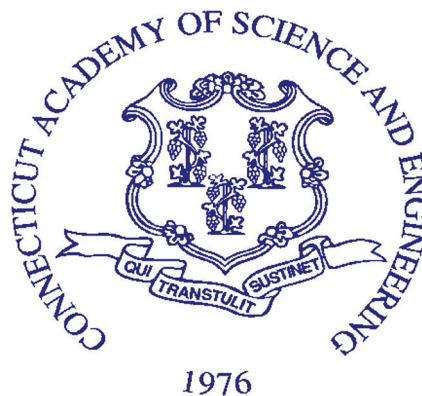


# CONNECTICUT DISPARITY STUDY: PHASE 2

MAY 2014

A REPORT BY

THE CONNECTICUT  
ACADEMY OF SCIENCE  
AND ENGINEERING



FOR

THE CONNECTICUT GENERAL ASSEMBLY  
AND THE  
GOVERNMENT ADMINISTRATION AND  
ELECTIONS COMMISSION



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ORIGIN OF INQUIRY:

THE CONNECTICUT  
GENERAL ASSEMBLY

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This study was initiated at the request of the Connecticut General Assembly on August 5, 2013. The project was conducted by an Academy Study Committee with the support of staff of the Connecticut Economic Resource Center, Inc. serving as the study management team with assistance from Evolution Enterprises, LLC. The content of this report lies within the province of the Academy's Economic Development, Education and Human Resources, and Technology Technical Boards. The report has been reviewed by Academy Members Peter G. Cable, PhD, and Gale F. Hoffnagle. Martha Sherman, the Academy's Managing Editor, edited the report. The report is hereby released with the approval of the Academy Council.

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## EXECUTIVE SUMMARY

### ES.1 STUDY PURPOSE

At the request of the Connecticut General Assembly, the Connecticut Academy of Science and Engineering (CASE) in accordance with legislation adopted in the 2012 legislative session, Public Act 12-1 and Public Act 12-104, was asked to conduct a Disparity Study of the state's Small and Minority Business Set-Aside Program ("Set-Aside Program"). Public Act 12-1 provided an overview of the initial scope of work to be included in the study, and Public Act 12-104 provided initial project funding.

### ES.2 STUDY PHASING

Initial research identified that the state's executive branch agencies and other branches of state government that are responsible for awarding state contracts and overseeing the Set-Aside Program do not for the most part collect subcontractor contracting data, including payment information.

In addition, a review of the legal issues and case law, including presentations to the CASE Study Committee by experts on matters of race-based and gender-based programs, identified that subcontractor data and financial information is a critical component of conducting any valid disparity study. Unless quality data are collected and available at a level of detail necessary for analysis, the results of the disparity study could be challenged, and if such challenge were successful, the whole purpose of conducting the study would be negated.

As a result of initial research findings, the scope of work for the study was divided into phases based on the goals of the project as specified in Public Act 12-1 and the best interests of the State of Connecticut.

- Phase 1 was completed in August 2013 and included a review and analysis of Connecticut's Set-Aside and Minority Business Enterprise Program, legal issues, and analysis of stakeholder anecdotal information.
- Phase 2 comprises the research in this report, and includes the following sections: Legislative and Administrative Initiatives; Diversity Data Management System Review; Review of Issue Areas; and Data and Methodology for Statistical Analysis.

Conducting Phase 3 is possible prior to implementation of a diversity data management system (DDMS). Phase 4 is dependent on the state acquiring and implementing a DDMS for managing the state's minority business enterprise and women's business enterprise program (MBE and WBE Program), including subcontractor data and financial information, in an electronic format for the dual purposes of conducting the data analysis portion of the disparity study and for managing the program. The following draft Phase 3 and Phase 4 work scopes are based on the research and findings of Phase 1 and Phase 2:

- Phase 3 focuses on identifying evidence of marketplace disparities, including: approximating the geographic marketplace; disparities in earnings by race and gender; analysis of credit market disparities in the United States; analysis of disparities in homeownership and home lending; disparities in business formation; and evidence from business owners.
- Phase 4 provides an analysis of state MBE and WBE utilization and additional anecdotal information, including: defining the geographic marketplace, reapplying the econometric models from Phase 3, calculating availability by industry sector in the geographic marketplace, identifying expected business formation rates, and a final study report.

## ES.3 METHODOLOGY

The Phase 2 report builds upon the research and findings from the Phase 1 report, and provides research and key findings on the following issues:

1. **Legislative and Administrative Initiatives:** Based on the Phase 1 Study, revisions to current legislation establishing the MBE and WBE Program are included for consideration by the General Assembly in FY14 and beyond. This analysis was conducted by reviewing current state statutes and regulations regarding the MBE and WBE Program, reviewing state statutes for MBE and WBE programs around the country, and using the key findings from the Phase 1 report as guidance for the initiatives and recommendations.
2. **Diversity Data Management System (DDMS) Review:** In order for the statistical analysis portion of the disparity study to be conducted, comprehensive and systematic data regarding the program must be collected. This section provides information on several aspects of a DDMS including the following:
  - o Data Elements for a Disparity Diversity Management System for Statistical Analysis and Program Review
  - o Managing the Data Elements for the Disparity Study Statistical Analysis and Program Review
  - o Diversity Data Management System (DDMS) Implementation Plan

This section was informed by an online survey of states that have implemented a DDMS. The survey garnered opinions concerning the resources needed to implement a DDMS and the resources needed for ongoing operations and maintenance. An overview of New York State's DDMS implementation plan was also incorporated into this section's findings.

3. **Review of Program Issue Areas:** In-depth assessments of program issue areas provide an understanding of some of the choices that program leaders have when considering enhancements to the MBE and WBE Program. These issue areas were identified in Phase 1 as needing additional research, and in Phase 2, that research was conducted through interviews with MBE and WBE program administrators, interviews with DBE leaders, literature and program website reviews, and consultations with national experts regarding disparity studies.

**4. Data and Methodology for Statistical Analysis:** This section provides an overview of the method and data sources needed to conduct the complete statistical analysis portion of the disparity study, and includes the following areas:

- o Evidence of Marketplace Disparities
- o Statistical Analysis of MBE and WBE Availability
- o Statistical Analysis of MBE and WBE Utilization in the State's Markets

This section was completed by reviewing a variety of comprehensive disparity studies for states and programs across the country, and consulting with national experts regarding disparity studies.

## ES.4 BRIEF STATEMENT OF PRIMARY CONCLUSION

The most effective statewide programs have a centralized structure with support from the governor and key political leaders, and advocate for MBEs and WBEs by implementing consistent programs, developing policies, overseeing and enforcing compliance, and educating stakeholders.

Once the comprehensive data needed for conducting the statistical analysis are collected, the disparity study can be completed and used to inform overall spending goals for the MBE and WBE Program.

Based on the results of periodic statistical analyses, if a statistically significant disparity exists, then a presumption of systemic discrimination implies the need for a legislatively mandated MBE and WBE Program, which should be implemented taking into account all of the relevant legal requirements.

## ES.5 KEY FINDINGS AND CONSIDERATIONS

### *ES.5.1 Legislative and Administrative Initiatives*

In order for a race-based program to be effective, enforceable, and legally defensible, it must meet the judicial test of *strict scrutiny*. *Strict scrutiny* is the most rigorous form of judicial review that courts use to determine the constitutionality of certain laws that involve *suspect classifications* such as race, religion, and national origin.

To determine if a statute passes the *strict scrutiny* test, the courts have considered whether the government has a compelling interest in creating the law and, if so, whether the law is *narrowly tailored* to meet the state's need. The following are criteria courts use to determine if a race-based program meets the standard of *narrowly tailored*:

- MBE program eligibility needs to be based on availability of companies located within the market area for contracting services that are *ready, willing, and able* to provide such services.

- A race-based program needs to be established as a goal-based program rather than as a set-aside
- Race-based program goals must be adjusted periodically to account for the changing effects of discrimination.
- A program should be subject to periodic evaluation to determine if there is a continuing need for it.
- Recipients of contract dollars must not be penalized for not meeting MBE and WBE goals, if *good faith efforts* were used to identify and engage eligible MBEs and WBEs.
- The types of companies that are eligible for preference need to be limited with respect to racial category and location in the area from which suppliers are usually drawn for the contracting agency. The aim of the program is to eliminate discrimination that has placed MBEs at an economic disadvantage.

Further, gender-based programs are sometimes held to the same *strict scrutiny* requirement as race-based programs. However, some courts have used *intermediate scrutiny*, a less stringent form of judicial review, to evaluate gender-based programs using the rationale that gender is not a suspect classification. The Supreme Court has not developed a framework for analyzing equal protection challenges to gender-based programs and whether such programs should be subject to the lesser constitutional review standard of *intermediate scrutiny*. Therefore, it is recommended that the state meet the rigors of the *strict scrutiny* standard when implementing the MBE and WBE Program.

Recommended legislative changes to state statutes, including but not limited to C.G.S. §4a-60g regarding the Set-Aside Program for Small Contractors and Minority Business Enterprises, and administrative changes, include:

- Proposed Immediate Changes: Legislative considerations involve separating the SBE Program from the MBE and WBE Program, designating the MBE and WBE Program as goal based rather than a set-aside program, establishing until completion of the Disparity Study the MBE and WBE Program goal in statute on an interim basis, and allowing MBEs and WBEs that are located in the geographic market (which could extend outside of Connecticut) for a particular industry or service to have the opportunity to become certified. Administrative changes include establishing guidelines on implementing the SBE Program and the MBE and WBE Program, establishing a standard for *good faith efforts* of prime contractors to engage MBEs and WBEs, clarifying the statute involving the issue of self-performance (i.e., allowing an MBE or WBE to perform work on a contract as compared to requiring subcontracting of work to other MBEs and WBEs), and considering whether entering into reciprocity agreements with other states is appropriate.
- Additional MBE and WBE Program Improvements: These changes are intended to improve the MBE and WBE Program, either by streamlining it with reference to the federal DBE program or by adding transparency. Legislative changes involve considering by means of a size standard if a business will also have to be economically disadvantaged to qualify for the MBE and WBE Program; revising P.A. 13-304 to simplify requirements regarding the issue of self performance on state contracts; adopting the practice utilized by ConnDOT for the federal DBE Program that

requires Affirmative Action Plans be submitted once every two years; streamlining the certification process either by creating a single certification office or by adopting the federal DBE requirements as the state MBE and WBE Program requirements; and exploring the possibility of including state-funded municipal projects in the MBE and WBE Program.

- Legislative Changes upon Completion of the Disparity Study: Once the statistical analysis of the disparity study is completed, the results should be used to create evidence-based goals for the MBE and WBE Program. Further, a sunset date should be established by statute that will coincide with the completion of the next disparity study. The process of sunseting the program to coincide with the results of future disparity studies should continue until discrimination in the marketplace is eliminated.

### ***ES.5.2 Diversity Data Management System (DDMS) Review***

Data elements need to be systematically collected and consistently maintained in a DDMS for use in conducting the statistical analysis portion of a comprehensive disparity study, as well as for the state's use for managing and reporting on the MBE and WBE Program. It is important that companies on which information is collected include those that bid on and are awarded contracts, as well as those that bid on and are not awarded contracts. In addition, information should be collected on all contracts, not just those with MBE or WBE goals. Moreover, it is necessary to collect payment information on both prime contractors and subcontractors, on those that are certified as MBEs and WBEs as well as those that are not minority- or women-owned.

Currently, the state maintains its program records in a disaggregated system where there are multiple financial systems and methods of recordkeeping among key state agencies and branches of government. These records do not contain information on subcontractors and payments to subcontractors. Also, the state does not have a standard process for recording P-card purchases, and does not use a consistent accounting method (cash versus accrual) among branches of state government and some executive branch agencies.

All of these data elements must be systematically collected and available in order to conduct a valid disparity study.

Managing the data elements for the disparity study's statistical analysis, as well as managing and reporting on the MBE and WBE Program, requires a multi-faceted approach. In order to manage the program and processes effectively, the state should consider establishing a project management team, outlining current processes, streamlining certification and program processes, engaging the contracting community, and assessing project and data elements routinely. Lastly, a DDMS implementation plan should be outlined and executed.

### ***ES.5.3 Review of Program Issue Areas***

This section provides information on several issue areas that are critical to the completion of a disparity study and for managing the MBE and WBE Program, as well as the SBE Program.

- Leadership and Program Structure: Successful and effective MBE and WBE programs have a distinct leader or champion and a centralized program structure. This leader



ensures that all aspects of the program are operating effectively, provides a system of accountability, and promotes the value of the program. A centralized program structure enhances accountability and communication among key program stakeholders.

- Race Neutral Measures: To increase the number of businesses participating in government contracting, race-neutral measures are used by MBE and WBE programs and SBE programs around the country. Race-neutral measures are intended to stimulate business growth by helping MBEs, WBEs, and SBEs overcome significant disadvantages. Race-neutral measures do not take into account preferences based on social classifications such as race, gender, or ethnicity. Common race-neutral measures include business support services, financing and networking programs. In particular, surety bonding guarantee programs transfer risk from surety companies to program stakeholders, and loan mobilization programs that are managed in conjunction with the MBE and WBE Program may be beneficial. Education programs that help contractors learn more about contracting, financing and bonding processes may also be beneficial. Other programs that Connecticut could consider include mentor-protégé programs, and contract unbundling programs, although these initiatives must be considered and structured with caution.
- Controlling for Capacity of Companies in the Statistical Analysis of a Disparity Study: Capacity is a term used to describe the ability of a company to perform services on government contracts. There are differing views regarding the process of adjusting for capacity for the purposes of MBE and WBE program administration and conducting the statistical analysis portion of a disparity study. The literature on minority business ownership provides substantive evidence that differential rates of capacity are likely the result of discrimination in the private marketplace. Therefore, adjusting for business availability in the marketplace through the statistical analysis of the disparity study will already account for differential levels of capacity.
- Setting MBE and WBE, and SBE Size Standard Definitions: Size standards, in the context of MBE and WBE programs and SBE programs, can be defined as quantitative business measures such as gross receipts or number of employees, which are used as a proxy for the size of a business. Size standard measures are important to implement for SBE, and MBE and WBE programs because they help to ensure that only small, economically disadvantaged businesses are benefiting from the program. Connecticut could consider adopting both the SBA size standards and the federal DBE standards of personal net worth and three-year gross receipts limit, since the SBA size standards account for industry differences, and gross receipts size standards are periodically adjusted for inflation. Since the DBE and SBA size standards are national in scope, Connecticut could consider using the SBA and DBE size standards as a baseline and making adjustments to account for regional differences, if necessary.
- Reciprocity Agreements: Reciprocity agreements are agreements between two or more MBE or WBE programs located in different governmental jurisdictions that allow for cross-program company certification. Reciprocity agreements are mainly intended to streamline the certification process for MBEs and WBEs that apply for certification to programs located in different governmental jurisdictions. If Connecticut decides to develop reciprocity agreements with other governmental jurisdictions, it should thoroughly review those programs to determine the set of standards and requirements that are common and those that are specific to each to ensure the integrity of the participating programs.

- Goal Setting: It is important to take a data-driven approach to contract and internal agency-specific goal setting. In addition, overall state goals could be adjusted at regular intervals to reflect spending patterns from prior years and the adjusted availability of MBEs and WBEs in the relevant geographic marketplace. Further, the process of applying exemptions and exclusions to determine the pool of funds eligible for the program should be restricted to include only sole-source contracts. Industry sectors with an absence of MBEs and WBEs need not be excluded or exempted from the program because this absence will be reflected in contract, agency-specific, and overall state goals through use of the recommended method for calculating goals.
- The Definition of a Minority: The definition of a minority adopted by the state has implications for the certification process and administration of the MBE and WBE Program. In addition, the results of the statistical analysis portion of the disparity study will vary depending on the definition of a minority used in the program. Successful and effective programs use a minority definition that aligns with the USDOT DBE program and SBA definitions. For the statistical analysis of the disparity study, the state should take an ex-ante approach to defining a minority that relies on evidence cited in the literature review and evidence investigated in the statistical analysis, and use broad racial and ethnic categories identified by the USDOT and SBA to investigate the presence of discrimination in the private marketplace.
- Commercially Useful Function (CUF): Federal regulations 49 CFR §26.55 define CUF for the federal DBE Program, as when the DBE “is responsible for execution of the work of the contract or a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.” CUF regulations and guidelines can be adopted by states and other government entities to help prevent certified MBEs, WBEs and SBEs from acting as “pass-through” entities when performing services on contracts that have MBE, WBE, and SBE goals. The state could consider implementing CUF guidelines that are similar to the DBE program’s guidelines to evaluate CUF because the DBE program has been found to incorporate legally defensible standards.

#### ***ES.5.4 Data and Methodology for Statistical Analysis***

The statistical analysis section of the disparity study will investigate whether conditions in Connecticut’s marketplace necessitate the need for a state MBE and WBE program, and will be used to inform goal setting for the program.

The statistical analysis can be split into two distinct tasks. Both rely on a theoretical framework developed through a comprehensive literature review, an estimation of the state’s relevant geographic marketplace, and an analysis of utilization of MBEs and WBEs by the state. Once the state collects the comprehensive data, the statistical analysis can be conducted, which will then complete the disparity study, allowing the goals for the MBE and WBE Program to be revised.

- Evidence of Marketplace Discrimination: Examining the evidence of marketplace discrimination first requires the establishment of the appropriate geographic market relevant to all agencies’ contracting activity. The analysis is conducted using publicly available data and statistically examines different measures of discrimination in the geographic market. These measures include, but are not limited to, analyses

of differences in wages, rates of self-employment, access to capital, and rates of homeownership.

This part of the analysis identifies barriers faced by MBEs and WBEs in the marketplace and whether current conditions necessitate a state MBE and WBE program. The statistical analysis consists of investigating whether minorities and women face significant barriers to forming and operating business enterprises in Connecticut's relevant geographic marketplace.

The analysis for evidence of marketplace discrimination includes the following sections of the statistical analysis: disparities in earnings by race and gender, analysis of credit market disparities in the United States, analysis of disparities in homeownership and home lending, evidence from business owners, and disparities in business formation.

- Analysis of MBE and WBE Utilization: Analyzing MBE and WBE utilization also requires the establishment of the appropriate geographic market relevant to contracting activity of all state agencies. The analysis is conducted by using the state's prime and subcontracting data in combination with proprietary business listings. The state's utilization of MBEs and WBEs for the designated study period is compared to the availability of these groups in the relevant geographic market area.

The purpose of this aspect of the statistical analysis is to evaluate whether there is discrimination in state contracting based on an examination of availability and utilization ratios. The analysis also corrects the availability ratio for disparities in business formation of MBEs and WBEs in the state's relevant geographic marketplace.

The analysis of evidence of marketplace discrimination includes the following sections of the statistical analysis: availability analysis, expected business formation rates, analysis of state MBE and WBE utilization, and anecdotal evidence about doing business in the state.

## ES.6 CONCLUDING REMARKS

The most effective statewide programs have a centralized structure that has support of the governor and key political leaders, and advocate for MBEs and WBEs in a variety of ways, including: implementing consistent MBE and WBE programs, developing policies, overseeing and enforcing compliance, and educating stakeholders.

Connecticut can be a national leader as an advocate for MBE and WBE business opportunities by considering the implementation of a series of actions.

- Adopt an **organizational structure with a focal point** for the MBE and WBE Program so that companies and state agencies clearly understand who is responsible and accountable for the program and who serves as its primary advocate, advisor, overseer, policymaker, and educator. Having a **leader** of the MBE and WBE Program who is focused solely on the program is a key organizational component of the most successful programs around the country.
- Enact **legislative initiatives** for the near term that separate the MBE and WBE Program from the state's SBE Set-Aside Program, enable the MBE and WBE Program to be goal



based, and allow out-of-state firms to become certified. The purpose of a MBE and WBE Program that is established by state statute should be to eliminate current disparities in state contracting. It is a remedy to be used after race-neutral measures are implemented and when disparities resulting from discrimination still exist. These initiatives will align the program with operative legal standards to address apparent discrimination.

- Implement **administrative changes** to provide greater transparency and consistency within goal-setting and monitoring processes. For example, defining good faith efforts and minimizing the use of exemptions and exclusions within the state agency goal setting process would achieve more efficient and effective administration of the MBE and WBE Program.
- Collect **comprehensive data** about contracts and all payments made to contractors, whether prime or subcontractors, across agencies and branches of government, as an essential precursor to conducting a statistical disparity analysis and to enable greater administrative accountability and oversight of the program.
- Increase the use of **race-neutral measures** to expand the number of businesses that participate in government contracting. By stimulating business growth, race-neutral measures help small companies overcome significant disadvantages regardless of race, gender, or ethnicity. Common race-neutral measures include business support services, finance, and networking programs.
- Consider the **federal DBE regulations** as guidance for implementation and administration of the MBE and WBE Program with regard to issue areas such as those regarding commercially useful function, size standards and definitions of minority. These regulations are useful models as they have been found to be based on legally defensible standards.

Once the comprehensive data needed for conducting the statistical analysis are collected, the disparity study can be completed and used to inform contract spending goals for the MBE and WBE Program.

Based on the results of periodic statistical analyses, if a statistically significant disparity resulting from discrimination exists, then a legislatively mandated MBE and WBE Program should be continued, taking into account all of the relevant legal requirements.



## 1.0 INTRODUCTION

At the request of the Connecticut General Assembly, the Connecticut Academy of Science and Engineering (CASE) in accordance with legislation adopted in the 2012 legislative session, Public Act 12-1 and Public Act 12-104, was asked to conduct a Disparity Study of the state's Small and Minority Business Set-Aside Program ("Set-Aside Program"). Public Act 12-1 provided an overview of the scope of work to be included in the study, and Public Act 12-104 provided initial project funding.

Initial research identified that:

- The state's executive branch agencies and other branches of state government that are responsible for awarding state contracts and overseeing the Set-Aside Program do not for the most part collect subcontractor contracting data, including payment information.
- A review of the legal issues and case law, including presentations to the CASE Study Committee by experts on matters of minority business enterprise programs, identified that subcontractor data and financial information is a critical component of conducting any valid disparity study. Additionally, it was noted that unless quality data are collected and available for analysis, the results of the disparity study could be challenged, and if such challenge were successful, the whole purpose of conducting the study would be negated.

Therefore, as a result of the initial research findings, the scope of work for the study was divided into phases based on the goals of the project as specified in Public Act 12-1 and the best interests of the State of Connecticut.

- Phase 1 was completed in August 2013 and included a review and analysis of Connecticut's Set-Aside and Minority Business Enterprise Program, legal issues, and analysis of stakeholder anecdotal information.
- Phase 2 comprises the research in this report, and includes the following sections: Legislative and Administrative Initiatives; Diversity Data Management System Review; Review of Issue Areas; and Data and Methodology for Statistical Analysis.

Conducting Phase 3 and Phase 4 is dependent on the state acquiring and implementing a diversity data management system (DDMS) for managing the state's minority business enterprise and women's business enterprise program (MBE and WBE Program), including subcontractor data and financial information, in an electronic format for the dual purposes of conducting the data analysis portion of the disparity study and for managing the program. The following draft Phase 3 and Phase 4 work scopes are based on the research and findings of Phase 1 and Phase 2:

- Phase 3 will focus on identifying evidence of marketplace disparities, including: approximating the geographic marketplace; disparities in earnings by race and gender; analysis of credit market disparities in the United States; analysis of disparities in

homeownership and home lending; disparities in business formation; and evidence from business owners.

- Phase 4 will be conducted pending progress on implementation of the DDMS. This phase of the study will provide an analysis of state MBE and WBE utilization and additional anecdotal information, including: defining the geographic marketplace, reapplying the econometric models from Phase 3, calculating availability by industry sector in the geographic marketplace, identifying expected business formation rates, and a final study report.

## 1.1 PHASE 1 REPORT HIGHLIGHTS

As noted in the Phase 1 report, providing opportunities for small companies to succeed in the marketplace through state contracts is a noble pursuit, and one that can be facilitated through race-neutral programs and initiatives such as technical business training and access to capital. Actions that enable small companies to work with the state by allowing these companies more access to financial opportunities and providing technical business assistance, for example, are all actions that can help small businesses succeed, regardless of a company's race or gender ownership. It is also necessary to implement these measures before revised legislation can be adopted that clearly states the goals of an MBE and WBE Program.

The purpose and intent of a formal MBE and WBE Program that is established by state statute should be to eliminate current discrimination. It is a remedy to be used after race-neutral measures are implemented and discrimination still exists.

Therefore, offering race-neutral measures that provide business support services is a useful way to initially provide businesses with opportunities. Streamlining agency processes and the certification process are also useful for every business because they make the program more efficient and enhance the state's contracting processes, encouraging more companies to participate.

Collecting comprehensive data about contracts and all payments made to all contractors, whether prime contractors or subcontractors, is an essential precursor to conducting the statistical disparity analysis. Based on the results of periodic statistical analyses, if discrimination exists, then a legislatively mandated MBE and WBE Program can be implemented that takes into account the legal requirements as set forth in relevant case law.

## 1.2 PHASE 2 REPORT OVERVIEW

The Phase 2 report builds upon the research and findings from the Phase 1 report and provides research and key findings on the following issues:

1. **Legislative Recommendations:** Based on the Phase 1 Study, revisions to current legislation for the MBE and WBE Program are included for consideration by the General Assembly in FY14 and beyond.

- 2. Data Diversity Management System (DDMS) Review:** In order for the statistical analysis of the disparity study to be conducted, comprehensive and systematic data regarding the program must be collected. This section reviews aspects of a DDMS for the state including:
  - a. Data Elements for a Disparity Diversity Management System for Statistical Analysis and Program Review
  - b. Managing the Data Elements for the Disparity Study Statistical Analysis and Program Review
  - c. Diversity Data Management System (DDMS) Implementation Plan
- 3. Review of Program Issue Areas:** In-depth assessments of the following areas provide an understanding of some of the choices that program leaders have in enhancing the MBE and WBE Program, including:
  - a. Leadership and Program Structure
  - b. Race-Neutral Measures
  - c. Controlling for Capacity of Companies in the Statistical Analysis of a Disparity Study
  - d. Setting MBE and WBE, and SBE Size Standard Definitions
  - e. Reciprocity Agreements
  - f. Goal Setting
  - g. The Definition of a Minority
  - h. Commercially Useful Function
- 4. Data and Methodology for Statistical Analysis:** This section provides an overview of the method and data sources needed to conduct the complete statistical analysis for the disparity study, including the following areas:
  - a. Evidence of Marketplace Disparities
  - b. Statistical Analysis of MBE and WBE Availability
  - c. Statistical Analysis of MBE and WBE Utilization in the State's Markets



## 2.0 LEGISLATIVE AND ADMINISTRATIVE INITIATIVES

This section of the Connecticut Disparity Study: Phase 2 report identifies recommended legislative changes to state statutes, including but not limited to C.G.S. §4a-60g regarding the Set-Aside Program for Small Contractors and Minority Business Enterprises, and administrative changes with a timeline for action based on the findings of the Connecticut Disparity Study: Phase I report, as follows:

- Proposed Changes for 2014: The first set of recommendations identifies suggested statutory changes to make the race-based aspect of the program meet the judicial test of *strict scrutiny*. Further, this section also identifies administrative changes.
- Additional MBE and WBE Opportunities Program Improvements: The next set of recommended changes involves both administrative and legislative changes for improving processes and streamlining the Small Business Enterprise Program (SBE Program) and the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program. It is suggested that this program be named the MBE and WBE Opportunities Program (hereinafter referred to as the MBE and WBE Program).
- Legislative Changes upon Completion of the Disparity Study: Finally, the last set of recommended legislative changes is intended for implementation upon completion of the Disparity Study.

In order for a race program to be effective, enforceable, and legally defensible, it must meet the judicial test of *strict scrutiny*. *Strict scrutiny* is the most rigorous form of judicial review that courts use to determine the constitutionality of certain laws that involve *suspect classifications* such as race, religion, and national origin.

To determine if a statute passes the *strict scrutiny* test, the courts have considered whether the government has a compelling interest in creating the law and, if so, whether the law is *narrowly tailored* to meet the need. The following are criteria used to determine if a race-based program meets the judicial standard of *narrowly tailored*:

- MBE program eligibility needs to be based on availability of companies located within the market area for contracting services that are *ready, willing, and able* to provide such services.
- A race-based program needs to be established as a goal-based program rather than as a set-aside
- Race-based program goals must be adjusted periodically to account for the changing effects of discrimination.
- A program should be subject to periodic evaluation to determine if there is a continuing need for it.
- Recipients of contract dollars must not be penalized for not meeting MBE goals, if *good faith efforts* were used to identify and engage eligible MBEs.

- The types of companies that are eligible for the preference need to be limited with respect to racial category and location in the area from which suppliers are usually drawn for the contracting agency. The aim of the program should be to eliminate discrimination that has placed MBEs at an economic disadvantage.

Further, gender-based programs are sometimes held to the same *strict scrutiny* requirement as race-based programs. However, some courts have used *intermediate scrutiny*, a less stringent form of judicial review, to evaluate gender-based programs on the basis that gender is not a suspect classification. The Supreme Court has not developed a framework for analyzing equal protection challenges to gender-based programs and whether such programs should be subject to the lesser constitutional standard of *intermediate scrutiny*. Therefore, it is recommended that the state meet the rigors of the *strict scrutiny* standard for implementing the MBE and WBE Program.

## 2.1 PROPOSED CHANGES FOR 2014

This section outlines the changes that are recommended for adoption during the 2014 legislative session. It also identifies recommended administrative changes that do not require legislation. The recommended legislative changes are intended to more closely align the MBE and WBE Program with the legal standards mentioned above.

### 2.1.1 Legislative Changes

**Separate the programs.** The first *statutory* change would be to separate the SBE Program, inclusive of nonprofits, from the MBE and WBE Program (C.G.S. §4a-60g), as the SBE Program is not held to the *strict scrutiny* standard. Therefore, the programs should be separated in order to align with judicial standards.

**Goal-based program.** The next step in aligning the MBE and WBE Program with judicial standards is to establish the MBE and WBE Program as goal-based rather than a set-aside program.<sup>1</sup> However, the SBE Program can remain a set-aside program since it is not based on race or gender; whereas the MBE and WBE Program must be established as a goal-based program (see recommendation under administrative changes for implementation of a goal-based program).

The current statutory language under C.G.S §4a-60g(c) states:

the total value of such contracts or portions thereof to be set aside by each such agency shall be at least twenty-five per cent of the total value of all contracts let by the head of such agency in each fiscal year, provided that neither: (1) A contract that may not be set aside due to a conflict with a federal law or regulation; or (2) a contract for any goods or services which have been determined by the Commissioner of Administrative Services to be not customarily available from or supplied by small contractors shall be included. Contracts or portions thereof having a value of not less than twentyfive per cent of the total value of all contracts or portions thereof to be set aside shall be reserved for awards to minority business enterprises.

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1. The language in the statutes will have to be amended to refer to the goal-based program as opposed to a set-aside when referring to the MBE and WBE Program. This includes but may not be limited to: C.G.S. § 4a-60g; 4a-60h; 4a-62; and 4a-52a.



Race- and gender-based programs that have been established as set-asides have not been upheld in court. Therefore, it is recommended Connecticut amend the statutory language to clarify that the state's MBE and WBE Program is established as a goal-based program.

Revising the statute to clearly define the MBE and WBE Program as a goal-based program will meet the judicial standard of *narrowly tailored*. As set forth in legal precedence, the courts have indicated programs must allow for flexibility by encouraging – through goals as opposed to set-asides – rather than requiring, contractors to use MBE and WBEs; and by providing waivers to contractors that are unable to meet the goals but can substantiate their *good faith efforts*.

The statute currently sets aside 25% of state contracting dollars for SBEs and 25% of that total is set aside for MBEs and WBEs. Therefore, in actuality, 18.75% is partitioned for SBEs and 6.25% for MBEs and WBEs. Since the recommended revisions to the statute separate the SBE Program and MBE and WBE Program, contract dollars for the SBE Program will be separate and distinct from contracting dollars for the MBE and WBE Program.

Therefore, it is recommended that the SBE Program set-aside be established at 18.75% of eligible contracting dollars and the MBE and WBE Program goal be established at 6.25% of eligible contracting dollars. This would keep the program percentages of eligible contracting dollars consistent with the current statute except that the MBE and WBE Program will be a goal-based as compared to a set-aside program. These percentages would remain in place in statute until the Disparity Study is completed.

Once the Disparity Study is complete, the statutes should be amended to provide for MBE and WBE Program goals to be established administratively based on the results of the statistical analysis of the Disparity Study and future disparity studies. See section on “Legislative Changes Upon Completion of the Disparity Study” for additional guidance. Program goals should not be specified in statute; rather, the statute should require that program goals be set administratively. Additionally, this will provide an opportunity to modify program goals periodically between disparity studies based on interim statistical analyses, if necessary.

**Interim goals.** In addition, until completion of the Disparity Study, the MBE and WBE Program goal should be established in statute on an interim basis only (C.G.S. §4a-60g). Once the Disparity Study is completed, legislation should be adopted to provide for program goals to be established by administrative action based on the statistical determination of whether there is a disparity in the state contracting market, and hence discrimination. The section that follows on “Legislative Changes Upon Completion of the Disparity Study,” provides additional information on establishing program goals and eligibility, including establishing separate goals for MBEs and WBEs.

**Out-of-state firms.** Since the market for contracting services extends beyond state borders, based on judicial precedence, the MBE and WBE Program must be representative of the market. This does not impact the state's SBE Program, which is an economic development program for Connecticut businesses and not a race- or gender-based program. The purpose of the MBE and WBE Program is to eliminate discrimination in state contracting. Therefore the program must allow MBEs and WBEs that are located in the geographic market (which could extend outside of Connecticut) for a particular industry or service to have the opportunity to participate in the program.

Currently the statutory (C.G.S. § 4a-60g) definition of “minority business enterprise” does not require a firm to be located in Connecticut, whereas the requirement for a firm to be located in Connecticut only applies to the definition of “small contractor.” Therefore, once the SBE Program, and the MBE and WBE Program are separated statutorily, the statutes need to be amended to provide for out-of-state firms to be eligible for MBE and WBE certification, which will provide those firms with an opportunity to participate in the MBE and WBE Program.

### **2.1.2 Administrative Changes**

**Implementation of goal-based MBE and WBE Program.** Assuming the SBE Program and the MBE and WBE Program are separated, guidelines on implementing the two programs need to be established. It is recommended that goals for contracts be published as part of the bid/proposal process so contractors are made aware of the goals for a particular project. Under these programs, a firm’s work on a contract cannot be double counted to achieve both the MBE and SBE goals. However, it is suggested that the state examine goal setting to determine if the dollars paid to a particular firm can be separated and applied to more than one program goal on a contract.

**Good faith efforts.** In order to meet the judicial standards of a program being *narrowly tailored*, a race- and gender-based program must not penalize recipients of contract dollars for not meeting MBE and WBE goals, if *good faith efforts* were used by a prime contractor to identify and utilize eligible MBEs and WBEs. Connecticut grants waivers for *good faith efforts*; however, the state does not have an established standard that is used by all agencies and branches of state government for determining the level of effort and documentation that constitutes a prime contractor’s *good faith effort*. Anecdotal information gathered in Phase 1 of the Disparity Study from contractors suggests that there is a lack of clarity concerning what constitutes a contractor’s *good faith effort* and that the state’s determination of such efforts seems arbitrary. Therefore, a standard must be established so that the *good faith efforts* of prime contractors to engage MBEs and WBEs can be fairly determined by the state and the contractors will have clarity in what is meant by *good faith effort*.

**Self-performance (C.G.S. § 4a-60g(e)).** Currently, DAS provides guidance on its website regarding the interpretation of the self-performance requirement. However, there is confusion within the contracting community concerning the requirements under this section of the statute. The self-performance requirement is critical to ensure MBEs and WBEs are not serving as pass-through entities. Therefore, it is suggested that DAS further clarify the statute, provide more examples of how to apply it under multiple circumstances and work with procurement staff in all branches of government to ensure consistent application.

**Reciprocity.** Since out-of-state firms will be able to participate in the MBE and WBE Program, based on the legislative recommendation in the previous section, DAS should consider the steps necessary to enter into reciprocity agreements with other states as appropriate, based on proximity to the state and similarity of certification processes. Entering into reciprocity agreements will help facilitate Connecticut MBE and WBE certified firms in seeking work in other states.

Through engaging other state’s certification offices, Connecticut can gain an understanding of the differences in certification requirements and enforcement practices. However, one

potential obstacle to entering into reciprocity agreements is the fact that the state does not proactively investigate whether firms legitimately match the certification for which they apply by conducting unannounced on-site visits. Other states may be hesitant to enter into agreements knowing that Connecticut's MBE and WBE certified firms have not been adequately vetted. For example, all contracting, engineering, and architectural firms in Massachusetts applying for certification under the state program receive an on-site visit while other industries receive a phone call. It was noted in the Disparity Study-Phase I report, based on the research conducted, that the DAS reported that additional staff resources would be needed to conduct on-site visits. Therefore, in order to conduct certification compliance work, it is expected that DAS would need to allocate additional staff resources to conduct these activities.

## **2.2 ADDITIONAL MBE AND WBE OPPORTUNITIES PROGRAM IMPROVEMENTS**

These recommended changes, based on the research conducted in Phase I of the Disparity Study, are intended to improve the MBE and WBE Program, either through streamlining it with the federal DBE program or by adding transparency.

### ***2.2.1 Legislative Changes***

**Definition of small business.** Since the programs will be separated into an SBE Program and the MBE and WBE Program, consideration should be given as to whether or not a business will also have to be economically disadvantaged to qualify for the MBE and WBE Program. Consideration should be given to whether establishing a small business size threshold and criteria for the threshold would be beneficial for the program and if so, whether it should be based on the current definition, which is defined as a company having annual gross revenues not exceeding \$15 million, or a net worth test.

The Disparity Study - Phase I report recommends changing the definition of a small business for the MBE and WBE Program. The rationale for the change is to make the definition more specifically tailored to provide opportunities to businesses that are economically disadvantaged. For example, the definition does not take into account industry differences. Businesses in industries that require large capital investment such as heavy construction may warrant a larger revenue cap than businesses in the service industry. Further, using annual gross revenues as a measurement does not necessarily identify businesses with economic disadvantages. Rather, a net worth test is a more appropriate measurement tool.

Three options for changing the definition of "small business" for the MBE and WBE Program in an effort to ensure fair representation of the types of small businesses that exist in the market that should be considered are as follows:

1. Make the MBE and WBE Program size limit the same as the federal DBE program;
2. Change the MBE and WBE Program size limit to net worth; and/or
3. Have different definitions depending on the industry for which services are utilized.

These options will be further analyzed, with more specific recommendations for establishing separate definitions for size limits for SBEs, and MBEs and WBEs.

**Self-performance (C.G.S. § 4a-60g(e)).** During the 2013 Legislative Session, P.A. 13-304 increased the percentage of work required to be performed by any prime SBE/MBE company that is awarded a contract under the set-aside statute. Following are the new guidelines as published on the DAS website:

Previously, a company awarded a set-side contract was required to self-perform at least 15% of such contract; it will now be required to self-perform at least 30%. Further SBEs and MBEs that subcontract some of the work under their set-aside contracts will be required to subcontract at least 50% of the remaining work (i.e., the work not self-performed by the prime) to SBEs and MBEs, respectively, instead of 25%, under current law. Please note the 50% requirement applies to the work subcontracted; in other words, the percentage to be self-performed by the prime contractor cannot be used to accomplish the 50% requirement.

For example, if an SBE is awarded a \$100,000 state contract under the set-aside statutes, that SBE will be required to perform at least \$30,000 of the work under the contract. If the SBE self-performs \$30,000 of the work, and chooses to subcontract the remainder, the SBE must subcontract at least \$35,000 of the work to another certified SBE (50% of the remaining \$70,000 on the contract).

Adding a second goal to contracts further complicates the effective management and administration of the program. The self-performance requirement is critical to ensure MBEs and WBEs are not serving as pass-through entities. However, the decision to subcontract and with whom to subcontract should only be a business decision of the MBE or WBE. However, contractors awarded contracts as part of the separate SBE Program should not be excluded from using *good faith efforts* to engage MBEs or WBEs for work on such contracts when appropriate based on the type and scope of work of such projects. It is recommended that this legislative action should be taken as soon as possible.

**Affirmative Action Plans.** The recommendations in this section concerning the Affirmative Action Plan include both legislative and administrative actions.

It is recommended that the plan be split into two parts:

- **Affirmative Action Plan:** This part of the plan would include the general policy statement, internal and external communications, and company workforce and organization analysis.
- **MBE and WBE Utilization Plan for contracts, when required:** This part of the plan would include contract specific information regarding MBE and WBE utilization (also applicable for SBE utilization for the SBE Program) on contracts, when required (Currently Section 11: Subcontractor Availability Analysis and Section 12 Minority Business Enterprise Goals and Timetables in the Affirmative Action Plan).

For the state MBE and WBE Program, companies submit the existing Affirmative Action Plan for each contract, when required. However, for the federal DBE Program administered by ConnDOT, companies must submit the Affirmative Action Plan only every two years. The state's requirement creates an administrative burden, with plans potentially not being approved in a timely manner due to resource constraints. Therefore, it is recommended that the state



adopt the practice utilized by ConnDOT for the federal DBE Program and have the Affirmative Action Plan submitted every two years. This will not only create consistency for the contracting community, but it will also alleviate the administrative burden and allow the administrative focus for each contract to be on the MBE and WBE Utilization Plan.

Another consideration is who should have responsibility for approval and monitoring of the MBE and WBE Utilization Plans. ConnDOT has a Memorandum of Understanding (MOU) with the Commission on Human Rights and Opportunities (CHRO) that provides them with authorization to approve and monitor Utilization Plans for companies for the federal DBE program. This model could be considered for state agencies/branches of state government by establishing MOUs that provide agencies contracting for services the authority to approve and monitor these plans.

Another option would be to amend the state statutes to provide contracting authorities with the responsibility for the approval and monitoring MBE and WBE Utilization Plans. However, a review of options should include an analysis of personnel resources necessary for implementation.

Further, in an effort to more seamlessly integrate the MBE and WBE Program into the bid/contracting process, it is recommended that the MBE and WBE Utilization Plan be submitted prior to contract execution, when such plans are required. This will provide an opportunity to assess the utilization of MBE and WBE firms during the contracting process. Wherever approval of the utilization plans resides, it is important that such approval occur within a predetermined time period so as not to delay the execution of a contract.

*Uniformity.* It is suggested that consideration be given to streamlining the certification process for all program classifications. Several options, among others, to consider include:

- Create a single certification office that is responsible for all state program certifications including the MBE and WBE Program, SBE Program, federal DBE program administered by ConnDOT, and the federal DBE Program for meeting EPA requirements. Contractors would be able to select the certifications that they would like to apply for through a single application process, rather than having to apply separately for the federal DBE and state programs.
- Adopt the federal DBE program certification requirements for the state's MBE and WBE Program.

*Municipalities.* Currently, municipalities are excluded from participating in the program. However, a sizeable amount of state funding is provided to municipalities for projects that are contracted for by municipalities. To ascertain whether there is discrimination in the state contracting marketplace, pass-through state funding to municipalities should be included in the MBE and WBE Program. Therefore, it is recommended that the exclusion that exempts state-funded municipal projects from the MBE and WBE Program should be eliminated. However, this legislative change has not succeeded in the past when considered by the General Assembly. Therefore, it is recommended that this be explored in greater depth before a legislative recommendation is proposed.

### 2.2.2 Administrative Changes

**Commercially useful function.** The term “commercially useful function” refers to contract dollars that go towards activities in a project that provide an added value. For example, the trucking of materials provides a service, or added value, but the purchasing of the material being hauled on behalf of a prime contractor may not necessarily be considered a “commercially useful function” depending on the specifics of the contract and contractors involved. Since determining a commercially useful function is complex, this issue will be researched in greater detail before submitting a recommendation for consideration.

**Program administration, compliance, and enforcement.** The anecdotal research of the Disparity Study - Phase I report, including findings from interviews, surveys, and focus group sessions, identified the need for a more streamlined and transparent process for administration, certification, compliance, and enforcement. The findings indicated there was fragmentation, differences by state agency in program implementation, and a lack of transparency for determining *good faith efforts*. To help provide consistency to the contracting community, the state should consider ways to provide a more centralized approach, with clear program leadership that has overall accountability for the SBE Program and the MBE and WBE Program. Determining the best organizational structure for program administration, certification, compliance, and enforcement that provides consistency for the contracting community will be analyzed and a recommendation will be made based on best practices across the country.

## 2.3 LEGISLATIVE CHANGES UPON COMPLETION OF THE DISPARITY STUDY

**Evidence-based goals.** Once the Diversity Data Management System is operational, the state will have the mechanism for collecting contractor and subcontractor contracting information and payment data systematically and at a level of detail that will enable the study’s econometric analysis to be conducted. If discrimination is found based on the analysis, goals will be established for race-based groups that are identified to be experiencing discrimination. The MBE goals will be aimed at alleviating discrimination experienced by minority groups. Further, based on this analysis, a separate goal for WBEs will be established, if it is found that WBEs are also experiencing discrimination.

**Sunset date.** Since the purpose of the MBE and WBE Program is to eliminate discrimination in the marketplace, the program needs to be evaluated continuously to determine if the goals should be modified and if the appropriate groups are included in the program. Upon completion of the current Disparity Study, the program goals for the MBE and WBE Program should be removed from the statute with new goals set administratively. Additionally, the statute should be amended to include only those groups that will be included in the MBE and WBE Program. The goals and the groups that are included will then be evaluated administratively on an ongoing basis. Further, a sunset date should be established by statute that will coincide with the completion of the next disparity study. The process of sunseting the program to coincide with the results of future disparity studies should continue until discrimination in the marketplace is eliminated.

## **2.4 CONCLUDING REMARKS**

It is important to align the MBE and WBE Program with the judicial standards for a race- and gender-based program. Further, suggested administrative changes can help provide clarity for the contracting community and also streamline and create uniformity among the various state programs.





## **3.0 DIVERSITY DATA MANAGEMENT SYSTEM (DDMS)**

### **3.1 DATA ELEMENTS FOR A DIVERSITY MANAGEMENT SYSTEM FOR DISPARITY STUDY STATISTICAL ANALYSIS AND PROGRAM ADMINISTRATION**

This section of the Connecticut Disparity Study: Phase 2 report identifies the data elements to be collected and maintained in a diversity data management system (DDMS) for use in conducting the statistical analysis for a comprehensive disparity study, as well as for the state's use for managing and reporting on the MBE and WBE Program.

It is important that companies on whom information is collected include those that bid on and are awarded contracts, as well as those that bid on and are not awarded contracts. Information should be collected for all contracts, not just those with MBE or WBE goals. In addition, it is important to collect payment information on both prime contractors and subcontractors including those certified as MBEs and WBEs as well as those that are not minority- or women-owned.

#### ***3.1.1 Data Elements***

1. Company information – For all bidders, prime contractors, and subcontractors
  - a. Business name
  - b. Primary owners
  - c. Contact person with contact information (including phone and email)
  - d. Address, city, state, and zip code
  - e. Vendor number (if applicable)
  - f. Certifications (SBE, MBE, WBE, DBE, municipal, etc.)
  - g. Race and gender
  - h. Primary NAICS codes (6 digit) for contractors and subcontractors
  - i. Bid/solicitation/contract number applying for as a prime, subcontractor, or lower-tier subcontractor
  - j. Whether bid on state contract before through an RFP/RFQ/other bid process (yes/no; if yes, how many times)
  - k. If awarded a state contract before (yes/no; if yes, how many times)
2. Contract/Purchase Order (PO) information
  - a. Name of contract/PO
  - b. Unique contract/PO number

- c. Start date and end date (projected and actual)
- d. Initial dollar amount of contract/PO
- e. Percentage MBE or WBE contract goal (exempt, 0%-100%)
- f. Agency/political subdivision for which the project was performed
- g. Short description of the services to be performed and/or goods to be supplied with accompanying NAICS codes (6-digit)
- h. Dollars actually paid to contractors and subcontractors (including P-card payments)
  - i. Whether the payment is a change order (yes/no)
- i. Subcontract information
  - i. Unique contract number for subcontract
  - ii. Initial dollar amount of subcontract
  - iii. Short description of the services to be performed and/or goods to be supplied with accompanying 6-digit NAICS codes

### **3.1.2 Rationale**

The following describes how each of the data elements will be used in the disparity study's econometric analysis. It is important to note that this information will be collected for all state contracts and purchase orders, not just for contracts and purchase orders with MBE or WBE participation. Further, it is important that information is collected on companies that bid and submit proposals on projects and for procurement, as well as on those who are ultimately awarded and complete the work.

Contract numbers are necessary for identification, tracking and verification purposes. The collection of contract numbers also ensures that if a contract is separated into several different purchase orders, the entire contract can be grouped together for analytical purposes. The statistical analysis will include contracts within a specific period of time. As a result, contract start and projected and actual end dates will be important for determining the contracts that will be included in the analysis. A short description of the project is important to ensure that the proper industry codes (i.e., NAICS codes) are assigned to the contract in order to compare the availability and utilization ratios. The bidder information will be presented in the utilization assessment, and is important in evaluating bids against awarded contracts.

All contractors who bid on projects are assumed to be *ready, willing, and able*. Availability has a product and a geographic dimension. Therefore, it is important to capture the business location of prime contractors and subcontractors, as well as the primary NAICS code associated with these companies. The market area of the state will be established based on where 80% of contracting dollars are spent geographically; this necessitates the collection of information regarding actual payments to both prime and subcontractors. Further, actual payment information is critical to calculating the percentage of all prime contract and subcontract dollars that were actually earned by MBEs and WBEs (i.e., "public sector utilization").

It is also recommended that the race and gender of the owners of the companies be collected to verify that all are correctly categorized. Some vendors may be minority- or female-owned but not be certified.

In determining whether MBE and WBE firms have been underutilized in the public sector, it is ideal to be able to examine public expenditures that are not subject to affirmative action requirements in order to determine if there is a difference in utilization as compared with those contracts that have goals applied. Capturing data about whether or not a contract has a goal applied or is exempt from the MBE and WBE Program will enable this analysis.

B2Gnow is a comprehensive DDMS that is under consideration for use in Connecticut. The B2Gnow DDMS contains a number of options for modules that the state can purchase to organize and assess its MBE and WBE program. The most common modules used by government entities across the country to complete the statistical analysis of the disparity study and the ones from which Connecticut could most benefit include: certification; contracts; concessions; goal setting; bid tracking; and payment analysis. Connecticut could also benefit from the workforce utilization module in order to assist with monitoring the program.

### **3.2 MANAGING THE DATA ELEMENTS FOR THE DISPARITY STUDY STATISTICAL ANALYSIS AND PROGRAM ADMINISTRATION**

Based on the suggested DDMS data requirements previously identified, this section of the report provides guidance for the state's consideration for managing and reporting on the MBE and WBE Program, as well as for conducting the statistical analysis of the disparity study.

As noted in Phase 1 of the disparity study, quality data collection and the application of appropriate analytical techniques are crucial aspects of designing a comprehensive disparity study and providing evidence justifying that program goals are based on the findings of discrimination in state contracting. Collecting complete and timely prime contract and associated subcontract award information and payment data is critical to effective program implementation and monitoring.

A complete data collection process requires that data be collected on prime contractors and subcontractors that have submitted a bid on any state contract, as well as on the state's purchases of goods and services. Calculating an agency's goals and evaluating its performance depends heavily on the availability of procurement, contract, criteria for awarding a contract, and bidding records. Currently, the state maintains these records in a disaggregated system where there are multiple financial systems and methods of recordkeeping among key state agencies and branches of government. There is no consistent information on subcontractors and payments to subcontractors or a standard process for recording P-card purchases, and varying accounting methods (cash versus accrual) are used among branches of state government and some executive branch agencies. All of these data elements must be systematically collected and available in order to conduct a valid disparity study.

Managing the data elements for the disparity study's statistical analysis, as well as managing and reporting on the MBE and WBE Program, requires a multi-faceted approach:

### ***3.2.1 Establish a Project Management Team***

A critical first step involves creating a project team that includes those state agencies and branches of government that will be involved in all aspects of the design, build, implementation and use of the DDMS.

- Establish a project team that includes representatives from all branches of government, including UConn and the Board of Regents, and assign a project manager. Representatives from all financial systems used by the state should be represented on the team.
- Meet with New York and other states, cities and agencies to learn about their experience in implementing a DDMS.

Suggested goals for the project team include the following:

- Streamline and adapt administrative processes and DDMS system functionality as necessary to ensure effective implementation of the system.
- Collect all data and information necessary for the administration and operation of state contracting and procurement programs and for use in conducting a comprehensive disparity study.
- Standardize the reporting of P-card information across all branches of government and financial systems.
- Develop DDMS reports to provide transparency in reporting on state contracting in as close to real-time as possible for the state's use in goal setting and program performance, as well as for the public's use in identifying contracting and procurement opportunities.
- Examine the functionality of the DDMS system and processes in order to consider including contracting information for state-funded municipal projects in the DDMS.

### ***3.2.2 Outline Current Processes***

Under the supervision of the project team, all agencies and branches of government that are involved with the MBE and WBE Program should outline their current processes for certification, contracting, goal tracking, reporting, and payment. Once the current processes and DDMS functionality are documented, adapt both as necessary and feasible to ensure successful integration of the state's processes and DDMS functionality to meet the needs of the state's contracting and procurement programs.

### ***3.2.3 Streamline Certification and Program Processes***

State agencies and the branches of state government should use the DDMS implementation process as an opportunity to consider ways in which current processes and procedures can be improved. These process improvements could then be incorporated into DDMS development and design.

As mentioned by small businesses in focus group sessions conducted during Phase 1 of the disparity study, there is confusion among a variety of stakeholders about what it means to be

SBE/MBE “certified” with the state. There are multiple programs for which a company can apply for certification or various designations in the state contracting process – through DAS certification as an SBE, MBE, or WBE; through the federal DBE program that is administered by ConnDOT,; or by being prequalified for larger construction projects. In addition, there are on-call lists through several agencies for emergency work that can be contracted for quickly, for which a company must apply through an RFP process every 1-2 years; other agencies have preferred vendor lists to conduct certain types of work and some municipalities have separate MBE certification processes. Additionally, there are other informal lists of companies that have conducted favorable work for agencies that can be utilized easily if formal bidding processes are not required. The level of paperwork to become certified at the state level is perceived as cumbersome, and if a company plans to apply for multiple certifications, the paperwork can become onerous, according to some of the companies that participated in the focus group sessions conducted in Phase 1 of the disparity study. However, it is important to have both a rigorous evaluation process to assure that companies are qualified for the certifications and designations applied for, and opportunities for many businesses to participate in the state’s contracting and procurement programs.

In anticipation of DDMS implementation, there is an opportunity to review both current certification processes, including the steps and paperwork involved, as well as an ideal process including integrating DDMS functionality to support and streamline the certification processes. This would allow the DDMS to be utilized most efficiently to capture as much information online and as routinely as possible for the MBE and WBE Program. One example of an opportunity to streamline the process would be to provide a single gateway where contractors can self-register for a multitude of certifications. Further, the state could consider having one certification office that would support all federal and state programs. In particular, certification could be managed in one office for all state agencies, federal EPA and DOT requirements, construction services, judicial services, and higher education.

### ***3.2.4 Engage the Contracting Community***

A critical aspect of successful management and implementation of a DDMS is adoption and use of the system by the contracting community. Therefore, the state will need to consider ways to ensure the contracting community – including both prime and subcontractors – inputs payment and other contracting information into the system. One example would be to make inputting the information a requirement in order to receive payment. Since this is not a requirement in the current contracting process, the operating procedures will need to be updated to reflect this change. Therefore, with the adoption of the new system, there is the opportunity to examine and streamline certification and contracting processes.

### ***3.2.5 Assess Project and Data Elements Routinely***

The project team should meet regularly to review the DDMS implementation process, how the streamlining of processes is enhancing the contracting and procurement programs, whether the contracting community is engaged in the process, and whether the data elements are adequately collected for conducting the statistical analysis of a disparity study and for administering the programs.

### 3.3 DDMS IMPLEMENTATION PLAN

This section of the report provides an overview of a suggested DDMS implementation plan, based on the process that the State of New York used with its DDMS vendor, B2Gnow, to implement the system they acquired in 2012, that can be used as a guide for Connecticut's consideration.

Principal activities of the implementation plan, as further described in this section, include the following:

- Project Approach
- Business Requirements Validation
- Infrastructure Build and Configuration
- Technical Environments
- Interface Implementation
- Software Build and Configuration
- Testing and Implementing the System
- Service Level Agreement Reporting
- Training
- Security Plan

For each principal activity, the implementation plan should include deliverables, work products, acceptance criteria, project roles for both the state staff responsible for each task including approvals, and the DDMS vendor. Additionally, a description of DDMS vendor actions to accomplish work tasks should be included in the plan, along with a timeline for completing all work tasks.

#### ***3.3.1 Project Approach***

- Initial Project Meetings: This task involves initial meetings with the DDMS vendor and all members of the state's project management team to review project tasks, responsibilities, expectations and system configuration.
- Statement of Work: A revised work scope should be developed that incorporates the results of the initial project meetings.
- Communication Plan: A detailed communication plan should be developed to keep the state's project management team, DDMS vendor, and stakeholders informed of project progress.
- Other Tasks: Other tasks include development and ongoing maintenance of the project schedule, and formulation of a project risk management plan.



### ***3.3.2 Business Requirements and Infrastructure Validation***

- **Business Requirements Specification/Document:** A document that identifies all business requirements, processes and reporting needs should be developed. This process includes using initial information developed by the state's project management team and additional information gathered by the DDMS vendor through interviews and discussions during the implementation process. The results of this process should be used by the DDMS vendor in the system configuration process.
- **Base Software Requirements Validation:** This process involves having the DDMS vendor validate software functionality through detailed demonstrations for the state's project management team.
- **DDMS Vendor Infrastructure Readiness:** This task involves having the DDMS vendor verify that their system is ready with the capacity to handle use by Connecticut. This includes the ability for state personnel to login and verify system availability.

### ***3.3.3 Technical Environments***

- **DDMS Vendor Environment Testing:** The DDMS vendor should develop a test environment to show Connecticut users how the system will be used.
- **Verify Test Environment:** Connecticut users should have the ability to test the system in the staging environment to ensure that the system is configured to meet the needs of the state. It will be important to determine the different user requirements and controls for various stakeholders such as agency staff, prime contractors and subcontractors, and others, as well as what data will be collected, including what data will be required versus not required.

### ***3.3.4 Interface Implementation***

- **Interface Design:** At this point in the implementation process, the DDMS vendor should design the interface between the state's financial, certification and procurement systems and the DDMS system. The DDMS vendor should provide the state with a guide that details how the systems will interface with each other.
- **Test Integration Files:** The DDMS vendor should supply the state with test integration files so that tests can be conducted to determine that the interface is specified correctly.
- **Data Initialization:** The DDMS vendor should guide the state through its specific process of data mapping and the load sequence for the initial migration of the existing data into the DDMS system.
- **Data Migration:** The state should provide the DDMS vendor with electronic copies of the existing data that need to be transferred into the DDMS system. Once the data have migrated to the DDMS system, the state will be able to review the data to make sure that the transfer was comprehensive and completed accurately.



### ***3.3.5 Software Build and Configuration***

- Fully Configured Software: The DDMS vendor should configure all of the modules based on the state's data and the input that was collected during the initial project meetings. The state should review the modules and suggest adjustments to the configuration, if needed.
- Create Notifications and Portal: The DDMS vendor should generate any notifications that may need to be sent through the state's system so that they match the state's letterhead and the "look and feel" of the state's program website, as appropriate.
- Additional Testing: The DDMS vendor should complete any remaining enhancements prior to the state's testing of the system.
- Security Plan: The DDMS vendor should document its approach to mitigating internal and external security threats to the data within the system.

### ***3.3.6 Testing and Implementing the System***

- User Testing and Input: As the system is developed, it will require informal testing by agency personnel, as well as formal user acceptance testing (UAT). Training sessions for agency staff on new procedures should be completed, followed by UAT, with system modifications being made based on the users' input.
- Upon successful completion of system testing, the final state system configuration should be completed and validated.

### ***3.3.7 Training***

- Initial Training: DDMS vendor should provide training to agency staff to teach them how to interface with the system.
- Ongoing Training: DDMS vendor should be available to conduct web-based training systems and to answer questions on an ongoing basis.
- Consider Additional Training of Vendors: Since a new process will be implemented which requires contractors to interface with the system – entering payment information, verifying payment, etc. – adoption by the contracting community is critical. Therefore, adequate training of the contracting community will be necessary. This training should entail explaining the importance of the system, the importance of accurate data collection for goal setting, and instructions on how to use it. Continuous, ongoing training should also be considered for new contractors, new employees of current contractors, as well as for those who may need extra assistance.

### ***3.3.8 Final Project Approval***

- Final Review: All of the work products and key findings should be reviewed with the state's project management team. The state should provide final approval/acceptance of the comprehensive project completion.

### **3.4 B2Gnow DIVERSITY DATA MANAGEMENT SYSTEM SURVEY: DDMS PRACTICES IN OTHER STATES/AGENCIES**

#### ***3.4.1 Survey Overview***

A survey was conducted of government supplier diversity offices across the nation that have implemented the B2Gnow diversity data management system (DDMS). These systems are typically used by government agencies to organize contractor data needed for conducting a disparity study, as well as for managing diversity programs. The purpose of the survey was to gain insights into the B2Gnow implementation process and program. The B2Gnow system was specifically chosen and analyzed because many supplier diversity offices use this system including New York State, which is in the process of implementation for all of its agencies. Other DDMS systems exist, but were not selected for analysis in this survey.

The online survey consisted of 25 questions and was sent to 30 supplier diversity offices via email.<sup>2</sup> The survey was released in mid-October 2013 and was closed in December 2013. The survey also included several questions for the purpose of understanding small (SBE), minority (MBE) and women-owned business enterprise (WBE) program issues.

The following analysis addresses questions that were specifically asked about the DDMS implementation process. Overall, 19 of the 30 supplier diversity offices (63%) that received the survey responded. Not all of the 19 survey respondents answered every question; some respondents chose to skip some questions. Appendix A has detailed table of the survey results.

#### ***3.4.2 Supplier Diversity Office Characteristics***

Sixteen of 17 respondents (94%) indicated that they were at the manager or director level in their respective supplier diversity offices; in addition, one respondent was employed in an information technology capacity.

A total of 17 respondents answered a question regarding the level at which their office operated, as follows: six respondents (35%) indicated that their office operated on the federal level; five respondents (29%) indicated that their office operated on the state level; four respondents (24%) indicated that their office operated at the county level; and seven respondents (41%) indicated that their office operated on the municipal level.<sup>3</sup> This shows that the B2Gnow system can be implemented at all levels of governments that may have differing processes, and at various levels of program and system complexities.

A total of 14 respondents indicated the number and dollar value of contracts recorded in either fiscal year 2012 or 2013. Six respondents (43%) indicated that their respective government issued between 100 and 499 contracts. Four survey respondents (29%) indicated that their respective government issued less than 99 contracts; and four survey respondents (29%) indicated that their respective government issued more than 500 contracts. Nine survey respondents (64%) indicated that their government issued contracts valued at more than \$100 million. As a

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2. Survey was administered through Survey Monkey.

3. Survey respondents were allowed to pick more than one answer.

comparison, the Connecticut Department of Administrative Services (DAS) issued 253 contracts in fiscal year 2011 valued at approximately \$412 million.<sup>4</sup>

### 3.4.3 B2Gnow Implementation Process and Program Findings

A total of 18 respondents responded to a question regarding the number of agencies in their government system that utilize the B2Gnow DDMS. Nine respondents (50%) indicated that only one government agency in their system utilized this DDMS. Five respondents (28%) indicated that between five and nine agencies in their government system utilized this DDMS. This indicates that many of the survey respondents may be employed in governments that are relatively small in size in comparison to Connecticut. However, nine supplier diversity offices indicated that the value of their government contracts for either fiscal year 2012 or 2013 exceeded \$100 million, and hence may be used as a comparison to Connecticut.

A total of 17 respondents responded to a question regarding the length of time that was needed for DDMS implementation (Figure 1). Fifteen respondents (88%) indicated that the B2Gnow DDMS implementation process took less than eleven months. Two respondents (12%) indicated that the implementation process exceeded twelve months. When examining survey respondents who indicated that their respective governments issued contracts above \$100 million in either 2012 or 2013, four respondents out of a total of nine respondents (44%) indicated that the implementation process took between three and five months. This may indicate that the time needed to implement the B2Gnow system may not be excessive, even for government systems that manage a relatively large number of contracts or have a several agencies that utilize the system.

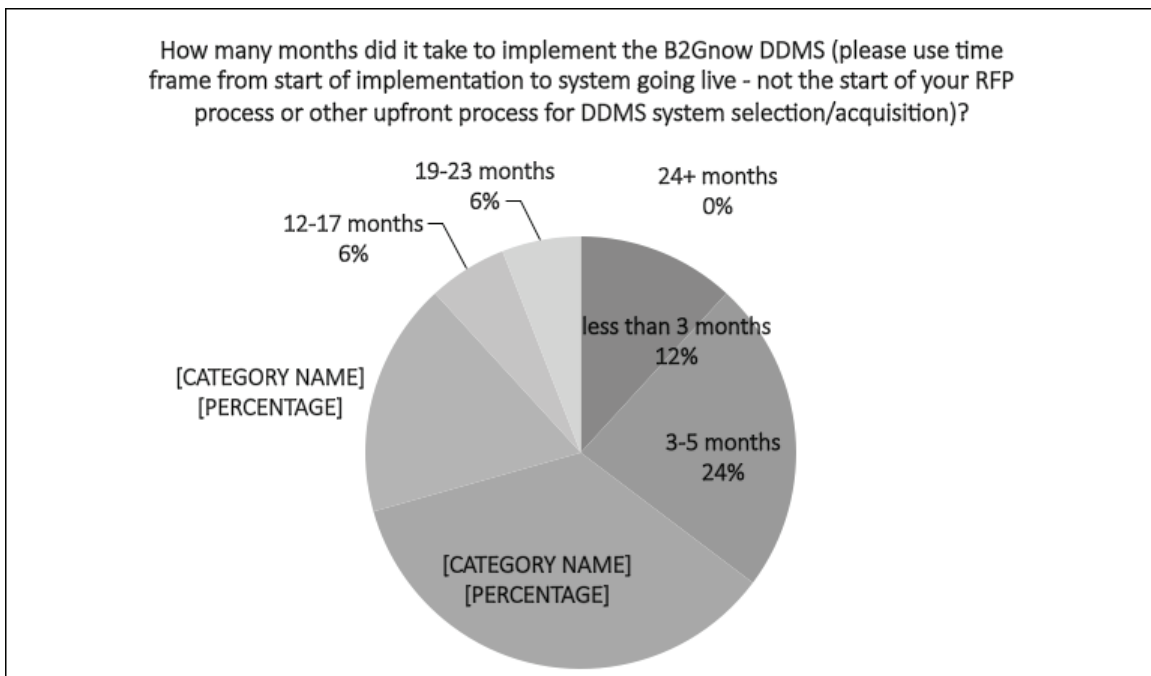


FIGURE 3.1: SURVEY RESPONSE REGARDING DDMS IMPLEMENTATION TIME

4. See Department of Administrative Services, State Procurement Marketplace, Briefing Book, 2012 year in review.

Thirteen of 16 respondents (81%) indicated that prime contractors manually input payment information into the B2Gnow DDMS, and subcontractors (81%) then manually verified the prime contractor payment information in the DDMS (Figure 3.2). This may indicate the system's value in validating contractor information, and hence may reduce the state's administrative compliance costs.

Twelve of a total of 16 respondents (75%), noted that the system automatically uploads information from their financial systems, which further indicates the efficiencies of the B2Gnow DDMS (Figure 3.2).

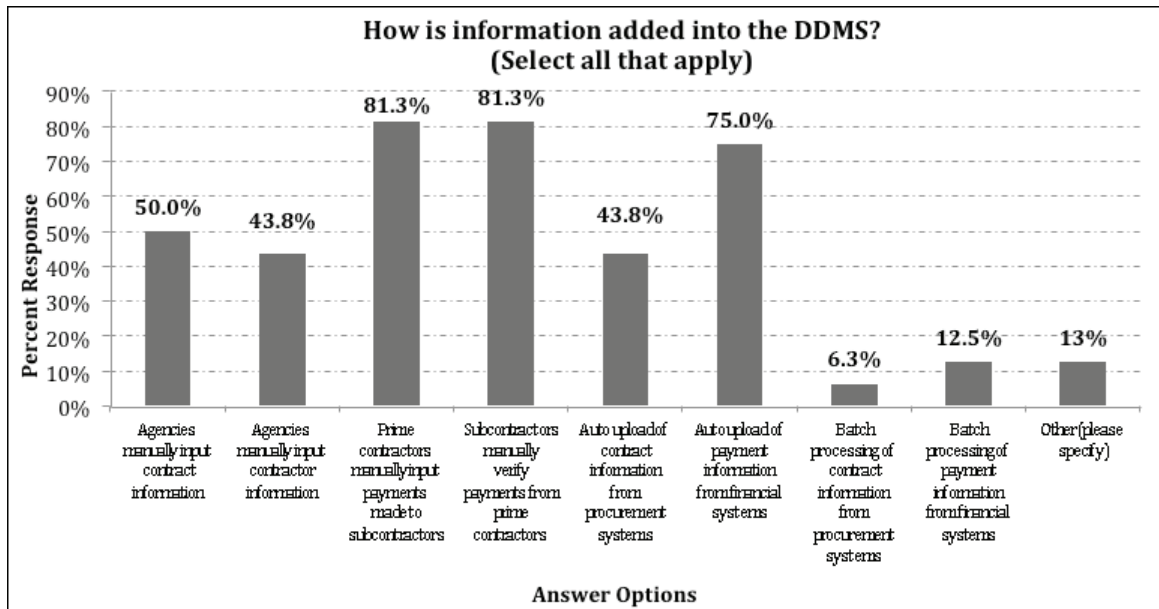


FIGURE 3.2: SURVEY RESPONSE REGARDING METHODS FOR INPUTTING DATA INTO THE DDMS

Based on survey responses, the certification, contract, and outreach modules were the most likely modules selected for initial use (Figure 3.3). Modules most likely to be implemented after initial use included the outreach and event management, and online application modules. Modules that were least likely to be implemented either initially or after initial implementation included the workforce utilization and the insurance modules.

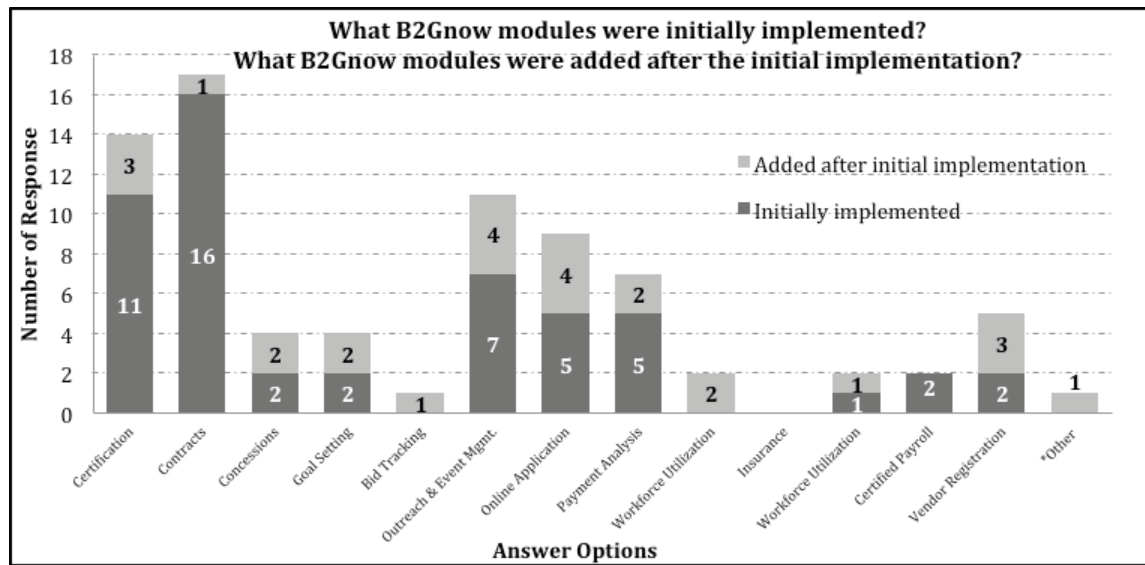


FIGURE 3.3: SURVEY RESPONSE REGARDING B2GNOW MODULES IMPLEMENTED

Before implementation of the B2Gnow system, seven of a total of 13 respondents (53%) indicated that one to four staff persons were needed for technical system maintenance. Four of a total of eleven respondents (36%) indicated that after implementation, one to four staff persons were needed for technical system maintenance. This finding seems to indicate that the technical maintenance needed was reduced after implementation because of efficiencies from the B2Gnow system.

### 3.4.4 DDMS Implementation Survey Findings Conclusion

Based on survey respondent answers, the B2Gnow DDMS may be beneficial in efficiently and effectively tracking spending for contractors. For example, the system has many modules to select from to manage all aspects of SBE, MBE, and WBE programs. Financial information from different financial systems can be automatically uploaded in a centralized location, which could minimize managerial and technical costs that come with managing a decentralized system.

Furthermore, survey respondents indicated that prime contractors and subcontractors utilize the system to verify payment information. Therefore, this may also greatly reduce the time and cost for program staff to verify this information. Another survey finding indicates that the majority of survey respondents' offices implemented the B2Gnow system in less than twelve months; this suggests that the time it takes to implement the B2Gnow system is not excessively long.

If the State of Connecticut implements B2Gnow or another DDMS to organize its information, it should consider the potential for efficiencies such as these that may simplify the management and analysis of its SBE, MBE, and WBE programs.

## 4.0 PROGRAM ISSUE AREAS

This section of the Connecticut Disparity Study: Phase 2 report provides information on several issue areas that are critical to the completion a disparity study and for managing the MBE and WBE Program, as well as the SBE Program. The Phase 1 report and ongoing discussion with experts in the field and stakeholders provided the basis for further research on the selected issue areas. Recommendations as to how these issues could be addressed for the MBE and WBE Program, and the SBE Program, are suggested for Connecticut's consideration.

The issue areas addressed in this section include

- Leadership and Program Structure
- Controlling for Capacity of Companies in the Statistical Analysis of a Disparity Study
- Goal Setting
- Commercially Useful Function
- The Definition of a Minority
- Race-Neutral Measures
- Reciprocity Agreements
- Setting MBE and WBE, and SBE Size Standard Definitions

### 4.1 LEADERSHIP AND PROGRAM STRUCTURE

#### 4.1.1 Overview

Research on best practices among other MBE and WBE programs, and SBE programs across the country indicated that successful and effective programs have a distinct leader or champion and a centralized program structure. This leader ensures that all aspects of the program are operating effectively, provides a system of accountability, and promotes the value of the program. A centralized program structure enhances accountability and communication among key program stakeholders. The following identifies the importance of leadership and a centralized program structure for management of MBE and WBE programs that could also include SBE programs.

#### 4.1.2 Program Management

MBE and WBE programs, and SBE programs are complex to implement and manage. Having a program leader who is responsible for program management and operation is essential to ensure that all aspects of the program are effectively developed and administered, and that all involved parties are held accountable for reaching program goals.



Further, research regarding programs in the United States identified that many effective programs are managed through a single, centralized office, with all agencies within the respective government system reporting to a central program office; for state level programs, the central office reports directly to the governor.

Having a single, central program office can

- improve program performance and accountability;
- mitigate confusion about who should be contacted regarding questions or concerns related to the program;
- ensure that there are no competing institutional concerns among different agencies or departments; and
- provide consistency in policies and practices.

Additionally, many of the programs researched had support from key legislative and executive branch decision-makers who are involved in the management of the program. Responsibilities of the legislative and executive branches should be clearly identified:

- The legislature should adopt and review policies and perform ongoing program oversight and review based on the results of periodic disparity studies and program reporting and results.
- The governor's office should provide overall leadership to assure the program is meeting performance goals.
- The central program office should develop policies, regulations, procedures and practices, and oversee implementation across state government, including periodic reporting of program results and opportunities for improving the program. In addition, the central program office should monitor compliance and report results.
- Agencies and branches of state government should consistently implement policies, regulations, procedures and practices for the contracting and procurement of goods and services, as well as assist with program outreach and training.

#### ***4.1.3 Program Voice***

The director of the central program office should be the focal point for overall program leadership. The director can strengthen stakeholder confidence in the program by serving as the definitive voice on all aspects of the program. Stakeholders will know with whom to communicate regarding questions or concerns about the program.

Additionally, race and gender preference programs can be subject to legal challenges. The program leader should monitor the program for legal compliance and effectively voice the state's position with the goal of reducing these challenges.



#### 4.1.4 Leadership and Program Structure Outcomes

Performance outcomes of having strong leadership for a centralized program office appear to be positive. Massachusetts and Maryland have programs that use this model for their MBE and WBE programs. Since the adoption of these models, these programs have grown substantially in terms of increasing MBE and WBE participation and dollars awarded on state contracts.

The next section describes why leadership and centralized program structure have been instrumental in the success of these particular programs.

#### 4.1.5 State of Maryland: Government Office of Minority Affairs

The State of Maryland has distinguished itself as a national leader in terms of creating an effective MBE and WBE program. In 2001, the overall participation goal of the state's MBE and WBE program was set at 25% and remains among the highest in the nation. From FY2007 to FY2012, MBE and WBE spending increased by approximately 71%. In 2012, the state reached its MBE spending goal of 25%, with overall MBE and WBE spending of 25.2% (\$1.93 billion) of total government contracting spending (Figure 4.1):

- Awards to African American MBE firms increased by 86%, from \$206 million to \$384 million.
- Awards to Asian American MBE firms increased by 17%, from \$132 million to \$155 million.
- Awards to Hispanic American MBE firms increased by 119%, from \$62.7 million to \$142 million.
- Awards to women-owned MBEs increased by 70%, from \$323 million to \$550 million.

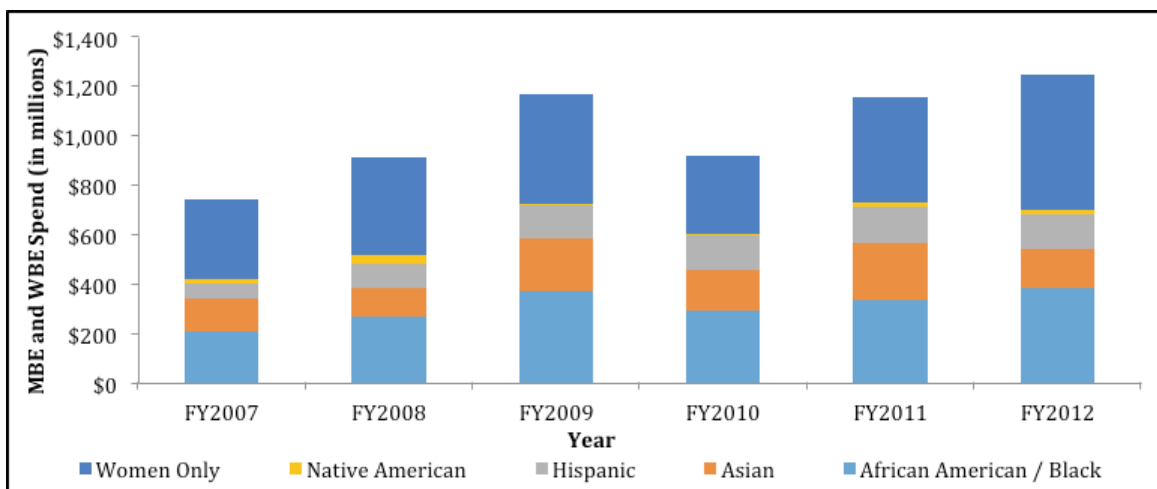


FIGURE 4.1: STATE OF MARYLAND: MBE AND WBE SPENDING FY2007 – FY 2012  
(SOURCE: MINORITY BUSINESS ENTERPRISE PROGRAM: FISCAL YEAR 2012 ANNUAL REPORT. THE STATE OF MARYLAND OFFICE OF MINORITY AFFAIRS. [HTTP://GOMA.MARYLAND.GOV/DOCUMENTS/FY2012 MINORITYBUSINESS ENTERPRISE PROGRAM ANNUAL REPORT.PDF](http://GOMA.MARYLAND.GOV/DOCUMENTS/FY2012%20MINORITYBUSINESS%20ENTERPRISE%20PROGRAM%20ANNUAL%20REPORT.PDF)  
WEB ACCESS DATE: MAY 9, 2014)

The percentage of growth and the overall spending awarded to MBEs and WBEs in Maryland is significant. Program leadership and structure were influential in the state reaching these goals. In the state's Minority Business Program FY2012 Statistical Report, it was stated that

These achievements do not happen by chance, but rather by choice. The O'Malley Administration has been a staunch supporter of the MBE Program since taking office, and awards to MBEs have grown by 70% under their leadership." – *Zenita Wickham Hurley, Special Secretary of GOMA*<sup>5</sup>

The State of Maryland operates its MBE and WBE Program through a single, centralized office called the Governor's Office of Minority Affairs (GOMA). A Special Secretary of GOMA is appointed by the governor to oversee and manage the statewide program, and to serve as a member of the governor's cabinet.

In conducting research on the GOMA office, key insights were identified in terms of designing an effective leadership and program structure.

- The GOMA office expressed the need to have support from the state's political leadership to have a successful program.
- The creation of a special secretary who reports directly to the governor ensures that there is continuous communication on the status of the program. It also signifies that the governor considers the program a top priority in his agenda.
- The importance of having a central office and having MBE and WBE program representatives at each state government agency was also emphasized. The program has designated MBE liaisons at each of the 70 state agencies to ensure program accountability. Each MBE liaison is responsible for ensuring that his/her respective agency is in compliance with program regulations, and communicates with the GOMA office if any issues arise at the agency level. The MBE liaisons are also responsible for program outreach for their respective agencies.

#### ***4.1.6 Commonwealth of Massachusetts: Office of Supplier Diversity***

The Office of Supplier Diversity (SDO) of the Commonwealth of Massachusetts has a similar management structure to that of Maryland. The SDO office has been successful in increasing MBE and WBE spending and in garnering broad support for the program because of its strong leadership and structure.

Since Governor Deval Patrick took office in 2006, MBE and WBE spending for goods and services from FY2006 – FY2012 increased by 93%. Also, spending increased substantially, by 30% between FY2009 and FY2010 when Governor Patrick consolidated all offices that administer supplier diversity programs under one central office. Currently, the Massachusetts MBE program goal is 6%, and its WBE program goal is 12% (Figure 4.2).

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5. See Minority Business Enterprise Program Statistical Report: Fiscal Year 2012 (July 1, 2011 to June 30, 2012). The State of Maryland Governor's Office of Minority Affairs. Web Access: May 9, 2014, <http://goma.maryland.gov/Documents/FY2012MBEStatisticalReport.pdf>

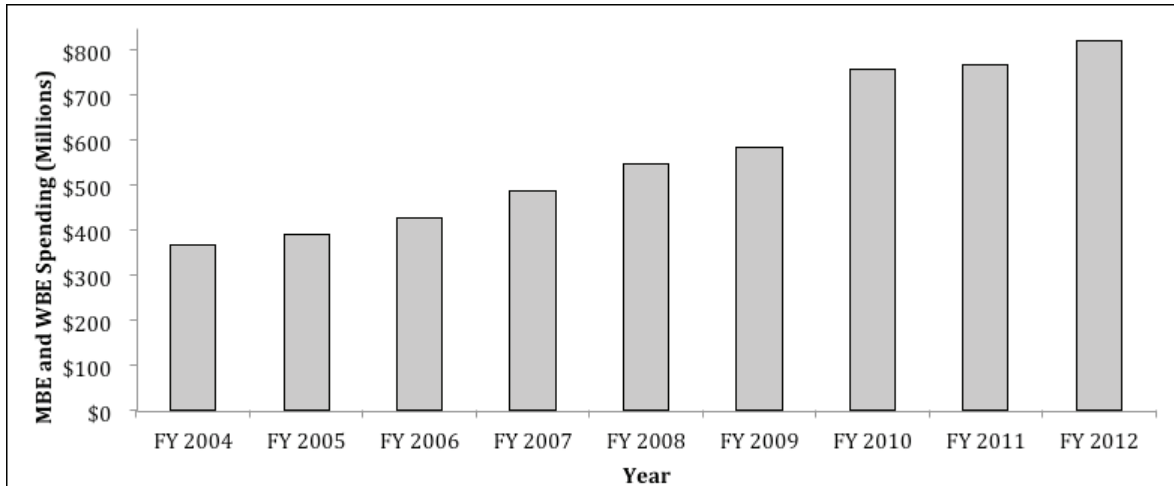


FIGURE 4.2: STATE OF MASSACHUSETTS OFFICE OF SUPPLIER DIVERSITY:  
COMBINED MBE AND WBE GOODS & SERVICES SPENDING

(SOURCE: *SUPPLIER DIVERSITY OFFICE: COMPREHENSIVE ANNUAL REPORT FY2012*. STATE OF MASSACHUSETTS OPERATIONAL SERVICES DIVISION, OFFICE OF SUPPLIER DIVERSITY.  
[HTTP://WWW.MASS.GOV/ANF/DOCS/OSD/SDO/FORMS/FY2011SDO-ANNUAL-REPORT.PDF](http://www.mass.gov/anf/docs/osd/sdo/forms/fy2011sdo-annual-report.pdf);  
WEB ACCESS DATE: MAY 9, 2014)

The significant increase in MBE and WBE spending appears to be influenced by Governor Patrick's leadership. During the governor's first term, an executive director was appointed to oversee all aspects of the program, including MBE and WBE certification, compliance and goal settings, and Small Business Purchasing Program (SBPP) registration. Through the centralized SDO office, a business can apply for both state and federal certifications, and receive technical assistance and bonding program referrals.

All of the state's government agencies now report to the single, centralized office on progress made on program goals. The SDO program executive director reports directly to the governor on goal progress, as well as program issues and challenges. This system of accountability, where all agencies report to a central office, strengthens the program. It also demonstrates that the governor has made program growth and management a priority.

The program has also benefited from an executive director who believes in community and private partner engagement. The executive director has reached out to prime contractors, such as Suffolk Construction, to engage MBEs and WBEs by offering educational courses on the contracting process. Because of education program enrollment, many MBEs and WBEs have secured contracts with the prime contractors that taught these courses. In conclusion, this program's strength lies in its visionary leadership and belief in the value of the program.

#### ***4.1.7 Federal Disadvantaged Business Enterprise Program (DBE)***

The Disadvantaged Business Enterprise (DBE) Program administered by the federal Department of Transportation (USDOT) is perceived by many as a model for MBE and WBE programs because it has endured legal challenges. The DBE program is governed by comprehensive regulations. In terms of program structure, DBE regulations provide some useful guidance on program structure:

**§26.25 What is the requirement for a liaison officer?<sup>6</sup>**

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

This part of the regulation requires that all DBE program operations be carried out by a central office with a “liaison officer” who directly reports to the chief executive officer of the respective state DOT. This structure provides for direct communication with the key decision-maker of the responsible governmental entity to ensure that all program issues are addressed.

**4.1.8 Overview of Best Practices Report**

The Insight Center for Community Economic Development recently published a best practices report, *Economic Development in Diverse Communities: Inclusive Procurement by Cities and Counties*,<sup>7</sup> on creating effective MBE and WBE programs and SBE programs. The report provides guidance on the following:

- Key Program Practices:
  - o Obtain support at the highest level – county executive, mayor, or county/city manager, along with department heads.
  - o Create an environment where inclusion is expected and exclusion is not tolerated.
  - o Give positive publicity to those doing well and negative publicity to those not doing well, whether they are departments, purchasing agents, prime contractors etc.
  - o Require regular reporting to inform the public and incentivize department heads.
- Program Leadership and Structure:
  - o Create or designate one reporting agency for the whole city or county, as is done in jurisdictions such as New York City, Philadelphia, Houston, and Baltimore.
  - o Integrate the agency that deals with certification, contract compliance, and reporting with business development services, or ensure that the agencies interface closely. King County is a jurisdiction of this type.
- Program Impact and Results:
  - o Report on the economic impact of programs: One jurisdiction, the State of Maryland, has attempted to quantify the economic impact of its MWBE program. The economic impact report carried out by Maryland GOMA found that \$1 billion in procurement to MWBs in Maryland in FY 2011 resulted in 12,830 direct

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6. See 49 C.F.R. § 26.25. (Part 26 – Participation By Disadvantaged Business Enterprises In Department Of Transportation Financial Assistance Programs)

7. *Economic Development in Diverse Communities: Inclusive Procurement by Cities and Counties*. Insight Center for Community Economic Development. January 2014;  
<http://www.insightcced.org/uploads/publications/assets/econ-dev-diverse-communities.pdf>

full-time jobs or 12.83 jobs for every \$1 million in M/WBE procurement. It also resulted in \$392 million in wages and salaries, and \$25.5 million in state and local tax receipts.

#### ***4.1.9 Conclusion and Recommendations***

These examples provide evidence that effective leadership and a centralized office structure are important considerations for creating successful MBE and WBE programs and SBE programs. Further, communicating program impact and results is useful in creating awareness of the value of the program. The State of Connecticut should review and consider these practices as a method for managing its MBE and WBE, and SBE programs.

### **4.2 RACE-NEUTRAL MEASURES**

#### ***4.2.1 Overview***

Race-neutral measures are used by MBE and WBE programs and SBE programs around the country to increase the number of businesses participating in government contracting. These measures are intended to stimulate business growth by helping MBEs, WBEs, and SBEs overcome significant disadvantages. Race-neutral measures do not take into account preferences based on social classifications such as race, gender, or ethnicity. Common race-neutral measures include business support services, financing and networking programs.

A survey of Department of Administrative Services (DAS) certified MBEs, WBEs, and SBEs was conducted and described in Phase 1 of the Connecticut Disparity Study. Many survey respondents indicated that their main barrier to business growth was their inability to secure financing. This section describes several race-neutral measures that are finance-related programs, as well as others that were not discussed in detail in the Phase 1 report. The programs analyzed in this section include

- surety bonding;
- loan programs;
- education programs;
- mentor-protégé programs; and
- contract unbundling.

Information for this section was gathered from interviews with MBE and WBE program, and SBE program administrators across the country who have had experience in implementing and managing programs that use race-neutral measures. Further, the NCHRP report *Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs* (2011)<sup>8</sup> was used for guidance.

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8. Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs. National Cooperative Highway Research Program, 2011. Web Access: April 11, 2014, [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_syn\\_416.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_416.pdf)



### 4.2.2 Surety Bonding

The inability to secure surety bonding was cited as a barrier to business growth and participation in state contracting by DAS-certified MBEs, WBEs, and SBEs.<sup>9</sup> Bonding is needed for participation on many state contracts, and is included in the DAS prequalification program for construction-related contracts.

To participate in the DAS prequalification program, contractors and substantial subcontractors<sup>10</sup> must obtain bonding. The prequalification process is required for all contracts valued at \$500,000 or more involving construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any other public work by the state or a municipality, except a public highway or bridge project or any other construction project administered by ConnDOT. Requirements may be different for contracts that do not meet these criteria.

To be prequalified, contractors and substantial subcontractors must provide a letter from a surety company that signifies that they have obtained surety bonding. To obtain a bonding letter, a surety company assesses the aggregate working capacity of the contractor, meaning the maximum amount of work an applicant is capable of undertaking for all projects, and the single project limit, the maximum amount of work an applicant is capable of undertaking for one project. This information is submitted along with other information for the prequalification application.

However, based on the findings from the above-referenced survey, because many contractors and subcontractors cannot secure bonding, they may not be able to qualify for the prequalification program and other state contracting programs where bonding is required or recommended. Consequently, in order to garner more participation in construction and other state contracting areas, programs should be designed to build the bonding capacity of businesses. If more businesses obtained bonding, it would be beneficial both for the businesses and for the state. The state would benefit from increased competition in the bidding process, and potentially reduced project costs. The following discusses the bonding process and programs that are specifically designed to help more businesses obtain bonding.

Surety bonding can be described as a three-party relationship consisting of the surety, the obligee, and the principal.<sup>11</sup> The surety promises to pay the obligee for losses incurred because of failure by the principal to perform on a contract.<sup>12</sup> The surety typically underwrites the contract with the expectation of no losses, and therefore places significant emphasis on the qualifications of the principal.<sup>13</sup>

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9. See Connecticut Disparity Study: Phase 1 Survey (Sec 7, page 75 and Appendix C, page 128).

10. A substantial contractor for DAS prequalification program is defined as a person who performs work with a value in excess of \$500,000 for a contractor pursuant to a contract for work for the state or a municipality which is estimated to cost more than \$500,000.

11. The principal is the party that undertakes the obligation. The surety guarantees the obligation will be performed, and the obligee is the party who receives the benefit of the bond.

12. Surety bonding can be extended for contract bids, performance, and payment. The bid bond assures that the bid is submitted in good faith and that the contractor will enter into the contract at the price bid and will provide the required performance and payment bonds. The performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions. The payment bond assures that the contractor will pay specified subcontractors, laborers, and materials suppliers associated with the project.

13. See Surety and fidelity bonds: Protecting consumers, taxpayers, and businesses. The Surety and Fidelity Association of America, 2014. Web Access: 10 April 2014. <http://www.surety.org/?page=AboutSurety>

The surety company then bonds the obligee based on the assessed risk of the project and the principal's business profile and history. A surety company assesses whether or not to extend bonding by looking at a myriad of factors. According to the Surety and Fidelity Association of America, surety companies generally ascribe to the "three Cs" when evaluating the principal:

- Capacity: does the applicant have the skill and ability to perform the obligation?
- Capital: does the financial condition of the applicant justify approval of the particular risk?
- Character: does the applicant's record show the applicant to be of good character and likely to perform the obligations assumed? <sup>14</sup>

Some of these assessment factors, such as capital, can be objectively calculated by analyzing indicators such as net working capital and debt to equity ratios. However, the assessment of character and capacity can be evaluated both objectively and subjectively. The subjectivity of the evaluation of certain bonding factors may result in denial of bonding to some companies. MBEs, WBEs, and SBEs may also be denied bonding because of the evaluation of more objective factors such as having adequate capital to perform the work on a contract. For example, MBEs, WBEs, and SBEs may be more likely to have less than optimal balance sheets and income statements in comparison to larger companies. Larger companies generally have better access to capital, which increases their ability to obtain bonding.

While there may be a perception that the factors used to determine if a company is approved for bonding are questionable or unfair, the state's focus should be directed at helping MBEs, WBEs and SBEs secure bonding through a transfer of risk. If surety companies are not willing to undertake the risk of bonding some of these businesses, then consideration should be given to transferring the risk associated with bonding to a program stakeholder that has a compelling interest in their success.

Since Connecticut has determined that it has a compelling interest in helping MBEs, WBEs and SBEs<sup>15</sup> participate in state contracting, the state is a significant stakeholder in the success of these businesses. Currently, the State of Connecticut guarantees bonds valued up to \$3 million through HedCo's M/WBE bonding program. The following provides an overview of the HedCo bonding program, as well as other programs that can be used to help MBEs, WBEs, and SBEs in Connecticut.

#### **4.2.2.1 HEDCO**

HedCo administers the M/WBE Bonding Guarantee Program that was created in 2007. From 2007 to 2012, HedCo distributed a total of \$11,827,560 in bonds to 42 participants, and in the calendar year 2013, a total of \$4,422,000 in bonds to 15 participants. Participants must pay a premium equal to 2.75% of the contract price, and a fund management fee equal to 1%–2% of the contract price. MBEs and WBEs located in Hartford, New Haven, Bridgeport, and New London are eligible for the program. The program is not race neutral; however, all other HedCo

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14. See Surety and fidelity bonds: Protecting consumers, taxpayers, and businesses. The Surety and Fidelity Association of America, 2014. Web Access: April 10, 2014 <http://www.surety.org/?page=AboutSurety>

15. Connecticut General Statute 4a-60g (b)



programs, such as its loan program, are available to all businesses. Program administrators consider a company's DAS certification, financial information, and the size of past projects in their evaluation of an application for bonding. Further, MBEs and WBEs must be in operation for at least one year, and must meet the Small Business Administration's (SBA) definition of "socially disadvantaged."<sup>16</sup>

Traveler's Insurance Company has provided \$20 million for the bonds and the State of Connecticut guarantees up to \$3 million in bonding for the program. If a contractor secures a bond from Traveler's through the program, 100% of the bond is guaranteed by the state. If a contractor fails to meet the requirements of the bond contract, the guarantee money provided by the state is used to pay for the liability created by the contractor's failure to meet the terms of the contract.

Overall, the program has been successful, with only one loss of \$100,000, and has the possibility of further growth since the available guarantee funds that support the program have never been fully utilized at any given time. This indicates that bonds could be issued with available program funds to more contractors who need support to secure bonding, including the possibility of making the program available to all small contractors that need assistance to secure bonding.

#### **4.2.2.2 SBA SURETY BOND GUARANTEE PROGRAM**

The SBA has two bond guarantee programs under which it participates with surety companies in assisting small businesses in obtaining bonding.<sup>17</sup>

- **Prior Approval Program:** The SBA guarantees 90% of losses for contracts valued up to \$100,000 and contracts must be awarded to businesses certified under the SBA small business programs. For contracts valued between \$100,000 and \$10 million, the guarantee rate is 80%. All bond guarantee applications are submitted by surety companies to SBA for prior review and approval.
- **Preferred Program:** This program was created to limit the administrative burden of approving the issuance of each bond, and has a guarantee rate of 70%. Surety companies are approved in advance of participation in the program. Prior SBA approval of bond guarantees by the surety company is not required, but the SBA must be notified electronically of all bonds issued. Further, premium income from contract bonds guaranteed by SBA can equal no more than one-quarter of the total contract bond premium income of the surety.

Overall, the main critique of the SBA bonding guarantee program is the complexity of the paperwork needed to apply and the paperwork that needs to be maintained by surety companies.

This program differs from the HedCo program because the government receives a share of the premium paid by the businesses. It is important to note that, mostly due to underwriting standard differences, some MBEs and WBEs that have been denied bonding by the SBA program have then been bonded through the HedCo program.

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16. Defined as Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans

17. See Prior Approval & Preferred Programs. The U.S. Small Business Administration. Web. 10 April 2014. <http://www.sba.gov/content/prior-approval-preferred-programs>

#### **4.2.2.3 CITY OF SAN FRANCISCO PROGRAM**

The City of San Francisco contracts with a local private firm, Merriwether & Williams Insurance Services (MWIS), to assist small or micro local business enterprises in obtaining or increasing bonding and financing for city projects. The services provided include: bid, performance and payment bond guarantees; accounting assistance and referrals; bonding and financing consultation and technical assistance; contract financing guarantees; third party funds administration; and individual and group workshops. MWIS assists contractors throughout the project.

Since the inception of the program, qualifying contractors have been able to bid on contracts aggregately valued at \$302 million and have been awarded \$87 million in contracts. Additionally, through this program contractors have also obtained \$6.1 million in working capital loans. This example shows that private and public sector partnerships can be formed to develop successful bond guarantee and financial education programs that help businesses win government contracts.

#### **4.2.3 Education Programs**

A summary of organizations that provide assistance to MBEs, WBEs, and SBEs in Connecticut was included in the Phase 1 Connecticut Disparity Study report. The following is an overview of other organizations that provide assistance to businesses in addition to the information included in Phase 1. The organizations listed in this section specialize in surety bonding education, financial education, and marketing assistance.

##### **4.2.3.1 USDOT BONDING EDUCATION PROGRAM (BEP)<sup>18</sup>**

The USDOT administers the BEP that provides education on the bonding process on a nationwide basis, with operations being carried out on a regional level. Connecticut is located in the USDOT Northeast Region that has a regional office in New York. Currently, the BEP is not available in Connecticut; however, the New York regional office is interested in identifying a partner to assist in starting the program in Connecticut. The BEP program consists of four components:

- **Stakeholder Meetings:** Members of the transportation-related services industry and small business resource providers meet to review the parameters of the BEP implementation in the local market, determine resource requirements, and ascertain the role each stakeholder will play in carrying out the educational component and ensuring the program's success.
- **Educational Workshops:** Business and federal transportation project-specific training is designed to provide information to small businesses related to improving their company's operations, making it easier to be bonded or to increase their bonding capacity.
- **Bond Readiness:** One-on-one meetings between volunteer representatives from surety companies and companies in need of bonding assistance are held. These meetings include a review of bonding applications and identification of potential deficiencies in the applications that is followed by assistance on how to make the company bondable.

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18. See U.S. Department of Transportation Bonding Education Program. The U.S Department of Transportation 23 December 2013. Web Access: 10 April 2014.  
<http://www.dot.gov/osdbu/financial-assistance/bonding-education/bonding-education-program>

- Follow-up and Assistance: This component of the program offers coordination and monitoring of technical assistance provided to program participants and helps the small businesses identify and secure bonding for subsequent transportation-related projects. An element of the follow-up assistance may include the matchmaking of program participants with available transportation-related contracting opportunities.

#### **4.2.3.2 MODEL CONTRACTOR DEVELOPMENT PROGRAM (MCDP)<sup>19</sup>**

USDOT entered into a Memorandum of Agreement (MOA) with the Surety and Fidelity Association of America (SFAA) to create the MCDP, which has a mission to assist MBEs, WBEs, and SBEs in securing surety bonding. The program operates at the federal level, as well as at the state and local levels. Also, the program has already partnered with New York State (Empire State Development Corporation) and the SBA office in the State of Rhode Island to develop state-specific MCDP programs.

- New York State/Empire State Development Corporation: The MCDP program started in 2007 in New York State with pilot programs launched in New York City, Buffalo, Rochester, Albany, and Syracuse. Educational workshops are provided to MBEs, WBEs, and SBEs on ways to improve their ability to secure bonding. The program also provides a service that involves having volunteer surety professionals design prescription plans consisting of personalized advice and planning for contractors. The plans consist of in-depth analysis of why a contractor was previously denied bonding. By 2012, an estimated \$99 million in bonding was offered and underwritten for participating contractors.
- State of Rhode Island: The Rhode Island Program was initiated as a result of discussions between the Rhode Island legislature and the SFAA. The program was launched in 2009 and is operated by the local SBA office. The program consists of education workshops for MBEs, WBEs and SBEs. Since its inception an estimated \$2 million in bonding has been secured by participating businesses.

#### **4.2.3.3 TURNER SCHOOL OF CONSTRUCTION**

In 1969, Turner Construction, a nationally recognized construction firm, created the Turner School of Construction Management Program through its Department of Community Affairs. The school offers classes in the following disciplines: Sales & Marketing, Prequalification, Insurance & Bonding, Project Delivery Methods, Contract Risk Management, Estimates & Bidding, Project Management & Scheduling, New Technologies, Construction Accounting, and Safety.

Eighteen programs have been offered in Connecticut with 346 Connecticut participants since the program's inception. There are no fees to participate. Businesses that have completed the program have secured work with Turner Construction as well as with other construction firms.

#### **4.2.3.4 DIVERSE SUPPLIER DEVELOPMENT ACADEMY (DSDA)**

The DSDA, located in Connecticut, provides courses for minority, women, veteran, and disabled businesses with the intent of helping businesses grow. Although the program is not

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19. See Model Contractor Development Program: MCDP Initiatives. The Surety and Fidelity Association of America, 2014. Web. 10 April 2014.  
<http://c.ymcdn.com/sites/www.surety.org/resource/resmgr/mcdp/mcdpinitiatives2014.pdf>.

race neutral, it is important to mention because of its commitment to growing business capacity and community economic growth.

The DSDA program consists of:

- One-on-one mentoring with Service Corps of Retired Executives (SCORE) officers.
- A series of six education workshops over a twelve-week period that focus on financial and marketing strategies. Businesses that participate in the workshops pitch their businesses through the “shark tank” method.
- Comprehensive and personalized business and marketing plans for businesses that participate in the program are prepared by UConn School of Business graduate students who are matched with program participants. The marketing plans comprise strategies for addressing market penetration issues that disadvantaged businesses often face.

#### ***4.2.4 Loan Programs***

A significant barrier to the development and expansion of small businesses is access to capital. Loan programs have been cited as a tool that can assist MBEs, WBEs and SBEs in meeting financial and capital needs for business operation and growth. These programs may be needed when access to traditional channels for securing capital are difficult or not readily accessible to MBEs, WBEs and SBEs.

##### **4.2.4.1 RHODE ISLAND DEPARTMENT OF TRANSPORTATION (RIDOT) LOAN MOBILIZATION PROGRAM**

RIDOT administers a loan mobilization program that provides loans at low annualized interest rates, currently approximately 2%–3%, to underutilized DBEs.<sup>20</sup> The goal of the program is to increase DBE capacity for the purposes of developing financial relationships with traditional banks and credit unions, and bidding on and being awarded larger contracts. Approximately 25 loans valued at \$1.5 million to \$2 million in total have been disbursed annually.

The loans are awarded to the DBEs after they have been selected as contractors on RIDOT construction projects. Equipment-based loans are provided for the purchase of capital equipment, such as trucks; contract-based loans are provided to meet the needs of a specific RIDOT project.

The loan program is based on the premise of a relationship of mutual dependence because the DBE contractor must successfully perform the work to receive payment for the work performed, and to pay off their loan liability to RIDOT.

While there have been some loans issued to DBEs that were not paid off in full, the program has been considered successful by RIDOT, as many DBEs that participated in the program have developed business relationships with credit unions and have been awarded larger projects. This is an indication that this loan program can be replicated by other MBE, WBE, and SBE programs and can be used successfully as a tool to help small businesses meet their capital and financial needs.

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<sup>20</sup> In this context, underutilized DBEs means DBEs identified by RIDOT that need more assistance than the typical DBE in growing their businesses.

#### 4.2.4.2 LINKED DEPOSIT PROGRAMS (LDP)

A LDP is a loan program that involves having a government entity reduce the interest rate on business loans provided to MBEs, WBEs and SBEs from traditional financial institutions. This is accomplished by the government entity using interest earned from funds invested in short-term, low-risk, and low-return financial products, such as certificates of deposit.

The government entity often requires that participating lending institutions have a satisfactory Community Reinvestment Act (CRA) rating. Most programs set limits on the maximum interest rate; establish guidelines regarding the type of project that qualifies for the loans, such as construction, expansion of a facility, purchase of equipment, or job creation; and limit the amount that can be borrowed based on the purpose of the loan.

- *New York State Linked Deposit Program:* The purpose of the New York State program is to provide companies with reduced rate financing to increase their competitiveness and modernize equipment. Historically, interest rates on the loans have been reduced by approximately 3%.

Since the inception of the program, more than 5,000 projects have been funded with over \$1.66 billion in loans being provided to businesses. In 2013, 157 loan applications were submitted and 142 loans were approved with deposits totaling \$58.2 million. As of the end of 2013, 71 lenders had participated in the New York State LDP.

Because of reduced interest earnings on its investments due to low interest rates in the post-recession economic environment, the state's ability to reduce interest rates on program loans was reduced. As a result, recently there has been a reduction in program participation, but participation is expected to increase as the economy recovers.

#### 4.2.5 Unbundling of Contracts

Typically, MBEs, WBEs, and SBEs, as smaller companies, provide services that are specialized; this may limit their ability to bid on larger, multi-faceted contracts as prime contractors or for procurement opportunities. Unbundling of contracts can be used to divide a large contract into smaller contracts to encourage MBE, WBE and SBE participation in government contracting.

However, unbundling of contracts increases the government's administrative responsibilities, as it must oversee multiple contracts for a project or procurement. Therefore, unbundling contracts would most likely require more staff capacity for contract administration and project coordination. Therefore, successful implementation of contract unbundling requires careful selection of projects and procurements to be considered for unbundling, significant oversight, and effective program management.

Additionally, there is a trend in public contracting towards strategic sourcing of common goods and services, including hourly-based information technology services, printers and copiers, and vehicles. In theory, savings are achieved by leveraging the state's substantial buying power. However, there is the possibility that this purchasing methodology could result in higher costs because of a reduction in the number of firms that can compete for these larger contracts.



#### **4.2.5.1 BUSINESS DEVELOPMENT INITIATIVE OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)**

Some state departments of transportation have established programs where some small contracts are reserved for small businesses. For example, in 2006, FDOT implemented the Business Development Initiative through statutory authority that already existed for innovative contracting. The program reserves some small contracts (under \$500,000) solely for smaller business with the program capped at \$120 million in construction contracts annually.

The program has had success in Florida, where DBEs expressed satisfaction with the program and the program helps FDOT achieve its DBE participation goal. A key challenge in administering the program is finding contracts that can be unbundled, particularly in highway construction where road-building contracts typically exceed the cap. Another challenge is weighing the benefits of dividing contracts into small contracts versus having engineering and procurement staff optimize limited resources on managing a single larger contract.

#### **4.2.6 Mentor-Protégé Programs**

Mentor-protégé programs are another race-neutral measure that can increase MBE, WBE, and SBE participation in government contracting. A mentor-protégé relationship is defined as having a business, the mentor, develop a working relationship with another business, the protégé, in an effort to help the protégé learn more about the industry and to develop skills necessary to successfully perform on contracts in the future.

However, there are challenges to implementing and monitoring a mentor-protégé program. Mentor-protégé relationships or programs may increase the likelihood of contract steering and fraud. For example, a mentor may develop a relationship with a protégé with the intent of using the protégé business as a pass-through or front in order to meet MBE, WBE, or SBE program goals. The USDOT has issued guidelines in its DBE regulations on implementation and management of mentor- protégé programs and relationships. The DBE guidelines should be considered if Connecticut chooses to implement this type of race-neutral measure. The guidelines specifically address contract and business standards for mentor-protégé relationships:

##### **4.2.6.1 DBE REGULATIONS - APPENDIX D TO PART 26 – MENTOR-PROTÉGÉ PROGRAM GUIDELINES<sup>21</sup>**

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct

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21. See 49 C.F.R.; Part 26 – Participation By Disadvantaged Business Enterprises In Department Of Transportation Financial Assistance Programs; Subpart F – Compliance and Enforcement; Appendix D to Part 26 – Mentor-Protégé Program Guidelines

and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified before it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

#### ***4.2.7 Conclusion and Recommendations***

Race-neutral measures are available to all businesses and may be an effective way for Connecticut to help businesses address barriers to growth. If businesses have greater access to services that help them overcome barriers, then they may be able to increase their competitiveness, successfully bid for projects, and potentially be awarded both government and private contracts.

Race-neutral measures that provide businesses with access to capital and bonding are beneficial to business growth, especially for economically disadvantaged businesses. Therefore, Connecticut should consider the expansion of its bonding guarantee program. The HedCo program is currently limited to MBEs and WBEs, and the money allocated for bonding is not currently being fully utilized.

Therefore, consideration should be given to making this program race neutral by expanding it to include SBEs and to possibly increase the amount of guarantees. This action might also encourage additional surety companies to participate in the guarantee program. This could increase the likelihood that more contractors will qualify for bonding due to the differing underwriting standards of surety companies.

Another barrier to growth of MBEs, WBEs, and SBEs is the fact that they generally have difficulty maintaining working capital. Linked deposit programs, loan mobilization programs, or access to capital programs may help to alleviate this barrier to business growth and participation in government contracting. Loan programs that are administered in conjunction with MBE, WBE, and SBE programs, similar to the RIDOT program, should be considered by Connecticut. This type of program reinforces the concept of stakeholder interdependence, as each relies on the other for successful performance.



Additional race-neutral measures that the state should consider to help MBEs, WBEs, and SBEs grow and increase their participation in state contracting are as follows:

- The development of a financial education program that operates in conjunction with its contracting program.
- Partnerships with some federal programs that are already in operation, such as the USDOT's Bonding Education Program. The USDOT Northeast Regional Office is currently seeking a partner in Connecticut to offer this program to Connecticut contractors. This is a potential opportunity in which the state and other stakeholders, dedicated to the growth of small businesses, can create a bonding education program on a significant scale. The state could also use this program as a platform to engage additional private partners to offer education programs, similar to Turner Construction's program.

Furthermore, the state should consider the benefits and challenges of implementing programs such as contract unbundling, and mentor-protégé relationships. These programs have many benefits that could increase business participation in state contracting. However, if implemented, these programs will need to be closely monitored to avoid ethical violations such as contract steering and fraud.

In conclusion, the State of Connecticut should consider implementing additional race-neutral measures. These programs are designed to reach all businesses for the purpose of providing assistance, where needed, to overcome an array of disadvantages. Implementing race-neutral programs directly and positively impacts business capacity, and has the potential to enable more MBEs, WBEs, and SBEs to successfully participate in the government contracting process.

## **4.3 CONTROLLING FOR CAPACITY OF COMPANIES IN THE STATISTICAL ANALYSIS OF A DISPARITY STUDY**

### **4.3.1 Overview**

Capacity is a term used to describe the ability of a company to perform services on government contracts. There are differing views regarding the process of adjusting for capacity for the purposes of MBE and WBE program administration and conducting the statistical analysis portion of a disparity study. Specifically, for the purpose of conducting a disparity study, this issue pertains to whether MBE and WBE availability rates are adjusted to account for relative differences in capacity. Appendix B of the *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program report* (NCHRP, 2010) provides a detailed review of this issue.

Critics of statistical analyses conducted in the majority of disparity studies believe that availability statistics do not accurately account for whether MBEs and WBEs are qualified, willing, and able to perform on government contracts. These critics suggest using metrics like employment or gross revenues to adjust the availability for differing rates of capacity. These metrics are difficult to justify statistically because they vary across industries, are susceptible to fluctuations in the business cycle, and do not have readily available benchmarks.

The 2010 NCHRP report suggests in Appendix B that using employment and gross revenues as measurements of capacity are inadequate for quantifying successful marketplace performance. The NCHRP report outlines how successful marketplace performance can, itself, be impacted by discrimination in a similar manner as rates of business formation. In fact, much of the statistical evidence presented in disparity studies supports this claim by presenting statistical and anecdotal evidence of disparities in the ability of MBEs and WBEs to access capital, to accrue enough capital to form, to receive bonding, and to grow. Evidence of discrimination in these areas is considered in the NCHRP report as sufficient statistical evidence to demonstrate that capacity is primarily impacted by discrimination.

The method identified in the statistical analysis section of this report provides a foundation of quantitative and anecdotal evidence necessary for attributing differing rates of capacity to discrimination in the marketplace. In the absence of discrimination, the same proportion of MBEs and WBEs and non-MBEs/WBEs would meet the capacity requirements for performing services on government contracts. This is a similar procedure as the one used to account for differing rates of business formation. The key point is that imposing an equilibrium rate of capacity across minority and non-minority availability should be thought of as an adjustment mechanism rather than an assumption.

The majority of the disparity studies examined in this analysis discuss the adjustment mechanism and justifications for equalizing rates of business formation, but do not directly explain that equalizing capacity can be considered a similar adjustment process. To directly address the concerns of these critics, the method by which equalized rates of capacity are adjusted for potential marketplace discrimination should be explained. An in-depth discussion of this controversial issue will help to alleviate much of the concern expressed by critics of the statistical analysis portion of disparity studies.

#### ***4.3.2 Conclusion and Recommendations***

The considerations suggested for addressing capacity for the purposes of program administration and conducting a disparity study include:

- Investigate evidence of discrimination that results in disparities in capacity for MBEs and WBEs in the marketplace by using the statistical analysis methodology identified in the statistical analysis section of this report.
- Address capacity by adjusting availability using the methodology outlined in the statistical analysis section of this report.
- Explain how imposing equalized rates of capacity across minority and non-minority businesses is a similar adjustment mechanism to that used to adjust for differing rates of business formation.

## 4.4 SETTING MBE AND WBE PROGRAM, AND SBE PROGRAM SIZE STANDARDS

### 4.4.1 Overview

The purpose of this section is to provide recommendations on size standards for the state's MBE and WBE Program and SBE Program. Size standards, in the context of these programs, can be defined as quantitative business measures, such as gross receipts<sup>22</sup> or number of employees, used as a proxy to measure the size of a business. Size standard measures are used to ensure that only small, economically disadvantaged businesses benefit from these programs.

Connecticut's MBE and WBE Program and SBE Program currently use a size standard limit of \$15 million in gross revenue for a company's most recently completed fiscal year. Connecticut also has a Micro-Business Program that has an annual gross revenue limit of \$3 million. These size standards, however, are not industry specific, are not adjusted for inflation, and do not take into account the possibility of short-term fluctuations in gross revenues.

The following provides a brief description of the US Small Business Administration's (SBA) size standards and the federal Disadvantaged Business Enterprise (DBE) Program personal net worth size standards. Many MBE and WBE programs and SBE programs in other states utilize the SBA or DBE size standards, or a combination of both.

### 4.4.2 Small Business Administration Size Standards

Based on an analysis of the 2002 US Census Economic Census, the SBA developed a methodology to determine business size standards in an effort to distinguish the meaning of a "small business" from a "large business." SBA size standards represent the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business concern.<sup>23</sup>

The SBA created size standards at the six-digit North American Industry Classification System (NAICS) industry level, and uses either a size standard of gross receipts or employee size for most industries.<sup>24</sup> The SBA examined differences in industry production factors to determine which size standard measure would be best for a particular industry. Table 4.1 provides information on the industry production factors used to determine which size standards should be used for a particular industry.

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22. Receipts means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms.

23. <http://www.sba.gov/content/what-are-small-business-size-standards>

24. For a limited number of industries, SBA uses different measures, such as financial assets for the banking industries and barrels per calendar day (as part of a two-component standard) for the petroleum refining industry.

TABLE 4.1: PRODUCTION FACTORS TO DETERMINE INDUSTRY SIZE STANDARDS<sup>25</sup>

Industry Factor	Number of Employees	Receipts
Highly capital intensive	X	
Low operational costs relative to receipts	X	
Variation of firms within industry by stage of production or degree of vertical integration	X	
Horizontally structured firms	X	
Highly labor intensive		X
Ease of factor substitution		X
Presence of subcontracting		X
High proportion of part-time or seasonal employment		X
Operation in multiple industries		X

The SBA then created a “general anchor measure” for each industry based on a weighted mean analysis of the identified industry size standard. For industries that have size standards measured by gross receipts, the general anchor measure is currently \$7 million. The Manufacturing and Wholesale Trade industry sectors have employee-based size standards: an employee size fewer than 500 for Manufacturing, and fewer than 100 for Wholesale Trade.

The SBA then examined the entire universe of industries and determined whether there were other economic factors present in a particular industry that required the general anchor measure to be adjusted upwards or downwards to arrive at the final size standard measure. The economic factors that the SBA used to consider adjustments are

- average firm size
- startup costs
- entry barriers
- industry competition
- distribution of firms by size
- technological changes
- industry growth trends
- SBA financial assistance and program factors
- presence of substitutable or competing relationships among industries
- historical activity within an industry

25. United States Small Business Administration. SBA Size Standards Methodology. Size Standards Division, Office of Government Contracting & Business Development: 2009.

The SBA also adjusts its gross receipts and other monetary based size standards for inflation when appropriate. In its methodology paper, the SBA states,

Current regulations require [the] SBA to consider adjusting monetary based standards (e.g., receipts, net income, assets) for inflation at least once every 5 years. If SBA finds that inflation has significantly eroded the value of the monetary based size standards, it will issue a proposed rule to increase size standards.<sup>26</sup>

Therefore, the SBA adjusts for inflation when it finds that the value of money has eroded to the point where it impacts the effectiveness of the size standards; it does not necessarily adjust for inflation every year.

The main limitation of a state using the SBA size standards for its definition of a “small business” is that the SBA standards are national in scope. The SBA provided the following rationale as to why regional analysis has not been conducted:

...an industry size standard is established at the national level. Similarly, the determination of “not dominant in its field of operation” is also done at the national level. Data limitations preclude an extensive analysis of businesses on a geographical basis. In addition, geographically based size standards may inappropriately influence decisions on business location.<sup>27</sup>

For this reason, it may be appropriate for a state program to use the SBA size standards as a baseline and consider regional adjustments where data is available to do so. The Enterprise Statistics by the US Census Bureau may provide the data necessary to make the adjustments. The 2012 full Enterprise Statistics dataset will be released in 2015. This program can be used by Connecticut as a source for considering adjustments, if needed.

Another limitation of the SBA size standards is that they only apply to for-profit entities. Gross receipts and employee size data from non-profits, or other business types, were not included in the SBA analysis.

#### ***4.4.3 USDOT DBE Program***

When examining business size standards, it is also important to examine and consider the regulations provided by the federal DBE Program because the federal program has endured multiple legal challenges. It is also important to consider the DBE regulations because many states have adopted the DBE Program size standard regulations for application to their MBE and WBE programs and SBE programs. For example, both Maryland and Rhode Island use the DBE Program size standards for MBE and WBE eligibility.

The DBE Program uses SBA size standards as a baseline measure for determining what constitutes a small business by industry. Further, personal net worth of the business owner(s) is used to determine DBE Program eligibility. The DBE program is intended to help economically disadvantaged firms, so by using personal net worth of business owners, there is assurance

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26. United States Small Business Administration. SBA Size Standards Methodology. Size Standards Division. Office of Government Contracting & Business Development: 2009.

27. See SBA Size Standard Methodology

that only economically disadvantaged businesses benefit from the program. The personal net worth standard is currently \$1.32 million and is periodically adjusted for inflation. Appendix B provides a set of DBE regulations that governs the personal net worth size standards.

Additionally, a DBE's gross receipts cannot exceed \$22.41 million within a three-year period. Extending the time period for size standard evaluation beyond one year takes into account the possibility that firms may have years in which gross receipts are unusually strong or weak.

#### ***4.4.4 Using DBE Regulations and SBA Size Standards for Statewide MBE and WBE Programs***

Many MBE and WBE programs have either adopted the DBE regulations and the SBA size standards, or use them as the foundations for minor adjustments to take into account known differences for a particular state. For example, the State of Maryland adopted the DBE Program size standard for its MBE Program. However, the state adjusted the DBE Program personal net worth size standard because Prince George's County in Maryland, where many MBEs are located, is relatively wealthier than the nation. The Rhode Island MBE program uses both the SBA size standards and the DBE Program personal net worth limit.

The main limitation of DBE program personal net worth size standard and three-year gross receipts limit is that they are national in scope. States and other government entities that adopt the DBE Program size standards may want to adjust their size standards for regional differences, where appropriate. In addition, using the national DBE regulations and SBA size standards for a statewide program can be a reasonable approach, because it can be difficult or impossible to obtain detailed industry data regarding gross receipts and employee estimates for analysis at the state level for the purpose of creating statewide size standards.

#### ***4.4.5 Conclusion and Recommendations***

Connecticut should review and consider adopting both the SBA size standards and the DBE standards of personal net worth, including the three-year gross receipts limit. The SBA size standards account for industry differences, and gross receipts size standards are periodically adjusted for inflation. The DBE Program ensures that its program is limited to businesses that are economically disadvantaged by examining the personal net worth of business owners. Further, the DBE gross receipts limit on a three-year cycle ensures that businesses that have short-term aberrations in gross receipts performance can still participate in the program.

The DBE and SBA size standards are national in scope. Consequently, Connecticut should also consider using the SBA and DBE size standards as a baseline and making adjustments to account for regional differences, if necessary. Additionally, Connecticut's size standards should be reviewed periodically and adjusted as appropriate for inflation and economic conditions.



## **4.5 RECIPROCITY AGREEMENTS**

### ***4.5.1 Overview***

Reciprocity agreements are agreements between two or more MBE or WBE programs located in different governmental jurisdictions that allow for cross-program company certification. Reciprocity agreements are mainly intended to streamline the certification process for MBEs and WBEs that apply for certification to programs located in different governmental jurisdictions. For example, if two states have a reciprocity agreement, MBEs and WBEs located and certified in each state can more easily become certified in the other state's program.

Reciprocity agreements differ from "opening up" a program, which means that MBEs and WBEs located outside of a particular governmental jurisdiction are eligible to apply for certification in another governmental jurisdiction. Hence, "opening up" a program for certification is essentially removing the eligibility requirement of business location. In contrast, reciprocity agreements are based on the premise that there are mutual benefits for both businesses and participating governmental jurisdictions by streamlining the certification process for MBEs and WBEs.

### ***4.5.2 Benefits of Reciprocity Agreements***

Governmental jurisdictions responsible for MBE and WBE programs should consider the following potential benefits for entering into reciprocity agreements:

- Streamlines the administrative process for government staff and businesses by using some or all business information provided for certification in the home governmental jurisdiction for use in becoming certified in another governmental jurisdiction, as applicable.
- Encourages more MBE and WBE participation in government contracting by making it easier to become certified in multiple governmental jurisdictions.
- Increases the pool of available certified firms in various industries and sub-industries, which can increase competition, reduce costs and help achieve program goals.
- Provides an opportunity for communication for MBE and WBE Program staff in the participating governmental jurisdictions to learn of best practices regarding common issues and challenges, such as creating effective compliance and other regulatory mechanisms, to improve program effectiveness and to mitigate issues that may occur.

### ***4.5.3 Challenges in Creating Reciprocity Agreements***

A possible challenge to creating reciprocity agreements is that MBE and WBE programs in different governmental jurisdictions typically have different eligibility standards and requirements for certification, such as:

- The racial, ethnic or other socially classified groups that are included in each program's definition of a minority or protected class

- The business and financial information that companies need to provide
- Rules and/or regulations to mitigate certification fraud

The process for the development of reciprocity agreements between programs located in different governmental jurisdictions can help mitigate issues and concerns associated with programs in each jurisdiction having different eligibility standards. While it is possible that programs in different jurisdictions will have the same certification requirements and standards, it is more likely that there will be differences. Therefore, a reciprocity agreement would most likely include a common set of requirements applicable to the programs in each jurisdiction, along with additional requirements that are specific to the programs in each participating jurisdiction. This will enable the programs in the jurisdictions participating in reciprocity agreements to reduce the documentation a company needs to submit for certification and to retain flexibility and control of its own certification process.

In addition, reciprocity agreements may increase competition for businesses located in a home jurisdiction because businesses located outside of it can more easily become certified in the home jurisdiction. However, reciprocity agreements can also create more opportunities for businesses located in the home jurisdiction because these businesses can more easily apply for certification and bid on contracts in other jurisdictions. This issue of increasing the number of certified companies to work in a particular jurisdiction can be seen as either a benefit or a challenge to the program, depending on who is considering the issue.

#### ***4.5.4 Disadvantaged Business Enterprise Program***

The USDOT federal DBE program has regulations (See Appendix C for entering into interstate certification agreements. These regulations are provided so that Connecticut can examine a program that has established a process for the implementation and operation of reciprocity agreements. Interstate certification agreements are similar to reciprocity agreements because they are created with the intention of streamlining a certification process.

An example of a recently formed interstate certification agreement is the New England States Memorandum of Agreement (MOA). ConnDOT entered into a memorandum of agreement with the other New England DOTs - Massachusetts, Rhode Island, Vermont, New Hampshire, and Maine - in April 2013. The MOA was created with the goals of reducing paperwork needed for the certification process, improving the quality of the certification process, increasing contracting opportunities for DBE firms, and acting as a network of resources for dealing with certification issues. The MOA allows DBEs that are certified in their home state to apply to DBE programs in other New England states.

While DBEs still have to apply for certification in states other than their home state, the certification process has been significantly streamlined because of this agreement. This is an example of states working together in a close-knit region to provide more opportunities for the businesses that they serve.

#### ***4.5.5 Conclusion and Recommendations***

Based on a review of the benefits and challenges of developing and implementing reciprocity agreements, it is recommended that Connecticut consider the use of reciprocity agreements for

its MBE and WBE Program. If Connecticut decides to develop reciprocity agreements with other governmental jurisdictions, it should thoroughly review those programs to determine the set of standards and requirements that are common and those that are specific to each jurisdiction to ensure the integrity of the participating programs.

## **4.6 GOAL SETTING**

### ***4.6.1 Overview***

There are various approaches used for MBE and WBE program goal setting for the purposes of program administration and conducting the statistical analysis of a disparity study. Specifically, this issue pertains to setting

- Contract goals;
- Agency-specific goals; and
- Overall state contracting goals.

All of these goals are based on the adjusted availability figures calculated in the statistical analysis portion of a disparity study. The development of these goals, with the exception of the allowance of exclusions and exemptions, will not impact the assessment of the state's utilization of MBEs and WBEs that are identified in the disparity study. These three areas will be discussed sequentially in an effort to provide the level of detail necessary to understand the approach recommended for goal setting for the Connecticut MBE and WBE Program.

### ***4.6.2 Contract Goals***

A contract goal is a share of eligible funds on a specific contract that a procurement agent deems eligible for the MBE and WBE program. A procurement agent can determine this percentage by using the results of the availability analysis from a disparity study. A contract's primary activities can be separated by industry sector and the appropriate availability ratio can be applied to each. The result would be an aggregate contract goal that was developed by the procurement agent using the appropriate availability ratios in a manner that would help the agency and state achieve its overall goals. This emphasizes the necessity of conducting the statistical analysis portion of a disparity study at regular intervals to ensure that the applied availability ratios align with the state's current geographic marketplace.

### ***4.6.3 Agency-Specific Goals***

The utilization analysis that is included in the statistical analysis portion of a disparity study provides an assessment of the relationship between the state's overall contracting and agency-specific contracting. Past contracting is statistically benchmarked against the adjusted availability ratios to assess whether state and agency utilization is reaching the state's overall program goal. An important feature of the utilization analysis and adjusted availability calculation is that both of these metrics are separated by detailed industry sector. As a result, the overall state contracting goal should not be applied to a specific agency, as each agency may have significantly different contracting patterns. Each agency's goal could be developed to reflect specific spending patterns and help the state more effectively meet the overall program

goal. It is recommended that agency-specific goals be developed using the most recent 3-5 years of contracting information by detailed industry sector.

The utilization analysis should be conducted using the most recently available (3-5 years) contracting data. Also, using contracting data from the most recent available prior years would be useful for setting internal agency-specific goals for use by each agency and to benchmark performance throughout the year. An example that illustrates the need for agency-specific goals is when an agency has vastly different spending patterns than most other agencies. The utilization analysis would reflect these spending patterns and identify if there is an under-utilization of MBE and WBEs. Agency-specific goals developed from spending patterns from the most recent prior years can provide internal agency consistency, helping procurement agents achieve a goal that is closer to the benchmark for the purpose of gauging utilization in the statistical analysis portion of a disparity study.

#### ***4.6.4 Overall State Contracting Goals***

Overall state contracting goals can be developed using the methodology for establishing agency-specific procurement goals. The statistical analysis portion of a disparity study identifies the availability of MBEs and WBEs in the relevant geographic marketplace.

The availability statistics can be applied to the state's prior years' spending patterns to construct annual goals. Overall state and agency-specific goals can be set annually using the availability ratios found in the adjusted availability analysis and a rolling collection of prior years' contracting data from the DDMS. Applying past spending patterns to goal setting provides a more flexible process, enabling the state to estimate a realistic goal that will be similar to the statistical benchmark used to assess performance in the utilization analysis.

#### ***4.6.5 Exemptions and Exclusions***

Another important aspect of goal setting that pertains to all three levels of goal setting is the use of exemptions and exclusions. Exemptions and exclusions are currently applied not only to sole-source contracts, but also to a broad set of industry sectors that are considered to have an absence of MBEs and WBEs. As discussed above, goals can be set internally for contracts and agencies as well as for overall state MBE and WBE contracting goals. As a result, there would be no need to apply exemptions and exclusions for any contracts beyond those deemed sole source. The program-eligible funds need not exempt spending in industry sectors that have an absence of MBEs and WBEs, because the adjusted availability would reflect this finding in the calculation of the goals.

In the state's current exemption process, each agency submits a form to DAS and CHRO that includes the agency's adopted budget, federally funded expenditures, non-purchasing expenditures, statute-required expenditures, requested exemptions, and the budget allocated for the MBE and WBE Program and the SBE Program.

CHRO provides aggregated information for each of the agencies on the budget allocated for the MBE and WBE Program and SBE Program along with the associated goals. However, aggregated information on the pre-exemption budget and the amount requested for exemption is not provided online. The FY 2012 individual agency forms were compiled to conduct the exemption analysis shown in Figure 4.3.

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PROGRAM ISSUE AREAS

The total FY2012 state budget (row labeled “Aggregate Agency Adopted Budget” in Figure 4.3) was \$20.9 billion and of that amount, approximately \$15 billion represents agency personnel costs, federal money, and statute-required expenditures. As shown in the second line from the bottom in the figure (“Aggregate of Agency Budgets less...”), the remaining \$5.8 billion represents agency discretionary spending. However, of the \$5.8 billion, 94% is submitted by agencies for exemption and all but 0.2% of exemptions are approved by DAS and CHRO for exclusion from the MBE and WBE Program and SBE Program. As a result, \$5.5 billion is not included in the eligible contracting budget for the MBE and WBE Program and SBE Program and no goals are applied to these budgeted expenditures.

2012				
		Achievement as a Percent of Budget w/Exemptions	Achievement as a Percent of Budget w/o Exemptions	Goal
SBE & MBE/WBE combined	\$306,833,614	85.2%	5.2%	25%
MBE/WBE only	\$67,833,614	18.8%	1.3%	6.25%
Aggregate of Agency Budgets less Exemptions (Budget Available for Program)	\$360,150,576	Approximately 94% of the aggregate agency adopted budget less federal, non-purchasing, and statute-required expenditure was deemed exempt in 2012 according to public CHRO and DAS documents.		
Exemptions	\$5,470,313,727			
Aggregate of Agency Budgets less Federal, Non-purchasing, and Statute- Required Expenditure	\$5,830,464,303			
Aggregate Agency Adopted Budget	\$20,899,072,182			

FIGURE 4.3 : EXEMPTION ANALYSIS MBE AND WBE PROGRAM AND SBE PROGRAM (2012)

SOURCE: SECTION 5.0 ANALYSIS OF STATE AGENCY BUDGETS FOR SET-ASIDE GOALS.  
CONNECTICUT DISPARITY STUDY: PHASE 1, PAGES 63-66  
(NOTE: BASED ON DATA PROVIDED BY DAS)

During the course of this study, several interested parties have indicated that they want the program goals increased for the purpose of expanding contract opportunities for MBEs, WBEs and SBEs. However, increasing the percentages does not necessarily equal additional business opportunities for MBEs, WBEs and SBEs. In fact, even doubling the MBE and WBE Program goal to 12.5% would not necessarily increase the amount contracted to those businesses because the program is already achieving a goal of more than 18% of contract and procurement awards to these groups. Increasing the program’s goals will have no impact on the contract spending to MBEs and WBEs if agencies continue to exempt nearly their entire operating budget from the program.



#### ***4.6.6 Conclusion and Recommendations***

The overall recommendation for goal setting is to take a data-driven approach to contract and internal agency-specific goal setting. In addition, overall state goals could be adjusted at regular intervals to reflect pending patterns from prior years and the adjusted availability of MBEs and WBEs in the relevant geographic marketplace. Further, it is recommended that the process of applying exemptions and exclusions to determine the pool of funds eligible for the program be restricted to include only sole-source contracts. All industry sectors with an absence of MBEs and WBEs need not be excluded or exempted from the program because this absence will be reflected in contract, agency-specific, and overall state goals when the recommended method for calculating goals is used.

The considerations for addressing goal setting include:

- Create a data-driven methodology for goal setting at the state, agency, and contract levels.
- Use adjusted availability by detailed industry sector as a guideline for procurement agents for setting contract goals.
- Eliminate agency budget exclusions and exemptions for all industry sectors, except in the case of sole-source procurement.
- Develop agency-specific goals using contracting information from prior years disaggregated by detailed industry sector as a guideline for procurement directors.
- Develop overall statewide MBE and WBE Program goals that reflect agency-specific goals using contracting information from prior years by detailed industry sector.

### **4.7 THE DEFINITION OF A MINORITY**

#### ***4.7.1 Overview***

The definition of a “minority” adopted by the state has implications for the certification process and administration of the MBE and WBE program. In addition, the results of the statistical analysis portion of the disparity study will vary depending on the definition of a minority used in the program. The purpose of this section is to outline approaches that the state should consider for defining a minority, as well as the impact that these approaches would have on the administration of the state’s MBE and WBE program and the statistical analysis portion of the disparity study. The section concludes by recommending a particular approach for defining a minority based on an analysis of the relevant literature and disparity studies from across the country.

The federal USDOT DBE program identifies women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities as disadvantaged demographic groups. However, the federal USDOT DBE program refers to the Small Business Administration (SBA) definition of socially disadvantaged groups. The SBA considers individuals to be socially disadvantaged if they consider themselves as members of



one of the aforementioned demographic groups or are considered by others as members of one of these groups.

The major difference between the USDOT DBE program and most state MBE programs pertains to the allowance of non-minority demographic groups in the DBE program. As discussed in Phase 1 of the Disparity Study, the USDOT DBE program allows for individuals from demographic groups that are not considered socially disadvantaged to become certified DBEs based on a net-worth evaluation. Individual business owners applying for DBE status must go through a rigorous net-worth assessment to become certified for the program.

There are two approaches to designing a disparity study based on the structure of the MBE and WBE program. These can be broadly categorized as an ex-ante analysis and an ex-post analysis.

- **Ex-Ante Approach:** The statistical analysis for the ex-ante approach is conducted by applying the definition of a minority for the USDOT DBE program based on the SBA definition of socially disadvantaged demographic groups.
- **Ex-Post Approach:** The ex-post approach does not presume that certain demographic groups are socially disadvantaged. This approach uses a robust statistical analysis to investigate which parties are affected by discrimination in the geographic marketplace. The results of the statistical analysis are used to identify qualifying demographic groups that are eligible for the MBE program. The ex-post approach also differs from the ex-ante approach in the degree of detail by which different demographic groups are defined in the statistical analysis. The results of the ex-post approach analysis can be used to construct a very specific definition of the demographic groups eligible for the program.

Although the ex-post approach does not align with the federal USDOT DBE program, it does have the advantage of ensuring that only affected parties in the relevant geographic marketplace are eligible for the program. However, public data restrictions and choices made by the economists conducting the statistical analysis make the ex-post approach difficult to rationalize. Further, Robert Fairlie and Bruce Meyer reported in 1996 that self-employment rates differed substantially across more than 60 ethnic and racial groups even after accounting for variables such as education, wealth, and residence.<sup>28</sup>

#### ***4.7.2 Conclusion and Recommendations***

After a thorough review of the relevant literature and disparity studies conducted across the country, the ex-ante statistical analysis approach is recommended for determining the definition of minority. The ex-ante approach has the advantage of constructing a definition of what constitutes a minority that aligns with guidelines of the USDOT DBE program.

There are a variety of publicly available datasets used in the statistical analysis to investigate evidence of marketplace discrimination. The most important dataset used in the statistical analysis portion of nearly all disparity studies from across the country is the US Census Bureau's Integrated Public Use Microdata Series (IPUMS). The IPUMS is a survey-based dataset

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28. Fairlie, Robert and B.D. Meyer. "Ethnic and Racial Self-Employment Differences and Possible Explanations." *Journal of Human Resources*. 1996.

that is constructed from the results of the American Community Survey. The American Community Survey is a national random sample of approximately 5% of national households.

A major shortcoming of the ex-post approach is that the margin of error for any of the information reported at a detailed demographic level will be large, especially when these results are further restricted to the relevant geographic marketplace, potentially making the data and analysis invalid.

As noted above, the ex-ante approach is recommended for the statistical analysis portion of the disparity study because it has the advantage of aligning with the USDOT DBE program guidelines. In addition, this approach avoids the hazard of generalizing results where the margin of error of survey responses is high. Specifically, the ex-ante analysis will provide statistical results that are disaggregated by the broad demographic groups identified in the SBA definition (women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Subcontinent Asian Americans) and for these groups in the aggregate.

It is also recommended that the state's MBE and WBE Program be designed to align the definition of a minority with the USDOT DBE certification requirements. Applying this definition to the state's MBE and WBE Program would allow for a more inclusive definition of program eligibility. If specific demographic groups were found to not be socially disadvantaged in the statistical analysis of marketplace discrimination they could still apply for certification on a case by case basis. The USDOT DBE program conducts a thorough certification process for individuals from parties that are not considered socially disadvantaged. The state's MBE and WBE Program could be designed so that individuals from socially disadvantaged demographic groups in the relevant geographic marketplace would be eligible, but that the program would also accept the companies that have USDOT DBE certification.

In summary, the recommendations suggested for determining the definition of a minority include:

- Use the ex-ante approach that relies on evidence cited in the literature review and the results of the statistical analysis to define a minority.
- Use broad racial and ethnic categories identified by USDOT and SBA to investigate the presence of discrimination in the private marketplace in the statistical analysis.

## **4.8 COMMERCIALLY USEFUL FUNCTION**

### ***4.8.1 Overview***

The administration of the federal DBE program provides a foundation for states and other governmental entities to consider having regulations and guidelines for their MBE, WBE and SBE programs to ensure the integrity of these programs, and that companies performing services on contracts with program goals are legitimately providing a commercially useful function.

Federal regulations, 49 CFR §26.55, define "commercially useful function" (CUF) for the federal DBE Program, as follows:

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract or a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.

CUF regulations and guidelines can be adopted by states and other government entities to help prevent certified MBEs, WBEs and SBEs from acting as “pass-through” entities when performing services on contracts that have MBE, WBE, and SBE goals.

#### ***4.8.2 Federal Regulations***

A concern is when DBEs are used as a “pass-through” entity – an entity that is contracted to perform, but does not actually perform, work on a contract. In such a case, a company that would not qualify as a DBE performs the actual work and receives nearly all of the financial benefit. For its role, the DBE serving as the “pass-through” typically receives a percentage of the contract amount as compensation for serving as the DBE to secure the contract award. In other cases, the DBE serving as the “pass-through” is incapable of performing the contracted work. In rare cases, the DBE is capable of performing the work, but the prime contractor directs the DBE to engage another company to perform the work.

The critical issue is whether the DBE can and will perform a CUF as defined in applicable regulations, because unless a DBE performs a CUF, its participation in a contract cannot be used to satisfy DBE participation requirements.

The USDOT DBE federal regulations identify the following key factors that should be analyzed when determining whether a CUF is being performed:

- How much of the work is subcontracted, whether it is consistent with normal industry practices;
- Whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed toward the goal;
- When the DBE furnishes materials, whether the DBE is responsible for negotiating the price, determining the quality and quantity of the material, ordering the material, and paying for it. As a contractor, a DBE firm would typically be hired to both furnish the material and install it with its own labor force.
- Whether the DBE’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
- In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE contract goal?

One of the most important elements to consider in any analysis of whether the DBE is performing a CUF is determining whether its role on a project is consistent with “normal industry practice.” This means that it must be determined if the DBE is performing the work or services in the manner normally performed by all contractors in a particular industry – DBEs and non-DBEs. As a general rule, the question to answer is whether a DBE would be performing the work or services in the same manner if there were no DBE program. Another question is, “Would the DBE also perform this work on non-federally assisted contracts?”

ConnDOT's Office of Contract Compliance has published an online Commercially Useful Function Guide.<sup>29</sup> This guide provides an interpretation of the federal rules and includes a checklist of elements for which a DBE should be responsible; if a DBE fails to meet any of the checklist requirements, further research into whether the DBE is performing a CUF is necessary. For example:

- If a DBE subcontractor is not fulfilling certain management functions, then further inquiry to assess if the DBE is separate and independent from the prime contractor is needed.
- If there is uncertainty to whether a DBE is managing its own workforce, then further inquiry is necessary.
- If it is unclear whether a DBE has control over equipment, further inquiry is required.
- If there is uncertainty regarding whether a DBE is responsible for ordering materials and supplies, further inquiry is needed.
- If it is unclear whether a DBE subcontractor is performing work specified in its agreement with a prime contractor, further inquiry is required.

ConnDOT uses the CUF guidelines for setting contract goals; for determining the difference between the contract amount and the work performed, which can affect the amount that is counted toward the contract goals; and for calculating supplier participation.

When ConnDOT identifies a DBE subcontractor that is not CUF compliant, the prime contractor does not receive credit for using a DBE on a contract. Further, if a DBE is identified as a "pass-through" and is incapable of performing work on a contract; it could lose its DBE certification.

### *Other Programs*

Many states that have MBE and WBE programs, and SBE programs, have established CUF guidelines.

- The State of Rhode Island uses the federal DBE program guidelines for its MBE program.
- The State of New York's MBE and WBE program has guidelines that closely mirror the federal DBE guidelines, and recently released proposed regulatory changes (5NYCCR, Part 140; Subdivision (f)),<sup>30</sup> including a description of what constitutes a CUF for its program:
  - f) Commercially useful function. A minority- or women-owned business enterprise performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the minority- or women-owned business enterprise must also be responsible, with respect to materials and

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29. ConnDOT, Bureau of Finance and Administration, Contract Compliance Forms, Web Access: May 9, 2014, [www.ct.gov/dot/cwp/view.asp?a=2288&Q=482636](http://www.ct.gov/dot/cwp/view.asp?a=2288&Q=482636)

30. Empire State Development, Final Proposed MWBE Regulation, Web Access: May 9, 2014, [http://www.esd.ny.gov/MWBE/Data/Final\\_Proposed\\_MWBE\\_Regulation.pdf](http://www.esd.ny.gov/MWBE/Data/Final_Proposed_MWBE_Regulation.pdf)

supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, where applicable, and paying for the material itself. A minority- or women-owned business enterprise does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. Factors to be used in assessing whether a minority- or women-owned business is performing a commercially useful function include:

1. The amount of work subcontracted;
2. Industry practices;
3. Whether the amount the minority- or women-owned business enterprise is to be paid under the contract is commensurate with the work it is to perform;
4. The credit claimed towards minority- or women-owned business enterprise utilization goals for the performance of the work by the minority or women-owned business enterprise; and
5. Any other relevant factors.

The State of California also uses defined rules to evaluate whether or not a participating SBE performs a CUF.<sup>31</sup>

A business performing a CUF is one that does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract.
- Carries out its obligation by actually performing, managing, or supervising the work involved.
- Performs work that is normal for its business, services and function.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

California provides administrators with a list of test questions for different project scenarios to evaluate whether all parties involved in a contract provide a CUF. In some circumstances, under the California guidelines, contractors are assumed to perform a CUF. The following example involves a prime contractor that is not certified working with two certified subcontractors.<sup>32</sup>

The prime is not certified and proposes the use of two subcontractors who are both certified small businesses. The bidder is a non-small business claiming small business preference for use of certified small business subcontractors. The Bidder Declaration states that the prime will manage the contract with one subcontractor

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31. Commercially Useful Function Use and Evaluation. California Department of General Services, 2006. Web Access: May 9, 2014, <http://www.documents.dgs.ca.gov/pd/delegations/CUFBrdcst0106.pdf>

32. Commercially Useful Function Use and Evaluation. California Department of General Services, 2006. Web Access: May 9, 2014, <http://www.documents.dgs.ca.gov/pd/delegations/CUFBrdcst0106.pdf>



providing the goods and the other subcontractor delivering the goods and performing the installation.

Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime will hold subcontractors responsible for execution of all contract elements.

Test #2 – The two subcontractors perform all elements of the contract.

Test #3 – The Office of Small Business & Disabled Veteran Business Enterprise Services (OSDS) website identifies that both subcontractors possess current certifications but only one has a CUF indicator. The indicator is consistent with the work being performed by that subcontractor. What is proposed in the solicitation for the other subcontractor are goods normally provided by that subcontractor.

Test #4 – The subcontractors are not further subcontracting with other entities.

Result: CUF compliant – Both subcontractors met all four tests.

#### ***4.8.3 Conclusion and Recommendations***

Currently, the use of CUF for administration of Connecticut's MBE and WBE Program, and SBE Program is not addressed in the Connecticut General Statutes (C.G.S. §4a-60g through §4a-60j) or other state legislation, regulations or guidelines. However, the state should consider incorporating CUF guidelines for administration of its MBE and WBE Program, and SBE Program, to ensure that CUF services are provided by certified companies and for the purpose of deterring companies from acting as "pass-through" entities for meeting contract goals.

Connecticut should consider developing CUF regulation and guidelines for managing its MBE and WBE Program, and SBE Program. The federal DBE regulations and other states' guidelines should be considered as a foundation for developing Connecticut's regulations and guidelines. Implementing and enforcing CUF regulations and guidelines for Connecticut's MBE and WBE Program, and SBE Program will be useful in preventing fraudulent practices.

Based on other programs, important criteria for evaluating whether a business provides a CUF includes whether payment is commensurate with work performed, if payment is aligned with industry standards, if the business is performing work that is considered normal for its business, and if the business in question provides a management or supervisory role in the project.



## 5.0 STATISTICAL ANALYSIS FOR CONDUCTING A DISPARITY STUDY

The proposed method of statistical analysis for conducting the Disparity Study is based on a review of the latest disparity studies prepared across the country and a review of the latest economic literature on self-employment and economic mobility. The proposed method, outlined in this chapter, was designed with significant consideration given to a 2006 report by the US Commission on Civil Rights.<sup>33</sup> In addition, the proposed analytical method aligns with the guidelines outlined in a 2010 report by the National Cooperative Highway Research Program (NCHRP).<sup>34</sup>

The NCHRP report, in particular, provides an outline of the major components necessary for conducting a comprehensive disparity study.

The NCHRP report outlined nine major elements of disparity studies that include:

1. A legal review and legal standards.
2. An empirical assessment of the appropriate geographic marketplace relevant to all agencies' contracting activity.
3. An empirical assessment of the appropriate product markets relevant to all agencies' contracting activity.
4. An estimate of the fraction of businesses within the agency's geographic and product markets that are owned by MBEs and WBEs (i.e., availability).
5. An estimate of the percentage of all prime contract and subcontract dollars earned by MBEs and WBEs (i.e., state agency utilization).
6. A statistical comparison of public sector utilization to availability.
7. An econometric analysis of MBEs and WBEs success, relative to non- MBEs and WBEs (e.g., business formation rates and business owner earnings).
8. An econometric analysis of access to capital and credit for MBEs and WBEs.
9. Collection of anecdotal evidence from MBEs and WBEs and non- MBEs and WBEs concerning experiences doing business in the state.

Phase 1 of the disparity study included elements one and nine. Phase 2 of the disparity study includes an overview of the elements and recommended timeline for conducting the statistical analysis that includes and outlines the overall report. The next steps of the disparity study will focus on a statistical investigation of the MBE and WBE Program, which encompasses elements two through eight of the NCHRP guidelines. The remaining elements of the NCHRP guidelines (two through eight), together, constitute the statistical analysis portion of a disparity study.

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33. United States Commission on Civil Rights. "Disparity Studies as Evidence of Discrimination in Federal Contracting." Briefing Report for the United States Commission on Civil Rights. 2006.

34. Wainwright, Jon and C. Holt. "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program." National Cooperative Highway Research Program. 2010.

The statistical analysis section of the disparity study will investigate whether conditions in Connecticut's marketplace necessitate the need for a state MBE and WBE program, and will be used to inform goal setting for the program.

The statistical analysis can be split into two distinct tasks. Both rely on a theoretical framework developed through a comprehensive literature review, an estimation of the state's relevant geographic marketplace, and an analysis of utilization of MBEs and WBEs by the state.

## **5.1 LITERATURE REVIEW AND GEOGRAPHIC MARKETPLACE**

Analysis of the economic literature on various measures of discrimination and self-employment include, but are not limited to, analyses of differences in wages, rates of self-employment, access to capital, and rates of homeownership. Connecticut's relevant geographic marketplace will be identified using available data. This section will include

- Statistical Analysis 1.A: Literature Review and Theoretical Framework
- Statistical Analysis 1.B: Defining the Geographic Marketplace

## **5.2 EVIDENCE OF MARKETPLACE DISCRIMINATION**

Examining the evidence of marketplace discrimination first requires the establishment of the appropriate geographic market relevant to all agencies' contracting activity. The analysis is conducted using publicly available data and statistically examines different measures of discrimination in the geographic market. These measures include, but are not limited to, analyses of differences in wages, rates of self-employment, access to capital, and rates of homeownership.

This part of the analysis identifies barriers faced by MBEs and WBEs in the marketplace and whether current conditions in Connecticut's marketplace necessitate a need for a state MBE and WBE program. The statistical analysis seeks to establish this justification by investigating whether minorities and women face significant barriers to forming and operating a business enterprise in Connecticut's relevant geographic marketplace. This portion of the statistical analysis constitutes elements seven and eight of the NCHRP guidelines.

The analysis of evidence of marketplace discrimination represents the following sections of the statistical analysis:

- Statistical Analysis 1.C: Disparities in Earnings by Race and Gender
- Statistical Analysis 1.D: Analysis of Credit Market Disparities in the United States
- Statistical Analysis 1.E: Analysis of Disparities in Homeownership and Home Lending
- Statistical Analysis 1.F: Evidence from Business Owners
- Statistical Analysis 1.G: Disparities in Business Formation (Calculating Correction Term)

### 5.3 ANALYSIS OF MBE AND WBE UTILIZATION

Analyzing MBE and WBE utilization also requires the establishment of the appropriate geographic market relevant to contracting activity of all state agencies. The analysis is conducted by using the state's prime and subcontracting data in combination with proprietary business listings. The state's utilization of MBEs and WBEs for the designated study period is compared to the availability of these groups in the geographic market area.

The purpose of this aspect of the statistical analysis is to evaluate whether there is discrimination in state contracting based on the availability and utilization ratios. The analysis also corrects the availability ratio for disparities in business formation of MBEs and WBEs in the state's relevant geographic marketplace. This portion of the statistical analysis constitutes elements two through six of the NCHRP guidelines.

The analysis of evidence of marketplace discrimination represents the following sections of the statistical analysis:

- Statistical Analysis 1.H: Availability Analysis
- Statistical Analysis 1.I: Expected Business Formation Rates (Applying Correction Term)
- Statistical Analysis 1.J: Analysis of State MBE and WBE Utilization
- Statistical Analysis 1.K: Anecdotal Evidence About Doing Business in the State

### 5.4 OVERVIEW AND TIMELINE FOR CONDUCTING PHASE 3 AND PHASE 4 OF THE DISPARITY STUDY

An examination of the evidence of marketplace discrimination and the analysis of the state's MBE and WBE utilization are both necessary for conducting a comprehensive disparity study and both require subcontractor data. The proposed timeline for Phase 3 and Phase 4 of the disparity study splits this analysis apart by conducting a preliminary examination of the evidence of marketplace discrimination before comprehensive subcontractor data is routinely collected and available through the diversity data management system (DDMS) that is being considered for implementation by the state.

The preliminary analysis will use an approximation of the geographic marketplace defined only by prime contracting data. Conducting the examination of the evidence of marketplace discrimination using a geographic area defined by only prime contracting data will provide an opportunity to conduct a thorough literature review, outline a complete theoretical framework, and develop the necessary econometric models for the final analysis that will be based on the geographic marketplace that includes subcontractor data.

#### *5.4.1 Statistical Analysis Conducted in Phase 3*

Phase 3 will present preliminary findings of whether there is a disparity in the rate of MBE and WBE business ownership and the potential causes of that disparity in the approximation of the state's geographic marketplace. The literature review and theoretical framework will provide

the necessary foundation for the statistical analysis. The approximation of the geographic marketplace will provide the information needed to develop and refine the econometric models necessary to conduct a final examination of the evidence of marketplace discrimination in Phase 3.

The analysis conducted in Phase 3 will complete the following portions of the statistical analysis (outlined below in the requisite section):

- Statistical Analysis 1.A: Literature Review and Theoretical Framework
- Statistical Analysis 1.B: Defining the Geographic Marketplace
- The analysis conducted in Phase 3 will include preliminary findings for the following portions of the statistical analysis:
- Statistical Analysis 1.C: Disparities in Earnings by Race and Gender
- Statistical Analysis 1.D: Analysis of Credit Market Disparities in the United States
- Statistical Analysis 1.E: Analysis of Disparities in Homeownership and Home Lending
- Statistical Analysis 1.F: Evidence from Business Owners
- Statistical Analysis 1.G: Disparities in Business Formation (Calculating Correction Term)

#### ***5.4.2 Statistical Analysis Conducted in Phase 4***

Phase 4 will include a final examination of marketplace discrimination using comprehensive prime and subcontractor data from a DDMS system that is expected to be implemented by the state, as well as the availability and utilization analyses. Anecdotal evidence gathered in Phase 1 will be supplemented in Phase 4 with additional comprehensive input from companies about doing business in the state. The analysis conducted in Phase 4 will meet the criteria outlined in the NCHRP report.

Connecticut subcontracting data is not currently collected at a comprehensive, statewide level, which makes it impossible to complete a disparity study using the most relevant geographic market at this time. However, it is believed that the distribution of prime contractors is likely similar to the distribution of subcontractors. This is likely the case because prime contractors utilize subcontractors in their local market or near their place of business. The results presented in Phase 3 will identify preliminary evidence of marketplace discrimination and will refine the econometric model that will be used in Phase 4. This analysis will be revised in Phase 4 based on the inclusion of subcontractor data if the subcontractor data identifies a substantial difference in the preliminary marketplace used in Phase 3.

The statistical analysis will be finalized in Phase 4 when complete subcontractor and prime contracting data is available from the DDMS for a three-year period. In the interim, an analysis can be conducted after collecting one year of complete DDMS data, if requested by the policymakers and pending funding from the Connecticut General Assembly. Once the comprehensive information is adequately tracked on all contracts, the actual geographic marketplace for Connecticut can be defined and a comprehensive statistical analysis for a disparity study can be conducted.

The analysis conducted in Phase 4 will complete the following sections of the statistical analysis:

- Statistical Analysis 1.C: Disparities in Earnings by Race and Gender
- Statistical Analysis 1.D: Analysis of Credit Market Disparities in the United States
- Statistical Analysis 1.E: Analysis of Disparities in Homeownership and Home Lending
- Statistical Analysis 1.F: Evidence from Business Owners
- Statistical Analysis 1.G: Disparities in Business Formation (Calculating Correction Term)
- Statistical Analysis 1.H: Availability Analysis
- Statistical Analysis 1.I: Expected Business Formation Rates (Applying Correction Term)
- Statistical Analysis 1.J: Analysis of State MBE and WBE Utilization
- Statistical Analysis 1.K: Anecdotal Evidence About Doing Business in the State

## 5.5 DETAILED OUTLINE OF THE STATISTICAL ANALYSIS

The purpose of the statistical analysis is to assess whether or not disparities exist in the Connecticut marketplace and the degree to which those disparities compare with those seen nationally. Evidence of discrimination in the marketplace must first be found to be statistically significant in order to properly justify the existence of a MBE and WBE program. There are several factors that will be examined to determine if there is discrimination in the private market: a disparity in earnings by race and gender, credit market accessibility, disparities in homeownership, and disparities in business formation rates. An approximation of the state's contracting marketplace will be developed using existing prime contracting records for this analysis.

Phase 4 will apply the same econometric models developed in Phase 3, potentially using a more refined geographic definition of the marketplace once the subcontractor data is available. The Phase 3 private market analysis would only be revised in Phase 4 if the availability analysis shows that the marketplace as defined by prime and subcontractor data is substantially different than the geography used in Phase 3. The following is an outline of the planned quantitative methods. However, the specific tables and models may change as the research team begins the analysis and the method is further refined.

The analysis will begin by reassessing the state's geographic marketplace developed in Phase 3 by including subcontractor data. This geographic definition will provide a more precise determination of the marketplace, which is required to conduct the final analysis. The analysis will then use this geographic definition to apply the econometric models developed in Phase 3, calculate availability, adjust availability by the correction term, and determine utilization.

### *5.5.1 Statistical Analysis 1.A: Literature Review*

A theoretical framework will be developed through a comprehensive literature review. The theoretical framework will form the basis for justifying the indicators examined in the statistical analysis. The statistical analysis will assess whether mechanisms affecting the entry and exit rates of MBE and WBEs are present in the geographic marketplace.



A disparity in the rate of minority to white self-employment has been widely reported and subsequently investigated by several prominent economists in the last two decades. Robert Fairlie and Bruce Meyer reported in 1996 that self-employment rates differed substantially across more than 60 ethnic and racial groups even after accounting for variables such as education, wealth, and residence.<sup>35</sup> In their 2000 work, Fairlie and Meyer develop an intergenerational model of self-employment.<sup>36</sup> They show that African-American workers are not concentrated in low self-employment industries and that, given data on educational attainment and wealth, the minority self-employment rate should be converging to that of whites. However, they report that the self-employment rate among African-American men has remained roughly one-third of the rate of their white counterparts from 1910 through 1997.

The factors that impact the rate of self-employment operate primarily through two non-exclusive channels, namely the entry and exit rates from wage/salaried employment to self-employment. Fairlie and Meyer report in their 1999 work that the African-American transition rate into self-employment is approximately half that of whites.<sup>37</sup> In the same paper, Fairlie and Meyer report that the African-American transition rate out of self-employment is roughly twice that of whites. Fairlie and Meyer conclude that only a portion of the difference in entry rates can be explained by wealth and an individual's father's self-employment. However, they are unable to explain the remainder of the difference in entry rates or any of the difference in exit rates using a variety of other variables.

Economic theory describes an individual's decision to start a business as a calculation of the spread between expected future income from self-employment compared to the expected income from wage or salaried employment.<sup>38</sup> An individual's expectation of success in operating a business will directly affect the forecast of self-employed earnings. As a result, the entry rate is itself affected indirectly by the exit rate in addition to other direct factors such as wage/salaried earnings, wealth, and access to small business loans.

A number of economists, most prominently Robert Fairlie, have found that the factors that influence the rate of minority self-employment through the entry and exit rates cannot be explained through differences in education, industry, and a number of other economic variables. A natural conclusion from this would be that the resulting differences in the entry and exit rates can only be explained through larger social factors like discrimination. Discrimination, in this context, can be considered a negative externality. The presence of a negative externality helps provide the justification for the creation of corrective institutions (such as a race-conscious MBE program or a gender-based WBE program) to ensure an efficient allocation of resources through the market mechanism.<sup>39</sup>

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35. Fairlie, Robert and B.D. Meyer. "Ethnic and Racial Self-Employment Differences and Possible Explanations." *Journal of Human Resources*. 1996.

36. Fairlie, Robert and B.D. Meyer. "Trends in Self-employment among White and Black men during the Twentieth Century." *Journal of Human Resources*. 2000.

37. Fairlie, Robert and B.D. Meyer. "The Absence of the African American owned Business, an Analysis of the Dynamic of Self-employment." *Journal of Labor Economics*. 1999.

38. A formal description of this theory can be found in the works of Rees and Shah (1986), Parker (2004), and Borjas and Bronars (1989). A more recent example of a contribution that builds on these foundational works can be found in Fairlie and Meyer (1996).

39. The notion of positive and negative externalities, as they relate to efficient allocations, is most frequently attributed to Coase (1960). Externalities of various forms have been the subject of countless research endeavors over the last 50 years that have resulted in a uniform acceptance of the concept as a cornerstone of modern economic theory.



### ***5.5.2 Statistical Analysis 1.B: Defining the Geographic Marketplace***

The geographic marketplace will be identified by using the locations of prime and subcontractor businesses that received state contracting dollars. This information will be obtained from the state's DDMS. The definition represents the true geographic marketplace of the state's prime contractors and subcontractors. The marketplace definition will be reported by major industry sector. In Phase 3, the geographic marketplace will be estimated using currently available prime contracting data. This approximation will likely be close to the true geographic marketplace based on the assumption that subcontractor data will have a similar spatial distribution. This marketplace definition will be used for the remainder of the analysis in Phase 3. In the Phase 4 analysis, both the prime and subcontractor business locations will be used to define the geographic marketplace.

#### *Statistical Analysis 1.B: Proposed Data Sources*

- State prime contracting data obtained from the state used in phase 3, as well as subcontracting data from the DDMS in Phase 4.

### ***5.5.3 Statistical Analysis 1.C: Disparities in Earnings by Race and Gender***

It is widely cited across literature from many disciplines that entrepreneurs emerge in any industry from the existing labor force.<sup>40</sup> An earnings disparity in minority or female earnings will adversely impact the ability of members from those groups to accrue the adequate level of capital to start a business. The analysis will examine whether there are differences in earnings among the self-employed who are business owners. If minority and women business owners earn significantly less than similarly situated non-minority and male entrepreneurs then growth rates may be slower, business failure rates may increase, and business formation rates may decrease.

This analysis will assess whether there exists a statistical discrepancy in existing businesses located in the private marketplace. It should be noted that this analysis abstracts from discrimination in business formation itself. This could create a downward bias, or show a lower level than the actual, on any disparity in self-employed earnings because of a selection process where only high quality minority businesses are successfully formed in the first place. Data from the US Census American Community Survey will be used to assess the current condition of the marketplace, and the US Census Current Population Survey data will be used as a robustness check as well as to assess how the disparity has changed over time.

#### *Statistical Analysis 1.C: Proposed Data Sources*

*The following data sources may be revised depending on availability and adjustments to the empirical specifications.*

- American Community Survey Public Use Microdata Sample (PUMS). United States Census Bureau.
- Current Population Survey. United States Census Bureau and Bureau of Labor Statistics.

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40. Two notable examples can be found in the work Saxenian (1996) and Mayer (2008).

#### ***5.5.4 Statistical Analysis 1.D: Analysis of Credit Market Disparities in the United States***

This section will look for evidence of disparities in access to credit for small businesses. Blanchflower, Evans, and Oswald find evidence in 1998 that fledgling small businesses grow more rapidly when they have adequate access to credit.<sup>41</sup> In another study by Blanchflower, Levine, and Zimmerman, the authors find that African-American business owners were about half as likely to be approved for credit and were charged higher rates when approved.<sup>42</sup> These results are found to hold even after the authors control for credit worthiness and a number of other pertinent factors. After conducting several statistical robustness checks, the authors conclude that their findings are likely the result of persistent social discrimination. Access to credit and bonding are significant impediments to small business growth and very likely impediments to MBE and WBE availability. This section of the statistical analysis will focus on examining evidence of access to loanable funds and the interest rate charged for those funds.

##### *Statistical Analysis 1.D: Proposed Data Sources*

*The following data sources may be revised depending on availability and adjustments to the empirical specifications.*

- Survey of Business Owners. United States Census Bureau.

#### ***5.5.5 Statistical Analysis 1.E: Analysis of Disparities in Homeownership and Home Lending***

This section will look for evidence of disparities in homeownership and home lending rates. In their 2006 paper, Fairlie and Krashinsky presented evidence that appreciation in the value of housing was a significant determinant of entry into self-employment.<sup>43</sup> Home equity lines of credit often serve as start-up capital for individuals starting businesses. In 1998, Blanchflower and Oswald find that the probability of self-employment is strongly correlated with shocks to an individual's wealth endowment.<sup>44</sup> In addition, the authors find that prospective entrepreneurs report that raising capital is the largest impediment to their success at achieving self-employment. Therefore, if disparities exist for women and minorities in having the necessary capital to start a business, formation rates will be lower. Similarly, disparities in home lending rates are a good proxy for those that might exist in the small business lending market.

- *Statistical Analysis 1.E: Proposed Data Sources*

*The following data sources may be revised depending on availability and adjustments to the empirical specifications.*

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41. Blanchflower, David and D. S. Evans and A. J. Oswald. "Credit Cards and Entrepreneurs." National Economic Research Associates Working Paper. 1998.

42. Blanchflower, David and P. Levine and D. Zimmerman. "Discrimination In The Small Business Credit Market." *Review of Economics and Statistics*. 2003.

43. Fairlie, Robert and H.A. Krashinsky. "Liquidity Constraints, Household Wealth and Entrepreneurship Revisited." University of California, Santa Cruz Working Paper. 2006.

44. Blanchflower, David and A. J. Oswald. "What Makes an Entrepreneur?" *Journal of Labor Economics*. 1998.

- American Community Survey Public Use Microdata Sample (PUMS). United States Census Bureau.
- Current Population Survey. United States Census Bureau and Bureau of Labor Statistics.
- Home Mortgage Disclosure Act. Federal Financial Institutions Examination Council.

### ***5.5.6 Statistical Analysis 1.F: Evidence from Business Owners***

The Census Bureau's Survey of Business Owners and Self-Employed Persons (SBO) collects and disseminates data on the number, sales, employment, and payrolls of businesses owned by minorities and women and also non-minority-owned and non-women owned firms. The SBO estimates are created by matching data collected from income tax returns by the Internal Revenue Service (IRS) with Social Security Administration data on race and ethnicity, and supplementing this information using statistical sampling methods. The SBO covers women and five minority groups.

In 2007, Fairlie and Robb found that African-American business owners earned less in sales, profits, and wages.<sup>45</sup> In addition, the authors found that African-American owned businesses were in operation, on average, for far shorter periods of time than their white counterparts.

This analysis will be used as a robustness check to verify the findings from the previous sections and demonstrate that the results are not unique to any one dataset or particular time period.

#### *Statistical Analysis 1.F: Proposed Data Sources*

*The following data sources may be revised depending on availability and adjustments to the empirical specifications.*

- Survey of Business Owners. United States Census Bureau

### ***5.5.7 Statistical Analysis 1.G: Disparities in Business Formation (Calculating Correction Term)***

This section will compare rates of self-employment to determine whether a disparity exists in rates of business formation owned by minorities and women in Connecticut's relevant geographic marketplace. These results will provide evidence of disparities in the rate of business formation, but may not directly point to a specific cause. The American Community Survey data will be used to assess the current condition of the marketplace and the Current Population Survey data will be used as a robustness check (a verification of the previous findings) as well as to assess how the disparity has changed over time.

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45. Fairlie, Robert and A. Robb "Why are Black-owned Businesses Less Successful than White-owned Businesses? The Role of Families, Inheritances, and Business Human Capital." *Journal of Labor Economics*. 2007.

Statistical Analysis 1.G: Proposed Data Sources

*The following data sources may be revised depending on availability and adjustments to the empirical specifications.*

- American Community Survey Public Use Microdata Sample (PUMS). United States Census Bureau.
- Current Population Survey. United States Census Bureau and Bureau of Labor Statistics.

**5.5.8 Statistical Analysis 1.H: Availability Analysis**

The availability analysis will be conducted using proprietary data sources. The current availability of MBEs and WBEs will be calculated by detailed industry sector for the geographic marketplace. MBE and WBE availability will be compared to the state's utilization of MBEs and WBEs and can be used to set MBE and WBE program goals. In addition, the availability rates by detailed industry can be used by agency procurement officers to set contract goals.

Statistical Analysis 1.H: Proposed Data Sources

- Supplier Diversity Data Services. Dun & Bradstreet.

**5.5.9 Statistical Analysis 1.I: Expected Business Formation Rates (Applying Correction Term)**

The disparity in business formation rates detailed in Phase 3.E will be used to adjust the availability of MBE and WBE firms from Phase 4.C. The wage and lending discrimination examined in Phase 4.B (detailed in Phase 3.B-3.F) have a significant impact on the rate of entrepreneurship and MBE and WBE formation. As such, the availability is corrected to resemble a disparity free marketplace in the absence of these barriers to MBE and WBE business formation.

Statistical Analysis 1.I: Proposed Data Sources

- Supplier Diversity Data Services. Dun & Bradstreet.

*The exact data sources may be adjusted based on availability and empirical specifications.*

- American Community Survey Public Use Microdata Sample (PUMS). United States Census Bureau.
- Current Population Survey. United States Census Bureau and Bureau of Labor Statistics.

#### ***5.5.10 Statistical Analysis 1.J: Analysis of State MBE and WBE Utilization***

The purpose of this section of the statistical analysis is to analyze whether or not disparities exist in Connecticut's MBE and WBE contract utilization relative to availability. Evidence of an ongoing disparity in state contracting must also be found to properly justify the continued existence of the state's MBE and WBE program. The state's utilization will be disaggregated by industry sector and the rate of current utilization will be compared to the raw and discrimination-adjusted availability. These figures will also be tracked at an agency level. A statistical hypothesis test will be used to assess whether disparities in utilization are statistically significant.

##### *Statistical Analysis 1.J: Proposed Data Sources*

- State prime and subcontracting data will be obtained from the DDMS in Phase 4.
- Supplier Diversity Data Services. Dun & Bradstreet. 2013-14.

#### ***5.5.11 Statistical Analysis 1.K: Anecdotal Evidence about Doing Business in the State***

Building from the key findings of the focus groups and surveys from Phase 1 of the disparity study, additional anecdotal evidence will be gathered regarding how MBEs, WBEs, non-MBEs, and non-WBEs do business with the state.

This qualitative evidence will include information about experiences doing business or attempting to do business with the state government, including any experiences of institutionalized discrimination and/or individual disparate treatment. The effectiveness of any race-neutral measures that assist small businesses with their participation in public contracting and procurement will also be analyzed. The anecdotal evidence gathering process may include, but not be limited to, the following methods: public information forums, focus groups, one-on-one interviews, and surveys. The methods used will be determined by how best to reach a broad set of businesses across industries and various regions across the state and the relevant geographic market area.

## **5.6 REFERENCES**

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Wainwright, Jon and C. Holt. "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program." National Cooperative Highway Research Program. 2010.



## 6.0 CONCLUDING REMARKS

The most effective statewide programs have a centralized structure that has support of the governor and key political leaders, and advocate for MBEs and WBEs in a variety of ways, including: implementing consistent MBE and WBE programs, developing policies, overseeing and enforcing compliance, and educating stakeholders.

Connecticut can be a national leader as an advocate for MBE and WBE business opportunities by considering the implementation of a series of actions.

- Adopt an **organizational structure with a focal point** for the MBE and WBE Program so that companies and state agencies clearly understand who is responsible and accountable for the program and who serves as its primary advocate, advisor, overseer, policymaker, and educator. Having a **leader** of the MBE and WBE Program who is focused solely on the program is a key organizational component of the most successful programs around the country.
- Enact **legislative initiatives** for the near term that separate the MBE and WBE Program from the state's SBE Set-Aside Program, enable the MBE and WBE Program to be goal based, and allow out-of-state firms to become certified. The purpose of a MBE and WBE Program that is established by state statute should be to eliminate current disparities in state contracting. It is a remedy to be used after race-neutral measures are implemented and when disparities resulting from discrimination still exist. These initiatives will align the program with operative legal standards to address apparent discrimination.
- Implement **administrative changes** to provide greater transparency and consistency within goal-setting and monitoring processes. For example, defining good faith efforts and minimizing the use of exemptions and exclusions within the state agency goal setting process would achieve more efficient and effective administration of the MBE and WBE Program.
- Collect **comprehensive data** about contracts and all payments made to contractors, whether prime or subcontractors, across agencies and branches of government, as an essential precursor to conducting a statistical disparity analysis and to enable greater administrative accountability and oversight of the program.
- Increase the use of **race-neutral measures** to expand the number of businesses that participate in government contracting. By stimulating business growth, race-neutral measures help small companies overcome significant disadvantages regardless of race, gender, or ethnicity. Common race-neutral measures include business support services, finance, and networking programs.
- Consider the **federal DBE regulations** as guidance for implementation and administration of the MBE and WBE Program with regard to issue areas such as those regarding commercially useful function, size standards and definitions of minority. These regulations are useful models as they have been found to be based on legally defensible standards.

Once the comprehensive data needed for conducting the statistical analysis are collected, the disparity study can be completed and used to inform contract spending goals for the MBE and WBE Program.

Based on the results of periodic statistical analyses, if a statistically significant disparity resulting from discrimination exists, then a legislatively mandated MBE and WBE Program should be continued, taking into account all of the relevant legal requirements.

## APPENDIX A

### B2GNOW DIVERSITY DATA MANAGEMENT SYSTEM SURVEY SELECTED SURVEY QUESTION AND ANSWER TABLES

(Q1) What is your role in your agency's/organization's supplier diversity program?

Answer Options	Response Percent	Response Count
Manager/Director	94.1%	16
Procurement	0.0%	0
Legal	0.0%	0
Human Resources	0.0%	0
Information Technology	5.9%	1
Other (please specify)		3
<i>answered question</i>		<b>17</b>
<i>skipped question</i>		<b>2</b>

(Q2) At what level of government is your supplier diversity program?

Answer Options	Response Percent	Response Count
Federal	35.3%	6
State	29.4%	5
County	23.5%	4
Municipal	41.2%	7
Other (please specify)		3
<i>answered question</i>		<b>17</b>
<i>skipped question</i>		<b>2</b>

(Q3) If your program is a state-level supplier diversity program, do all branches of state government and all agencies in each branch (executive/legislative/judicial branches and state university systems) utilize the B2Gnow Data Diversity Management System (DDMS)?

Answer Options	Response Percent	Response Count
Yes	10.0%	1
No	50.0%	5
Don't Know	40.0%	4
Please specify any exceptions		6
<i>answered question</i>		<b>10</b>
<i>skipped question</i>		<b>9</b>

(Q4) Please indicate the following types of certifications that companies can qualify for in your supplier diversity program (select all that apply).

Answer Options	Response Percent	Response Count
Small business enterprise	68.4%	13
Minority business enterprise	68.4%	13
Women business enterprise	68.4%	13
Disadvantaged business enterprise (federal program)	73.7%	14
Disabled business enterprise	15.8%	3
Veteran business enterprise	15.8%	3
Other (please specify)		7
<i>answered question</i>		<b>19</b>
<i>skipped question</i>		<b>0</b>

(Q5) Approximately how many contracts (for your last available fiscal year) are recorded in your DDMS? Approximately what dollar amount of purchases do those contracts represent?

(Q5A) Answer Options	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Response Count
# of Respondents by FY	0	0	0	9	5	14

(Q5B) Answer Options	less than 50	50-99	100-499	500-999	1000+	Response Count
# of respondents by # of contracts recorded for FY reported	3	1	6	2	2	14

(Q5C) Answer Options	less than \$1M	\$1M-\$4.9M	\$5M-\$9.9M	\$10M-\$49.9M	\$50M-\$99.9M	\$100M-\$499.9M	\$500M+	Response Count
Amount of Purchases on of Contracts Reported	0	1	0	3	1	5	4	14
<i>answered question</i>								14
<i>skipped question</i>								5

(Q6) Does your program allow for reciprocity agreements for certification?

Answer Options	Yes	No	Don't Know	Response Count
With other government entities within your state?	14	5	0	19
With other government entities in other states?	9	9	0	18
<i>answered question</i>				<b>19</b>
<i>skipped question</i>				<b>0</b>

(Q7) How is information added into the DDMS? Select all that apply.

Answer Options	Response Percent	Response Count
Agencies manually input contract information	50.0%	8
Agencies manually input contractor information	43.8%	7
Prime contractors manually input payments made to subcontractors	81.3%	13
Subcontractors manually verify payments from prime contractors	81.3%	13
Auto upload of contract information from procurement systems	43.8%	7
Auto upload of payment information from financial systems	75.0%	12
Batch processing of contract information from procurement systems	6.3%	1
Batch processing of payment information from financial systems	12.5%	2
Other (please specify)		2
<i>answered question</i>		<b>16</b>
<i>skipped question</i>		<b>3</b>

(Q8) In what year did you implement the B2Gnow DDMS?

In what year did you implement the B2Gnow DDMS?		
Answer Options	Response Percent	Response Count
prior to 2005	0.0%	0
2005	10.5%	2
2006	5.3%	1
2007	15.8%	3
2008	5.3%	1
2009	21.1%	4
2010	15.8%	3
2011	10.5%	2
2012	0.0%	0
2013	15.8%	3
<i>answered question</i>		<b>19</b>
<i>skipped question</i>		<b>0</b>

(Q9) How many months did it take to implement the B2Gnow DDMS (please use time frame from start of implementation to system going live - not the start of your RFP process or other upfront process for DDMS system selection/acquisition)?

Answer Options	Response Percent	Response Count
less than 3 months	11.8%	2
3-5 months	23.5%	4
6-8 months	35.3%	6
9-11 months	17.6%	3
12-17 months	5.9%	1
19-23 months	5.9%	1
24+ months	0.0%	0
<i>answered question</i>		<b>17</b>
<i>skipped question</i>		<b>2</b>

(Q10) How many agencies/ departments/ other entities were involved in the implementation of the B2Gnow DDMS?

Answer Options	Response Percent	Response Count
1	11.8%	2
2-4	76.5%	13
5-9	11.8%	2
10-19	0.0%	0
20-29	0.0%	0
30-39	0.0%	0
40-49	0.0%	0
50-99	0.0%	0
100+	0.0%	0
<i>answered question</i>		<b>17</b>
<i>skipped question</i>		<b>2</b>



CONNECTICUT DISPARITY STUDY: PHASE 2  
APPENDICES

(Q11) Approximately how many staff persons (other than B2Gnow DDMS consultants) and staff hours were needed for the implementation of the DDMS?

(Q11A) # FTE staff persons: Answer Options	less than 1	1-4	5-9	10-19	20+	Response Count
Implementation	1	13	1	1	0	16

(Q11B) # FTE staff hours: Answer Options	less than 40	40-99	100-199	200-299	300+	Response Count
Implementation	4	4	4	1	3	16
						<b>Question Totals</b>
<i>answered question</i>						<b>16</b>
<i>skipped question</i>						<b>3</b>

(Q12) What B2Gnow modules were initially implemented? What B2Gnow modules were added after the initial implementation?

Answer Options	Initially implemented	Added after initial implementation	Response Count
Certification	11	3	14
Contracts	16	1	17
Concessions	2	2	4
Goal Setting	2	2	4
Bid Tracking	0	1	1
Outreach & Event Mgmt.	7	4	11
Online Application	5	4	9
Payment Analysis	5	2	7
Workforce Utilization	0	2	2
Insurance	0	0	0
Workforce Utilization	1	1	2
Certified Payroll	2	0	2
Vendor Registration	2	3	5
*Other	0	1	1
<i>answered question</i>			<b>19</b>
<i>skipped question</i>			<b>0</b>

(Q13) How many agencies/ departments/ governmental entities utilize the B2Gnow DDMS?

Answer Options	Response Percent	Response Count
1	50.0%	9
2-4	11.1%	2
5-9	27.8%	5
10-19	5.6%	1
20-29	0.0%	0
30-39	0.0%	0
40-49	5.6%	1
50-99	0.0%	0
100+	0.0%	0
<i>answered question</i>		<b>18</b>
<i>skipped question</i>		<b>1</b>

CONNECTICUT DISPARITY STUDY: PHASE 2  
APPENDICES

(Q14) Approximately how many staff persons (other than B2Gnow DDMS consultants) and staff hours were needed to manage your supplier diversity program before and after B2Gnow DDMS implementation for the following tasks?

(Q14A) # FTE staff persons - BEFORE Answer Options	less than 1	1-4	5-9	10-19	20+	Don't know	Response Count
Technical maintenance	3	7	1	0	0	2	13
Management and reporting	0	10	3	0	0	1	14

(Q14B) # FTE staff hours - BEFORE Answer Options	less than 40	40-99	100-199	200-299	300+	Don't know	Response Count
Technical maintenance	4	4	1	0	0	3	12
Management and reporting	2	2	1	2	2	2	11

(Q14C) # FTE staff persons - AFTER Answer Options	less than 1	1-4	5-9	10-19	20+	Don't know	Response Count
Technical maintenance	6	4	1	0	0	0	11
Management and reporting	2	9	0	0	0	0	11

(Q14D) # FTE staff hours - AFTER Answer Options	less than 40	40-99	100-199	200-299	300+	Don't know	Response Count
Technical maintenance	8	3	0	0	0	0	11
Management and reporting	8	1	1	1	0	0	11

FOR QUESTION: Q14	Question Totals
<i>answered question</i>	0
<i>skipped question</i>	5

(Q15) What race neutral measures do you employ (select all that apply)?

Answer Options	Response Percent	Response Count
Assisting M/WBEs overcome barriers related to surety/performance bonding or other financing	42.9%	6
Assisting start-up firms become established and certified	64.3%	9
Programs regarding contracting procedures and opportunities	71.4%	10
Adopting reciprocal preference laws for certification	50.0%	7
Assisting firms in the adoption of emerging technologies and the use of electronic media	28.6%	4
Implementing supportive services programs to develop business management, record keeping, and accounting skills	50.0%	7
Ensuring distribution of the certified directory to prime contractors	64.3%	9
Restricting prime contractors' self-performance	14.3%	2
Linked deposit programs, quick pay	0.0%	0
Other (please specify)		2
<i>answered question</i>		<b>14</b>
<i>skipped question</i>		<b>5</b>

(Q20) How do you measure company capacity (select all that apply)?

Answer Options	Response Percent	Response Count
Revenues	50.0%	6
Employees	41.7%	5
Do not measure	50.0%	6
Other (please specify)		2
<i>answered question</i>		<b>12</b>
<i>skipped question</i>		<b>7</b>

(Q21) How do you calculate the availability of firms to set contract goals? Select all that apply.

Answer Options	Response Percent	Response Count
Look at the list of certified firms by industry	90.9%	10
Look at a business list in certain industries	45.5%	5
Ask community leaders about availability in the industry	18.2%	2
Other (please specify)		7
<i>answered question</i>		<b>11</b>
<i>skipped question</i>		<b>8</b>

(Q22) How do you define a company as ready, willing, and able to perform the work? Select all that apply.

Answer Options	Response Percent	Response Count
A company is certified with your government entity	100.0%	10
A company is registered to conduct business in the state	70.0%	7
Other (please specify)		6
<i>answered question</i>		<b>10</b>
<i>skipped question</i>		<b>9</b>

(Q23) What are the company size standards for qualification in your program?

Answer Options	Response Percent	Response Count
Gross revenues?	80.0%	8
Personal net worth?	70.0%	7
Something else?	30.0%	3
Utilize federal SBA guidelines?	70.0%	7
<i>answered question</i>		<b>10</b>
<i>skipped question</i>		<b>9</b>

## APPENDIX B

### FEDERAL DBE PROGRAM SMALL BUSINESS AND PERSONAL NET WORTH SIZE STANDARDS

#### **§26.65 What rules govern business size determinations?**

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

In addition to the small business size standards, many minority- and women-owned businesses enterprises also use a personal net worth<sup>46</sup> standard for eligibility.

#### **§26.67 What rules determine social and economic disadvantage?**

(a) Presumption of disadvantage. (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

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46. For the federal DBE program the definition of personal net worth is as follows: Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.



(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

(b) Rebuttal of presumption of disadvantage. (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

## APPENDIX C

### FEDERAL DBE PROGRAM: INTERSTATE CERTIFICATION

#### DBE regulations §26.85 *Interstate certification*

- b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.
  - 1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.
  - 2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.
- c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.
  - 1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (*see* §26.83(j)) and any notices of changes (*see* UCP or any other recipient concerning your application or status as a DBE firm).
  - 2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B
  - 3) If you have filed a certification appeal with DOT (*see* §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.
  - 4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
    - i. This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.
    - ii. If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

- d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:
- 1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by “State A” or any other State of not complying with such requests in a timely manner is noncompliance with this Part.
  - 2) Determine whether there is good cause to believe that State A’s certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:
    - i. Evidence that State A’s certification was obtained by fraud;
    - ii. New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
    - iii. State A’s certification was factually erroneous or was inconsistent with the requirements of this part;
    - iv. The State law of State B requires a result different from that of the State law of State A.
    - v. The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
  - 3) If, as State B, unless you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.
  - 4) If, as State B, you have determined that there is good cause to believe that State A’s certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.
    - i. This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
    - ii. The firm may elect to respond in writing, to request an in-person meeting with State B’s decision maker to discuss State B’s objections to the firm’s eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm’s request.
    - iii. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized

- issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.
- iv. The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
  - v. State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
  - vi. The firm's application for certification is stayed pending the outcome of this process.
  - vii. A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.
- e) State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- f) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:
- i. The name of the firm;
  - ii. The name(s) of the firm's owner(s);
  - iii. The type and date of the action;
  - iv. The reason for the action.
- 1) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.
- 2) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.
- (g) You must implement the requirements of this section beginning January 1, 2012.

## APPENDIX D

### STUDY COMMITTEE MEETINGS AND GUEST SPEAKERS

The following is a list of study committee meetings, including presentations given to the CASE study committee by guest speakers and the CASE Research Team. In the electronic version of this report, links to meeting proceedings are highlighted in blue.

#### OCTOBER 25, 2013 - MEETING 1

- **Welcome**  
Richard H. Strauss, Executive Director, CASE
- **Overview of Phase 2 Scope of Work and Work Plan - [Presentation Materials](#)**  
Alissa DeJonge, *Study Manager; Vice President of Research, CERC*
  - o Concepts for Revision to the Small Business/Minority Business Set-Aside Program Statute
  - o Data Diversity Management System Agency/State Survey - Update
- **Guest Speaker, John Chapman, Account Director, B2GNOW - [Presentation Materials](#)**
- **Guest Speaker, Diana Lopez-Torres, *Study Committee Member* and MWSDBE Program Coordinator, Denver International Airport**
- **Next Steps**

#### DECEMBER 17, 2013 - MEETING 2

- **Welcome**  
Richard H. Strauss, Executive Director, CASE
- **Guest Speaker, Debra Goss, Manager, Division of Contract Compliance, ConnDOT**  
Topic: New England Reciprocity for DBE program - [Presentation Materials](#)  
Supplemental Documents:
  - o NE Interstate Certification Request Form - [See Document](#)
  - o Interstate Affidavit of Disclosure - [See Document](#)
  - o Memorandum of Agreement, New England Interstate Certification Program - [See Document](#)
- **Guest Speaker, Reginald "Reggie" A. Nunnally**  
**Supplier Diversity Office, State of Massachusetts**  
Topic: Massachusetts Program - [Presentation Materials](#)

- **Research Team Update - [Presentation Materials](#)**
  - Disparity 2 Report: Legislative and Administrative Initiatives DRAFT
  - B2Gnow: Progress, acquisition, and implementation
  - Data Diversity Management System Agency/State Survey
- Next Steps

### FEBRUARY 27, 2014 – MEETING 3

- **Welcome**  
Richard H. Strauss, Executive Director, CASE
- **Guest Speaker, Colette Holt**, Study Advisor and Attorney at Law, Holt & Associates  
Focus Areas - [Presentation Materials](#)
- **Guest Speakers – [Presentation Materials](#)**  
**Reggie Tolliver**, Director of Community Affairs, Turner Construction Co.  
**Kris Harrison**, Marketing Manager, Turner Construction Co.  
Program for MBE and SBE Contractors
- **Research Team – [Presentation Materials](#)**  
**Alissa DeJonge**, Study Manager
  - Overview and Discussion - Statistical Analysis
  - Update and Discussion - Research Areas
- Next Steps

### APRIL 23, 2014 – MEETING 4

- **Welcome**  
Richard H. Strauss, Executive Director, CASE
- **Research Team – [Presentation Materials](#)**  
**Alissa DeJonge**, Study Manager  
Review of Issue Areas
- **Guest Speaker, Zenita Wickham Hurley, Esq.**, Special Secretary of Minority Affairs  
Office of Minority Affairs, State of Maryland - [Presentation Materials](#)
- **Guest Speaker, Kim Hawkins**, Director, Business Resource Center, HEDCO, Inc.  
Minority Bond Guaranty Program - [Presentation Materials](#)



## MAJOR STUDIES OF THE ACADEMY

### 2013

- Analyzing the Economic Impacts of Transportation Projects
- Health Impact Assessments Study
- Connecticut Disparity Study: Phase 1
- Connecticut Stem Cell Research Program Accomplishments

### 2012

- Strategies for Evaluating the Effectiveness of Programs and Resources for Assuring Connecticut's Skilled Workforce Meets the Needs of Business and Industry Today and in the Future
- Benchmarking Connecticut's Transportation Infrastructure Capital Program with Other States
- Alternative Methods for Safety Analysis and Intervention for Contracting Commercial Vehicles and Drivers in Connecticut

### 2011

- Advances in Nuclear Power Technology
- Guidelines for the Development of a Strategic Plan for Accessibility to and Adoption of Broadband Services in Connecticut

### 2010

- Environmental Mitigation Alternatives for Transportation Projects in Connecticut
- The Design-Build Contracting Methodology for Transportation Projects: A Review of Practice and Evaluation for Connecticut Applications
- Peer Review of an Evaluation of the Health and Environmental Impacts Associated with Synthetic Turf Playing Fields

### 2009

- A Study of the Feasibility of Utilizing Waste Heat from Central Electric Power Generating Stations and Potential Applications

- Independent Monitor Report: Implementation of the UCHC Study Recommendations

### 2008

- Preparing for Connecticut's Energy Future
- Applying Transportation Asset Management in Connecticut
- A Study of Weigh and Inspection Station Technologies
- A Needs-Based Analysis of the University of Connecticut Health Center Facilities Plan

### 2007

- A Study of the Feasibility of Utilizing Fuel Cells to Generate Power for the New Haven Rail Line
- Guidelines for Developing a Strategic Plan for Connecticut's Stem Cell Research Program

### 2006

- Energy Alternatives and Conservation
- Evaluating the Impact of Supplementary Science, Technology, Engineering and Mathematics Educational Programs
- Advanced Communications Technologies
- Preparing for the Hydrogen Economy: Transportation
- Improving Winter Highway Maintenance: Case Studies for Connecticut's Consideration
- Information Technology Systems for Use in Incident Management and Work Zones
- An Evaluation of the Geotechnical Engineering and Limited Environmental Assessment of the Beverly Hills Development, New Haven, Connecticut

### 2005

- Assessment of a Connecticut Technology Seed Capital Fund/Program
- Demonstration and Evaluation of Hybrid Diesel-Electric Transit Buses

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## **CONNECTICUT ACADEMY OF SCIENCE AND ENGINEERING**

The Connecticut Academy is a non-profit institution patterned after the National Academy of Sciences to identify and study issues and technological advancements that are or should be of concern to the state of Connecticut. It was founded in 1976 by Special Act of the Connecticut General Assembly.

### **VISION**

The Connecticut Academy will foster an environment in Connecticut where scientific and technological creativity can thrive and contribute to Connecticut becoming a leading place in the country to live, work and produce for all its citizens, who will continue to enjoy economic well-being and a high quality of life.

### **MISSION STATEMENT**

The Connecticut Academy will provide expert guidance on science and technology to the people and to the State of Connecticut, and promote its application to human welfare and economic well-being.

### **GOALS**

- Provide information and advice on science and technology to the government, industry and people of Connecticut.
- Initiate activities that foster science and engineering education of the highest quality, and promote interest in science and engineering on the part of the public, especially young people.
- Provide opportunities for both specialized and interdisciplinary discourse among its own members, members of the broader technical community, and the community at large.

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