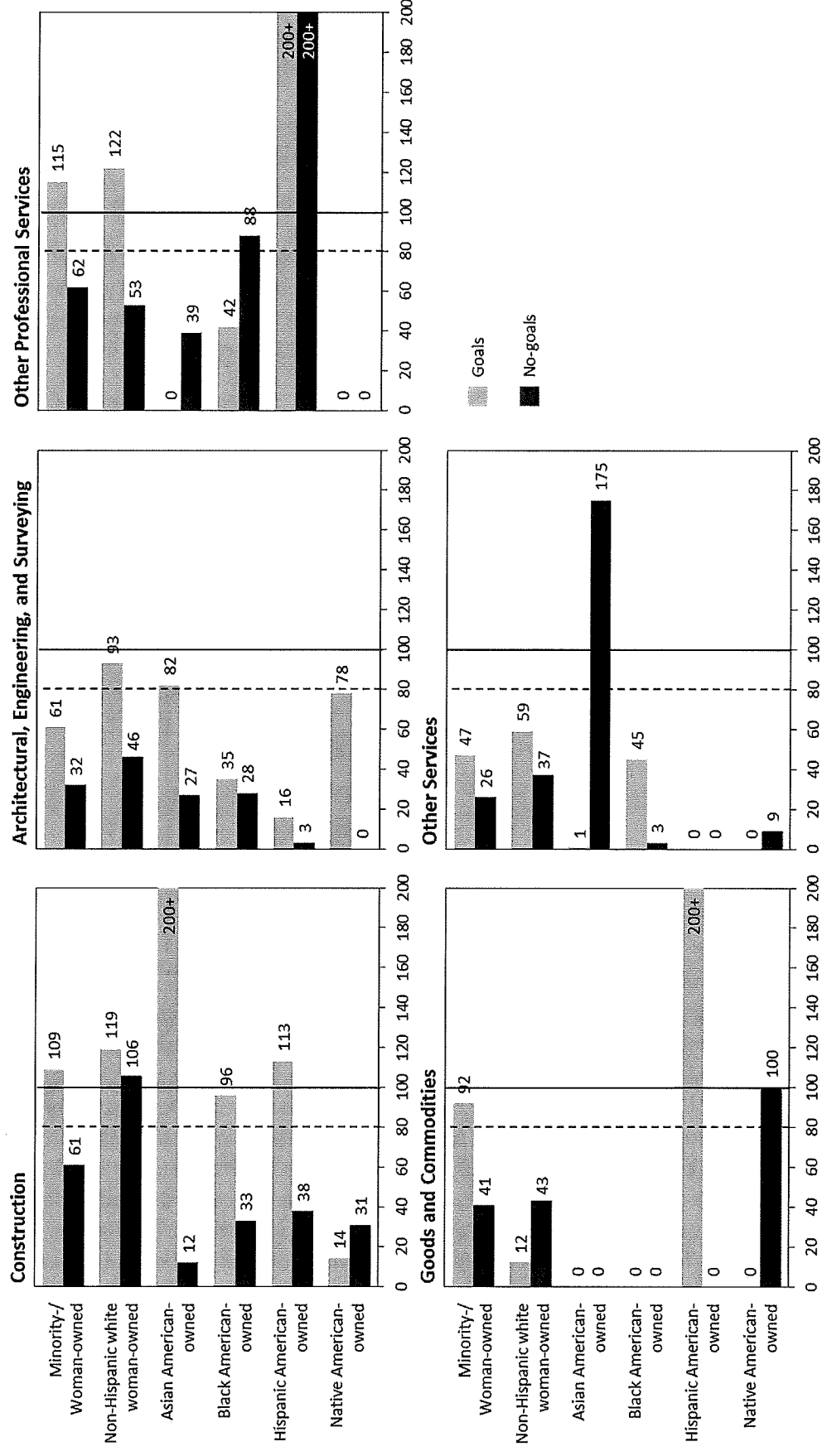
Source:

BBC Research & Consulting disparity analysis.



Results by industry. BBC compared disparity analysis results for goals contracts and no-goals contracts separately for each relevant contracting area. The results presented in Figure ES-10 include both prime contracts and subcontracts associated with projects that the City awarded with and without the use of goals. Figure ES-10 present those results for construction contracts; architecture, engineering, and surveying contracts; other professional services contracts; goods and commodities contracts; and other services contracts. As shown in Figure ES-10, minority-owned businesses and woman-owned businesses considered together showed better outcomes on goals contracts than no-goals contracts for all relevant contracting areas. Results for individual groups for no-goals contracts for each relevant contracting area indicated that:

Figure ES-10.
Disparity indices for goals and no-goals contracts in construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services



Note: The study team analyzed 7,344 goals construction contracts; 1,151 no-goals construction contracts; 943 goals architecture, engineering, and surveying contracts; 509 no-goals architecture, engineering, and surveying contracts; 103 goals goods and commodities contracts; 16 goals other professional services contracts; 242 no-goals other professional services contracts; 371 goals other services contracts; and 370 no-goals other services contracts.

For more detail, see Figures F-38, F-39, F-40, F-41, F-42, F-43, F-44, F-45, F-46, and F-47 in Appendix F.

Source: BBC Research & Consulting disparity analysis.

- All individual groups except non-Hispanic white woman-owned businesses (disparity index of 106) showed substantial disparities on no-goals construction contracts;
- All individual groups showed substantial disparities on no-goals architecture, engineering, and surveying contracts;
- All individual groups except Hispanic American-owned businesses (disparity index of 200+) showed substantial disparities on no-goals other professional services contracts;
- All individual groups except for Native American-owned businesses (disparity index of 100) showed substantial disparities on no-goals goods and commodities contracts; and
- All individual groups except for Asian American-owned businesses (disparity index of 175) showed substantial disparities on no-goals other services contracts. However, Asian American-owned businesses actually showed a substantial disparity on goals other services contracts (disparity index of 1).

Comparisons to previous disparity study. The City last conducted a disparity study in 2011. To the extent possible, BBC compared disparity analysis results between the current disparity study and the previous disparity study. BBC's methodology to conduct the current study differs substantially from the methodology that the previous consultant used to conduct the 2011 study. Thus, differences in results may reflect changes in outcomes for minority-owned businesses and woman-owned businesses; changes in the City's contracting practice and MWBE Program measures; and differences in disparity study methodology.

Construction. Comparisons of disparity analysis results for construction subcontracts suggest an improvement in outcomes for minority-owned businesses and woman-owned businesses between the 2011 disparity study and the current disparity study. Disparity analysis results from the 2011 study showed substantial disparities for Black American-owned businesses, Hispanic American-owned businesses, and Native American-owned businesses on construction subcontracts. In contrast, the current disparity study shows substantial disparities only for Native American-owned businesses on construction subcontracts. With regard to construction prime contracts, disparity analysis results from the two studies are very similar. Results from the current study indicate substantial disparities for all relevant racial/ethnic and gender groups on construction prime contracts. (Those results may partially reflect the City's obligation, per North Carolina State statute, to award construction contracts to the lowest responsive and responsible bidder.) Results from the 2011 study showed substantial disparities for all relevant groups with the exception of Asian American-owned businesses.

Architecture, engineering, and surveying. Disparity analysis results from the current study show that a greater number of racial/ethnic and gender groups are suffering from substantial underutilization on the City's architecture, engineering, and surveying subcontracts than in 2011. Whereas the 2011 disparity study showed substantial disparities for only Black American-owned businesses on architecture, engineering, and surveying subcontracts, the current study shows substantial disparities for Asian American-owned business and Hispanic American-owned businesses. With regard to architecture, engineering, and surveying prime contracts, disparity analysis results from the two studies are very similar. Results from the current study

indicate substantial disparities for all relevant racial/ethnic and gender groups on architecture, engineering, and surveying prime contracts. Results from the 2011 study showed substantial disparities for all relevant groups with the exception of Asian American-owned businesses.

Other industries. There were also several key differences in disparity analysis results between the current disparity study and the 2011 disparity study for other relevant industries:

- **Other professional services.** Whereas the 2011 study did not show a disparity for Native American-owned businesses on other professional services contracts, the current study shows a substantial disparity for Native American-owned businesses on those contracts.
- **Goods and commodities.** Similarly, whereas the 2011 study did not show a disparity for Native American-owned businesses on goods and commodities contracts, the current study shows a substantial disparity for Native American-owned businesses on those contracts.
- **Other services.** Black American-owned businesses and Native American-owned businesses exhibit substantial disparities on other services contracts in the current study. In contrast, those groups did not show disparities on other services contracts in the 2011 study. In addition, whereas Asian American-owned businesses showed a substantial disparity for other services contracts in the 2011 study, they do not show a disparity for those contracts in this study.

E. Program Implementation

Chapter 9 reviews information relevant to the City's implementation of the CBI Program. The City should review study results and other relevant information in connection with making decisions concerning its implementation of the program. Key considerations of potential refinement are discussed below. In making those considerations, the City should also assess whether additional resources, changes in internal policy, or changes in state law may be required.

Overall annual aspirational goal. The City establishes an overall annual aspirational goal for the participation of minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs) in its contracting. BBC Research & Consulting's availability analysis indicates that the availability of *potential MWBEs*—minority-owned businesses and woman-owned businesses that are currently MWBE certified through the City or appear that they could be MWBE-certified based on their reported ownership as part of availability surveys—for City contracts is 20.9 percent. The City might consider 20.9 percent as the basis for its overall annual aspirational goal for MWBE participation, assuming that the types and sizes of the contracts and procurements that the City awards in the future are similar to those of the contracts and procurements that the City awarded during the study period. The City should also consider information about current conditions in the local marketplace for minorities, women, minority-owned businesses, and woman-owned businesses as part of determining its overall annual aspirational goal.

Subcontracting goals. The City uses subcontracting goals on many of the contracts that it awards. Based on disparity analysis results, the City should consider continuing its use of subcontracting goals in the future, specifically as they relate to encouraging the participation of

minority-owned businesses and woman-owned businesses. Disparity analysis results indicated that the City's use of subcontracting goals is effective in encouraging the participation of minority-owned businesses and woman-owned businesses in its contracts. Moreover, those results indicated that when the City does not use subcontracting goals, all relevant racial/ethnic and gender groups suffer from substantial underutilization for various sets of City contracts.

In addition to using subcontracting goals, the City now allows MWSBE prime contractors to count self-performed work toward meeting subcontracting goals on construction contracts worth less than \$500,000 and services contracts worth less than \$200,000. The City should consider continuing to count the participation of MWSBE prime contractors toward meeting subcontracting goals and should also consider expanding that policy to other relevant contracts. Doing so might encourage minority-owned businesses and woman-owned businesses to pursue work as prime contractors and increase their capacity to perform work as prime contractors.

The City should consider disparity analysis results for various contract sets to ensure its future use of subcontracting goals is appropriate and narrowly tailored. One key aspect of narrow tailoring is for an organization to determine which business groups are eligible to participate as part of any race- or gender-conscious measures. Doing so requires the organization to assess for which racial/ethnic and gender groups evidence of discrimination exists that affects outcomes in the organization's contracting. Courts have taken substantial disparities between participation and availability as *inferences* of such discrimination and, often, as justification for the use of race- and gender-conscious measures.

The most instructive disparity analysis results in terms of narrow tailoring are for no-goals contracts that the City awarded in construction; architecture, engineering, and surveying; other professional services; goods and commodities; and other services. Those results provide important information about outcomes for minority-owned businesses and woman-owned businesses on contracts that the City awarded in a purely race-neutral and gender-neutral manner—that is, without the use of measures that are specifically designed to encourage the participation of minority-owned businesses and woman-owned businesses. If the City based its decisions about narrowly tailoring on disparity study results for no-goals contracts, then the following groups would be considered eligible for its use of race-conscious and gender-conscious measures in each contracting area:

- **Construction:** Asian American-owned businesses; Black American-owned businesses; Hispanic American-owned businesses; and Native American-owned businesses;
- **Architecture, Engineering, and Surveying:** Non-Hispanic white woman-owned businesses; Black American-owned businesses; Asian American-owned businesses; Hispanic American-owned businesses; and Native American-owned businesses;
- **Other professional services:** Non-Hispanic white woman-owned businesses; Asian American-owned businesses; and Native American-owned businesses;
- **Goods and commodities:** Non-Hispanic white woman-owned businesses; Black American-owned businesses; and Asian American-owned businesses; and

- **Other services:** Non-Hispanic white woman-owned businesses; Black American-owned businesses; Asian American-owned businesses; Hispanic American-owned businesses; and Native American-owned businesses.

MWBE certification. The City relies on the North Carolina Department of Administration's Historically Underutilized Businesses (HUB) database to certify MBEs and WBEs. Unlike many other minority-owned business and woman-owned business programs—such as the Federal Disadvantaged Business Enterprise Program—no revenue or net worth requirements are associated with the HUB certification process. The City should consider limiting MWBE certification to those minority-owned businesses and woman-owned businesses that are small and disadvantaged based on size and personal net worth limits (similar to requirements for City small business certification). In that way, the CBI Program will better address barriers that small, disadvantaged businesses face.

SBE goals program. The City should consider reviewing its implementation of its SBE goals program. The City should ensure that the language it uses to describe SBE goals in contracting documents for individual contracts is precise and clear to minimize any confusion between SBE contract goals and MWBE contract goals. Doing so will help ensure that the use of those goals are interpreted and treated in a race-neutral and gender-neutral manner. In addition, often when the City uses an MWBE goal to award a contract, it also uses an SBE goal. The City should consider separating the use of those goals to reduce confusion between its MWBE goals program and its SBE goals program. Doing so will allow the City to assess the effects that the use of MWBE goals have on the participation of minority-owned businesses and woman-owned businesses in City contracting.

Unbundling contracts. In general, minority-owned businesses and woman-owned businesses exhibited reduced availability for relatively large contracts that the City awarded during the study period. In addition, as part of in-depth interviews, several small businesses, minority-owned businesses, and woman-owned businesses reported that the size of contracts often serves as a barrier to their success. The City has been working to break contract pieces into sizes that are more feasible for small businesses—including many minority-owned businesses and woman-owned businesses—to pursue. In addition, the City encourages prime contractors to unbundle subcontracting opportunities into smaller sizes and accepts such attempts as good faith efforts. The City should consider continuing efforts to unbundle contracts. Doing so would result in that work being more accessible to small businesses, which in turn might increase opportunities for minority-owned businesses and woman-owned businesses and result in greater minority-owned business and woman-owned business participation.

Prime contract opportunities. Disparity analysis results indicated substantial disparities for all racial/ethnic and gender groups on the prime contracts that the City awarded during the study period. However, minority-owned businesses and woman-owned businesses showed somewhat better outcomes on smaller prime contracts than on larger ones. In 2015, the City began directing solicitation efforts for certain, relatively small prime contracts only to small businesses, including many minority-owned businesses and woman-owned businesses. The City should continue those efforts and might consider expanding its program to set aside additional

small prime contracts for small business bidding to encourage the participation of minority-owned businesses and woman-owned businesses as prime contractors.

Subcontract minimums. Overall, minority-owned businesses and woman-owned businesses did not show disparities on the subcontracts that were associated with the prime contracts that the City awarded during the study period. However, subcontracting accounted for a relatively small percentage of the total contracting dollars that the City awarded during the study period. The City could consider implementing a program that requires prime contractors to include certain minimum levels of subcontracting as part of their bids and proposals for specific types of contracts where subcontracting or partnership opportunities might exist. Prime contractors bidding on the contract would be required to subcontract a percentage of the work equal to or exceeding an established minimum level for their bids to be responsive. If the City were to implement such a program, it should include flexibility provisions such as a good faith efforts process.

Contract and data management. The City should continue tracking and maintaining contracting and payment data in a centralized manner but should consider implementing processes so that contracting data connects more intuitively with corresponding payment data from the beginning of a contract to its completion. Establishing a clear crosswalk between those data sources will help ensure that the City can monitor the participation of minority-owned businesses and woman-owned businesses efficiently and accurately. The City should also consider dedicating additional resources to training relevant department staff on how to input contracting and payment data accurately and consistently.

In addition, the City should consider collecting comprehensive data on *all* subcontracts, regardless of whether they are performed by minority-owned businesses or woman-owned businesses. The City should also consider requiring prime contractors to submit data on subcontracts as part of the invoicing process for all contracts and incorporating those data into the City's data system. Collecting comprehensive subcontract data will help the City more accurately monitor the participation of minority-owned businesses and woman-owned businesses and potential opportunities for their participation.

As part of the disparity study, the study team also examined information concerning conditions in the local marketplace for minorities, women, minority-owned businesses, and woman-owned businesses including results for different racial/ethnic and gender groups. The City should review the full disparity study report—as well as other information it may have—in determining how best to implement the CBI Program and whether it needs to continue its use of race-conscious or gender-conscious measures, and if so, how to implement those measures in a narrowly tailored manner.

