



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY 2022 DISPARITY STUDY FINAL SUMMARY REPORT

Prepared for:

Washington Metropolitan Area Transit Authority (WMATA)
600 5th Street, NW
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Final Summary Report
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ES. Executive Summary

Washington Metropolitan Area Transit Authority (WMATA) is a public transportation agency that receives funds from the U.S. Department of Transportation (USDOT). It must operate the Federal Disadvantaged Business Enterprise (DBE) Program for its federally funded contracts.

Keen Independent Research LLC (Keen Independent) conducted a disparity study to help WMATA set its next three-year overall goal for DBE participation in its Federal Transit Administration (FTA)-funded contracts and determine whether it needs to apply DBE contract goals to help it meet its overall DBE goal.

The disparity study follows federal regulations and court decisions regarding DBE and other business assistance programs.

Utilization, Availability and Disparity Analyses

Keen Independent compared the utilization and availability of minority- and white woman-owned businesses in WMATA's FTA-funded contracts and in its non-federally funded contracts.

Availability. Keen Independent conducted a large survey of companies in the Washington metro area to determine the availability of minority- and woman-owned firms and other firms for WMATA contracts. MBE/WBEs comprised about two-thirds of the firms indicating qualifications and interest in WMATA contracts in this survey. Through a contract-by-contract analysis of MBE/WBEs and other firms available to perform specific types and sizes of WMATA contracts and subcontracts, Keen Independent determined that 48 percent of WMATA contract dollars would go to minority- and woman-owned firms if there were a level playing field for those companies.

Utilization. About 23 percent of the dollars of WMATA contracts from July 2017 through June 2020 went to minority- and woman-owned companies.

Disparity analysis. Utilization of MBE/WBEs (23%) was less than what would be expected based on the relative availability of firms qualified and interested in performing WMATA contracts and subcontracts (48%).

The disparity was larger for contracts where WMATA did not set a DBE contract goal. When examining results for non-goals contracts by group, there were substantial disparities in the utilization of African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned businesses and a small disparity for white woman-owned firms.

Marketplace Conditions

There is considerable evidence that there is not a level playing field for people of color and women, and for minority- and woman-owned firms, in the Washington metro area marketplace based on the quantitative and qualitative information analyzed in this report.

Overall DBE Goal

WMATA is required to set an overall triennial goal for DBE participation in its FTA-funded transportation contracts. Federal regulations govern how these goals are determined. Keen Independent calculated a goal of 18.87 percent for future DBE participation in WMATA's FTA-funded contracts. WMATA can also consider adjustments to this overall DBE goal that could increase it to up to 25.54 percent.

The information in this report indicates that WMATA will need to use a combination of small business programs and DBE contract goals to achieve goals in this range. There was limited data to examine the effectiveness of WMATA's new small business and MBE programs as part of this study. Future review of those programs is recommended.

Keen Independent calculated an MBE goal of 14.84 percent for non-federally funded contracts under WMATA's new MBE program.

1. Introduction

Washington Metropolitan Area Transit Authority (WMATA) is a rapid transit public transportation agency in the District of Columbia. WMATA is an independent agency created in 1967 by an interstate compact between the District of Columbia, the State of Maryland and the Commonwealth of Virginia to provide a public transportation for residents in the Washington Metropolitan Area. Today, WMATA provides approximately 2.3 million passenger trips per year and employs over one thousand people.

Financing the construction, operation and maintenance of public transportation systems involves many different types of funding including federal and non-federal grants, cooperative agreements, loans and revenue sources. Transit agencies that receive federal funds from the U.S. Department of Transportation (USDOT) must operate the Federal Disadvantaged Business Enterprise (DBE) Program.

2022 Disparity Study

Keen Independent Research LLC (Keen Independent) conducted a disparity study for WMATA to analyze whether there are disparities in the utilization of diverse firms in its contracts and in the local marketplace. This disparity study is based on relevant case law, including the Ninth Circuit decisions that favorably reviewed the study team's methodology for measuring availability, analyzing disparity and collecting and analyzing qualitative information.

The 2022 Disparity Study will help WMATA operate the Federal Disadvantaged Business Enterprise (DBE) Program. The study will assist WMATA in setting its overall triennial goal for DBE participation in Federal Transit Administration (FTA)-funded contracts and determine whether it needs to apply DBE contract goals to help it meet its overall DBE goal.

Research methods. The study included:

- A survey of firms available to perform work in the Washington metro area.
- Analysis of prime contractors and subcontractors on past FTA-funded and non-federally funded contracts for WMATA (including DBEs and non-DBEs).
- Disparity analyses that compare participation of minority- and woman-owned firms on WMATA contracts with what would be expected from the availability analysis.
- In-depth interviews with businesses, trade association representatives and other interested individuals.
- Additional input from the study website, mail and designated telephone hotline and email address.

Study team. Local subconsultants, Alternative Resolutions and Law Offices of Courtney M. Billups, joined the Keen Independent study team. The Atlanta-based law firm Holland & Knight and the survey firm Customer Research International (CRI) also assisted in the study.

Public input. The 2022 Washington Metropolitan Area Transit Authority Disparity Study started in January 2021 with completion in January 2022.

- Through surveys, interviews and other research, the study team obtained input from more than 380 businesses, trade organizations and other groups during the course of the study.
- Keen Independent also reviewed results of interviews, focus groups and public meetings from seven additional disparity studies conducted between 2014 and 2021.

2. Legal Framework

The legal framework for this disparity study is based on regulations for the Federal DBE Program, Official USDOT Guidance and other sources including court decisions related to the Federal DBE Program and minority- and woman-owned business enterprise programs.

- The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the strict scrutiny standard of review for race-conscious programs adopted by state and local governments¹ and its 2005 decision in *Adarand Constructors, Inc. v. Peña* established the same standard of review for federal race-conscious programs.²
- The Federal DBE Program has been held to be constitutional “on its face” in subsequent legal challenges, but a court may still find that an agency implementing the program fails to meet the strict scrutiny legal standard in its implementation of the Program (see Appendix B).

To further understand the legal framework and context for the study, it is useful to review:

- The Federal DBE Program;
- Similar state and local MBE/WBE programs in the United States; and
- Legal standards that race- and gender-conscious programs must satisfy.

1. U.S. Supreme Court that ruled in *City of Richmond v. J.A. Croson Co.* in 1989



¹ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

² *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

2. Legal Framework — Federal DBE Program

Federal regulations govern how agencies implement the Federal DBE Program. Three important requirements are:

- Setting overall goals for DBE participation. (49 CFR Section 26.45)
- Meeting the maximum feasible portion of the overall DBE goal through race- and gender-neutral means. (49 CFR Section 26.51)
 - Race- and gender-neutral measures include promoting the participation of small or emerging businesses.³
 - If an agency can meet its overall DBE goal solely through race- and gender-neutral means, it must not use race- and gender-conscious measures when implementing the Federal DBE Program.
- Appropriate use of race- and gender-conscious measures, such as contract-specific DBE goals. (49 CFR Section 26.51)
 - Because these measures are based on the race or gender of business owners, use of these measures must satisfy stringent court imposed legal and regulatory standards in order to be legally valid.⁴
 - Measures such as DBE quotas are prohibited; DBE set-asides may only be used in limited and extreme circumstances (49 CFR Section 26.43).

- Following the court decisions, the strict scrutiny standard, and federal regulations, some agencies restricted eligibility to participate in DBE contract goals measures to certain racial, ethnic and gender groups based on pertinent evidence establishing a firm basis of identified discrimination in the relevant transportation contracting marketplace showing statistically significant underutilization for those groups.

Based on these court decisions, federal regulations and other requirements, transit agencies receiving USDOT funds set overall goals for DBE participation and use certain race-neutral measures to encourage DBE participation. Some transit agencies, including WMATA, also use race- and gender-conscious measures such as DBE contract goals to help meet their overall DBE goals.

³ Note that all use of the term “race- and gender-neutral” refers to “race-, ethnic- and gender-neutral” in this report.

⁴ *Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200, 227 (1995); See *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Midwest Fence*, 840 F.3d 930; *Dunnet Bay*, 799 F.3d 676; *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; see, e.g. *H. B. Rowe*, 615.3d 233, 241-242 (4th Cir. 2010); *Associated Gen. Contractors of Ohio, Inc. v.*

Drabik (“Drabik II”), 214 F.3d 730 (6th Cir. 2000); *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 I”)*, 6 F.3d 990 (3d Cir. 1993); *Geod Corp.*, 746 F.Supp. 2d 642.

Certain Federal Courts of Appeal, including the Fourth Circuit Court of Appeals, apply the “intermediate scrutiny” standard to gender-conscious programs. Appendix B describes the intermediate scrutiny standard in detail. See, Section C. 3 of Appendix B.

2. Legal Framework — Federal DBE Program

The USDOT instructs that agencies should ascertain evidence of discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26.⁵ The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT's Guidance provides that recipients should consider evidence of discrimination and its effects.⁶ The USDOT's Guidance is recognized by the federal regulations as "valid, and express the official positions and views of the Department of Transportation."⁷ Although the Guidance following the Ninth Circuit decision in the *Western States Paving* case is specifically provided for state and local governments in the Ninth Circuit, it is informative and instructive to recipients of USDOT funds in other jurisdictions.

There have been recent decisions that involved a challenge to a public transit agency. *Geod Corporation v. New Jersey Transit Corporation, et. seq.*,⁸ involved a challenge to the New Jersey Transit Corporation's ("NJT") implementation of the Federal DBE Program. In ruling on motions for summary judgment, the district court held that states and their agencies are entitled to adopt the federal governments' compelling interest in enacting TEA-21 and its implementing regulations. The court held that all states "inherit the federal governments' compelling interest in establishing a DBE program."⁹ Therefore, the court limited its analysis to whether NJT's DBE program was narrowly tailored to further that compelling interest in accordance with "its grant of authority under federal law."¹⁰ The court held NJT's

DBE program did not violate the Constitution, as the court held it was narrowly tailored to further a compelling governmental interest.¹¹ Thus, the court upheld the validity of the NJT DBE program implementing the Federal DBE Program. See Section D, *infra* for a detailed summary of these *Geod v. New Jersey Transit Corporation* decisions.

As mentioned above, some agencies limit participation in DBE contract goals to those DBE groups for which there is sufficient evidence of discrimination in the transportation contracting industry in their market area (sometimes called "underutilized DBE" or "UDBE" contract goals programs). Implementation of such contract goals measures requires approval of a waiver from USDOT.¹²

⁵ Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation* (January 2006) [hereinafter USDOT Guidance], available at 71 Fed. Reg. 14,775; see 49 CFR Section 26.9; see, also, 49 CFR Section 26.45.

⁶ *Id.*

⁷ *Id.*, 49 CFR Section 26.9; See, 49 CFR Section 23.13.

⁸ 678 F.Supp.2d 276, 2009 WL 2595607 (D.N.J. August 20, 2009)

⁹ *Id.*

¹⁰ *Id.* at 652 citing *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 722 (7th Cir. 2007)

¹¹ *Id.* at 657

¹² 49 CFR Section 26.15.

2. Legal Framework — State and local MBE/WBE programs

In addition to USDOT-funded contracts, WMATA and other transit agencies award transportation contracts that are solely funded through state or local sources. The Federal DBE Program does not apply to those contracts.

Many local governments in the Washington, D.C. metro area operate minority- and woman-owned business enterprise (MBE/WBE) programs for their non-federally funded contracts, as do the State of Maryland and Commonwealth of Virginia.

Court decisions regarding MBE/WBE programs are instructive as to the types of evidence and information that must be considered and analyzed to determine whether or not a governmental agency, such as a transit authority, can develop and apply race- and gender-based programs, whether they be local programs or the Federal DBE Program. Appendix B examines the applicable legal analysis from these cases.

2. Legal Framework — Legal standards that race- and gender-conscious programs must meet

Different legal standards apply for judicial review of programs that are race- and gender-conscious and equity programs that have no race or gender component.

Race-Based Programs

In *City of Richmond v. J.A. Croson Company*, the U.S. Supreme Court established that government contracting programs with race-conscious measures must satisfy the strict scrutiny standard of constitutional review. As described in detail in Appendix B, the strict scrutiny standard is very difficult for a government entity to meet.

Under the strict scrutiny standard, a governmental entity must have a strong basis in evidence that:

- There is a *compelling governmental interest* in remedying specific past identified discrimination or its present effects; and
- Any program adopted is *narrowly tailored* to remedy the identified discrimination. There are a number of factors a court considers when determining whether a program is narrowly tailored (see Appendix B).

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

2. Legal Framework — Legal standards that race- and gender-conscious programs must meet

Gender-Conscious Programs

Certain courts, including the Fourth Circuit and other Federal Courts of Appeal, apply the “intermediate scrutiny” standard to gender-conscious programs. It is more easily met than strict scrutiny.

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
- Substantially related to the achievement of that underlying objective.¹³

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. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.¹⁴

The Fourth Circuit cites with approval the guidance from the Eleventh Circuit that has held “[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort Additionally, under intermediate scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”¹⁵

Appendix B describes the intermediate scrutiny standard in detail.

¹³ 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; *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, Inc.*, 2014 WL 1309092.

¹⁴ *Coral Constr. Co.*, 941 F.2d at 931-932; see *Eng’g Contractors Ass’n*, 122 F.3d at 910.

¹⁵ 615 F.3d 233, 242; 122 F.3d at 929 (internal citations omitted).

2. Legal Framework — Legal standards that race- and gender-conscious programs must meet

Small Business Programs and Other Neutral Efforts

Small business programs and other race- and gender-neutral efforts are not subject to strict scrutiny or intermediate scrutiny standards. Where a challenge to the constitutionality of 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. When applying rational basis review under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, a court is required to inquire “whether the challenged classification has a legitimate purpose and whether it was reasonable [for the legislature] to believe that use of the challenged classification would promote that purpose.”¹⁶

Courts applying the rational basis test 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.”¹⁷ So long as a government legislature had a reasonable basis for adopting the classification the law will pass constitutional muster.¹⁸

Therefore, state and local governments can defend programs for *all* economically disadvantaged firms or *all* small businesses if they can meet the rational basis test, which is much more easily satisfied than the strict scrutiny or intermediate scrutiny standards of review for programs that provide preferences on the basis of race or gender.

¹⁶ 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, 1096 (9th Cir. 2019); *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 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998); *Beavers* 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th 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; *Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union v. District of Columbia*, _ F.Supp.3d _ 2020 WL 6484312 CV 20-2103 (D. D.C. November 4, 2020); see, e.g., *Gray v. Commonwealth of Virginia*, 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007).

¹⁷ See, e.g., *Kadrmas 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 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th 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); *Price-Cornelison v.*

Brooks, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998) see also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985) (citations omitted); *Heller v. Doe*, 509 U.S. 312, 318-321 (1993) (Under rational basis standard, a legislative classification is accorded a strong presumption of validity); *Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union v. District of Columbia*, _ F.Supp.3d _ 2020 WL 6484312 CV 20-2103 (D. D.C. November 4, 2020); see, e.g., *Gray v. Commonwealth of Virginia*, 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007).

¹⁸ *Id.*; *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th 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); *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013), (citing *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)); *Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union v. District of Columbia*, _ F.Supp.3d _ 2020 WL 6484312 CV 20-2103 (D. D.C. November 4, 2020); see, e.g., *Gray v. Commonwealth of Virginia*, 247 Va. 290, 306-309, 645 S.E. 2d 448, 458-460 (Va. 2007).

3. WMATA Procurement Process and Programs — Procurement

WMATA Compact

Section 73 of the WMATA Compact governs procurements for goods, services and construction. The Authority follows these requirements and other laws pertaining to its contracts.

Bidding Requirements

Public advertising of bid opportunities is required for large contracts, but small contracts can be procured through simplified acquisitions. Figure 2 summarizes bid thresholds.

Above \$150,000. Large contracts require public advertising under most circumstances. WMATA typically advertises contract bid opportunities through its website, FedBizOpps and additional electronic sources.

Awards for competitive sealed bids go to the lowest responsive, responsible bidder. A&E contracts and sometimes other types of work can also be procured through competitive sealed proposals where qualifications and other non-price factors can be considered. (Awards of A&E contracts do not consider price.)

The firm must be registered with WMATA through its Supplier Portal prior to submitting its bid. The firm must obtain project and bidding materials through the Supplier Portal unless otherwise specified.

WMATA may prequalify firms to submit a bid or proposal.

\$150,000 or less. Small purchases can be obtained by soliciting quotes without public advertising (usually solicitation of at least three firms). Awards can consider qualifications, price and other factors (unless a small A&E contract, which would not consider price).

Bonding. Bid, payment and performance bonds are required for public works contracts that are over \$100,000.

2. WMATA bidding thresholds

	Construction	Goods and services	A&E
Bidding thresholds			
Requiring competitive sealed bids/proposals	Above \$150,000	Above \$150,000	Above \$150,000
Competitive simplified acquisitions	\$2,001–\$150,000	\$3,501–\$150,000	\$3,501–\$150,000
Non-competitive simplified acquisitions	\$2,000 or below	\$3,500 or below	\$3,500 or below
Bidding requirements			
Competitive sealed bids/proposals	Public advertising	Public advertising	Public advertising
Competitive simplified acquisitions	Solicitation of at least 3 firms for quotes	Solicitation of at least 3 firms for quotes or proposals	Solicitation of at least 2 firms for proposals
Non-competitive simplified acquisitions	No bidding required	No bidding required	No bidding required
Means of public advertising	Local newspaper, business journals and/or electronic media	Local newspaper, business journals and/or electronic media	Local newspaper, business journals and/or electronic media
Basis for award			
Competitive sealed bids	Lowest responsive, responsible bidder	Lowest responsive, responsible bidder	N/A
Competitive sealed proposals	Proposer with best responsive proposal	Qualifications, price and other factors	Qualifications and other factors
Competitive simplified acquisitions	Qualifications, price and other factors	Qualifications, price and other factors	Qualifications and other factors
Non-competitive simplified acquisitions	\$2,000 or below	N/A (no bidding required)	N/A

3. WMATA Procurement Process and Programs — Federal DBE Program

WMATA is required to operate the Federal DBE Program for its federally funded contracts. Regulations in 49 Code of Federal Regulations (CFR) Part 26 govern how agencies implement the Federal DBE Program. Three important requirements are:

- Setting overall goals for DBE participation. (49 CFR Section 26.45)
- Meeting the maximum feasible portion of the overall DBE goal through race- and gender-neutral means. (49 CFR Section 26.51)
 - Race- and gender-neutral measures include promoting the participation of small or emerging businesses.¹⁹
 - If an agency can meet its overall DBE goal solely through race- and gender-neutral means, it must not use race- and gender-conscious measures when implementing the Federal DBE Program.
- Appropriate use of race- and gender-conscious measures, such as contract-specific DBE goals. (49 CFR Section 26.51)
 - Because these measures are based on the race or gender of business owners, use of these measures must satisfy standards to be legally valid.
 - Measures such as DBE quotas are prohibited; DBE set-asides may only be used in limited and extreme circumstances (49 CFR Section 26.43).

¹⁹ Note that all use of the term “race- and gender-neutral” refers to “race-, ethnic- and gender-neutral” in this report.

- Some public agencies, including WMATA, use race- and gender-conscious measures such as DBE contract goals to help meet their overall DBE goals.

Some agencies restrict eligibility to participate in DBE contract goals programs to certain racial, ethnic and gender groups based on pertinent evidence of discrimination for those groups. Implementation of such contract goals programs requires approval of a waiver from USDOT.²⁰

To be certified as a DBE for participation in the Program, a firm must be socially and economically disadvantaged as defined in 49 CFR Part 26. Revenue limits, personal net worth limits and other restrictions apply. Most DBEs are minority- or woman-owned firms, but white male-owned firms that can demonstrate social and economic disadvantage can be certified as DBEs as well.

Together with the District of Columbia Department of Transportation, WMATA is a member of the District of Columbia Unified Certification Program (DCUCP), which reviews DBE certification applications from firms located within Washington, D.C. There is an expedited process to review certification of firms from outside the District of Columbia that are already DBE-certified in their home state.

²⁰ 49 CFR Section 26.15.

3. WMATA Procurement Process and Programs — Other race-neutral efforts in the DBE Program

WMATA operates an SBE Program in conjunction with the DBE Program. The Authority encourages SBE participation by:

- Establishing race-neutral small business set-asides for prime contracts under a certain amount (e.g., \$1 million);
- In multi-year design-build contracts or other large contracts (e.g., for megaprojects), requiring bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- On prime contracts not having DBE contract goals, encouraging prime contractors to form joint ventures to provide subcontracting opportunities of a size that DBEs and other small businesses can reasonably perform, rather than self-performing all of the work involved;
- Structuring procurements to facilitate the ability of joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts; and
- Using additional race-neutral measures to ensure that a reasonable number of prime contracts are of a size that small businesses can reasonably perform.

WMATA also performs outreach to small businesses and provides other assistance to SBEs.

To be eligible to be certified through WMATA's SBE Program, a firm must meet the following criteria:

- Be a for-profit, small business as defined by SBA regulations and size standards for the types of work it will perform;
- Have average gross receipts, over the previous three years, of no more than \$26.29 million;
- Have an owner that has at least a 51 percent interest in the firm and a personal net worth that does not exceed \$1.32 million; and
- Be registered in WMATA's Vendor Registration Program.

All firms certified as DBEs automatically meet these criteria.

To participate in the SBE Program, WMATA requires firms to complete the SBE Verification Application.²¹ The Authority has also established an SBE Directory.

²¹ For reference purposes, the SBE Verification Application may be obtained by contacting WMATA's Small Business Program Office (SBPO) or via the WMATA website.

3. WMATA Procurement Process and Programs — Other race-neutral efforts in the DBE Program

WMATA has other race-neutral efforts concerning its federally funded contracts in compliance with the Federal DBE Program, including to:

- Monitor and develop processes to review contract procedures and specific contract opportunities;
- Communicate race-neutral issues and information within WMATA;
- Ensure the inclusion of DBEs and other small businesses on mailing lists for bidders and provide information about upcoming contracting opportunities;
- Ensure that prime contractors receive SBE and DBE directories;
- Unbundle large contracts to make them more accessible to small businesses, as described in Section 11.2.2 of the WMATA Procurement Practices Manual (Contract Unbundling and Examination); and
- Implement a supportive services program for DBEs and SBEs. (These efforts include financing and bonding training, a business development program, outreach and other training.)

3. WMATA Procurement Process and Programs — MBE Program for non-federal contracts

In 2020, after receiving a new, non-federal capital funding source by Virginia, Maryland and the District of Columbia, WMATA created a new MBE Program for its non-federal contracts to operate alongside its DBE and SBE Programs. The program will seek to encourage the participation of minority-owned businesses as the Authority invests dedicated capital funding to provide additional contracting opportunities. In addition to the general MBE program, the agency has also adopted a Small Business Program (SBP) and Micro Business Program (MBP), both of which are race-neutral, local business set aside components of the MBE Program.

MBE Program Applicability

The MBE program requirements apply to any contract that does not involve the use of federal funds. As a result, the previously mentioned DBE and SBE requirements will not apply to MBE eligible projects, as no federal funds are involved.

Additionally, the SBP requirements are applicable to contracts with values ranging from \$50,000 to \$1 million (and when there are at least three small businesses identified). Likewise, MBP requirements apply to contracts worth up to \$50,000 (when there are at least three micro-businesses identified).

If a contract has been awarded to a small or micro-business, that contract must also be set aside for a small or micro-business when the contract needs to be renewed.

MBE Program Goals

The MBE Program and its race-neutral components are expected to mirror the agency's existing DBE Program when it comes to processes and procedures, although the language used will differ to distinguish between these two. As a result, MBE subcontracting goals will be established based on the work that needs to be performed and the availability of certified MBEs that can do the work. As of this time, the agency has not set overall aspirational goals for MBE participation, but as the program grows and firm participation increases, it may be something that the agency adopts.

3. WMATA Procurement Process and Programs — Discontinued SBLP Program

During the study period, WMATA operated a Small Business Local Preference Program (SBLPP) to encourage participation of small and local businesses in its non-federal simplified acquisitions (procurements \$150,000 or below).

This program focused on self-certified Small Local Businesses and Local Businesses.

SBLPP Eligibility and Certification

To have been eligible for SBLPP certification, firms had to meet the following criteria:

- Qualify as a small business as defined by the U.S. Small Business Administration (SBA); and
- Have a place of business incorporated in the District of Columbia, State of Maryland or Commonwealth of Virginia.

WMATA required applicants requesting SBLPP status to complete the Socio-Economic Program (SEP) Certification Registration within its website. This application process and certification involved the steps described above for SBE certification, starting with completing an online application, up to receiving a final decision on SBLPP status. To further facilitate participation of local small businesses in WMATA contracts, the Authority had also established an SBLPP vendor list.

WMATA attempted to maximize participation of Small Local Businesses and Local Businesses in procurements by taking the following actions:

- Obtain quotes from a minimum of three Small Local Businesses when they matched with the solicitation requirements (for non-federal procurements up to \$150,000);
- If fewer than three quotes from Small Local Businesses were obtained, additional quotes were also obtained from Local Businesses registered with the Authority; and
- If WMATA was unable to identify a minimum of three Small Local Businesses or Local Businesses, then the solicitation would be opened to other sources.

When a Small Local Business was competing with other businesses, a factor of 5 percent was added to the price quotes or bids received from firms that were not Small Local Businesses. The 5 percent factor was added to the quote or bid for evaluation purposes but was not added to the actual price reflected on the purchase order or contract.

4. WMATA Contracts and Market Area

Contract and Subcontract Data

WMATA provided Keen Independent data for contracts awarded from Fiscal Year 2018 through Fiscal Year 2020 (July 1, 2017, through June 30, 2020). In total, Keen Independent examined 1,512 prime contracts and 525 subcontracts. (This does not include purchases primarily made from a national market or procurements for which the USDOT Transit Vehicle Manufacturer (TVM) program applies.) Appendix C describes methods used to compile and analyze these data.

The final Keen Independent database of construction contracts totaled about \$2.4 billion for FY2018–FY2020.

Types of Work in WMATA Contracts

Based on information in the contract and subcontract records, Keen Independent coded the primary type of work involved in each prime contract and subcontract using NAICS codes (North American Industry Classification System codes), augmented to show additional subspecialties. NAICS codes are standardized federal system for classifying firms into a subindustry according to the detailed type of work they perform.

The subspecialties Keen Independent used primarily split NAICS into “railroad-related” work and other work. For example, some engineering work was related to roadbed or other rail services, and some was more general engineering services. It is labeled as “railroad engineering” and “other engineering” in Figure 3.

Figure 3 shows WMATA dollars of prime contracts and subcontracts according to the primary type of work performed. There were 31 different types of work that accounted for about 94 percent of the total contract dollars. The availability analysis beginning on page 28 focused on these 31 subindustries.

3. Dollars of WMATA contracts and subcontracts, FY2018–FY2020

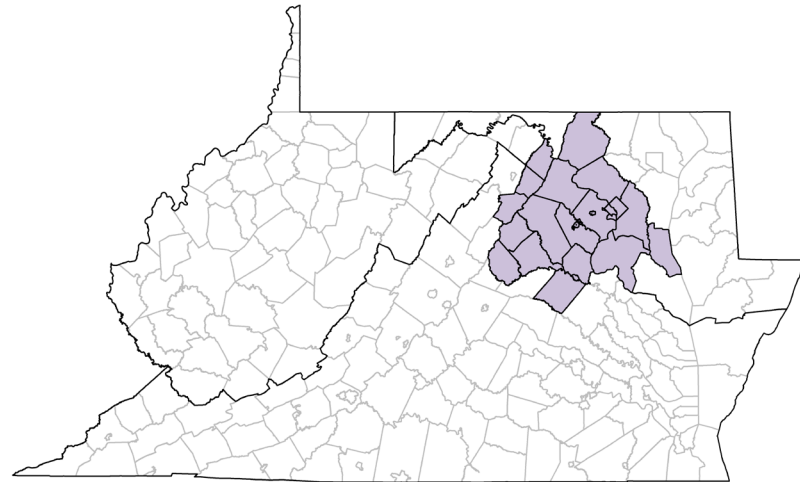
Type of work	Dollars (millions)	Percent
Other engineering	\$ 440	18.7 %
Commercial and institutional building construction	367	15.6
Railroad and railway roadbed construction	275	11.7
IT work	187	7.9
Construction management	130	5.5
Escalator and elevator installation and repair	98	4.2
Other electrical work	91	3.9
Contracted bus and van transportation	69	3.0
Environmental consulting	66	2.8
Railroad engineering	63	2.7
Railroad electrical work	58	2.5
Plumbing, heating and air-conditioning work	56	2.4
Electrical equipment and wiring supplies	47	2.0
Roofing work	35	1.5
Vehicle tires	35	1.5
New cars and trucks	33	1.4
Railroad flagging work	28	1.2
Security systems services	20	0.8
Advertising and public relations	19	0.8
Surveying and mapping	17	0.7
Temporary help services	11	0.5
Heating and air-conditioning equipment and supplies	11	0.5
Surfacing and paving	9	0.4
Construction equipment rental and leasing	9	0.4
Tile and Terrazzo Contractors	8	0.3
Construction materials and supplies	8	0.3
Fare collection equipment	7	0.3
Masonry work	6	0.2
Janitorial services for buildings	5	0.2
Site Preparation Contractors	4	0.2
Rail car cleaning	1	0.1
Total identified subindustries	\$ 2,212	94.0 %
Other construction	\$ 27	1.1 %
Other professional services	51	2.2
Other equipment and supplies	38	1.6
Other services	25	1.1
Total	\$ 2,353	100.0 %

4. WMATA Contracts and Market Area

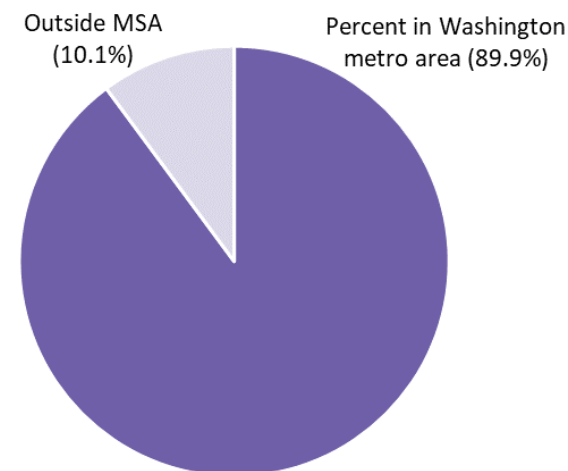
Firms in the federally defined Washington, D.C. Metropolitan Statistical Area (“metro area”) performed most of the dollars of WMATA contracts and subcontracts.

- The “geographic market area” for WMATA contracts extends beyond the District of Columbia to include counties in Maryland, Virginia and West Virginia, as shown in Figure 4.
- Counties and other political geographies in the geographic market area include the District of Columbia, Northern Virginia; Calvert, Charles, Frederick, Montgomery, Prince George’s counties in Maryland; and Jefferson County (WV).
- As shown in Figure 5, businesses with locations in this area accounted for about 90 percent of WMATA contract dollars from July 2017 through June 2020 (after excluding transit vehicles and types of purchases typically made from national markets).
- The Washington, D.C. metro area was the focus of Keen Independent’s availability analysis and research on the local marketplace.

4. Geographic market area for WMATA contracts



5. Percentage of WMATA contract dollars going to firms with locations in the relevant geographic market area, FY2018–FY2020



Source: Keen Independent Research from WMATA contract and subcontract data.

5. Information About Marketplace Conditions

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 local marketplace. As summarized in the following 10 pages, the combined information indicates that people of color and women face barriers entering study industries as employees and as business owners. Once formed, there is evidence of greater barriers for minority- and woman-owned firms in the marketplace, including when competing for work.

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 local construction industry, for example, could depress the number of businesses owned by minorities and women.

Entry into study industries. People of color were 46 percent of the local marketplace workforce between 2015 and 2019 and women accounted for about 48 percent of all workers. Analysis of the local workforce in the study industries indicates that there could be barriers to employment for some minority groups and for women in certain industries.

- Among construction workers, African Americans, Asian-Pacific Americans, Subcontinent Asian Americans and women were underrepresented compared to representation among workers in all other industries. These differences were statistically significant.

In the marketplace, representation of people of color in construction trades such as HVAC mechanics and installers and among construction supervisors was low when compared to representation in the construction industry as a whole.

There were five construction trades examined in which there were no women in the Census Bureau sample data for the local area.

There were relatively few African Americans, Asian-Pacific Americans and women working in construction who were managers.

- After controlling for educational attainment, African Americans and women constituted a smaller portion of the local professional services workforce when compared to representation among workers in all other industries. These differences were all statistically significant.
- In the other services industry, Asian-Pacific Americans and Subcontinent Asian Americans represented a smaller portion of workers than would be expected based on representation among workers in all other industries. These differences were statistically significant.

Any barriers to entry or advancement in the study industries might affect the relative number of businesses owned by people of color and women in these industries in local area. Appendix F, which follows, examines rates of business ownership among individuals working in the study industries.

Appendix E provides detailed results regarding entry and advancement.

5. Information About Marketplace Conditions

Business Ownership

Keen Independent examined whether there were differences in business ownership rates for workers in the local marketplace construction, professional services and other services industries related to race, ethnicity and gender.

- African Americans, Hispanic Americans and Native Americans and other minorities working in the local construction industry were less likely than non-Hispanic whites to own a business. Similarly, women in the local construction industry were less likely than men to be self-employed.

Even after statistically controlling for factors including education, age, family status and homeownership, statistically significant disparities in business ownership rates were still found for African Americans, Native Americans and other minorities and non-Hispanic white women. These disparities were substantial.

- In the local professional services industry, Asian-Pacific Americans, Hispanic Americans and women were less likely than non-Hispanic whites to own a business.

After controlling for education, age and other personal characteristics, Asian-Pacific and Hispanic Americans still had a statistically significant disparity in business ownership rates. These disparities were substantial.

- After controlling for personal characteristics including age and education, there were statistically significant differences for business ownership rates among African Americans and Native Americans or other minorities in the local other services industry. These disparities were substantial.

The overall evidence suggests there is not a level playing field consistently across study industries for people of color and women to start and operate businesses. Because of these disparities in the Washington metro area marketplace, there are:

- Fewer African American-, Hispanic American-, Native American-, and white woman-owned construction firms;
- Fewer Asian Pacific American- and Hispanic American-owned professional services firms; and
- Fewer African American- and Native American-owned other services firms.

Appendix F presents detailed results of the business ownership analyses conducted for this study.

5. Information About Marketplace Conditions

Analysis of Access to Capital

Business start-up and long-term business success depend on access to capital. Discrimination at any link in that chain may produce cascading effects that result in racial and gender disparities in business formation and success.

The information presented here indicates that people of color and women continued to face disadvantages in accessing capital that is necessary to start, operate and expand businesses as of 2021.

Background. Capital is required to start companies, so barriers to accessing capital can affect the number of people of color and women who are able to start businesses. In addition, minority and female entrepreneurs start their businesses with less capital (based on national data). Several studies have demonstrated that lower start-up capital adversely affects prospects for those businesses. Key results include:

- Nationally, minority- and woman-owned employer businesses (except Asian American-owned businesses) were more likely to use personal credit cards as a source of start-up capital, which is a more expensive form of debt than business loans from financial institutions.
- Personal and family savings of the owner was the main source of capital for startups among many U.S. businesses, but African American and Hispanic American households had considerably lower amounts of wealth than non-Hispanic white households.
- Among employer firms across the country, female- and minority-owned companies were less likely than non-Hispanic white male-owned companies to secure business loans from a bank or financial institution as a source of start-up capital.

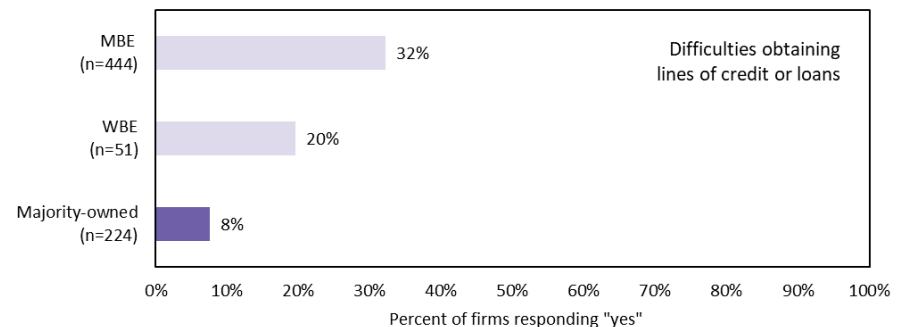
- Nationally, female- and minority-owned firms were more likely to not apply for additional financing because firm owners believed that they would not be approved by a lender. These firms were also more likely to indicate that access to financial capital negatively impacted firm profitability.

Quantitative information about access to capital for businesses

available for WMATA work. Availability survey results for local area businesses indicate that minority-owned companies were more likely than other firms to report difficulties obtaining lines of credit or loans. As shown in Figure 6, 32 percent of minority-owned firms and 20 percent of white woman-owned firms reported difficulties compared to just 8 percent of WBEs and majority-owned companies.

Access to bonding is highly related to access to capital. Among construction firms indicating in the availability survey that they had tried to obtain a bond, MBE/WBEs were more likely to report difficulties obtaining bonding than other firms.

6. Responses to availability survey question concerning loans



Source: Keen Independent Research from 2021 availability survey.

5. Information About Marketplace Conditions

Quantitative information about homeownership and mortgage lending. Wealth created through homeownership can be an important source of funds to start or expand a business. Any discrimination against people of color in the home purchase and home mortgage markets can negatively affect the formation of firms by minorities in the local area and the success and growth of those companies.

- Fewer people of color in the local area own homes compared with non-Hispanic whites. Except for Asian-Pacific Americans and Subcontinent Asian Americans, people of color also tended to have lower home values than non-Hispanic white homeowners. These conditions can negatively affect business ownership and success for people of color.
- High-income minority households applying for conventional home mortgages in the local area were more likely to have their applications denied than high-income non-Hispanic whites. This may indicate discrimination in mortgage lending and may affect access to capital to start and expand businesses.
- Some minority groups were more likely to have subprime loans than non-Hispanic whites. This may be evidence of predatory lending practices affecting people of color in the region.

Appendix G explains results and information sources in detail.

5. Information About Marketplace Conditions

Business Success

Keen Independent explored different types of business outcomes in the local marketplace for minority- and woman-owned firms compared with majority-owned companies. In summary, many different data sources and measures suggested disparities in marketplace outcomes for minority- and woman-owned businesses and evidence of greater barriers for people of color and women to start and operate businesses in the Washington metro area construction, professional services, goods and other services industries. (See Appendix H for detailed results.)

Business closure, expansion and contraction. The study team used the 2010 SBA study of minority business dynamics to examine business closures, expansions and contractions for privately held businesses between 2002 and 2006. In the District of Columbia, the rate of business closure among Asian American- and Hispanic American-owned businesses in 2002–2006 exceeded the closure rate of majority-owned businesses.

National research indicates that minority-owned small businesses have been disproportionately impacted by the pandemic. Firms owned by African Americans, Asian Americans and Hispanic Americans had higher rates of closure than non-Hispanic whites. Evidence also shows the pandemic to have disproportionately affected woman-owned firms.

Business revenue and earnings. The study team used data from different sources to analyze business receipts and earnings for MBEs and WBES.

- In general, analysis of U.S. Census Bureau data from the 2017 Annual Business Survey showed lower average receipts for businesses owned by people of color and women in the District of Columbia compared with businesses owned by non-minorities or men.

- Data from 2015–2019 American Community Survey for the Washington metro area indicated that:
 - Average earnings for African American and Hispanic American business owners were less than earnings for non-Hispanic white business owners.
 - Average earnings for female business owners were also less than those of male business owners.
 - Average earnings of Asian-Pacific American-, Subcontinent Asian American- and Native American-owned firm owners were higher than non-Hispanic white business owners.
- Similar results were found for the Washington metro area for African American owners of construction and professional services firms, people of color who owned goods firms and Hispanic Americans, Asian Americans and Native Americans who owned other services firms. Women owners of professional services firms and other services firms had lower earnings than men who owned businesses.
- Regression analyses using U.S. Census Bureau data for business owner earnings indicated that there were statistically significant negative effects of being a Hispanic American, Native American or woman business owner in the professional services industry after controlling for other factors.
- Data from availability surveys showed that, across the construction and other services industries in the Washington metro area, MBEs and WBES had lower revenue compared with majority-owned firms.

5. Information About Marketplace Conditions

Bid capacity. From Keen Independent’s availability survey, there was evidence that minority-owned firms had lower bid capacity than majority-owned firms in the Washington metro area study industries, with the exception of the goods industry. However, these differences did not persist after accounting for the types of work they perform and length of time in business.

Difficulties with prequalification, insurance and project size.

Answers to availability survey questions concerning marketplace barriers indicated that relatively more MBEs and WBEs than majority-owned firms face difficulties related to:

- Being prequalified;
- Insurance requirements; and
- Large project size.

Difficulties learning about bid opportunities. Survey results also indicate greater barriers for MBEs and for WBEs in learning about work. Relatively more minority-owned and woman-owned firms than majority-owned firms reported difficulties learning about bid opportunities with WMATA, with other public sector agencies, with private sector clients and with prime contractors.

Payment and approvals. For most questions about receiving payment, about the same share of MBEs, WBEs and majority-owned firms indicated difficulties. Few firms overall indicated difficulties in receiving payment from WMATA and more reported difficulties receiving payment from primes and private sector customers.

Compared with majority-owned firms, MBEs and WBEs were more likely to indicate difficulties receiving obtaining approvals.

Bid restrictions. Survey questions regarding bid restrictions showed relatively more MBEs and WBEs than majority-owned firms experiencing competitive disadvantages due to supplier pricing.

The quantitative results about marketplace conditions identified in this study were consistent with those found in other recent disparity studies in the region, including the 2020 Commonwealth of Virginia Disparity Study²² and the 2018 Maryland DBE Disparity Study: Volume 1.²³

²² BBC Research and Consulting (2021). *2020 Disparity Study: Commonwealth of Virginia*. (Rep.)

²³ NERA Economic Consulting. (2018). *Disadvantage Business Enterprise Disparity Study: Volume 1*. (Rep.)

5. Information About Marketplace Conditions

Qualitative Information about Marketplace Conditions

Keen Independent collected qualitative information about entry and advancement in the WMATA study industries through surveys and interviews. The study team also provided opportunity for public comments via mail and the designated telephone hotline as well as a study website and email address. Through these methods, the study team obtained input from more than 380 businesses, trade association representatives and other interested individuals during the course of the study. In addition, Keen Independent reviewed qualitative information reported in other local disparity studies.

Comments were received from African American, Asian American, Hispanic American, Native American and white business owners including businesses owned by men and by women. Interviewees had businesses in the transportation contracting industry in the Washington, D.C. area, or were generally knowledgeable about that industry.

Appendix J presents qualitative information in detail. Examples of topics discussed in Appendix J are listed below.

- Introduction;
- Starting a business;
- Dynamic firm size, types of work and markets served;
- Current conditions in the Washington, D.C. marketplace;
- Keys to business success;
- Working with WMATA;
- Whether there is a level playing field;
- Challenges not faced by other businesses;
- Access to capital;
- Bonding and insurance;
- Issues with prompt payment;
- Unfair treatment in bidding;
- Stereotyping and double standards;
- “Good ol’ boy” and other closed networks;
- Business assistance programs and certifications; and
- Other insights and recommendations for WMATA.

The following three pages summarize some of these results.

5. Information About Marketplace Conditions

Working in the industry before starting a business. Many business owners worked in the industry, or a related industry before starting their firms.

After working in the industry for over 20 years at other companies, the interviewee reported that she grew tired of working for others who did not appreciate her value, which prompted her to open her own firm.

I-21. African American female owner of a DC-certified CBE/GVAC specialty services firm

Relationships. Interviewees indicated that success in the marketplace depends on relationships with employees and customers.

Happy employees [are key to success] If they are happy, they are more likely to do good work, which means they are more useful to the client and then the client is more likely to come back.

I-14. White representative of a CBE professional services firm

Access to capital, bonding and insurance. Many expressed that success was dependent on access to capital.

Access to capital is always a challenge, particularly for start-up businesses Human capital and having people that are ready and skilled up to go to work [are also challenges].

TO-7. African American male representative of a business assistance association

The interviewee remarked that bonding and insurance issues have restricted him from advancing to prime contracting.

I-5. African American male owner of a general contractor firm

Learning about WMATA bid opportunities. Business owners and representatives reported on their pursuit of work with WMATA. Many noted a reliance on online bid platforms to seek out work, such as the WMATA and the District of Columbia procurement websites. Others reported not understanding WMATA's bidding process.

I don't really hear about opportunities as much with WMATA. So, I'm not sure where they're advertising.

I-2. African American female DBE professional services business owner

The interviewee noted that despite receiving email notifications for opportunities, she did not know how to go about winning actual work with WMATA.

I-21. African American female owner of a DC-certified CBE/GVAC specialty services firm

The interviewee reported that the firm *looks up* opportunities with WMATA. His firm also is sometimes called by WMATA with work.

I-22. White representative of a construction-related firm

Challenges when seeking opportunities with WMATA. Business owners and representatives discussed barriers that discourage minority- or woman-owned businesses or other small businesses from pursuing contract opportunities with WMATA or otherwise disadvantaged those firms.

It's a mystery to figure out [WMATA's] forecast, with any real follow-through factor Is there really an open opportunity? [WMATA] puts out IDIQs all the time. We know as an industry that it's coming out, but not everybody goes after it, because we know that it's not really open for new competition.

I-8. African American female owner of a professional services firm

5. Information About Marketplace Conditions

Reports that the playing field is not level for MBE/WBEs. Many individuals indicated that there was not a level playing field for business owners of color and women business owners.

Unfavorable procurement processes. Minority- and woman-owned business owners reported barriers including unfavorable procurement processes and closed networks.

They [public agencies] are trying to make it level, but I still think there are some issues there. He added that there are *loopholes* within government agency procurement processes, which deny equal opportunity.

I-4. African American male owner of a specialty service firm

We would not be having this conversation if there was a level playing field. She added that the relationships and resources are what give larger companies advantages over smaller companies.

I-6b. African American female owner of a DBE/MBE construction-related firm

Closed networks. Some business owners were challenged by closed networks.

‘Good ol’ boy’ network is steeped in policy ... policy protects the unfairness It has nothing to do with service or product quality.

TO-2. African American male representative of a business assistance association

Stereotyping and double standards. Other disadvantages mentioned included double standards.

The hardest thing with being a minority small business, is they [people] assume you’re there with no merit. So, we’re constantly having to prove ourselves ... we’re only there to get a handout.

I-12. Asian-Pacific American female owner of an 8a/WOSB professional services firm

As a woman in construction, you have to have a thicker skin You have to know your job. You have to know everything because they’re always going to test you.

M2018-5. Female owner of a construction-related firm

I struggle with knowing if the bias I’m experiencing is because I’m a woman or [because] I’m Black Conditions could be perceived as fair for the system, but the system is broken.

I-7. African American female owner of a specialty services firm

5. Information About Marketplace Conditions

Qualitative Information about Assistance Programs

Some business owners and representatives reported awareness of business assistance programs.

Technical assistance, outreach and training programs. For many, such programs were useful and provided value to their firm. However, many business owners indicated that they had not taken advantage of WMATA's and other business assistance programs or do not know how to go about finding the assistance they need.

I don't know anything [about these programs] I don't know what opportunities are available, because I do not get any information from them [WMATA] ... no emails. The interviewee commented that he is registered in WMATA's procurement portal yet does not receive information from the agency.

I-5. African American male owner of a general contractor firm

Outreach and other encouragement. Many business owners and managers recommended greater WMATA outreach to minority- and woman-owned firms and other small businesses, as well as the need to ensure outreach was performed accessibly.

[WMATA has] outreach events. But you still have to know somebody ... because prejudice is deeply ingrained in people's brains. I went to an IT outreach for a contract. You know that the Asian Americans are very well situated. Most of the leadership in the IT part is Asian American, and almost everyone in the small business office is African American. You have to learn how to navigate those processes

TO-11. Hispanic American female representative of a trade association

Contract goals and preference programs. Of the interviewees who commented on contract goals programs, most business owners and representatives suggested the need for contract goals, set asides or other preference programs to level the playing field.

I think that percentage [contract goal] is a great starting point, but it needs to graduate to something more, more modern. It needs to be more purposeful and direct.

I-16. African American representative of a majority-owned professional services firm

The participant reported that set-aside programs are better than contract goals programs at providing opportunities for disadvantaged firms.

I-16. African American representative of a majority-owned professional services firm

[WMATA] should have some type of engaged support services program. I think that they should definitely put a spotlight and a focus on woman-owned businesses.

I-8. African American female owner of a professional services firm

6. Availability Analysis

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

Methodology

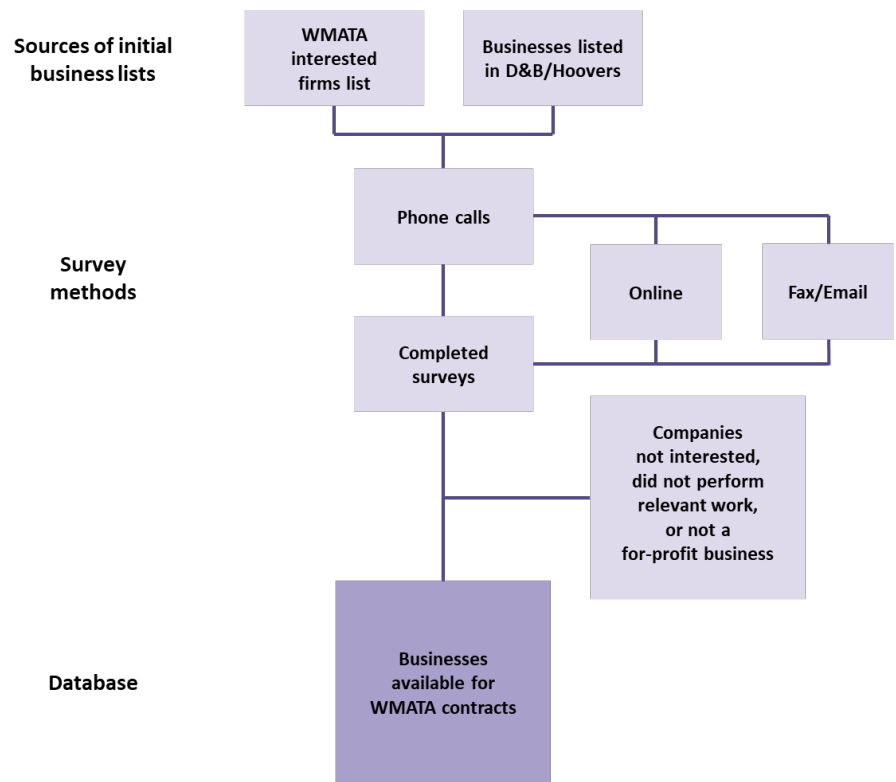
List of firms to be surveyed. WMATA provided Keen Independent with a list of all firms that had expressed interest in bidding on WMATA contracts. Keen Independent supplemented WMATA’s interested firms list with additional information from Dun & Bradstreet (D&B). Use of D&B information has been accepted and approved in connection with disparity study methodology. Keen Independent obtained listings for companies that D&B identified as:

- Having a location in the local market area; and
- Performing work or providing goods the study team determined was potentially related to agency procurement.

More than 24,000 business establishments were on this initial list. Only some of the firms were determined to be qualified and interested in WMATA 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 WMATA contracts and subcontracts. Customer Research International (CRI) performed the surveys under Keen Independent’s direction. Surveys were conducted in September 2021.

7. Keen Independent WMATA availability survey process



6. Availability Analysis

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

- CRI contacted firms by telephone.²⁴ There were 16,073 business establishments called that had working phone numbers for the correct business.
- Interviewers indicated that the calls were made on behalf of Washington Metropolitan Area Transit Authority to gather information about companies interested in performing work for WMATA.
- Some firms indicated in the phone calls that they did not perform relevant work or had no interest in work with WMATA, 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 eight 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 WMATA;
- 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 Washington metro area in the previous four 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 WMATA contracts or subcontracts if they reported possessing all of the following characteristics:

- Were a private business;
- Performed work relevant to types of work WMATA frequently purchased in the study period; and
- Reported qualifications and interest in work with WMATA and whether they were interested in prime contracts or subcontracts or both.

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

6. Availability Analysis

Availability Survey Results

The study team successfully contacted 6,609 businesses in this survey, or 41 percent of the 16,073 firms that were called that had working phone numbers. Most of these businesses indicated that they were not interested in WMATA work. There were 818 businesses in the final database of companies indicating qualifications and interest in WMATA contracts or subcontracts.

- About 61 percent of firms in the market area available for WMATA contracts were owned by people of color and 8 percent were owned by white women. In total, MBE/WBEs accounted for 68 percent of available firms.
- “Majority-owned firms” are companies that are not MBE/WBEs. They comprised 32 percent of the firms available for WMATA contracts. Figure 8 presents these “head count” availability results.
- Only some of these MBE/WBE firms were certified as DBEs under the Federal DBE Program. Of the 68 percent of total available firms that were MBE/WBEs, 22 percentage points were DBE-certified.

Appendix D provides information about response rates, confidence intervals and analysis of any differences in response rates between groups.

8. Number of businesses included in the availability database, 2021

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	343	41.9 %
Asian-Pacific American-owned	39	4.8
Subcontinent Asian American-owned	34	4.2
Hispanic American-owned	71	8.7
Native American-owned	11	1.3
Total MBE	498	60.9 %
WBE (white woman-owned)	61	7.5
Total MBE/WBE	559	68.3 %
Majority-owned firms	259	31.7
Total	818	100.0 %

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

Source: Keen Independent Research 2021 availability survey.

6. Availability Analysis

Methodology for Developing Dollar-Weighted Availability Benchmarks

Although MBE/WBEs comprise a large share of total firms available for WMATA 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 WMATA contracts.

Keen Independent conducted a contract-by-contract availability analysis based on the specific types and sizes of WMATA contracts and subcontracts from FY2018 through FY2020 and dollar-weighted those results.

- The study team used the availability database 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 WMATA contract and subcontract, Keen Independent weighted the availability results based on the share of total WMATA contract dollars that each contract represented.

Figure 9 provides an example of this dollar-weighted analysis. Appendix D further discusses these methods.

9. Example of an availability calculation for a WMATA subcontract

One of the subcontracts examined was for plumbing and HVAC (\$169,940) on a 2017 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 2017;
- Indicated that they performed plumbing, heating and air-conditioning work;
- Indicated qualifications and interest in such subcontracts; and
- Reported bidding on work of similar or greater size in the past four years in the Washington metro area.

There were 65 businesses in the availability database that met those criteria. Of those businesses, 47 were MBE/WBEs. Therefore, MBE/WBE availability for the subcontract was 72 percent (i.e., $47/65 = 72.3\%$).

The contract weight was $\$169,940 \div \$2.4 \text{ billion} = 0.01\%$ (equal to its share of total procurement dollars). Keen Independent made this calculation for each prime contract and subcontract.

6. Availability Analysis

Dollar-Weighted Availability Results

The availability analysis described on the previous page indicates that about 48 percent of WMATA contract dollars might be expected to have gone to minority- and woman-owned businesses during the FY2018–FY2020 study period (see Figure 10).

Note that not all of these MBE/WBEs are currently DBE-certified or would be eligible for certification.

10. Dollar-weighted MBE/WBE availability for WMATA contracts and subcontracts, FY2018–FY2020

Race/ethnicity and gender	Dollar-weighted availability
African American-owned	25.48 %
Asian-Pacific American-owned	6.57
Subcontinent Asian American-owned	7.29
Hispanic American-owned	3.70
Native American-owned	0.39
Total MBE	43.43 %
WBE (white woman-owned)	4.93
Total MBE/WBE	48.36 %
Majority-owned firms	51.64
Total	100.00 %

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

Source: Keen Independent Research from 2021 availability survey and analysis of WMATA procurements.

7. Utilization and Disparity Analysis

Keen Independent examined the ownership of firms performing WMATA contracts awarded from July 1, 2017, through June 30, 2020. Of the \$2.4 billion in contract dollars, about 23 percent went to minority- and woman-owned companies. Figure 11 presents the number of contracts and subcontracts received, total dollars obtained and percentage of total dollars to each group.

Participation of MBEs included:

- 163 contracts and subcontracts totaling \$104 million to 77 African American-owned firms (share of total dollars was about 4 percent);
- \$49 million going to 31 Asian-Pacific American-owned firms;
- \$168 million to 51 Subcontinent Asian American-owned firms;
- \$55 million to 38 Hispanic American-owned firms; and
- \$4 million to two Native American-owned firms.

There were 75 different white woman-owned companies that received WMATA prime contracts or subcontracts during the study period. White woman-owned companies received \$152 million of the \$2.4 billion in contract dollars, or 6.5 percent of the total dollars.

Of the \$533 million of contract dollars awarded to MBE/WBEs, \$403 million went to firms that were certified as DBEs. Results for DBE-certified firms are shown in the bottom portion of Figure 11.

Appendix C describes the methods Keen Independent used to identify the ownership of companies performing WMATA contracts and subcontracts.

11. WMATA contract dollars going to MBEs, WBEs and other firms, FY2018–FY2020

	Number of procurements*	\$1,000s	Percent of dollars
Business ownership			
African American-owned	163	\$ 104,450	4.44 %
Asian-Pacific American-owned	111	48,698	2.07
Subcontinent Asian American-owned	297	168,374	7.16
Hispanic American-owned	103	55,407	2.36
Native American-owned	9	4,073	0.17
Total MBE	683	\$ 381,001	16.21 %
WBE (white woman-owned)	337	151,681	6.45
Total MBE/WBE	1,020	\$ 532,683	22.67 %
Total majority-owned	1,017	1,817,383	77.33
Total	2,037	\$ 2,350,065	100.00 %
Certified DBEs			
African American-owned	132	\$ 80,893	3.44 %
Asian-Pacific American-owned	98	37,849	1.61
Subcontinent Asian American-owned	157	93,030	3.96
Hispanic American-owned	95	45,698	1.94
Native American-owned	2	2,473	0.11
Total MBE	484	\$ 259,943	11.06 %
WBE (white woman-owned)	296	142,657	6.07
Total DBE-certified	780	\$ 402,600	17.13 %
Non-DBE	1,257	1,947,465	82.87
Total	2,037	\$ 2,350,065	100.00 %

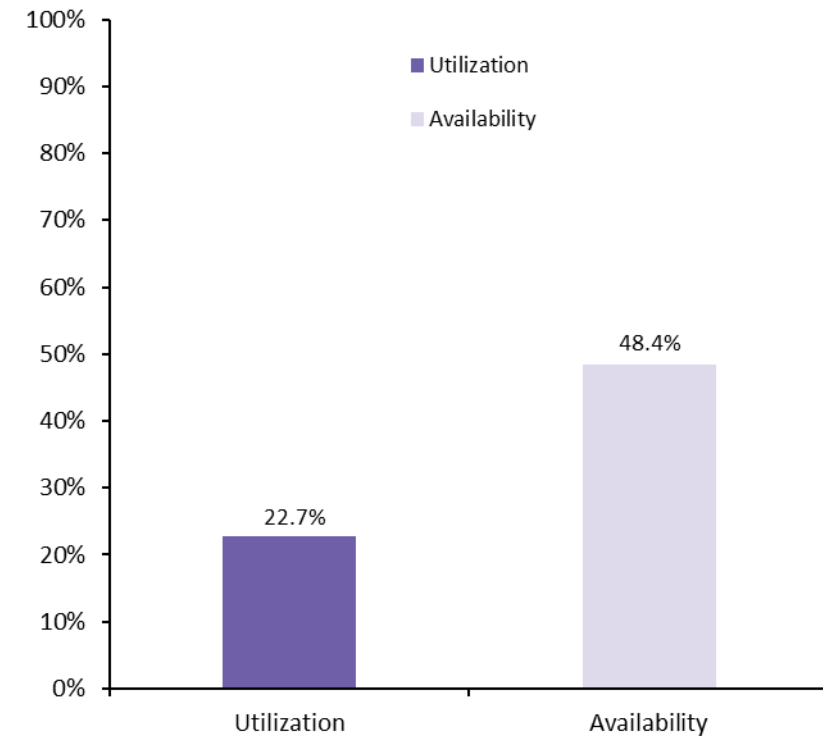
Note: *Includes subcontracts.

Source: WMATA contract and subcontract data.

7. Utilization and Disparity Analysis

As shown in Figure 12, the share of WMATA contract dollars going to minority- and woman-owned firms (22.7%) for FY2018–FY2020 was below what might be expected based on analysis of firms available to do business with WMATA (48.4%).

12. Utilization and availability of MBE/WBEs for WMATA contracts, FY2018–FY2020



Source: Keen Independent Research utilization and availability analyses for WMATA contracts.

7. Utilization and Disparity Analysis

Figure 13 compares utilization and availability for each MBE group and for white woman-owned firms. For FY2018–FY2020 WMATA contracts:

- Utilization was less than availability for African American-, Asian-Pacific American-, Hispanic American- and Native American-owned companies;
- Utilization was about the same as expected from the availability of Subcontinent Asian American-owned firms; and
- Utilization exceeded availability for white woman-owned companies.

Following direction from court decisions, Keen Independent calculated disparity indices to compare utilization and availability.

- A disparity index is calculated by dividing utilization by availability and multiplying by 100, where a value of “100” equals parity.
- An index of less than 80 is described as “substantial.”²⁵
- Disparity indices were below 80, and therefore substantial, for African American-, Asian-Pacific American-, Hispanic American- and Native American-owned firms for WMATA contracts.

²⁵ 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 (7th 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

13. Disparity analysis for WMATA contracts, FY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	4.44 %	25.48 %	17
Asian-Pacific American-owned	2.07	6.57	32
Subcontinent Asian American-owned	7.16	7.29	98
Hispanic American-owned	2.36	3.70	64
Native American-owned	0.17	0.39	44
Total MBE	16.21 %	43.43 %	37
WBE (white women-owned)	6.45	4.93	131
Total MBE/WBE	22.67 %	48.36 %	47
Majority-owned	77.33	51.64	150
Total	100.00 %	100.00 %	

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

Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research utilization and availability analyses for WMATA contracts.

(9th 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 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).

7. Utilization and Disparity Analysis

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 WMATA contracts for the study period above \$10,000 (and subcontracts of any size). There was no sampling of WMATA 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 regional market area available for WMATA 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 headcount availability is within +/- 1.6 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 ten WMATA 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 observed for MBEs and WBEs when examining WMATA contracts.

- The Monte Carlo analysis determined that one could reject chance in contract awards as an explanation for the observed disparity for MBEs.
- Applying a 95 percent confidence level for “statistical significance,” one cannot reject chance in contract awards as the explanation of the disparity.

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.²⁶ Appendix L provides further discussion and detailed results of these statistical analyses.

²⁶ 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.

8. Further Exploration of any Disparities

FTA-funded Contracts

Keen Independent evaluated MBE and WBE utilization and availability for WMATA FTA-funded contracts.

Figure 14 includes the rates of utilization for each MBE group and for white woman-owned firms on FTA-funded contracts with or without DBE goals. Utilization of DBE-certified firms is presented in the bottom half of the figure. For these procurements:

- 118 contracts and subcontracts totaling \$86 million to African American-owned firms (share of total dollars was about 5.7%);
- \$40 million going to Asian-Pacific American-owned firms;
- \$110 million to Subcontinent Asian American-owned firms;
- \$54 million to Hispanic American-owned firms;
- \$2 million to Native American-owned firms; and
- \$103 million to white woman-owned firms.

Of the \$395 million of FTA-funded contract dollars awarded to MBE/WBEs, \$314 million went to firms that were certified as DBEs. Results for DBE-certified firms are shown in the bottom portion of Figure 14.

14. Disparity analysis for WMATA FTA-funded contracts, FY2018–FY2020

	Number of procurements*	\$1,000s	Percent of dollars
Business ownership			
African American-owned	118	\$ 85,759	5.66 %
Asian-Pacific American-owned	68	40,375	2.67
Subcontinent Asian American-owned	158	109,932	7.26
Hispanic American-owned	100	54,126	3.57
Native American-owned	2	2,473	0.16
Total MBE	446	\$ 292,665	19.32 %
WBE (white woman-owned)	187	102,676	6.78
Total MBE/WBE	633	\$ 395,341	26.10 %
Total majority-owned	279	1,119,194	73.90
Total	912	\$ 1,514,535	100.00 %
Certified DBEs			
African American-owned	106	\$ 69,957	4.62 %
Asian-Pacific American-owned	61	30,372	2.01
Subcontinent Asian American-owned	97	65,731	4.34
Hispanic American-owned	94	44,753	2.95
Native American-owned	2	2,473	0.16
Total MBE	360	\$ 213,287	14.08 %
WBE (white woman-owned)	166	100,888	6.66
Total DBE-certified	526	\$ 314,175	20.74 %
Non-DBE	386	1,200,361	79.26
Total	912	\$ 1,514,535	100.00 %

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

Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research utilization and availability analyses for WMATA FTA-funded contracts.

8. Further Exploration of any Disparities

FTA-funded Contracts Where DBE Contract Goals Applied

Keen Independent evaluated MBE and WBE utilization and availability for WMATA FTA-funded contracts where DBE contract goals applied.

Figure 15 includes utilization for each MBE group and for white woman-owned firms on FTA-funded contracts with DBE goals. MBE/WBE utilization was 26.39 percent for these contracts, slightly higher than shown in Figure 14 for all FTA-funded contracts.

Of the \$383 million of FTA-funded contract dollars awarded to MBE/WBEs on contracts with DBE goals, \$305 million went to firms that were certified as DBEs. Results for DBE-certified firms are shown in the bottom portion of Figure 15. The 21 percent utilization of DBEs for contracts with DBE contract goals is also higher than shown in Figure 14 for all FTA-funded contracts.

Keen Independent identified seven contracts awarded as part of an SBE set-aside program. These contracts were excluded from the above analysis and the additional analyses below. Separate analyses of the SBE set-aside program were not conducted due to the low number of contracts awarded as part of this program.

15. Disparity analysis for WMATA FTA-funded contracts where DBE contract goals applied, FY2018–FY2020

	Number of procurements*	\$1,000s	Percent of dollars
Business ownership			
African American-owned	115	\$ 85,254	5.88 %
Asian-Pacific American-owned	66	40,315	2.78
Subcontinent Asian American-owned	145	105,571	7.28
Hispanic American-owned	92	53,405	3.68
Native American-owned	2	2,473	0.17
Total MBE	420	\$ 287,018	19.79 %
WBE (white woman-owned)	167	95,652	6.60
Total MBE/WBE	587	\$ 382,670	26.39 %
Total majority-owned	224	1,067,405	73.61
Total	811	\$ 1,450,075	100.00 %
Certified DBEs			
African American-owned	103	\$ 69,452	4.79 %
Asian-Pacific American-owned	60	30,362	2.09
Subcontinent Asian American-owned	92	64,346	4.44
Hispanic American-owned	86	44,032	3.04
Native American-owned	2	2,473	0.17
Total MBE	343	\$ 210,666	14.53 %
WBE (white woman-owned)	154	94,215	6.50
Total DBE-certified	497	\$ 304,880	21.03 %
Non-DBE	314	1,145,195	78.97
Total	811	\$ 1,450,075	100.00 %

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

Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research utilization and availability analyses for WMATA FTA-funded contracts where DBE contract goals applied.

8. Further Exploration of any Disparities

Disparity Analysis for FTA-funded Contracts Where DBE Contract Goals Applied

Keen Independent evaluated MBE and WBE utilization and availability for WMATA FTA-funded contracts where DBE goals applied.

Figure 16 compares utilization and availability for each MBE group and for white woman-owned firms on contracts with DBE goals. For these procurements:

- Utilization was less than availability for African American-, Asian-Pacific American- and Native American-owned firms;
- Utilization exceeded availability for Subcontinent Asian American-, Hispanic American- and white woman-owned firms; and
- Overall MBE/WBE participation (26.39%) was less than availability (37.03%) even with application of DBE contract goals.

16. Disparity analysis for WMATA DBE goals contracts, FY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	5.88 %	18.27 %	32
Asian-Pacific American-owned	2.78	5.56	50
Subcontinent Asian American-owned	7.28	5.96	122
Hispanic American-owned	3.68	3.03	121
Native American-owned	0.17	0.33	52
Total MBE	19.79 %	33.15 %	60
WBE (white woman-owned)	6.60	3.88	170
Total MBE/WBE	26.39 %	37.03 %	71
Majority-owned	73.61	62.97	117
Total	100.00 %	100.00 %	

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

Disparity index = $100 \times \text{Utilization/Availability}$.

Source: Keen Independent Research utilization and availability analyses for WMATA DBE goals contracts.

8. Further Exploration of any Disparities

Non-Goals Contracts

Keen Independent evaluated MBE and WBE utilization and availability for WMATA contracts where DBE contract goals were not applied. These data include non-federally funded contracts and FTA-funded contracts where no DBE goals were applied.

Figure 17 examines utilization for each MBE group and for white woman-owned firms. Less than 17 percent of the dollars for WMATA contracts without goals went to MBE/WBEs.

Utilization of DBE-certified firms is presented in the bottom half of the figure. About 11 percent of contract dollars went to DBEs for these non-goals contracts.

17. Disparity analysis for WMATA contracts where DBE contract goals were not applied, FY2018–FY2020

	Number of procurements*	\$1,000s	Percent of dollars
Business ownership			
African American-owned	48	\$ 19,196	2.13 %
Asian-Pacific American-owned	44	8,373	0.93
Subcontinent Asian American-owned	147	62,509	6.93
Hispanic American-owned	10	1,967	0.22
Native American-owned	7	1,600	0.18
Total MBE	256	\$ 93,645	10.38 %
WBE (white woman-owned)	170	56,029	6.21
Total MBE/WBE	426	\$ 149,674	16.59 %
Total majority-owned	793	752,527	83.41
Total	1,219	\$ 902,201	100.00 %
Certified DBEs			
African American-owned	29	\$ 11,441	1.27 %
Asian-Pacific American-owned	37	7,478	0.83
Subcontinent Asian American-owned	61	28,400	3.15
Hispanic American-owned	7	1,631	0.18
Native American-owned	0	0	0.00
Total MBE	134	\$ 48,950	5.43 %
WBE (white woman-owned)	142	48,442	5.37
Total DBE-certified	276	\$ 97,392	10.79 %
Non-DBE	943	804,809	89.21
Total	1,219	\$ 902,201	100.00 %

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

Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research utilization and availability analyses for WMATA contracts where DBE contract goals were not applied.

8. Further Exploration of any Disparities

Disparity Analysis for Non-Goals Contracts

Figure 18 compares utilization and availability for each MBE group and for white woman-owned firms on contracts with no goals. These data include non-federal contracts and federal contracts where no DBE goals were applied.

For these procurements, utilization was substantially less than availability for each MBE group.

Utilization was somewhat below availability for white woman-owned firms. The disparity index for white woman-owned firms (94) indicates a disparity. It is not at the level (below 80) that is considered substantial.

18. Disparity analysis for WMATA non-goals contracts, FY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	2.13 %	37.07 %	6
Asian-Pacific American-owned	0.93	8.21	11
Subcontinent Asian American-owned	6.93	9.44	73
Hispanic American-owned	0.22	4.76	5
Native American-owned	0.18	0.49	37
Total MBE	10.39 %	59.97 %	17
WBE (white woman-owned)	6.21	6.61	94
Total MBE/WBE	16.60 %	66.58 %	25
Majority-owned	83.41	33.42	250
Total	100.01 %	100.00 %	

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

Disparity index = $100 \times \text{Utilization/Availability}$.

Source: Keen Independent Research utilization and availability analyses for WMATA non-goals contracts.

8. Further Exploration of any Disparities

FTA-Funded Non-Goals Contracts

Keen Independent also calculated MBE and WBE utilization and availability for contracts without DBE goals for just FTA-funded contracts.

Figure 19 examines utilization for each MBE group and for white woman-owned firms on FTA-funded contracts without DBE goals. MBE/WBE utilization was 19.23 percent (top portion of the table). About 8 percent of contract dollars went to MBEs and about 11 percent went to WBEs.

DBE utilization was 13.98 percent (bottom portion of the table). Most of the DBE dollars were for white woman-owned DBEs.

19. Disparity analysis for WMATA contracts where DBE contract goals were not applied, FY2018–FY2020

	Number of procurements*	\$1,000s	Percent of dollars
Business ownership			
African American-owned	3	\$ 505	0.79 %
Asian-Pacific American-owned	1	50	0.08
Subcontinent Asian American-owned	8	4,068	6.34
Hispanic American-owned	7	686	1.07
Native American-owned	0	0	0.00
Total MBE	19	\$ 5,309	8.28 %
WBE (white woman-owned)	20	7,024	10.95
Total MBE/WBE	39	\$ 12,333	19.23 %
Total majority-owned	55	51,789	80.77
Total	94	\$ 64,122	100.00 %
Certified DBEs			
African American-owned	3	\$ 505	0.79 %
Asian-Pacific American-owned	0	0	0.00
Subcontinent Asian American-owned	1	1,102	1.72
Hispanic American-owned	7	686	1.07
Native American-owned	0	0	0.00
Total MBE	11	\$ 2,293	3.58 %
WBE (white woman-owned)	12	6,673	10.41
Total DBE-certified	23	\$ 8,966	13.98 %
Non-DBE	71	55,156	86.02
Total	94	\$ 64,122	100.00 %

Note: *Includes subcontracts.

Numbers may not add to totals due to rounding.

Disparity index = 100 x Utilization/Availability.

Source: Keen Independent Research utilization and availability analyses for WMATA contracts where DBE contract goals were not applied.

8. Further Exploration of any Disparities

Disparity Analysis for FTA-Funded Non-Goals Contracts

Figure 20 compares utilization and availability for each MBE group and for white woman-owned firms on FTA-funded contracts with no goals.

For these procurements, utilization was substantially less than availability for each MBE group.

Utilization was above availability for white woman-owned firms.

20. Disparity analysis for WMATA non-goals contracts, FY2018–FY2020

	Utilization	Availability	Disparity index
African American-owned	0.79 %	33.08 %	2
Asian-Pacific American-owned	0.08	9.68	1
Subcontinent Asian American-owned	6.34	11.68	54
Hispanic American-owned	1.07	6.27	17
Native American-owned	0.00	0.73	0
Total MBE	8.28 %	61.44 %	13
WBE (white woman-owned)	10.95	5.13	214
Total MBE/WBE	19.23 %	66.57 %	29
Majority-owned	80.77	33.43	242
Total	100.00 %	100.00 %	

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

Disparity index = $100 \times \text{Utilization} / \text{Availability}$.

Source: Keen Independent Research utilization and availability analyses for WMATA non-goals contracts.

8. Further Exploration of any Disparities

Analysis of Concentration of DBEs

Keen Independent examined the representation of DBEs and work going to DBEs in three ways:

- Share of WMATA FTA-funded contract dollars within a type of work going to DBEs;
- Distribution of DBE dollars by work type; and
- Representation of DBEs among all firms available for specific types of contracts and subcontracts.

Share of WMATA FTA-funded contract dollars within a type of work going to DBEs. For each specific type of work examined in the study, the study team calculated the share of dollars going to DBE firms.

DBEs accounted for more than 50 percent of contract dollars on FTA-funded contracts for ten types of work, including advertising and public relations (100%), janitorial services for buildings (100%) and surfacing and paving (100%). These types of contracts represented 6 percent of total FTA-funded contract dollars.

Distribution of DBE contract dollars across types of work. Another way to examine concentration of DBEs is whether DBE participation is only found in certain types of work. In the study period, no one type of work accounted for a substantial share of DBE participation. Commercial and institutional building construction was the largest area of DBE contract dollars and it accounted for only 16 percent of FTA-funded dollars awarded to DBEs during the study period.

Representation of DBEs among firms available for particular types of contracts or subcontracts. Finally, Keen Independent analyzed whether DBEs accounted for a dominant share of firms available for specific types of work.

Based on firms in the availability database, DBEs appeared to constitute a dominant portion of firms available for railroad flagging (100%). DBEs made up less than 50 percent of firms available to perform all other types of work.

Participation of individual DBEs in WMATA FTA-funded contracts. Fifteen DBEs accounted for about half of the total FTA-funded contract dollars going to DBEs during the study period.

- M & M Welding & Fabricators, Inc. (6%), Signature Renovations, LLC (6%), EMCO Elevator, LLC (5%), Nationwide Electrical Services, Inc. (4%) and TMG Construction (4%) together accounted for about one quarter of FTA dollars awarded to DBEs.
- Ten DBEs accounted for another 25 percent of FTA dollars awarded to DBEs, each earning between 2 and 3 percentage points of these dollars.
- 171 DBEs accounted for the remaining 50 percent of FTA dollars awarded to DBEs during the study period.

Summary. Because DBEs obtained all dollars of FTA-funded contracts dollars for advertising and public relations, janitorial services and surfacing and paving, WMATA should closely monitor future DBE participation in these three areas. If it continues to find potential overconcentration, it could remove these types of work from future DBE contract goals. Similarly, WMATA should continue to monitor availability of DBEs and other firms for railroad flagging.

9. Assessment of Potential Remedies

Keen Independent examined additional efforts WMATA could take to address disparities in its contracts and help level the playing field for minority- and woman-owned firms and other small businesses.

WMATA Programs

As discussed in Section 3 of the Summary Report, WMATA makes considerable efforts to include DBEs and other small businesses in its FTA-funded contracts and other contracts.

SBE Program. WMATA has recently developed an SBE Program to operate in conjunction with its DBE contract goals program. This initiative may help to address disparities in participation of minority- and woman-owned firms in its contracts. WMATA should examine program effectiveness once more contracts have been awarded under this program. The data Keen Independent examined for this study was for a time period prior to start of this program.

MBE Program. WMATA is also initiating an MBE Program for its non-federally funded contracts. As with the SBE Program, there was no information to determine the effectiveness of the program in the data examined in this disparity study. WMATA should conduct this review once results become available.

Providing additional information about bid opportunities. WMATA already attempts to communicate bid opportunities to DBEs and other small businesses. However, 40 percent of minority-owned firms and 33 percent of white woman-owned companies in the 2021 availability survey indicated difficulties learning about opportunities with WMATA. About 25 percent of majority-owned firms also reported such difficulties. WMATA could explore additional methods to introduce available firms to contract opportunities and communicate specific prime contract and subcontract opportunities to those companies as they arise.

Additional outreach. Keen Independent has produced a database of firms reporting qualifications and interest in future WMATA work, which the agency can use for expanded outreach. It can also use other District of Columbia, State of Maryland and Commonwealth of Virginia lists of MBE/WBEs and other small businesses to more comprehensively reach out to firms that could potentially participate in future work.

Bonding. The quantitative and qualitative information in this study indicated that bonding was a barrier to doing business with public sector entities. WMATA requires bonding on its public works construction contracts of more than \$100,000.

WMATA might consider whether it has any additional flexibility to waive bonding or increase the threshold for requiring bonding in its procurement rules under the Interstate Compact. For example, it has simplified bidding procedures for construction contracts up to \$150,000. If possible, increasing the threshold for bonding to \$150,000 could assist firms competing for the largest construction contracts procured through simplified methods.

Tracking. WMATA should continue to develop processes and information systems for ongoing tracking and regular reporting of DBE, MBE/WBE and SBE participation (by racial, ethnic and gender group) for both its FTA-funded contracts and other contracts.

9. Assessment of Potential Remedies

Participation in Regional Business Assistance Efforts

Quantitative and qualitative information from the disparity study indicates that access to capital is a barrier to MBE firms in the Washington metro area.

WMATA should consider forming or participating in regional partnerships related to:

- Working capital for small firms working on public sector projects; and
- A bond guarantee program for small construction firms seeking public sector work.

Examples of working capital loan programs. There are several examples of regional or statewide working capital programs across the country that focus on capital needs for construction contractors. For example, Wisconsin DOT has operated a working capital loan program since the 1980s. WisDOT provides a loan guarantee and banks issue the loans.

DBEs awarded WisDOT contracts or subcontracts can apply for the loan, with the contract and the WisDOT guarantee combining to provide collateral for the loan. Loans can be up to \$200,000. A CPA assists the DBE in preparing a loan application to a bank. The bank evaluates the loan application and makes the final decision on issuing the loan. Funds are provided as a line of credit that the DBE can draw upon as needed. Payments made to the DBE are through a two-party check.

Examples of bonding programs. There are many sources of education and training about bonding for construction contractors in the region (see Appendix K). However, there may be a need for additional assistance in actually obtaining bonds for public sector construction projects. A joint effort that includes WMATA might be the best way to approach this barrier for some small contractors.

As an example of a bond guarantee program, the Colorado Department of Transportation partnered with Lockton Companies to launch the Bond Assistance Program in July 2019, for construction contracts of \$3 million or less. CDOT provides a guarantee of 50 percent.

Firms certified as emerging small businesses (ESBs), including DBEs, are eligible to participate. A potential participant starts the process by undergoing an assessment of whether it is bondable. A firm can participate in the program on one contract only. The surety fee is 2 percent of the contract, and the ESB must participate in a funds control program with the management company (0.75% fee).

Obtaining bonding through the program also helps a contractor meet CDOT's prequalification requirements to bid on a construction contract. For firms not yet prequalified, it provides proof of bonding. For firms that are prequalified, it can be used to increase the size of contract on which the firm can bid as a prime.

Florida DOT has a similar Bond Guarantee Program. There are other examples around the country as well.

10. Summary and Conclusions

There is considerable evidence that there is not a level playing field for people of color and women, and for minority- and woman-owned firms, in the local marketplace. There were also disparities in the utilization of minority-owned companies on WMATA contracts, especially when no DBE contract goals were applied.

Disparity Analysis for WMATA Contracts

All contracts. Keen Independent examined the ownership of firms performing WMATA contracts awarded from July 1, 2017, through June 30, 2020. Of the \$2.4 billion in contract dollars, about 23 percent went to minority- and woman-owned companies. When comparing all WMATA contracts included in the study, there were substantial disparities for firms owned by:

- African Americans;
- Asian-Pacific Americans;
- Hispanic Americans; and
- Native Americans.

These disparities occurred even with application of DBE contract goals and other WMATA programs for many of these contracts.

Contracts without DBE goals. When Keen Independent focused on contracts for which DBE contract goals did not apply, there were substantial disparities for each of the above groups and for Subcontinent Asian American-owned firms.

There was a small disparity for white woman-owned companies for WMATA contracts without DBE goals.

Analysis of Marketplace Conditions

Entry and advancement and business ownership. There is considerable information from analyses of local marketplace conditions that certain minority groups and women face barriers entering and advancing in local industries such as construction.

There is also evidence of substantial disparities in business ownership rates for some groups for some industries, even after controlling for certain neutral factors.

Access to capital. There is considerable evidence of disparities in access to capital for people of color and minority-owned companies. There was also evidence of greater difficulties obtaining business loans for white woman-owned firms.

Business success. Many different measures of business success indicated disparities for minority- and woman-owned companies.

Existing Business Assistance and Neutral Programs

As explained in this Summary Report and in detail in Appendix K, there are many organizations in the Washington metro area that assist small businesses including minority- and woman-owned companies. WMATA programs provide assistance to these businesses as well. The disparities observed in WMATA contracts and in the local marketplace occurred even with these efforts.

11. Overall DBE Goal for Future FTA-funded Contracts

WMATA is required to set an overall triennial goal for DBE participation in its FTA-funded transportation contracts. Federal regulations govern how these goals are determined. Agencies such as WMATA must determine “the level of DBE participation you would expect absent the effects of discrimination.”²⁷

This section provides information for WMATA to consider as it sets its overall triennial DBE goal for FTA-funded contracts and its projection of how much of the goal to be met through race-neutral measures.

This section is organized in three parts based on the process that 49 CFR Part 26.45 outlines for agencies to set their overall goals and project the portion to be met through neutral means:

- Establishing a base figure;
- Consideration of a step 2 adjustment; and
- Portion of overall DBE goal for FTA-funded contracts to be met through neutral means.

Establishing a Base Figure

Establishing a base figure is the first step in calculating an overall triennial goal for DBE participation in WMATA’s FTA-funded transportation contracts.

WMATA contracts. WMATA has projected that the types of work involved in FTA-funded contracts for FFY2023 through FFY2025 will closely match the distribution of work by NAICS code that Keen Independent determined from FTA-funded contracts and subcontracts awarded from FY2018 through FY2020.

Figure 21 on the next page shows the distribution of FTA-funded contract dollars and subcontracts by type of work, and related North American Industry Classification System (NAICS). Note that the study team created subcategories of work within a single NAICS code when necessary. (The subcategories are shown under “type of work.”)

²⁷ 49 CFR Section 26.45(b).

11. Overall DBE Goal for Future FTA-funded Contracts

Figure 21. Dollars of FTA-funded WMATA contracts, by type of work

NAICS	NAICS description	Type of work	FTA-funded	
			Dollars (\$1,000s)	Percent
236220	Commercial and institutional building construction	Commercial and institutional building construction	\$ 331,384	21.88 %
541330	Engineering services	Other engineering	286,015	18.88
237990	Railway roadbed construction	Railroad and railway roadbed construction	267,065	17.63
238290	Elevator installation	Escalator and elevator installation and repair	75,842	5.01
238210	Electrical contractor and other wiring installation contractors	Other electrical work	64,320	4.25
236220	Commercial and institutional building construction	Construction management	58,565	3.87
541620	Environmental consulting services	Environmental consulting	51,735	3.42
238210	Electrical contractor and other wiring installation contractors	Railroad electrical work	58,318	3.85
423610	Electrical equipment and wiring supplies merchant wholesalers	Electrical equipment and wiring supplies	37,392	2.47
238220	Plumbing, heating and air-conditioning contractors	Plumbing, heating and air-conditioning work	45,616	3.01
485111	Commuter transit systems, mixed mode	Contracted bus and van transportation	35,910	2.37
238160	Roofing contractors	Roofing work	27,316	1.80
518210	Automated data processing services	IT work	25,199	1.66
541990	All other professional, scientific, and technical services	Other professional services	25,133	1.66
561720	Janitorial services	Janitorial services for buildings	177	0.01
541330	Engineering services	Railroad engineering	19,004	1.25
238990	All other specialty trade contractors	Other construction	18,432	1.22
423730	Heating and air-conditioning equipment and supplies merchant	Heating and air-conditioning equipment and supplies	9,372	0.62
453998	All other miscellaneous store retailers	Other equipment and supplies	15,531	1.03
541810	Advertising agencies	Advertising and public relations	13,267	0.88
561621	Security systems services	Security systems services	9,875	0.65
423110	Automobile and other motor vehicle merchant wholesalers	New cars and trucks	7,772	0.51
212321	Construction sand and gravel mining	Construction materials and supplies	7,378	0.49
238140	Masonry contractor	Masonry work	5,524	0.36
238990	Paving, residential and commercial driveway and parking lot	Surfacing and paving	4,973	0.33
541370	Surveying and mapping services (except geophysical)	Surveying and mapping	3,728	0.25
811490	All other personal goods repair and maintenance	Other services	3,333	0.22
561320	Temporary help services	Temporary help services	2,938	0.19
532412	Construction machinery and equipment rental or leasing without operator	Construction equipment rental and leasing	2,028	0.13
334514	Counting device manufacturing	Fare collection equipment	759	0.05
238340	Tile and terrazzo Contractors	Tile and Terrazzo Contractors	488	0.03
238910	Site preparation contractors	Site Preparation Contractors	148	0.01
			\$ 1,514,535	100.00 %

Source: Keen Independent Research based on contracts for July 2017 through June 2020.

11. Overall DBE Goal for Future FTA-funded Contracts

Relative availability of DBEs. Keen Independent identified the number of DBEs available for each of the NAICS codes shown in the previous table. Figure 22 provides these results.

- The first column of data in Figure 22 presents the numbers of DBEs in the final availability database, respectively.
- After dividing the number of DBEs by total firms (column 2 of data), Figure 22 indicates the percentage of firms in each subindustry that are DBEs (column 3 of the data).

Keen Independent defined DBEs as those firms indicating qualifications and interest in WMATA work in the 2021 availability survey that were certified as DBEs in the District of Columbia, Virginia or Maryland. The total number of firms by NAICS also was determined from the availability survey (firms indicating qualifications and interest in WMATA work).

A firm is counted more than once in Figure 22 if it reported performing more than one type of work.

22. Number of DBEs and total businesses in the availability analysis, by NAICS

NAICS	NAICS description	DBE firms	Total firms	DBEs as a share of all firms
236220	Commercial and institutional building construction	33	177	18.64 %
541330	Engineering services	25	162	15.43
237990	Railway roadbed construction	8	29	27.59
238290	Elevator installation	6	25	24.00
238210	Electrical contractor and other wiring installation contractors	19	118	16.10
236220	Commercial and institutional building construction	18	95	18.95
541620	Environmental consulting services	14	78	17.95
238210	Electrical contractor and other wiring installation contractors	5	28	17.86
423610	Electrical equipment and wiring supplies merchant wholesalers	5	31	16.13
238220	Plumbing, heating and air-conditioning contractors	18	138	13.04
485111	Commuter transit systems, mixed mode	3	17	17.65
238160	Roofing contractors	17	80	21.25
518210	Automated data processing services	20	153	13.07
541990	All other professional, scientific, and technical services	-	11	-
561720	Janitorial services	10	91	10.99
541330	Engineering services	5	18	27.78
238990	All other specialty trade contractors	5	27	18.52
423730	Heating and air-conditioning equipment and supplies merchant wholesalers	1	20	5.00
453998	All other miscellaneous store retailers	2	20	10.00
541810	Advertising agencies	6	72	8.33
561621	Security systems services	5	39	12.82
423110	Automobile and other motor vehicle merchant wholesalers	1	14	7.14
212321	Construction sand and gravel mining	17	99	17.17
238140	Masonry contractor	14	77	18.18
238990	Paving, residential and commercial driveway and parking lot	18	68	26.47
541370	Surveying and mapping services (except geophysical)	6	49	12.24
811490	All other personal goods repair and maintenance	8	29	27.59
561320	Temporary help services	6	29	20.69
532412	Construction machinery and equipment rental or leasing without operator	1	15	6.67
334514	Counting device manufacturing	-	3	-
238340	Tile and terrazzo Contractors	15	72	20.83
238910	Site preparation contractors	19	99	19.19

Source: Keen Independent Research availability analysis.

11. Overall DBE Goal for Future FTA-funded Contracts

DBE dollar-weighted availability. To calculate a base figure for WMATA's overall DBE goal for future FTA-funded contracts, Keen Independent dollar-weighted the availability results for each NAICS code shown in Figure 22 on the previous page.

The first column of data in Figure 23 presents the percentage of total dollars of FTA-funded contracts in that NAICS code.

- The second column of data in Figure 23 shows the share of total firms in each NAICS codes that are DBEs.
- After multiplying the percentage of total of FTA-dollars with the share of DBEs, Figure 23 shows the dollar-weighted availability of DBEs (third column).

Keen Independent summed the weighted availability values for all NAICS codes studied. This sum, 18.87 percent, is the base figure for WMATA's DBE goal.

23. Dollar-weighted DBE availability estimates for WMATA FTA-funded contracts

NAICS	NAICS description	Percent of FTA-funded contract dollars	Percent of DBE firms	Weighted availability
236220	Commercial and institutional building construction	21.88 %	18.6 %	4.08 %
541330	Engineering services	18.88	15.4	2.91
237990	Railway roadbed construction	17.63	27.6	4.86
238290	Elevator installation	5.01	24.0	1.20
238210	Electrical contractor and other wiring installation contractors	4.25	16.1	0.68
236220	Commercial and institutional building construction	3.87	18.9	0.73
541620	Environmental consulting services	3.42	17.9	0.61
238210	Electrical contractor and other wiring installation contractors	3.85	17.9	0.69
423610	Electrical equipment and wiring supplies merchant wholesalers	2.47	16.1	0.40
238220	Plumbing, heating and air-conditioning contractors	3.01	13.0	0.39
485111	Commuter transit systems, mixed mode	2.37	17.6	0.42
238160	Roofing contractors	1.80	21.3	0.38
518210	Automated data processing services	1.66	13.1	0.22
541990	All other professional, scientific, and technical services	1.66	-	-
561720	Janitorial services	0.01	11.0	0.00
541330	Engineering services	1.25	27.8	0.35
238990	All other specialty trade contractors	1.22	18.5	0.23
423730	Heating and air-conditioning equipment and supplies merchant wholesalers	0.62	5.0	0.03
453998	All other miscellaneous store retailers	1.03	10.0	0.10
541810	Advertising agencies	0.88	8.3	0.07
561621	Security systems services	0.65	12.8	0.08
423110	Automobile and other motor vehicle merchant wholesalers	0.51	7.1	0.04
212321	Construction sand and gravel mining	0.49	17.2	0.08
238140	Masonry contractor	0.36	18.2	0.07
238990	Paving, residential and commercial driveway and parking lot	0.33	26.5	0.09
541370	Surveying and mapping services (except geophysical)	0.25	12.2	0.03
811490	All other personal goods repair and maintenance	0.22	27.6	0.06
561320	Temporary help services	0.19	20.7	0.04
532412	Construction machinery and equipment rental or leasing without operator	0.13	6.7	0.01
334514	Counting device manufacturing	0.05	-	-
238340	Tile and terrazzo Contractors	0.03	20.8	0.01
238910	Site preparation contractors	0.01	19.2	0.00
Total		100.00 %		18.87 %

Source: Keen Independent Research based on contracts for July 2017 through June 2020 and Keen Independent availability analysis.

11. Overall DBE Goal for Future FTA-funded Contracts

Step 2. Determining if an Adjustment is Needed — 49 CFR Section 26.45(d)

Per the Federal DBE Program, WMATA must consider potential adjustments to the base figure as part of determining its overall triennial DBE goal for FTA-funded contracts. Federal regulations outline factors that an agency must consider when assessing whether to make any such “step 2 adjustments” to its base figure:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.²⁸

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but is still relevant to WMATA as it determines whether to make any step 2 adjustments.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

Figure 24 shows DBE participation based on commitments/award data from WMATA Uniform Reports of DBE Awards or Commitments and Payments reported to FTA. The median DBE participation from FFY2018 through FFY2021 is 23.18 percent (the mid-point between 21.21% and 25.14%).

As this value is higher than the 18.87 percent base figure, it suggests a possible upward step 2 adjustment based on this factor.

24. DBE participation on FTA-funded contracts based on WMATA Uniform Reports to FTA, FFY2018 through FFY2021



Source: WMATA Uniform Reports of DBE Award or Commitments and Payments.

²⁸ 49 CFR Section 26.45.

11. Overall DBE Goal for Future FTA-funded Contracts

2. Information related to employment, self-employment, education, training, and unions. Keen Independent’s analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Washington metro area construction, professional services, goods and other services industries (see Section 5-Marketplace Conditions and Appendices E through J).

The study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Washington metro area study industries. There were statistically significant disparities in business ownership for certain minority groups and women in some of the study industries. (See Section 5 in this Summary Report as well as Appendix F).

Keen Independent analyzed the impact that those barriers in business ownership would have on the base figure if these groups owned businesses at the same rate as similarly situated nonminorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

The difference between the “but for” DBE availability (25.54%) and the base figure (18.87%) is 6.66 percentage points. to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 6.68 percentage points (25.54% - 18.87% = 6.66%). Appendix M provides these calculations.

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs. (See Section 5 of the Summary Report and Appendix G for detailed results.)

The information about financing and bonding supports an upward step 2 adjustment in WMATA’s overall triennial goal for DBE participation in FTA-funded contracts.

4. Other factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.²⁹

Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the Washington metro area marketplace. There is quantitative and qualitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors.

There is no straightforward way to project the number of MBE/WBEs available for WMATA work but for the effects of these other factors.

²⁹ 49 CFR Section 26.45.

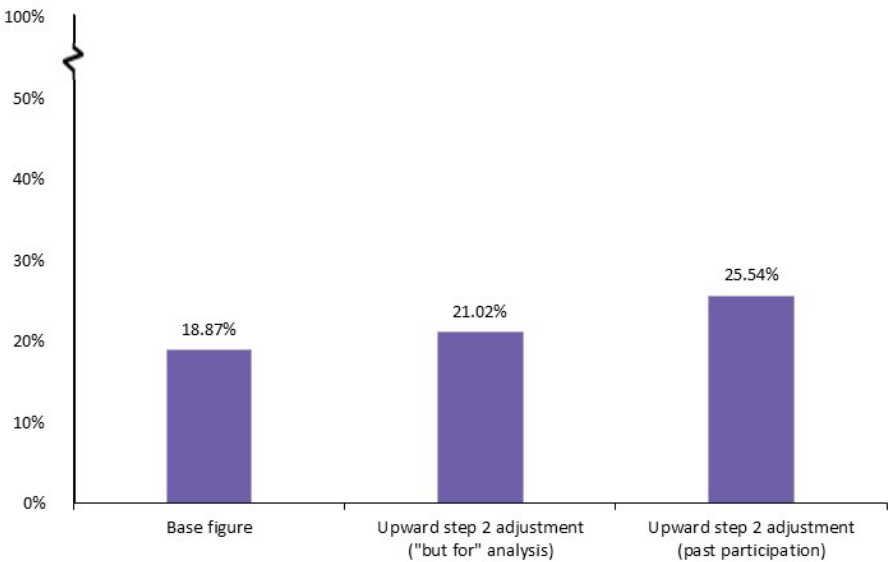
11. Overall DBE Goal for Future FTA-funded Contracts

Summary. WMATA will need to consider whether to make two different types of upward adjustments when determining its overall DBE goal.

- If WMATA makes an upward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FTA-funded contracts would be 21.02 percent.
- If WMATA decides to make an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 25.54 percent.

Figure 25 summarizes the potential adjustments described in this section.

25. Potential step 2 adjustments to WMATA’s overall DBE goal for FTA-funded contracts



Source: Keen Independent Research analysis.

12. Goal Setting

Projecting the Portion of the Overall DBE Goal to be Met Through Neutral Means

The Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures.³⁰ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs.

Agencies must determine whether they can meet their overall DBE goals solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed.

- If an agency determines that it can meet its overall DBE goal solely through race- and gender-neutral means, then it would propose using only neutral measures as part of its program.
- If an agency determines that a combination of race- and gender-neutral and race- and gender-conscious measures are needed to meet its overall DBE goal, then the agency would propose using a combination of neutral and conscious measures as part of its program.

Based on 49 CFR Part 26 and the resources above, Keen Independent examined four broad questions for WMATA to consider.

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups? This study considered conditions in the local marketplace to address this question.

Marketplace conditions. There was quantitative evidence of disparities in outcomes in the Washington metro area marketplace for MBE/WBEs in general and for certain MBE/WBE groups in certain industries. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes.

Results of the disparity analysis for FTA-funded contracts.

Utilization of minority-owned businesses on WMATA contracts was substantially below what might be expected from the availability analysis, especially when no DBE contract goals applied. There was a disparity in the utilization of white woman-owned firms on WMATA contracts without DBE goals. This disparity was not substantial.

Summary. The combined information indicates some evidence of negative outcomes for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American and Native American-owned firms when compared with majority-owned companies. There was also some evidence of disparities in the marketplace for white woman-owned firms, as well as a small disparity in WMATA contracts when no contract goals were applied (disparity index of 94). WMATA might consider this information when determining if it should request a waiver from FTA to allow it to provide eligibility for participation in any future DBE contract goals program to minority-owned DBEs.

³⁰ 49 CFR Section 26.51.

12. Goal Setting

2. What has been the agency’s past experience in meeting its overall DBE goal? WMATA’s reported DBE participation based on DBE commitments/awards on FTA-funded contracts is summarized in Figure 26. FTA also reported participation based on payments to DBEs. Data are for FFY2018 through FFY2021.

As presented in the far-right columns of Figure 30, WMATA fell short of its overall DBE goals in two of the four fiscal years when participation was measured based on commitments and three of the four fiscal years when participation was measured based on payments.

26. WMATA overall DBE goal and reported DBE participation on FTA-funded contracts, FFY2018 through FFY2021

Federal fiscal year	DBE goal	DBE commitments/ awards	DBE payments	Difference from DBE goal	
				Awards	Payments
2018	22.00 %	21.21 %	18.75 %	-0.79 %	-3.25 %
2019	25.00	25.81	14.49	0.81	-10.51
2020	25.00	20.45	62.01	-4.55	37.01
2021	25.00	25.14	6.84	0.14	-18.16

Source: WMATA Uniform Reports of DBE Awards/Commitments and Payments.

12. Goal Setting

3. What has DBE participation been when WMATA has not applied DBE contract goals (or other race-conscious remedies)?

Keen Independent examined three sources of information to assess race-neutral DBE participation:

Race-neutral DBE participation in recent WMATA Uniform Reports. Per USDOT instructions, WMATA counts as “neutral” participation any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

WMATA’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FTA for the four most recent federal fiscal years indicate median race-neutral participation of 4.93 percent. Figure 27 presents these results.

DBE participation on contracts without DBE contract goals.

Keen Independent also analyzed DBE participation on WMATA’s FTA-funded contracts without DBE contract goals. WMATA achieved 13.98 percent DBE participation on these contracts from July 2017 through June 2020.

DBE participation as prime contractors. Keen Independent also analyzed DBE participation based on FTA-funded prime contract dollars. From July 2017 through June 2020, DBE participation on prime contracts was about 4.2 percent for FTA-funded contracts.

27. WMATA-reported race-neutral and race-conscious DBE participation on FTA-funded contracts, FFY2018 through FFY2021

Federal fiscal year	DBE commitments/award		
	Total	Race- conscious	Race- neutral
2018	21.21 %	10.07 %	11.14 %
2019	25.81	18.92	6.89
2020	20.45	20.05	0.41
2021	25.14	22.18	2.96

Source: WMATA Uniform Reports of DBE Awards/Commitments and Payments.

12. Goal Setting

4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, WMATA must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent's analysis of neutral remedies indicates that WMATA has already implemented an extensive set of neutral measures (see Section 3 of the Summary Report).

At this time, it is difficult to quantify the extent to which any additional neutral measures could increase race-neutral participation of DBEs in WMATA's FTA-funded contracts.

12. Goal Setting

If WMATA uses a combination of neutral means and DBE contract goals, how much of the overall DBE goal can WMATA project to be met through neutral means? In 2019, WMATA set an overall DBE goal of 25 percent for FTA-funded contracts for FFY2020 through FFY2022 and projected that 14 percentage points of its overall goal would be met through neutral means.

Based on the information in this report, it appears that WMATA could consider continued use of a combination of neutral measures and the race-conscious DBE contract goals program to help it reach an overall goal in the range of 18.87 percent or more.

- The median race-neutral portion of WMATA’s DBE participation was 4.93 percent based on WMATA’s reports for FFY2018 through FFY2021 (presented earlier in this chapter); and
- WMATA has race-neutral initiatives in place that will continue to expand.

The second column of numbers in Figure 28 is an example of projections using an overall DBE goal of 18.87 percent and a 4.93 percentage point race-neutral projection for FFY2023 through FFY2025. The race-conscious portion of the goal would be 13.94 percentage points.

As indicated in the other columns of Figure 28, the race-conscious projection would need to be higher if WMATA selected an overall DBE goal in the range of 21 to 25 percent.

28. WMATA overall DBE goal and projections of race-neutral participation for FTA-funded contracts for FFY2023–FFY2025

Component of overall DBE goal	FFY 2020–FFY 2022	FFY 2023–FFY 2025		
		Base figure	Upward adjustment - current capacity	Upward adjustment - business ownership
Overall goal	25.00 %	18.87 %	21.02 %	25.54 %
Neutral projection	- 14.00	- 4.93	- 4.93	- 4.93
Race-conscious projection	11.00 %	13.94 %	16.09 %	20.61 %

Source: Keen Independent Research analysis.

13. MBE Goal for Non-Federally Funded Contracts

As discussed in Section 3, WMATA adopted a new MBE program for its non-federally funded contracts. DBEs headquartered in Maryland, District of Columbia and Virginia can qualify for WMATA's MBE certification. (Eligibility includes minority- and white woman-owned DBEs.)

This section provides information for WMATA to consider as it sets its overall MBE goal for non-federally funded contracts.

Keen Independent examined the types and sizes of its non-federally funded contracts and subcontracts awarded from FY2018 through FY2020 to project WMATA's future non-federally funded work under the MBE program.

Figure 29 shows the distribution of non-federal contract dollars and subcontracts by type of work, and related North American Industry Classification System (NAICS). Note that the study team created subcategories of work within a single NAICS code when necessary. (The subcategories are shown under "type of work.")

29. Dollars of non-federally funded WMATA contracts, by type of work

NAICS	NAICS description	Type of work	Non-federally funded	
			Dollars (\$1,000s)	Percent
518210	Automated data processing services	IT work	\$ 161,341	19.25 %
541330	Engineering services	Other engineering	153,781	18.35
236220	Commercial and institutional building	Construction management	70,996	8.47
541330	Engineering services	Railroad engineering	44,488	5.31
236220	Commercial and institutional building	Commercial and institutional building	35,633	4.25
441320	Tire dealers	Vehicle tires	34,706	4.14
485111	Commuter transit systems, mixed mode	Contracted bus and van transportation	33,552	4.00
561990	All other support services	Railroad flagging work	27,549	3.29
238210	Electrical contractor and other wiring	Other electrical work	26,969	3.22
541990	All other professional, scientific, and	Other professional services	26,129	3.12
423110	Automobile and other motor vehicle	New cars and trucks	25,126	3.00
453998	All other miscellaneous store retailers	Other equipment and supplies	22,419	2.68
238290	Elevator installation	Escalator and elevator installation and	22,104	2.64
811490	All other personal goods repair and	Other services	21,384	2.55
541620	Environmental consulting services	Environmental consulting	13,793	1.65
541370	Surveying and mapping services (except	Surveying and mapping	13,588	1.62
238220	Plumbing, heating and air-conditioning	Plumbing, heating and air-conditioning	10,082	1.20
423610	Electrical equipment and wiring supplies merchant wholesalers	Electrical equipment and wiring supplies	9,878	1.18
561621	Security systems services	Security systems services	9,760	1.16
238990	All other specialty trade contractors	Other construction	8,436	1.01
561320	Temporary help services	Temporary help services	8,227	0.98
238160	Roofing contractors	Roofing work	7,831	0.93
237990	Railway roadbed construction	Railroad and railway roadbed construction	7,721	0.92
238340	Tile and terrazzo Contractors	Tile and Terrazzo Contractors	7,587	0.91
532412	Construction machinery and equipment rental or leasing without operator	Construction equipment rental and leasing	7,286	0.87
334514	Counting device manufacturing	Fare collection equipment	5,932	0.71
541810	Advertising agencies	Advertising and public relations	5,412	0.65
561720	Janitorial services	Janitorial services for buildings	5,087	0.61
238990	Paving, residential and commercial	Surfacing and paving	4,378	0.52
238910	Site preparation contractors	Site Preparation Contractors	3,548	0.42
423730	Heating and air-conditioning equipment and supplies merchant wholesalers	Heating and air-conditioning equipment and supplies	1,465	0.17
561720	Janitorial services	Rail car cleaning	1,238	0.15
212321	Construction sand and gravel mining	Construction materials and supplies	655	0.08
			\$ 838,079	100.00 %

Source: Keen Independent Research based on WMATA non-federally funded contracts for July 2017 through June 2020.

13. MBE Goal for Non-Federally Funded Contracts

Relative availability of MBEs. Keen Independent identified the number of MBEs available for each of the NAICS codes shown in the previous table. Figure 30 provides these results.

- The first column of data in Figure 30 presents the numbers of MBEs in the final availability database, respectively.
- After dividing the number of MBEs by total firms (column 2 of data), Figure 30 indicates the percentage of firms in each subindustry that are MBEs (column 3 of the data).

Keen Independent defined MBEs as those firms indicating qualifications and interest in WMATA work in the 2021 availability survey that were certified as DBEs in the District of Columbia, Virginia or Maryland. The total number of firms by NAICS also was determined from the availability survey (firms indicating qualifications and interest in WMATA work).

A firm is counted more than once in Figure 30 if it reported performing more than one type of work.

30. Number of MBEs and total businesses in the availability analysis, by NAICS

NAICS	NAICS description	MBE firms	Total firms	MBEs as a share of all firms
518210	Automated data processing services	20	153	13.07 %
541330	Engineering services	25	162	15.43
236220	Commercial and institutional building construction	18	95	18.95
541330	Engineering services	5	18	27.78
236220	Commercial and institutional building construction	33	177	18.64
441320	Tire dealers	-	4	-
485111	Commuter transit systems, mixed mode	3	17	17.65
561990	All other support services	3	14	21.43
238210	Electrical contractor and other wiring installation contractors	19	118	16.10
541990	All other professional, scientific, and technical services	-	11	-
423110	Automobile and other motor vehicle merchant wholesalers	1	14	7.14
453998	All other miscellaneous store retailers	2	20	10.00
238290	Elevator installation	6	25	24.00
811490	All other personal goods repair and maintenance	8	29	27.59
541620	Environmental consulting services	14	78	17.95
541370	Surveying and mapping services (except geophysical)	6	49	12.24
238220	Plumbing, heating and air-conditioning contractors	18	138	13.04
423610	Electrical equipment and wiring supplies merchant wholesalers	5	31	16.13
561621	Security systems services	5	39	12.82
238990	All other specialty trade contractors	5	27	18.52
561320	Temporary help services	6	29	20.69
238160	Roofing contractors	17	80	21.25
237990	Railway roadbed construction	8	29	27.59
238340	Tile and terrazzo Contractors	15	72	20.83
532412	Construction machinery and equipment rental or leasing without operator	1	15	6.67
334514	Counting device manufacturing	-	3	-
541810	Advertising agencies	6	72	8.33
561720	Janitorial services	10	91	10.99
238990	Paving, residential and commercial driveway and parking lot	18	68	26.47
238910	Site preparation contractors	19	99	19.19
423730	Heating and air-conditioning equipment and supplies merchant wholesalers	1	20	5.00
561720	Janitorial services	3	17	17.65
212321	Construction sand and gravel mining	17	99	17.17

Source: Keen Independent Research availability analysis.

13. MBE Goal for Non-Federally Funded Contracts

Dollar-weighted availability. Keen Independent weighted the availability results for each industry by the share of WMATA’s total non-federally funded contracts in each type of work. This provides availability results on a “dollar-weighted” basis.

The first column of data in Figure 31 presents the percentage of total dollars of non-federally funded contracts in that NAICS code.

- The second column of data in Figure 31 shows the share of total firms in each NAICS code that qualify as MBEs under the program (DBEs, including minority- and woman-owned companies).
- After multiplying the percentage of total non-federally funded dollars with the share of MBEs, Figure 31 shows the dollar-weighted availability of MBEs (third column). The sum at the bottom of column 3 is the dollar weighted availability (15.44%).

The 15.44 percent availability result is the expected share of dollars going to MBEs.

31. Dollar-weighted MBE availability estimates for WMATA non-federally funded contracts

NAICS	NAICS description	Percent of non-federally funded contract dollars	Percent of MBE firms	Weighted availability
518210	Automated data processing services	19.25 %	13.07 %	2.52 %
541330	Engineering services	18.35	15.43	2.83
236220	Commercial and institutional building construction	8.47	18.95	1.61
541330	Engineering services	5.31	27.78	1.47
236220	Commercial and institutional building construction	4.25	18.64	0.79
441320	Tire dealers	4.14	-	-
485111	Commuter transit systems, mixed mode	4.00	17.65	0.71
561990	All other support services	3.29	21.43	0.70
238210	Electrical contractor and other wiring installation contractors	3.22	16.10	0.52
541990	All other professional, scientific and technical services	3.12	-	-
423110	Automobile and other motor vehicle merchant wholesalers	3.00	7.14	0.21
453998	All other miscellaneous store retailers	2.68	10.00	0.27
238290	Elevator installation	2.64	24.00	0.63
811490	All other personal goods repair and maintenance	2.55	27.59	0.70
541620	Environmental consulting services	1.65	17.95	0.30
541370	Surveying and mapping services (except geophysical)	1.62	12.24	0.20
238220	Plumbing, heating and air-conditioning contractors	1.20	13.04	0.16
423610	Electrical equipment and wiring supplies merchant wholesalers	1.18	16.13	0.19
561621	Security systems services	1.16	12.82	0.15
238990	All other specialty trade contractors	1.01	18.52	0.19
561320	Temporary help services	0.98	20.69	0.20
238160	Roofing contractors	0.93	21.25	0.20
237990	Railway roadbed construction	0.92	27.59	0.25
238340	Tile and terrazzo Contractors	0.91	20.83	0.19
532412	Construction machinery and equipment rental or leasing without operator	0.87	6.67	0.06
334514	Counting device manufacturing	0.71	-	-
541810	Advertising agencies	0.65	8.33	0.05
561720	Janitorial services	0.61	10.99	0.07
238990	Paving, residential and commercial driveway and parking lot	0.52	26.47	0.14
238910	Site preparation contractors	0.42	19.19	0.08
423730	Heating and air-conditioning equipment and supplies merchant wholesalers	0.17	5.00	0.01
561720	Janitorial services	0.15	17.65	0.03
212321	Construction sand and gravel mining	0.08	17.17	0.01
Total				15.44 %

Source: Keen Independent Research based on non-federally funded contracts for July 2017 through June 2020 and Keen Independent availability analysis.