



## CITY OF ATLANTA DISPARITY STUDY

### Summary Report

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## CITY OF ATLANTA DISPARITY STUDY SUMMARY REPORT

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The City of Atlanta has an Equal Business Opportunity (EBO) Ordinance and a Small Business Opportunity (SBO) Ordinance. These Ordinances were enacted to promote full and equitable opportunity for those doing business with the City. The City operates contract goals and joint venture programs and other initiatives to accomplish the objectives of these ordinances.

The City of Atlanta, like other cities and states that have enacted its own contract equity programs, monitors the performance of its programs and whether there is a need to continue or modify them. Its reviews include disparity studies that examine City contracts. Disparity studies include analysis of the utilization and availability of minority- and woman-owned firms in public agency contracts.

Keen Independent Research LLC (Keen Independent) performed the City's 2021 disparity study as a consultant to and working with the law firm Holland & Knight LLP (H&K) in Atlanta. DEBLAR & Associates and Customer Research International assisted in this assignment. Keen Independent also prepared the 2015 disparity study for the City.

The study team began work in March 2020.

In addition to its own programs for City-funded contracts, the City of Atlanta operates the Federal Disadvantaged Business Enterprise (DBE) Program and the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program for its U.S. Department of Transportation-funded contracts. Federal regulations govern how the City implements the DBE and ACDBE programs, so this disparity study did not examine USDOT-funded contracts.

## SUMMARY REPORT — Introduction

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Keen Independent examined the utilization of minority-owned businesses (MBEs) and white woman-owned businesses (WBEs) in City contracts awarded from 2015 through 2019.

The study team then compared actual MBE/WBE utilization in City contracts to the utilization expected based on relative availability of qualified, ready, willing and able MBE/WBEs and non-MBE/WBEs (“majority-owned firms”) to perform this work for the City.

The study team also compiled data and performed analyses regarding:

- Commercial construction and design contracts within city limits;
- Entry and advancement as employees;
- Opportunities for business ownership;
- Access to capital;
- Rates of business failure, firm revenue, bid capacity and experiences regarding marketplace barriers; and
- Disparity studies for other local public entities.

The study also incorporated input from business owners, trade association representatives, City staff and others in the community. Efforts to gather information included:

- A survey of businesses in the Atlanta Metro Area that asked about their companies, experience with the City of Atlanta, and comments about the marketplace;
- In-depth interviews with representatives of businesses, trade associations, City officials and staff, and other groups; and
- Input provided by businesses, trade associations and other groups in other recent studies in the Atlanta Metro Area.

In total, the study team collected quantitative information from more than 1,800 businesses and qualitative input from nearly 700 businesses, trade association representatives, business assistance providers, City of Atlanta staff and others.

Note that this report identifies woman-owned firms as WBEs (certified and non-certified firms combined) and firms that have obtained City certification as female-owned as “FBEs.”<sup>1</sup> The disparity results show results for white woman-owned firms to isolate any effects of gender on contract outcomes.

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<sup>1</sup> Results for woman-owned firms in general, and white woman-owned firms specifically, are shown as “WBEs” in this Summary Report. WBEs include firms that are certified or non-certified. The City certifies woman-owned firms as Female Business Enterprises (FBEs), so Keen Independent refers to WBEs that are City certified as “FBEs” in this report.

# SUMMARY REPORT — EBO and SBO programs

## Current City EBO Program

**Certification criteria.** The City certifies firms for participation in its Equal Business Opportunity program. Firms of any size can be certified under the program (there is no size limit at time of certification).

To be eligible for certification a, firm must:

- Be a for-profit, independent business enterprise;
- Be at least 51 percent owned by African Americans, Asian Americans, Hispanic Americans or women;
- Have its operations controlled by the minority or woman business owner (along with certain other requirements);
- Perform a commercially useful function; and
- Have a location within one of the 20 counties in the Atlanta Metro Area.

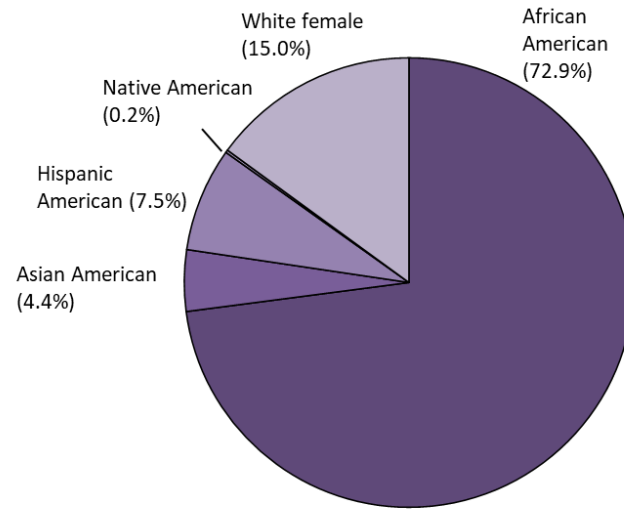
Every two years, a firm must re-apply for certification. Firms that have been certified under the EBO program for ten consecutive years graduate from the program unless the firm is still a “small business” under federal guidelines.

Figure 1 shows race, ethnicity and gender of certified firms.

**Program elements.** MBE and FBE contract goals can be applied to a construction, professional services and other services contract of more than \$100,000 unless it is: (a) USDOT-funded or (b) a sole source, special, emergency or cooperative procurement. A firm must either meet the contract goals or show good faith efforts to do so.

The City also operates a joint venture program for contracts more than \$5 million. Joint venture partners must be firms owned by people of different races or genders.

1. Race, ethnicity and gender of City-certified M/FBEs, 2021



Source: Keen Independent Research from City certification records.

# SUMMARY REPORT — EBO and SBO programs

## Current City SBO Program

**Certification criteria.** The City also certifies firms for participation in its Small Business Opportunity program. To be eligible for certification a, firm must:

- Be a for-profit, independent business enterprise;
- Have annual revenue or employment size that meets the definition of a “small business” under federal guidelines in 13 Code of Federal Regulations Sec. 121.103.;
- Perform a commercially useful function; and
- Have a location within one of the 20 counties in the Atlanta Metro Area.

Every two years, a firm must re-apply for certification.

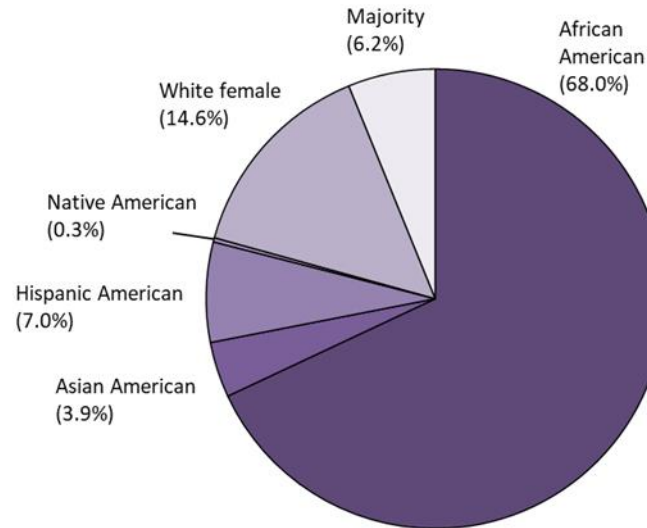
**Program elements.** SBE contract goals can be applied to a construction, professional services and other services contract unless it is: (a) USDOT-funded or (b) a sole source, special, emergency or cooperative procurement. A firm must either meet the contract goal or show good faith efforts to do so.

The City also operates a joint venture program for contracts more than \$5 million. One of the joint venture partners must be an SBE.

The City can designate a contract between \$20,000 and \$100,000 as a sheltered market procurement where at least one of the three first solicited for a bid must be an SBE. Contracts between \$1000,000 and \$25 million can be reserved for bidding solely by SBEs, except when prohibited under the Ordinance or state law.

**Race, ethnicity and gender of SBEs.** As shown in Figure 2, firms owned by people of color and non-minority women comprise 94 percent of firms that have sought and obtained City certification as SBEs.

2. Race, ethnicity and gender of City-certified SBEs, 2021



Source: Keen Independent Research from City certification records.

## SUMMARY REPORT — Summary of study conclusions

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Keen Independent summarizes study conclusions below and further explains them in the balance of this Summary Report.

1. Firms across the 20-county Atlanta Metro Area perform City of Atlanta contracts. The 20-county region was the geographic focus of the disparity study.
2. About 62 percent of Atlanta Metro Area firms indicating qualifications and interest in City contracts are owned by people of color or women. Thus, the study shows that MBE/WBEs comprise more than one-half of the potential contractors, subcontractors and vendors for City contracts.

Keen Independent determined that 34 percent of City contract dollars from 2015 through 2019 would be expected to go to MBE/WBEs based on the availability analysis for each of the 9,664 contracts and subcontracts examined in this study (described in more detail later in this Summary Report).

3. Quantitative and qualitative information indicates that there is not a level playing field in the Atlanta Metro Area marketplace for companies owned by people of color or by women, and there is not full and equitable business opportunity for those available to do business with the City. When programs such as those implemented by the City of Atlanta, including the EBO Ordinance, are not applied, there are disparities in participation of MBE/WBEs.
4. Including contracts with and without the City's EBO and SBO programs, overall City utilization of MBE/WBEs was close to what might be expected based on the availability analysis. About 30 percent of City contract dollars examined in this study went to MBE/WBEs, slightly less than the 34 percent that might be expected based on the availability analysis.

5. When the EBO and SBO programs were not applied to City contracts, and thus without applying MBE/FBE/SBE contract goals, 22 percent of contract dollars went to MBE/WBEs, far short of the availability of MBE/WBEs for those contracts. With only a few exceptions, there were disparities in each study industry for African American-, Asian American-, Hispanic American-, Native American- and white woman-owned firms.
6. When the City's EBO and SBO programs were applied, including providing for contract goals, there did not appear to be disparities for MBE/WBEs overall. However, disparities persisted for certain MBE/WBE groups.
7. The totality of results for City contracts and the Atlanta Metro Area marketplace indicates a need for the City to consider policies and measures to continue efforts to level the playing field for minority- and woman-owned businesses and to promote full and equitable opportunity for those available to do business with the City.

Each conclusion is further explained in the balance of this Summary Report.

Keen Independent's 2015 Disparity Study for the City also identified disparities in the marketplace and in City contracts when the EBO and SBO Programs did not apply and thus no contract goals applied.

## SUMMARY REPORT — Legal framework

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Across the country, state and local governments have enacted minority- and woman-owned business enterprise programs for multiple reasons, including to:

- a. Ensure that they are not engaged in discrimination in their contracting;
- b. Remedy specific identified past discrimination or its present effects in their marketplace;
- c. Remove and address barriers to participation in contracting by minority- and woman-owned business enterprises; and
- d. Take affirmative steps to dismantle a system in which they were passive participants in private marketplace discrimination.

Different standards of legal review apply to minority-owned business, woman-owned business and small business enterprise (MBE, WBE and SBE) programs.

Disparity studies, based on the court decisions and legal framework summarized below, are an accepted and recognized method to analyze quantitative and qualitative information regarding the participation of minority- and woman-owned businesses in government contracting and the marketplace.



## SUMMARY REPORT — Legal framework

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### Strict Scrutiny Standard of Review for MBE Programs

The U.S. Supreme Court in *City of Richmond v. J.A. Croson Company* established “strict scrutiny” as the standard of review for race-conscious programs adopted by state and local governments.<sup>2</sup> In its 1989 *Croson* decision, the U.S. Supreme Court held the City of Richmond’s minority business enterprise “set-aside” program violated the Equal Protection Clause of the Fourteenth Amendment.

The U.S. Supreme Court applied the “strict scrutiny” standard, which has been followed by the courts since the *Croson* decision and requires a governmental entity to have a “compelling governmental interest” in remedying past identified discrimination or its present effects, and that any program adopted by a local or state government must be “narrowly tailored” to achieve the goal of remedying the identified discrimination.<sup>3</sup>

The Court held that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able

to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”<sup>4</sup>

The courts have noted that “there is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.”<sup>5</sup> It has been held that a local or state government need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.<sup>6</sup> Instead, the Supreme Court held that a government may rely on “a significant statistical disparity” between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.<sup>7</sup>

The Court further found “if the City could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the City could take affirmative steps to dismantle such a system. It is

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<sup>2</sup> 488 U.S. 469 (1989).

<sup>3</sup> *City of Richmond v. J.A. Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200, 227 (1995); see, e.g., *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H.B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting v. Illinois DOT*, 473 F.3d at 721; *Western States Paving v. Washington State DOT*, 407 F.3d 983 at 991(9th Cir.2005); *Sherbrooke Turf v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*, 345 F.3d at 969 (8th Cir. 2003); *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 990 (3d. Cir. 1993).

<sup>4</sup> *Id.*

<sup>5</sup> *H.B. Rowe*, 615 F.3d at 241, quoting *Rothe Dev. Corp. v. Dep’t of Def.*, 545 F.3d 1023, 1049 (Fed. Cir. 2008) (quoting *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 n. 11 (5th Cir. 1999)); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see, *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993);

<sup>6</sup> *H.B. Rowe Co.*, 615 F.3d at 241; see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 958; see, *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

<sup>7</sup> *Croson*, 488 U.S. 509, see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *H.B. Rowe*, 615 F.3d at 241; *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586, 596-598; 603; (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1002-1007 (3d. Cir. 1993).

## SUMMARY REPORT — Legal framework

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beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”<sup>8</sup>

**Compelling governmental interest.** The first test of the strict scrutiny analysis requires a governmental entity to have a *compelling governmental interest* in remedying past identified discrimination in order to implement a race- and ethnicity-based program.<sup>9</sup> A local government such as the City must thoroughly examine evidence to determine whether there is a compelling governmental interest in remedying specific past identified discrimination or its present effects in its marketplace.<sup>10</sup>

**Narrow tailoring.** The second test of the strict scrutiny analysis requires that a local government must also ensure that any program adopted is *narrowly tailored* to achieve the goal of remedying the identified discrimination. The courts, including the Eleventh Circuit Court of Appeals, analyze several criteria or factors in determining whether a program or legislation satisfies this requirement, including:

- The necessity for the relief and efficacy of alternative race-, ethnicity- and gender-neutral remedies;
- Flexibility and duration of the relief, including the availability of waiver provisions;
- Relationship of numerical goals to the relevant labor market;
- Impact of a race-, ethnicity-, or gender-conscious remedy on the rights of third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.<sup>11</sup>

A government agency must satisfy both requirements of the strict scrutiny standard. A race-conscious program that fails to meet either one is unconstitutional.

Disparity studies examine the types of evidence approved by the U.S. Supreme Court and lower courts that have reviewed public programs involving minority-owned businesses since the *Croson* decision.

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<sup>8</sup> 488 U.S. at 492.

<sup>9</sup> *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200, 227 (1995); *Croson*, 448 U.S. at 492-493; *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7<sup>th</sup> Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9<sup>th</sup> Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4<sup>th</sup> Cir. 2010); *Northern Contracting v. Illinois DOT*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9<sup>th</sup> Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10<sup>th</sup> Cir. 2000); *Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”)*, 214 F.3d 730 (6<sup>th</sup> Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5<sup>th</sup> Cir. 1999); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP II”)*, 91 F.3d 586 (3<sup>d</sup> Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 990 (3<sup>d</sup> Cir. 1993).

<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g., Midwest Fence*, 840 F.3d 932, 942, 953-954 (7<sup>th</sup> Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Rothe Development, Inc. v. U.S. Dep’t of Defense*, 545 F.3d at 1036; *Western States Paving*, 407 F.3d at 993-995; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, at 1181 (10<sup>th</sup> Cir. 2000) (*Adarand VII*, 228 F.3d at 1181 (10<sup>th</sup> Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5<sup>th</sup> Cir. 1999); *Eng’g Contractors Ass’n*, 122 F.3d at 927 (11<sup>th</sup> Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 605-610 (3<sup>d</sup> Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1008-1009 (3<sup>d</sup> Cir. 1993); *see also, Concrete Works*, 321 F.3d 950 (10<sup>th</sup> Cir. 2003); *Concrete Works*, 36 F.3d 1513 (10<sup>th</sup> Cir. 1994); *Geyer Signal, Inc.*, 2014 WL 1309092.

## SUMMARY REPORT — Legal framework

### Intermediate Scrutiny Standard of Review

Some courts apply a different standard of legal review — “intermediate scrutiny” — to gender-conscious programs.<sup>12</sup> This includes the Eleventh Circuit, which applies to Georgia.<sup>13</sup> This standard is more easily met than strict scrutiny. Restrictions subject to intermediate scrutiny are permissible so long as they are substantially related to serve an important governmental interest.<sup>14</sup>

The courts have interpreted this intermediate scrutiny standard to require that gender-based classifications be:

- Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and

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<sup>12</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910 (11th Cir. 1997); *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification”); *Geyer Signal, Inc.*, 2014 WL 1309092;

<sup>13</sup> *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910 (11th Cir. 1997); see, e.g., *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); See generally, *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”); *Geyer Signal*, 2014 WL 1309092.

- Substantially related to the achievement of that underlying objective.<sup>15</sup>

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the local or state government has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the local or state government to present “sufficient probative” evidence in support of its stated rationale for the program.<sup>16</sup>

Intermediate scrutiny, as interpreted by federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective.<sup>17</sup>

<sup>14</sup> *Id.*; see, e.g., *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see, also, *Serv. Emp. Int’l Union, Local 5 v. City of Hous.*, 595 F.3d 588, 596 (5th Cir. 2010); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993).

<sup>15</sup> *Id.*; see, e.g., See e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; (11th Cir. 1997); *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); see, also, *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996).

<sup>16</sup> *Id.*

<sup>17</sup> See e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; (11th Cir. 1997); *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); see, also, *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”)

## SUMMARY REPORT — Legal framework

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The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. The intermediate scrutiny standard also does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.<sup>18</sup>

### Rational Basis Standard of Review For SBE Programs

Where a statute or a regulation does not involve a fundamental right or a suspect class, the appropriate level of scrutiny to apply is the rational basis standard.<sup>19</sup> A government entity small business enterprise or targeted economic focused business program, not based on race or gender, need only show that it has a “rational basis” for the program according to the courts.<sup>20</sup>

In applying the rational basis test, the courts generally find that a challenged law is upheld “as long as there could be some rational basis for enacting [it],” that is, that “the law in question is rationally related to a legitimate government purpose.”<sup>21</sup> Under a rational basis review standard, a legislative classification will be upheld “if there is a rational

relationship between the disparity of treatment and some legitimate governmental purpose.”<sup>22</sup> Because all legislation classifies its objects, differential treatment is justified by “any reasonably conceivable state of facts.”<sup>23</sup>

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<sup>18</sup> *Coral Constr. Co.*, 941 F.2d at 931-932; *See Eng’g Contractors Ass’n*, 122 F.3d at 910 (11<sup>th</sup> Cir. 1997).

<sup>19</sup> *See, e.g., Heller v. Doe*, 509 U.S. 312, 320 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9<sup>th</sup> Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9<sup>th</sup> Cir. 2018); *Rothe Development, Inc. v. U.S. Dept. of Defense, U.S. Small Business Administration, et al.*, 836 F.3d 57 (D. C. Cir 2016), cert. denied, 2017 WL 1375832 (2017); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10<sup>th</sup> Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10<sup>th</sup> Cir. 1998); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5<sup>th</sup> Cir. 1988); *Ga. Dep’t of Human Resources v. Sweat*, 276 Ga. 627, 580 S.E. 2d 206; *see also Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8<sup>th</sup> Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a ‘highly deferential rational basis’ standard of review.”); *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233 at 254.

<sup>20</sup> *Id.*

<sup>21</sup> *Heller v. Doe*, 509 U.S. 312, 318-321 (1993) (Under rational basis standard, a legislative classification is accorded a strong presumption of validity); *See, e.g., Kadmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1998); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9<sup>th</sup> Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9<sup>th</sup> Cir. 2018); *Rothe Development, Inc. v. U.S. Dept. of Defense, U.S. Small Business Administration, et al.*, 836 F.3d 57 (D. C. Cir 2016), cert. denied, 2017 WL 1375832 (2017); *see also, City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985) (citations omitted); *See, Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10<sup>th</sup> Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10<sup>th</sup> Cir. 1998); *Ga. Dep’t of Human Resources v. Sweat*, 276 Ga. 627, 580 S.E. 2d 206.

<sup>22</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993); *see, e.g., Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012).

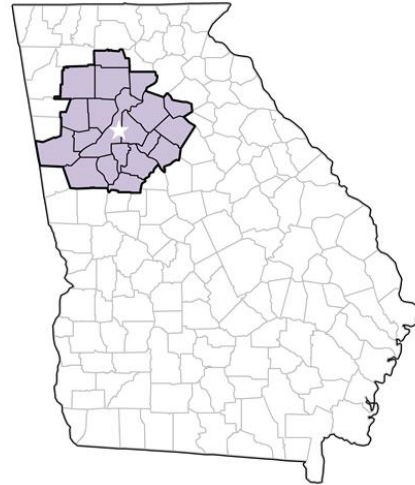
<sup>23</sup> *Id.*; *See, e.g., Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir. 2012); *Ga. Dept. of Human Resources v. Sweat*, 276 Ga. 627, 580 S.E. 2d. 206 (2003).

## SUMMARY REPORT — Geographic focus of study

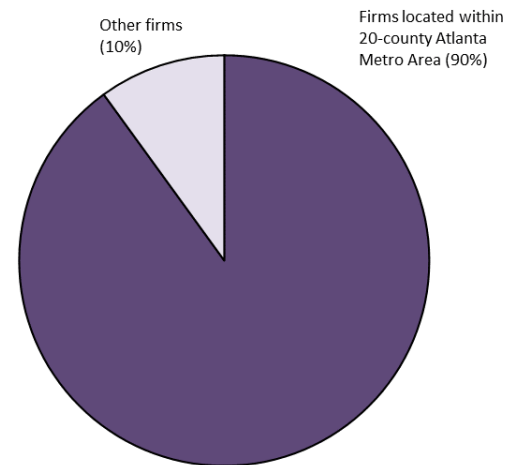
### 1. Firms across the 20-county Atlanta Metro Area perform City of Atlanta construction, professional services, goods and other services contracts.

- The “local market” for City contracts extends well beyond city limits, as shown in Figure 3.
- The City currently extends potential under its EBO and SBO Ordinances to firms within the 20 counties that form the core of the Atlanta Metropolitan Statistical Area.
- As shown in Figure 4, businesses within the 20-county area account for 90 percent of City procurement dollars (after excluding types of purchases typically made from national markets).
- There is support for retaining a similar geographic area for certification of firms eligible for City programs.
- The 20-county area was the focus of Keen Independent’s research on the Atlanta Metro Area marketplace.

### 3. City of Atlanta study region (20-county area)



### 4. Percentage of City contract dollars going to firms with locations in the 20-county Atlanta Metro Area, 2015–2019



Source: Keen Independent Research from City of Atlanta procurement data.

## SUMMARY REPORT — Availability results

### 2. About 62 percent of the Atlanta Metro Area firms available for City contracts are owned by people of color or women.

Keen Independent conducted a survey of businesses in the Atlanta Metro Area to identify companies indicating they were qualified and interested (ready, willing and able) to work on City contracts. The survey also asked about the types of work performed, size of contracts bid and the race, ethnicity and gender ownership of the firm.

### Methodology

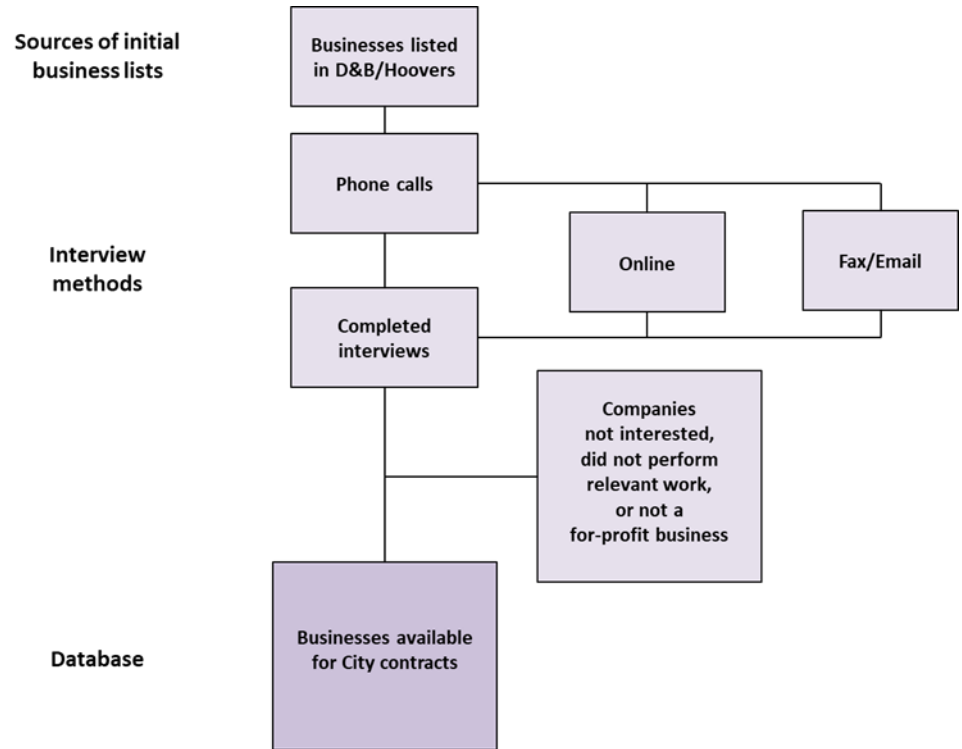
**List of firms to be surveyed.** The City of Atlanta does not maintain a comprehensive list of firms that have identified themselves to the City as interested in learning about future work. Therefore, Keen Independent compiled the list of firms to be contacted in the availability survey from the Dun & Bradstreet (D&B) Hoover’s business establishment database. Use of D&B information has been accepted and approved in connection with disparity study methodology. Keen Independent obtained listings for companies that D&B identified as:

- Having a location in the Atlanta Metro Area; and
- Performing work or providing goods the study team determined was potentially related to City procurement.

More than 38,000 business establishments were on this initial list. Only some of the firms were determined to be qualified and interested in City contracts, as described below.

**Availability surveys.** The study team conducted telephone surveys with business owners and managers of businesses on the D&B list that asked them whether they were qualified and interested in participating in City contracts and subcontracts. Customer Research International (CRI) performed the surveys under Keen Independent’s direction. Surveys began in January of 2021 and were completed in March 2021.

### 5. Availability survey process



## SUMMARY REPORT — Availability results

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**Survey execution.** CRI used the following steps to complete telephone surveys with business establishments.

- CRI contacted firms by telephone.<sup>24</sup>
- Interviewers indicated that the calls were made on behalf of the City of Atlanta to gather information about companies interested in performing work for the City.
- Some firms indicated in the phone calls that they did not perform relevant work or had no interest in work with the City, so no further survey questions were necessary. (Such surveys were treated as complete at that point.)
- When a business was unable to conduct the interview in English, the study team called back with a bilingual interviewer (English/Spanish) to collect basic information about the company. Keen Independent then followed up with these firms with a bilingual interviewer (English/Spanish) to offer the option of filling out a written version of the full survey (in English).
- Up to six phone calls were made at different times of day and different days of the week to attempt to reach each company.

**Information collected.** Survey questions covered topics including:

- Status as a private business (as opposed to a public agency or not-for-profit organization);
- Status as a subsidiary or branch of another company;
- Types of work performed or goods supplied;
- Qualifications and interest in performing work or supplying goods for the City of Atlanta;
- Qualifications and interest in performing work as a prime contractor or as a subcontractor (or prime consultant/subconsultant);
- Largest prime contract or subcontract bid on or performed in the Atlanta Metro Area in the previous six years;
- Year of establishment; and
- Race/ethnicity and gender of firm owners.

**Screening of firms for the availability database.** Keen Independent considered businesses to be potentially available for City contracts or subcontracts if they reported possessing all of the following characteristics:

- Were a private business;
- Performed work relevant to public sector contracts; and
- Reported qualifications and interest in work with the City (and for some types of work, whether they were interested in prime contracts or subcontracts or both).

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<sup>24</sup> The study team offered business representatives the option of completing surveys via fax or email if they preferred not to complete surveys via telephone.

## SUMMARY REPORT — Availability results

### Availability Survey Results

The study team successfully contacted 13,524 businesses in this survey.

- About 53 percent of firms in the Atlanta Metro Area available for City construction, professional services, goods and other services contracts were owned by people of color and 9 percent were owned by white women. In total, MBE/WBEs accounted for nearly two-thirds of available firms. “Majority-owned firms” are companies that are not MBE/WBEs. They comprised 38 percent of the firms available for City contracts. Figure 6 presents these “head count” availability results.
- Since more than one-half of firms indicating qualifications and interest in City contracts are minority- or woman-owned, there is added importance of a level playing field for those companies as they appear to comprise a majority of the City’s potential contractors, subcontractors and vendors.
- About 97 percent of all businesses available for City contracts had annual revenue within the federal definition of “small businesses.”
- Only some of these MBE/WBE firms and small businesses were certified under the City’s EBO and SBO programs.

**Analysis of statistical reliability of results.** Keen Independent’s availability survey attempted to contact all businesses in relevant fields in the Atlanta Metro Area (no sampling of firms). The overall response rate to the survey was very high (41%), the confidence interval for the share of firms that are MBE/WBEs (62.2%) is +/- 0.6 percentage points, and there are no differences in response rates between groups that materially affect the estimates of MBE/WBE availability in this study.

### 6. Number of businesses included in the availability database, 2021

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	778	43.0 %
Asian American-owned	71	3.9
Hispanic American-owned	91	5.0
Native American-owned	24	1.3
<b>Total MBE</b>	<b>964</b>	<b>53.2 %</b>
WBE (white woman-owned)	162	8.9
<b>Total MBE/WBE</b>	<b>1,126</b>	<b>62.2 %</b>
Majority-owned firms	685	37.8
<b>Total</b>	<b>1,811</b>	<b>100.0 %</b>

Note: Percentages may not add to totals due to rounding.

Source: Keen Independent Research 2021 availability survey.



## SUMMARY REPORT — Availability results

### Methodology for Developing Dollar-Weighted Availability Benchmarks

Although MBE/WBEs comprise a large share of total firms available for City contracts, there are industry specializations in which there are relatively few minority- and woman-owned firms. Also, Keen Independent found that minority-owned firms are less likely than other companies to be available for the largest City contracts.

Keen Independent conducted a contract-by-contract availability analysis based on the specific types and sizes of City contracts and subcontracts from 2015 through 2019 and dollar-weighted those results.

- The study team used the availability databased developed in this study, including information about the type of work a firm performed, the size of contracts or subcontracts it bid, and the race, ethnicity and gender of its ownership.
- To determine availability for a contract or subcontract, Keen Independent first identified and counted the firms indicating that they performed that type of work of that size.
- The study team then calculated the MBE and WBE share of firms available for that contract (by group).
- Once availability had been determined for every City contract and subcontract, Keen Independent weighted the availability results based on the share of total City contract dollars that each contract represented.

Figure 7 provides an example of this dollar-weighted analysis.

#### 7. Example of an availability calculation for a City subcontract

One of the subcontracts examined was for architecture and engineering (\$57,249) on a 2016 contract. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- Were in business in 2016;
- Indicated that they performed architecture and engineering work;
- Indicated qualifications and interest in such subcontracts; and
- Reported bidding on work of similar or greater size in the past six years in the Atlanta Metro Area.

There were 151 businesses in the availability database that met those criteria. Of those businesses, 58 were MBE/WBEs. Therefore, MBE/WBE availability for the subcontract was 38 percent (i.e.,  $58/151 = 38.4\%$ ).

The contract weight was  $\$57,249 \div \$4 \text{ billion} = 0.14\%$  (equal to its share of total procurement dollars). Keen Independent made this calculation for each prime contract and subcontract.

## SUMMARY REPORT — Availability results

### Dollar-Weighted Availability Results

The availability analysis described on the previous page indicates that 34 percent of City contract dollars might be expected to have gone to minority- and woman-owned businesses during the 2015–2019 study period (see Figure 8).

These dollar-weighted availability figures were calculated based on all City contracts included in the study. In addition, Keen Independent prepared benchmarks for specific subsets of City contracts, including the industry-specific results shown in Figure 8.

Availability results for other subsets of contracts, including those when the City’s EBO and SBO programs did not apply, are discussed later in the Summary Report.

#### 8. Dollar weighted MBE/WBE availability for City procurements, 2015–2019

	Construction	Professional services	Goods	Other services	Total
African American-owned	9.3 %	20.6 %	20.9 %	32.7 %	14.4 %
Asian American-owned	4.0	6.6	8.8	1.1	5.0
Hispanic American-owned	5.0	4.9	0.7	2.1	4.4
Native American-owned	0.2	0.6	0.2	0.2	0.3
<b>Total MBE</b>	<b>18.5 %</b>	<b>32.7 %</b>	<b>30.6 %</b>	<b>36.1 %</b>	<b>24.0 %</b>
WBE (white woman-owned)	9.3	11.5	16.4	6.2	10.4
<b>Total MBE/WBE</b>	<b>27.8 %</b>	<b>44.2 %</b>	<b>47.0 %</b>	<b>42.2 %</b>	<b>34.4 %</b>
Majority-owned firms	72.3 %	55.8 %	53.0 %	57.8 %	65.6 %
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>

Note: Percentages may not add to totals due to rounding.

Source: Keen Independent Research from 2021 availability survey and analysis of City procurements 2015–2019.

## SUMMARY REPORT — Availability results

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### Strengths of the Keen Independent Approach to Calculating Availability Benchmarks

There are several important ways in which Keen Independent's contract-by-contract, dollar-weighted approach to measuring availability is more precise and appropriate than completing a simple head count approach.

**Accounting for type of work involved in a procurement.** The study team took type of work into account by examining 47 different subindustries related to construction, professional services, goods and other services procurements as part of estimating availability for City work.

**Accounting for qualifications and interest in public sector work.** The study team collected information on whether businesses are qualified and interested in working as prime contractors, subcontractors, or both on City procurements, in addition to the consideration of factors such as type, size and location of the procurement. This was based on responses to survey questions, supplemented by review of actual contract performance in the contract and subcontract data.

- Only businesses that indicated qualifications and interest in bidding as a prime contractor on public agency contracts were counted as available for City prime contracts; and
- Only businesses that reported being qualified for and interested in working as subcontractors on public agency contracts were counted as available for City subcontracts.

**Accounting for the size of prime contracts and subcontracts.** The study team considered the size — in terms of dollar value — of the procurements that a business bid on or received in the previous six years (i.e., bid capacity) when determining whether to count that business as available for a particular City procurement. When determining whether businesses would be counted as available for a particular prime contract or subcontract, the study team considered whether businesses had previously bid on or received at least one procurement of an equivalent or greater dollar value in the Atlanta Metro Area in the previous six years. Keen Independent obtained these data by asking firms in the availability survey about the sizes of contracts they had performed or bid on in the previous six years (roughly 2015 through 2020).

Keen Independent's approach follows appropriate disparity study methodology that incorporates the concept of firm capacity when measuring availability.

**Using dollar-weighted results.** Keen Independent examined availability on a contract-by-contract basis and then dollar-weighted the results. Thus, the results of relatively large contracts and subcontracts contributed more to overall availability estimates than those of relatively small contracts and subcontracts.

## SUMMARY REPORT — Marketplace conditions

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### 3. Quantitative and qualitative information indicates that there is not a level playing field for companies owned by people of color or women in the Atlanta Metro Area marketplace.

Keen Independent examined U.S. Census Bureau data, results from the availability survey conducted for this study and other data sources on conditions for minority- and woman-owned firms in the Atlanta Metro Area marketplace as a whole. As summarized in the following seven pages, the combined information indicates that minority- and woman-owned firms, in general, face barriers and are at a disadvantage competing for work, including public sector contracts.

#### Entry and Advancement as Employees in Study Industries

Employment and advancement are preconditions to business ownership in study industries. Barriers for people of color and women entering and advancing within the Atlanta study industries could depress the number of businesses owned by members of these groups in the construction, professional services, goods and other services industries.

**Entry into study industries.** Keen Independent’s analyses indicate that people of color and women encounter barriers to entry for certain study industries in the Atlanta Metro Area. The following summarizes where there were statistically significant differences in employment outcomes for a group in a particular industry.

- **Construction.** Fewer African Americans, Asian Americans and women worked in the Atlanta area construction industry than what might be expected based on their representation in other industries in the market area.

- **Professional services.** Fewer African Americans, Hispanic Americans and women worked in the Atlanta area professional services industry than what might be expected based on representation among all workers in the Atlanta Metro Area who were 25 and older with a four-year college degree.
- **Goods.** In the goods industry, there were fewer African American, Hispanic American and female workers than expected based on the overall workforce.
- **Other services.** In the other services industry, there were fewer Asian American and female workers than expected based on the overall workforce.

**Advancement within study industries.** U.S. Census Bureau data provided detailed information about employees in individual construction trades. Keen Independent’s analyses indicate statistically significant outcomes regarding advancement in the industry:

- Representation of people of color was much lower in certain construction trades than others.
- Most construction trades have very few female workers.
- Compared to non-Hispanic whites working in the construction industry, people of color were less likely to be managers.
- Women working in the construction industry were less likely than men to be managers.

Because certain minority groups and women appear to be underrepresented in the Atlanta study industries and as managers in the construction industry — the number of people of color and women starting businesses is lower than expected, reducing overall MBE/WBE availability in the marketplace.

## SUMMARY REPORT — Marketplace conditions

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### Business Ownership

The study team used U.S. Census Bureau data for 2014–2018 from the American Community Survey (ACS) to examine whether there were differences in business ownership rates between people of color and whites and between women and men in the Atlanta Metro Area study industries.

Keen Independent used regression analyses to examine whether differences in business ownership rates in the Atlanta Metro Area persisted after accounting for other personal characteristics. After controlling for factors including education, age, family status and homeownership, statistically significant disparities in business ownership rates were evident for:

- African Americans and women working in the construction industry (substantial disparities);
- Asian Americans working in professional services (a substantial disparity); and
- Women working in the goods industry (a substantial disparity).

These results indicate that MBE/WBE availability is reduced in certain industries because of depressed rates of business ownership for African Americans, Asian Americans and women.

## SUMMARY REPORT — Marketplace conditions

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### Analysis of Access to Capital

Business creation and long-term success rests on access to capital. Discrimination at any link in that chain may produce cascading effects on business formation and success.

**Quantitative information about homeownership and mortgage lending.** Wealth created through homeownership can be an important source of funds to start or expand a business.

Keen Independent analyzed 2014–2018 ACS data to determine if there were any differences in homeownership in the Atlanta Metro Area by racial and ethnic groups. The study team also examined the potential impact of race and ethnicity on mortgage lending in Atlanta based on Home Mortgage Disclosure Act (HMDA) data for 2013, 2017 and 2018. Results are described below.

**Homeownership rates.** Based on 2014–2018 ACS data, relatively fewer African Americans, Asian Americans, Hispanic Americans and Native Americans or other minority in the Atlanta Metro Area owned homes compared with non-Hispanic whites. Among those who owned homes, median home values for African Americans, Hispanic Americans and Native Americans or other minority were lower than the home value for non-Hispanic whites.

**Mortgage lending.** The study team also examined the potential impact of race and ethnicity on mortgage lending in Atlanta based on Home Mortgage Disclosure Act (HMDA) data for 2013, 2017 and 2018. In 2013, high-income African Americans, Asian Americans, Hispanic Americans, Native Americans and Native Hawaiian or other Pacific Islanders applying for home mortgages in the Atlanta Metro Area were more likely than high-income non-Hispanic whites to have their applications denied. Disparities were also evident for African Americans, Hispanic Americans, Native Americans and Native Hawaiian or other Pacific Islanders in 2017 and for all minority groups in 2018. (Note that “high-income applicants” are those households with 120 percent or more of the U.S. Department of Housing and Urban Development area median family income.)

Mortgage lending discrimination can also occur through higher fees and interest rates. Subprime lending is one example of such types of discrimination through fees associated with various loan types. Because of higher interest rates and additional costs, subprime loans affected homeowners’ ability to grow home equity and increased their risks of foreclosure.

- There is national evidence that predatory lenders disproportionately targeted minorities with subprime loans, even when applicants could qualify for prime loans.
- Analysis of Atlanta Metro Area data indicates that a relatively high share of conventional home purchase loans and conventional home refinance loans were subprime for African Americans, Hispanic Americans, Native Americans and Native Hawaiians or other Pacific Islanders.

In conclusion, there is substantial quantitative evidence of disparities in homeownership and home mortgage lending for people of color in the Atlanta Metro Area.

## SUMMARY REPORT — Marketplace conditions

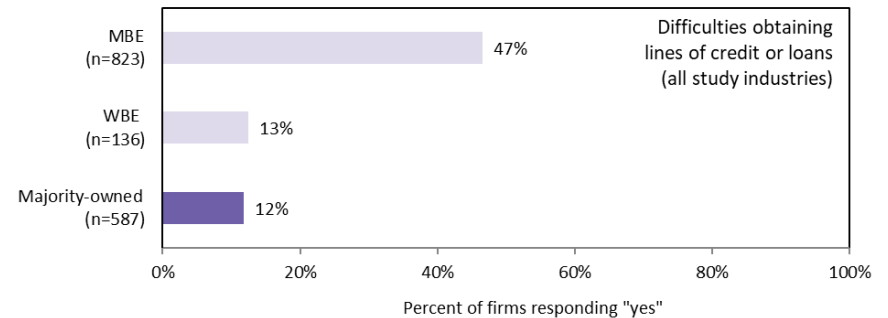
**Quantitative information about business credit.** Any race- or gender-based barriers in the application or approval processes of business loans can also affect the formation and success of MBEs and WBEs.

To examine the role of race/ethnicity and gender in capital markets, the study team analyzed data from the Federal Reserve Board’s Survey of Small Business Finances (SSBF) — the most comprehensive national source of credit characteristics of small businesses (those with fewer than 500 employees). The South Atlantic region is the level of geographic detail of SSBF data most specific to Georgia, and 2003 is the latest information available from the SSBF. (The Atlanta Metro Area represents one of the largest agglomerations of businesses in the South Atlantic region.) More recent national data, including from 2016 Annual Survey of Entrepreneurs, are consistent with 2003 SSBF results.<sup>25</sup>

- **Business loan approval rates.** Keen Independent examined business loan approval rates in the South Atlantic region and national level in 2003. Loan applications from minority and female applicants were more frequently denied (26%) than from non-minority male-owned businesses (7%) in the South Atlantic region.
- **Applying for loans.** Fear of loan denial can be a barrier to business credit in the same way that actual loan denial presents a barrier. Among firms indicating they needed loans, 28 percent of MBE/WBEs indicated that they did not apply for those loans because of fear of loan denial compare with only 16 percent of non-Hispanic white-owned firms (South Atlantic region).

- **Loan values.** Keen Independent also examined 2003 SSBF data on the average business loan values and interest rates paid by small businesses that received loans. The mean value of approved loans for minority- and female-owned businesses in the South Atlantic region (\$191,000) was lower than for non-Hispanic white male-owned firms (\$373,000).
- **2021 Availability survey results for Atlanta Metro Area.** Firms responding to the availability survey were asked whether they had difficulties obtaining lines of credit or loans. Only 12 percent of majority-owned companies said “yes” compared to almost one-half of MBEs that said they had experienced these difficulties (see Figure 9). MBE/WBEs that had tried to obtain bonding were more likely than majority-owned firms to report difficulties obtaining bonding.

9. Responses to availability survey questions concerning loans and bonding, Atlanta marketplace



Source: Keen Independent Research from 2021 availability survey.

<sup>25</sup> United States Census Bureau. (2016). 2016 Annual Survey of Entrepreneurs. [Data file]. Retrieved from

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bk mk>

## SUMMARY REPORT — Marketplace conditions

### Analysis of Commercial and Public Projects in Atlanta

Keen Independent compared the utilization and availability of MBE/WBE construction and design firms on commercial and non-City public projects in Atlanta. This analysis examines prime contractors, as there were no data for subcontractors.

**Construction projects.** The study team examined information from building permits for commercial and public construction projects issued by the City of Atlanta from 2015 through 2019 (excluding projects for the City). These projects included new construction, alterations and repairs. The data identified the specific type of work for the permit.

After excluding City properties, nonprofit firms, utility projects, residential permits, projects that were self-performed and permits with construction cost less than \$10,000, there were 2,687 unique projects in the permits data provided by the City (totaling \$3.5 billion). Keen Independent was able to determine ownership for the listed companies on each of these projects.

- Minority-owned companies were general contractors for about \$120 million of these projects, or about 3 percent of the total contract dollars.
- Firms identified as white woman-owned were general contractors for about \$75 million, or approximately 2 percent of the contract dollars.

- There was a disparity between the utilization and availability of construction prime contractors on these projects for each MBE group and for WBEs (see Figure 9).
- Keen Independent calculated disparity indices that compare utilization and availability (dividing utilization by availability and multiplying by 100, where a value of “100” equals parity). A disparity index of less than 100 may indicate a disparity between utilization and availability. A disparity index of less than 80 is described as “substantial.”<sup>26</sup>

10. Disparity analysis for design prime contracts for commercial and non-City public construction projects within the City of Atlanta, 2015–2019

	Utilization	Availability	Disparity index
<b>Construction</b>			
African American-owned	2.6 %	5.1 %	51
Asian American-owned	0.4	1.3	31
Hispanic American-owned	0.4	2.4	15
Native American-owned	0.0	0.1	1
Total MBE	3.4 %	8.9 %	38
WBE (white woman-owned)	2.1	5.4	39
<b>Total MBE/WBE</b>	<b>5.5 %</b>	<b>14.3 %</b>	<b>39</b>

Source: Keen Independent from analysis of City of Atlanta building permits data and 2021 availability survey data for construction firms.

<sup>26</sup> Courts deem a disparity index below 80 as being “substantial” and have accepted it as evidence of adverse impacts against MBE/WBEs. For example, see, e.g., *Ricci v. DeStefano*, 557 U.S. 557, 129 S.Ct. 2658, 2678 (2009); *Midwest Fence*, 840 F.3d 932, 950 (7<sup>th</sup> Cir. 2016); *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F. 3d 1187, 1191, 2013 WL 1607239

(9<sup>th</sup> Cir. April 16, 2013); *H.B. Rowe Co.*, 615 F.3d 233, 243-245; *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11<sup>th</sup> Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10<sup>th</sup> Cir. 1994).



## SUMMARY REPORT — Marketplace conditions

**Design contracts.** Keen Independent’s analysis of the design firms listed on projects indicated that 11 percent of those contracts went to minority- and woman-owned companies. This was considerably less than the 40 percent availability of MBE/WBEs for those contracts. (This analysis examined type of work performed, but not size of contract.)

As with the analysis of construction contracts, the permits data for design contracts found substantial disparities for each MBE group and for WBEs. Figure 11 shows these results.

11. Disparity analysis for design prime contracts for commercial and non-City public construction projects in Atlanta, 2015–2019

	Utilization	Availability	Disparity index
<b>Architecture and engineering</b>			
African American-owned	1.2 %	17.0 %	7
Asian American-owned	1.2	5.0	24
Hispanic American-owned	1.2	3.8	33
Native American-owned	0.0	0.6	0
Total MBE	3.7 %	26.4 %	14
WBE (white women-owned)	7.4	13.2	56
<b>Total MBE/WBE</b>	<b>11.1 %</b>	<b>39.6 %</b>	<b>28</b>

Source: Keen Independent from analysis of City of Atlanta building permits data and 2021 availability survey data for design firms.

## SUMMARY REPORT — Marketplace conditions

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### Qualitative Information

Keen Independent collected qualitative information about entry and advancement in the Atlanta study industries through surveys, interviews, focus groups and stakeholder meetings. The study team reviewed information from nearly 700 in-depth personal interviews and telephone, online and fax availability surveys from September 2020 through June 2021.

Comments were received from African American, Asian American, Hispanic American, Native American and white business owners including businesses owned by men and by women. The results on the right side of this page provide examples of comments received.

In addition, Keen Independent reviewed qualitative information reported in other local disparity studies.

Interviewees indicated that success in the marketplace depends on relationships with prime contractors and customers and that small businesses are at a disadvantage competing for public sector work, including as a subcontractor.

Some of the minority and women business owners reported unequal treatment, negative stereotypes and other forms of discrimination that affected their businesses. There were comments that there was not a level playing field for MBE/WBEs and that goals programs help to level the playing field.

Based on the qualitative information compiled for this study, there are barriers for people of color and women who own businesses in the Atlanta marketplace that appear to go beyond those impacting small business owners in general.

*For people of color there are always disadvantages and hurdles we're going to have to jump. I mean, everything we do historically has had to have been a million times better than anybody else ....*

*African American owner of a construction firm*

*You are expected to have the higher quality of work and less [leeway] when you are a minority or a woman. Rather, white men have a lot more [leeway] if mistakes are made.*

*African American woman representative of a minority industry association*

*One owner described a Catch-22 situation in that he is qualified to work but is not awarded jobs due to his lack of experience and capital, but he cannot gain experience and capital until he is awarded work.*

*African American male owner of a construction firm*

*Access to capital is the number one problem faced by [minority] businesses.*

*African American female representative of a minority business chamber*

*I know there are people that say, 'A woman owns that place?' The 'good ol' boys' ... just don't believe that women should run businesses, period.*

*White female representative of a construction-related firm*

*Some of the major challenges that I see in the Atlanta market are definitely people doing business with folks that they know, which restricts the opportunities for the emerging, small, minority firms. Having a goal-based program in some instances really helps because it helps to level the playing field.*

*African American female representative of an industry association*

## SUMMARY REPORT — Marketplace conditions

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### Disparities in Utilization in the Marketplace

Analysis of U.S. Census Bureau data, analysis of annual revenue reported in the availability survey, and review of disparity studies for other local public agencies such as Atlanta Public Schools and Atlanta Housing Authority indicate disparities in the utilization of MBEs and WBEs when no contract equity programs apply.

### Business Assistance Programs in the Metro Area

In addition to City of Atlanta race- and gender-neutral efforts to assist minority- and woman-owned firms and other small businesses, other organizations in the Atlanta Metro Area operate a wide range of business assistance programs. These efforts include:

- Down payment assistance;
- Loans;
- Small business grants;
- Networking;
- Mentoring;
- Business training, education and other technical assistance; and
- Workforce training

The apparent disadvantages for minority- and woman-owned businesses in the Atlanta Metro Area occurred even with this assistance network in place.

Comments were received from African American, Asian American, Hispanic American, Native American and white business owners including businesses owned by men and by women. The results on the right side of this page provide examples of comments received.

### Conclusions from Marketplace Conditions

There is information demonstrating that there is not a level playing field for businesses owned by minorities and women in the Atlanta Metro Area.

This context is important when considering results of the availability analysis for City contracts and utilization and disparity analyses for City contracts.

The information also demonstrates the pattern of disparities and barriers for people of color and women, and minority- and woman-owned businesses in the Atlanta Metro Area in an environment that is largely race- and gender-neutral.

Based on the qualitative information compiled for this study, there are barriers for people of color and women who own businesses in the Atlanta marketplace that appear to go beyond those impacting small business owners in general.

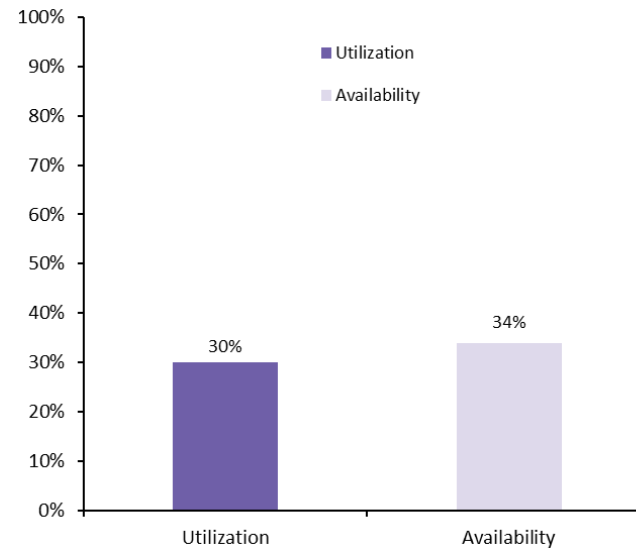
## SUMMARY REPORT — Disparity analysis for all City contracts

### 4. Including contracts with and without application of the City’s EBO and SBO programs, overall City utilization of MBE/WBEs was close to what might be expected based on the availability analysis.

As shown in Figure 12, about 30 percent of City contract dollars examined in this study went to MBE/WBEs, slightly less than the 34 percent that might be expected based on the availability analysis of firms qualified and interested (ready, willing and able) to do business with the City of Atlanta. (Excludes USDOT and other federally funded contracts.)

The difference between overall MBE/WBE utilization and availability is not considered to be a “substantial disparity” based on relevant court decisions.

12. Overall utilization of MBE/WBEs in City-funded procurements for all City contracts, including when the EBO and SBO programs applied, 2015–2019



Source: Keen Independent utilization and availability analyses for City contracts.

## SUMMARY REPORT — Disparity analysis for all City contracts

Figure 13 compares utilization and availability on City contracts for each MBE group and for white woman-owned firms for all City contracts, including when the EBO Program was applied with contract goals.

Keen Independent calculated disparity indices that compare utilization and availability (dividing utilization by availability and multiplying by 100, where a value of “100” equals parity).

- Overall utilization reached or exceeded availability for African American-owned businesses (disparity index of 131) and Native American-owned firms (disparity index of 99).
- There were substantial disparities for Asian American-, Hispanic American- and white woman-owned businesses. These disparities occurred even when the City’s EBO and SBO programs were applied to some of the City contracts.

13. Disparity analysis for City-funded procurements for all City contracts, including when the EBO and SBO programs applied, 2015–2019

	Utilization	Availability	Disparity index
<b>MBE/WBEs</b>			
African American-owned	18.9 %	14.4 %	131
Asian American-owned	1.2	5.0	25
Hispanic American-owned	2.4	4.4	54
Native American-owned	0.3	0.3	99
Total MBE	22.7 %	24.0 %	95
WBE (white woman-owned)	6.9	10.4	66
<b>Total MBE/WBE</b>	<b>29.6 %</b>	<b>34.4 %</b>	<b>86</b>

Note: Numbers may not add to totals due to rounding.  
Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for City contracts

## SUMMARY REPORT — Disparity analyses when City EBO and SBO programs did not apply

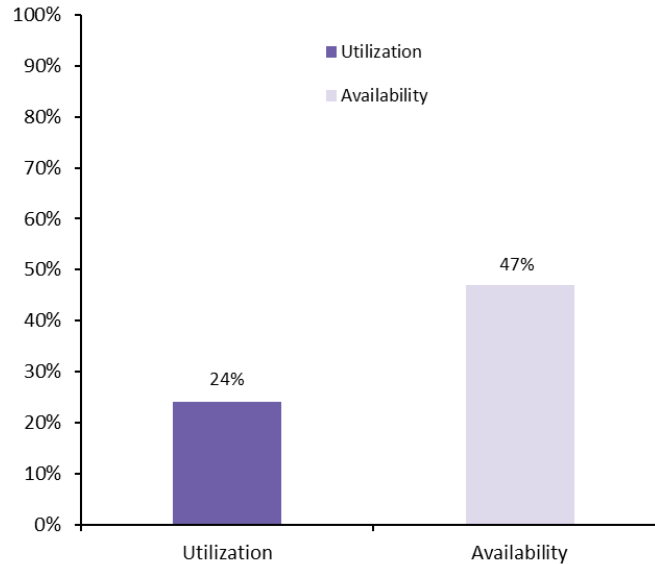
### 5. When the City’s EBO and SBO programs were not applied, there were disparities for each MBE/WBE group.

By ordinance, the City’s EBO and SBO programs do not apply to certain sizes or types of procurements. For example, the EBO and SBO programs do not apply to goods contracts, regardless of size.

Keen Independent examined the utilization of minority- and woman-owned firms on City contracts outside the EBO and SBO programs for the 2015 through 2019 study period.

About 24 percent of the dollars of those City contracts went to minority- and woman-owned firms, which was about one-half of what might be expected based on the availability analysis. Figure 14 shows those results.

14. Utilization and availability of MBE/WBEs in City-funded procurements when EBO and SBO programs did not apply, 2015–2019



Source: Keen Independent Research from City of Atlanta procurement data.

## SUMMARY REPORT — Disparity analyses when City EBO and SBO programs did not apply

Further Keen Independent analysis revealed substantial disparities for African American-, Asian American-, Native American- and white woman-owned businesses when examining contracts for which the EBO and SBO programs did not apply (see Figure 15).

Keen Independent also examined industry-specific results for City contracts outside the EBO and SBO programs. Results are reported in the following pages.

### 15. Disparity analysis for City-funded procurements when EBO and SBO programs did not apply, 2015–2019

	Utilization	Availability	Disparity index
MBE/WBEs			
African American-owned	7.5 %	23.4 %	32
Asian American-owned	1.1	6.9	16
Hispanic American-owned	4.2	2.6	160
Native American-owned	<u>0.1</u>	<u>0.7</u>	17
Total MBE	12.9 %	33.6 %	39
WBE (white woman-owned)	<u>8.7</u>	<u>13.1</u>	67
<b>Total MBE/WBE</b>	<b>21.7 %</b>	<b>46.7 %</b>	<b>46</b>

Source: Keen Independent utilization and availability analyses for City contracts.

## SUMMARY REPORT — Disparity analyses when City EBO and SBO programs did not apply

Disparity results for non-EBO/SBO program contracts by industry are as follows.

**Construction.** There were substantial disparities for African American-, Asian American-, Hispanic American-, Native American- and white woman-owned firms. (Figure 16 presents these results.)

**Professional services.** There were substantial disparities for African American-, Hispanic American-, Native American- and white woman-owned firms (see Figure 17).

Utilization of Asian American-owned firms exceeded availability on non-program professional services contracts but there was a disparity for Asian American-owned firms for all professional services contracts combined.

16. Disparity analysis for City-funded construction contracts when EBO and SBO programs did not apply, 2015–2019

Construction	Utilization	Availability	Disparity index
<b>MBE/WBEs</b>			
African American-owned	11.9 %	18.4 %	65
Asian American-owned	0.1	3.4	2
Hispanic American-owned	1.7	7.0	24
Native American-owned	0.0	0.6	2
Total MBE	13.7 %	29.4 %	47
WBE (white woman-owned)	3.6	7.0	51
<b>Total MBE/WBE</b>	<b>17.3 %</b>	<b>36.4 %</b>	<b>48</b>

Source: Keen Independent utilization and availability analyses for City contracts.

17. Disparity analysis for City-funded professional services contracts, when EBO and SBO programs did not apply, 2015–2019

Professional services	Utilization	Availability	Disparity index
<b>MBE/WBEs</b>			
African American-owned	8.6 %	38.4 %	22
Asian American-owned	9.0	7.3	123
Hispanic American-owned	0.7	7.8	9
Native American-owned	0.0	5.2	0
Total MBE	18.3 %	58.7 %	31
WBE (white woman-owned)	4.7	6.6	71
<b>Total MBE/WBE</b>	<b>23.0 %</b>	<b>65.2 %</b>	<b>35</b>

Source: Keen Independent utilization and availability analyses for City contracts.



## SUMMARY REPORT — Disparity analyses when City EBO and SBO programs did not apply

**Goods.** The EBO and SBO programs do not apply to City goods procurements. There were substantial disparities between the utilization and availability of African American-, Asian American-, Native American- and white woman-owned firms for City goods contracts. (See Figure 18.)

Utilization of Hispanic American-owned firms on goods contracts exceeded availability, which may in part be because of contracts for vehicles going to a Hispanic American-owned company.

**Other services.** There were substantial disparities for African American-, Asian American- and Hispanic American-owned firms for other services contracts when the City’s EBO and SBO programs did not apply. Three were also large disparities for white woman-owned firms (disparity index of 81, nearly a substantial disparity). Figure 19 provides these results.

**Summary.** The disparities in City contracts when the EBO and SBO programs did not apply appear to be due to race and gender, not just because MBEs and WBEs are typically small businesses.

- Nationally, small businesses face disadvantages when competing with larger firms for public sector contracts. However, as discussed previously in this Summary Report, one of the factors that was controlled for in the availability analyses was the size of construction, professional services and other services contracts that available firms bid. Small companies that only bid on small contracts were not counted as available for large contracts.
- This method used to control for business capacity is approved as appropriate disparity study methodology.

18. Disparity analysis for City-funded goods contracts (no EBO/SBO programs), 2015–2019

Goods	Utilization	Availability	Disparity index
<b>MBE/WBEs</b>			
African American-owned	6.6 %	20.9 %	31
Asian American-owned	0.4	8.8	4
Hispanic American-owned	5.9	0.7	830
Native American-owned	0.1	0.2	80
Total MBE	13.0 %	30.6 %	42
WBE (white woman-owned)	10.8	16.4	66
<b>Total MBE/WBE</b>	<b>23.8 %</b>	<b>47.0 %</b>	<b>51</b>

Source: Keen Independent utilization and availability analyses for City contracts.

19. Disparity analysis for City-funded non-goals other services contracts when EBO and SBO programs did not apply, 2015–2019

Other services	Utilization	Availability	Disparity index
<b>MBE/WBEs</b>			
African American-owned	5.7 %	31.4 %	18
Asian American-owned	0.4	1.2	39
Hispanic American-owned	1.5	2.9	51
Native American-owned	0.2	0.0	220
Total MBE	7.9 %	35.5 %	22
WBE (white woman-owned)	7.8	9.6	81
<b>Total MBE/WBE</b>	<b>15.7 %</b>	<b>45.1 %</b>	<b>35</b>

Source: Keen Independent utilization and availability analyses for City contracts.

## SUMMARY REPORT — Disparity analyses when EBO and SBO programs applied

**6. When the City’s EBO and SBO programs were applied, including providing for contract participation goals, there did not appear to be disparities for MBE/WBEs overall. However, disparities persisted for certain MBE/WBE groups.**

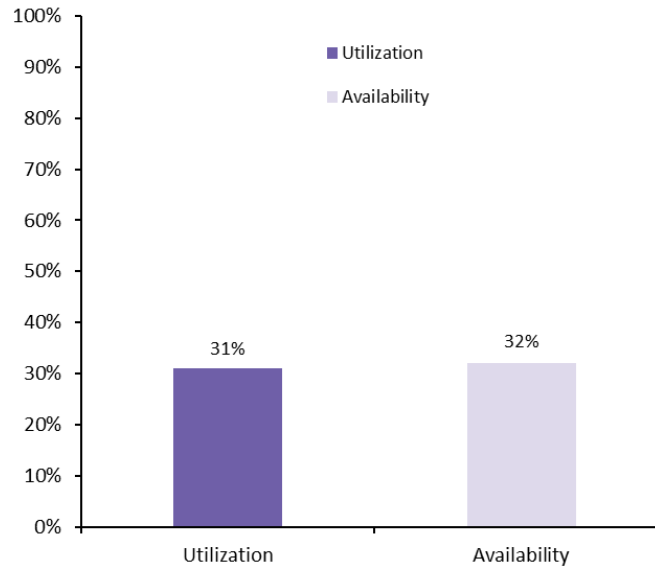
**Overall results for MBE/WBEs.** Utilization of MBE/WBEs of 31 percent on contracts with the EBO and SBO programs applied nearly matched the 32 percent MBE/WBE availability for these contracts. Figure 20 shows these results.

**Contracts with SBE goals.** The MBE/WBE utilization of 40 percent nearly matched the 42 percent MBE/WBE availability for City contracts that had SBE contract goals.

**Continued disparities for some MBE/WBE groups.** Even with application of the EBO and SBO programs, utilization of some MBE/WBE groups was still substantially below what was expected based on availability analyses for those contracts. For contracts with programs applied, there were substantial disparities for:

- Asian American-owned firms;
- Hispanic American-owned companies; and
- White woman-owned businesses.

20. Utilization of MBE/WBEs in City-funded procurements when EBO and SBO programs applied, January 2015–December 2019



Source: Keen Independent Research from City of Atlanta procurement data and Availability Survey data.

## SUMMARY REPORT — Further statistical analyses of disparity results

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The disparity analyses presented in this Summary Report take certain neutral factors into account.

### Accounting for Factors that might Explain any Disparities

**Qualifications and interest.** Keen Independent only included firms indicating qualifications and interest in performing work for the City in the availability calculations in this study.

**Type of work performed.** The availability analysis only considered firms as available for a particular contract or subcontract if it performed that specific type of work (“architecture and engineering” for example).

**Performance as prime contractor, subcontractor or both.** The availability analyses for construction and professional services contracts screened for whether firms worked as a prime contractor, subcontractor or both.

- Only those firms indicating qualifications and interest in working as a prime contractor were counted in the availability analyses for City prime contracts (along with consideration of other screening factors).
- Only firms indicating qualifications and interest in working a subcontractor were counted as available for subcontracts on City contracts.

**Size of contracts bid or performed.** There is authority that the availability analysis considers the capacity of firms to perform a public entity’s contracts. Keen Independent incorporated “bid capacity” into the availability analysis by asking firms to identify the largest contract or subcontract they had performed or bid on within the previous six years.

## SUMMARY REPORT — Further statistical analyses of disparity results

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### Statistical Confidence in Results

**Examination of whether chance in sampling could explain any disparities.** Keen Independent can reject sampling in the collection of utilization and availability information as an explanation for any disparities.

- Keen Independent attempted to compile a complete “population” of City contracts for the study period above \$10,000 (and subcontracts of any size). There was no sampling of City contracts. Using a population of contracts above \$10,000 provides statistical confidence in utilization results.
- Keen Independent’s availability survey attempted to obtain a population of firms within the Atlanta Metro Area available for City contracts. There was no sampling of firms to be included in the survey since Keen Independent obtained the complete list of firms that Dun & Bradstreet identified as doing business within relevant lines of work. The overall response rate to the survey was very high (41%), the confidence interval for MBE/WBE availability is with +/- 0.6 percentage points.

**Monte Carlo simulation to examine chance in contract awards.** One can be more confident in making certain interpretations from the disparity results if they are not easily replicated by chance in contract awards. For example, if there were only 20 City contracts examined in the disparity study, one might be concerned that any resulting disparity might be explained by random chance in the award of those contracts.

Keen Independent performed Monte Carlo simulation to determine whether chance could explain the disparities for MBEs and WBEs when examining all City contracts (including those for which the EBO and SBO programs applied).

- As the disparity was small for MBEs, the Monte Carlo analysis determined that one could not reject chance in contract awards as an explanation for the observed disparity (disparity index of 95, which was not a substantial disparity).
- The disparity was large for WBEs, and the Monte Carlo simulations were rarely able to replicate the observed disparity (disparity index of 66, indicating a substantial disparity). There was less than a 3 percent chance that this disparity could be due to random chance of contract and subcontract awards.

It is important to note that this test may not be necessary to establish statistical significance of results. It also may not be appropriate for very small populations of firms.<sup>27</sup>

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<sup>27</sup> Even if there were zero utilization of a particular group, Monte Carlo simulation might not reject chance in contract awards as an explanation for that result if there were a small number of firms in that group or a small number of contracts and subcontracts

included in the analysis. Results can also be affected by the size distribution of contracts and subcontracts.

## SUMMARY REPORT — Conclusions

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**The totality of information for City contracts and the Atlanta Metro Area marketplace indicates a need for the City to consider policies and measures to continue efforts to level the playing field for minority- and woman-owned businesses and to promote full and equitable opportunity for those available to do business with the City.**

Without application of the City's EBO and SBO Ordinances and related programs, there were substantial disparities in the utilization of minority- and woman-owned firms in City contracts.

For the City's contracts for which the City did not apply the EBO and SBO programs, there was evidence of disparities for the following groups:

- For African American-owned firms for construction, professional services, goods and other services contracts;
- For Asian American-owned firms for construction, goods and other services non-goals contracts (and for professional services contracts when examining all City contracts);
- For Hispanic American-owned firms for construction, professional services and other services contracts;
- For Native American-owned firms for construction, professional services and goods; and
- For white woman-owned firms for construction, professional services, goods and other services contracts.

The evidence of disparities for MBE/WBEs in City contracts when no EBO or SBO programs were applied is consistent with the quantitative and qualitative information regarding underutilization and other negative outcomes for people of color, women and MBE/WBEs in the Atlanta Metro Area.

The City should review the totality of results in the disparity study and all other information it has accumulated regarding its efforts to level the playing field for minority- and woman-owned businesses and to promote full and equitable opportunity for those available to do business with the City.