



CHARLES COUNTY**MD**

DISPARITY STUDY JULY 2021

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I. INTRODUCTION

A. Scope of Work

In 2020, the Board of Commissioners of Charles County (“County”) contracted with Griffin & Strong, P.C. (“GSPC”) to conduct a disparity study and comprehensive analysis of Charles County’s procurement process to determine if the participation of minority and women owned firms (“MWBE”) is what should be expected given their availability in the County’s marketplace. Further, GSPC was to perform a comprehensive analysis of the County’s minority business enterprise (“MBE”) Program and determine appropriate, legally defensible methods to enhance the program’s efficiency. (“Study”)

Governmental entities across the country authorize Disparity Studies in response to City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and subsequent cases in order to determine whether there is a compelling interest for the creation or continuation of remedial procurement programs, based upon race, gender, and ethnicity. In order for the legal requirements of Croson and its progeny to be satisfied for any race or gender-based activities, GSPC must determine whether Charles County has been a passive or active participant in any identified discrimination.

Toward achievement of these ends, GSPC has analyzed the prime contractor contracting and subcontracting activities for Charles County’s purchases of Construction, Architecture and Engineering (A&E), Other Services, and Goods during the five (5) year Study Period FY2015 through FY2019 (“Study Period”).

B. Objectives

The principal objectives of this Study were to:

- Collect and analyze relevant data to determine if there is a disparity between the number of MWBEs that are “ready, willing, and able” as vendors in the areas of Construction, Architecture and Engineering (A&E), Other Services, and Goods;
- Determine whether there are current discriminatory practices, or the present effects of past discriminatory practices in Charles County’s solicitation and award of contracts;
- Determine if Charles County’s race and gender conscious remedial efforts with regard to the awarding of contracts are narrowly tailored to the findings of this Study; and
- Provide recommendations for actions to be taken by Charles County as a result of the findings of the Study, including serious consideration of race-neutral program options, and, as appropriate, consideration of race- and gender-conscious remedies that are narrowly tailored to address any identified barriers and forms of marketplace discrimination.

C. Technical Approach

In conducting this Study and preparing its recommendations, GSPC followed a carefully designed work plan that allowed Study team members to fully analyze Availability, Utilization, and Disparity with regard to participation. The final work plan consisted of, but was not limited to, the following major tasks:

- Establishing data parameters and finalizing a work plan;
- Legal analysis;
- Reviewing policy and procurement processes and MBE Program analysis;
- Collecting electronic data, inputting manual data, organizing, and cleaning data, as well as filling any data gaps;
- Conducting geographic and product market area analyses;
- Conducting Utilization analyses;
- Determining the Availability of qualified firms;
- Analyzing the Utilization and Availability data for disparity and statistical significance;
- Conducting private sector analysis including credit and self-employment analysis;
- Collecting and analyzing anecdotal evidence;
- Establishing findings of fact regarding the existence and nature of marketplace discrimination and / or other barriers to MWBE participation in Charles County contracts; and
- Preparing a final report that identifies and assesses the efficacy of various race- and gender-neutral and narrowly tailored race- and gender-based remedies if indicated by the findings.

Study definitions are contained in Appendix A.

D. Report Organization

This report is organized into the following sections, which provide the results of GSPC's analytical findings and recommendations for Charles County. In addition to this introductory chapter, this report includes:

- Chapter II, which presents the Executive Summary of Findings and Recommendations;
- Chapter III, which is an overview of the legal framework and basis for the Study;
- Chapter IV, which provides a review of Charles County's purchasing policies, practices, and programs;
- Chapter V, which presents the methodology used in the collection of statistical data from Charles County and the analyses of the data regarding relative MWBE Availability and Utilization analyses, and includes a discussion on levels of disparity for Charles County's prime contractor contractors and subcontractors;
- Chapter VI, which analyzes whether present or ongoing effects of past discrimination are affecting Charles County's marketplace; and
- Chapter VII, which outlines the qualitative analyses: the analysis of anecdotal data collected from the online survey, personal interviews, focus groups and public meetings.

II. EXECUTIVE SUMMARY FINDINGS AND RECOMMENDATIONS

This chapter presents the findings and recommendations resulting from the Study for Charles County related to Construction, Architecture & Engineering, Other Services, and Goods for the five-year period FY2015-FY2019.

A. FINDINGS

1. Legal Findings

Finding 1: LEGAL FINDING

Consistent with the “narrow tailoring” aspect of the strict scrutiny analysis discussed in the Legal Chapter, Charles County continues to implement race and gender-neutral measures to try to increase utilization of MWBE firms,¹ but the present Study shows that those measures have not been effective in resolving or significantly reducing the identified disparities.² Accordingly, the County has a basis to introduce race and gender conscious remedies or policies toward that goal.³

Moreover, the use of a regression analysis and consideration of the contracting environment in the private sector as part of this Study allow Charles County to demonstrate that factors other than MWBE status cannot fully account for the statistical disparities found. Stated otherwise, the County can show that MWBE status continues to have an adverse impact on a firm’s ability to secure contracting opportunities with the County, further supporting more aggressive remedial efforts.

Lastly, having obtained statistical and anecdotal evidence of disparities that are race, ethnicity, and gender specific, Charles County can ensure that the more robust remedies considered as a result of this Study can be limited to minority groups for which underutilization and an inference of discrimination has been identified.⁴

¹ The current Minority Business Enterprise (MBE) Program implemented and run by Charles County covers minority and woman owned business enterprises, business enterprises owned by mentally or physically Disabled persons, and Disabled American Veteran (DAV) owned businesses – collectively referred to as MBEs.

² See City of Richmond v. J. A. Croson Company, 488 U.S. 469, 507-508; 109 S. Ct. 706 (1989).

³ Id.

⁴ Id.; see also H.B. Rowe Company, Inc. v. W. Lindo Tippet, 615 F.3d 233, 256-58 (4th Cir. 2010) (finding strong basis in evidence for remedial action for African American and Native American firms, but no similar basis for inclusion of other minority groups (including women-owned businesses) in the remedial policy).

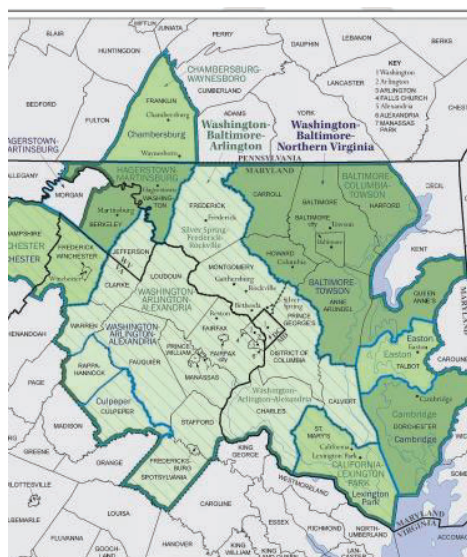
2. Quantitative Findings

FINDING 2: RELEVANT GEOGRAPHIC AND PRODUCT MARKETS

The Study compares the availability and utilization of firms in a common area, the Relevant Geographic Market, where at least 75% of County spending with vendors takes place. The Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Consolidated Statistical Area (“CSA”)⁵ was determined to be the Relevant Market based on the following percentages of spending in the CSA.

- In Construction, 84.50%
- In A&E, 80.85%
- In Other Services, 83.93%
- In Goods, 54.22%
- Overall spend in the CSA, 77.49%

Figure 1: MAP OF THE WASHINGTON-BALTIMORE-ARLINGTON, DC-MD-VA-WV-PA CONSOLIDATED STATISTICAL AREA (“CSA”)



⁵ The CSA is comprised of the counties in the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area (“MSA”): Frederick County, Fairfax County, Prince George’s, District of Columbia, Prince William County, Loudoun County, Arlington County, Charles County, City of Alexandria, Stafford County, Spotsylvania County, Calvert County, Fauquier County, Jefferson County, Culpeper County, City of Manassas, Warren County, City of Fredericksburg, City of Fairfax, City of Manassas Park, Clarke County, City of Falls Church, Madison County, Rappahannock County, and Montgomery County and the additional counties in the CSA of: Baltimore County, Baltimore City, Anne Arundel County, Howard County, Harford County, Carroll County, Queen Anne’s County, Washington County, Berkeley County, Morgan County, Franklin County, Frederick County (Virginia), City of Winchester, Hampshire County, St. Mary’s County, and Talbot County.

The following payments were made to firms in Charles County during the Study Period with the percentage of spending in that Industry Category:

Table 1: Summary of Payments to Firms Located in Charles County
(Based upon Payments FY2015-FY2019)
Charles County Disparity Study

Construction:	\$25,123,644.41
	27.38%
A&E:	\$1,209,219.19
	4.95%
Other Services:	\$44,784,420.25
	23.57%
Goods:	\$7,293,003.12
	8.76%

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FINDING 3: AVAILABILITY

The measures of availability utilized in this Study incorporate all of the criteria of availability required by City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

- The firm does business within an industry group from which Charles County makes certain purchases.
- The firm's owner has taken steps to demonstrate interest in doing business with government.
- The firm is located within a relevant geographical area such that it can do business with Charles County

The firms used to calculate Availability came from the Master Vendor File which is a pool of vendors who meet the above referenced criteria. GSPC found that firms were available to provide goods and services to Charles County as reflected in the following percentages by each race, ethnicity, and gender group.

Table 2: Availability Estimates by Work Category

In the Relevant Market

(Based upon the Master Vendor File)

Charles County Disparity Study

Business Owner Classification	Construction	A&E Services	Other Services	Goods
African American	26.65%	15.47%	19.13%	9.52%
Asian American	3.02%	9.35%	2.61%	0.91%
Hispanic American	8.13%	2.88%	1.89%	1.43%
Native American	1.32%	1.44%	1.17%	0.52%
TOTAL MINORITY	39.13%	29.14%	24.80%	12.39%
Nonminority Female	5.48%	6.12%	2.38%	1.96%
Unidentified MWBE	0.76%	0.72%	0.53%	0.65%
TOTAL MWBE	45.37%	35.97%	27.71%	14.99%
TOTAL Non-MWBE	54.63%	64.03%	72.29%	85.01%
TOTAL	100.00%	100.00%	100.00%	100.00%
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FINDING 4: MWBE PRIME UTILIZATION

As Table 3 below shows, Charles County paid a total of \$77.6 million in prime construction spending in the Relevant Market during the Study Period and \$9.5 million of this amount, or 12.3% was paid with MWBE firms as prime contractors. MWBEs were paid 4.16% of A&E dollars, 6.46% of Other Services, and 1.93% of Goods. MWBEs were paid 7.13% of prime payments across all purchasing categories.

Table 3: Summary of Prime Utilization by Work Category*In the Relevant Market**(Based upon Payments FY2015-FY2019)**Charles County Disparity Study*

Business Ownership Classification	Construction	A&E Services	Other Services	Goods	Total
	(\$)	(\$)	(\$)	(\$)	(\$)
African American	\$ 48,595	\$ 288,731	\$ 6,114,474	\$ 70,459	\$ 6,522,259
Asian American	\$ 3,731,772	\$ 517,811	\$ 1,396,826	\$ -	\$ 5,646,409
Hispanic American	\$ 2,632,613	\$ -	\$ 34,312	\$ 8,979	\$ 2,675,904
Native American	\$ 648,532	\$ -	\$ -	\$ -	\$ 648,532
TOTAL MINORITY	\$ 7,061,512	\$ 806,542	\$ 7,545,612	\$ 79,439	\$ 15,493,105
Nonminority Female	\$ 2,482,525	\$ 14,107	\$ 2,690,414	\$ 791,019	\$ 5,978,066
Unidentified MWBE	\$ -	\$ -	\$ 18,793	\$ -	\$ 18,793
TOTAL MWBE	\$ 9,544,037	\$ 820,650	\$ 10,254,819	\$ 870,458	\$ 21,489,964
TOTAL NON-MWBE	\$ 68,044,805	\$ 18,909,914	\$ 148,566,128	\$ 44,344,917	\$ 279,865,764
TOTAL FIRMS	\$ 77,588,842	\$ 19,730,563	\$ 158,820,947	\$ 45,215,375	\$ 301,355,727
Business Ownership Classification	Construction	A&E Services	Other Services	Goods	Total
	(%)	(%)	(%)	(%)	(%)
African American	0.06%	1.46%	3.85%	0.16%	2.16%
Asian American	4.81%	2.62%	0.88%	0.00%	1.87%
Hispanic American	3.39%	0.00%	0.02%	0.02%	0.89%
Native American	0.84%	0.00%	0.00%	0.00%	0.22%
TOTAL MINORITY	9.10%	4.09%	4.75%	0.18%	5.14%
Nonminority Female	3.20%	0.07%	1.69%	1.75%	1.98%
Unidentified MWBE	0.00%	0.00%	0.01%	0.00%	0.01%
TOTAL MWBE	12.30%	4.16%	6.46%	1.93%	7.13%
TOTAL NON-MWBE	87.70%	95.84%	93.54%	98.07%	92.87%
TOTAL FIRMS	100.00%	100.00%	100.00%	100.00%	100.00%
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FINDING 5: MWBE TOTAL UTILIZATION

As shown in Table 4 below minority owned firms received \$7.6 million during the Study Period, 9.68% of the total Construction Services paid to prime and subcontractor dollars, while Nonminority Female owned

firms were paid a total of \$2.7 million, 3.45% of the total Construction Services paid dollars. MWBEs received 13.14% of the total Construction Services paid dollars.

In terms of Total Utilization, MWBEs received 4.37% of the total A&E paid dollars, 6.52% of the total Other Services paid dollars and 1.93% of the total Goods paid dollars. There was little to no subcontracting outside of Construction.

Table 4: Summary of Total Utilization by Work Category

In the Relevant Market

(Based upon Payments FY2015-FY2019)

Charles County Disparity Study

Business Ownership Classification	Construction (\$)	A&E Services (\$)	Other Services (\$)	Goods (\$)	TOTAL (%)
African American	\$ 228,042	\$ 284,663	\$ 6,178,628	\$ 70,459	\$ 6,761,793
Asian American	\$ 3,376,686	\$ 549,919	\$ 1,410,873	\$ -	\$ 5,337,478
Hispanic American	\$ 3,255,986	\$ -	\$ 34,312	\$ 8,979	\$ 3,299,277
Native American	\$ 648,532	\$ -	\$ -	\$ -	\$ 648,532
TOTAL MINORITY	\$ 7,509,246	\$ 834,582	\$ 7,623,814	\$ 79,439	\$ 16,047,080
Nonminority Female	\$ 2,678,229	\$ 27,145	\$ 2,706,456	\$ 791,019	\$ 6,202,849
Unidentified MWBE	\$ 4,689	\$ -	\$ 18,793	\$ -	\$ 23,482
TOTAL MWBE	\$10,192,164	\$ 861,727	\$ 10,349,062	\$ 870,458	\$ 22,273,411
TOTAL NON-MWBE	\$67,396,678	\$ 18,868,836	\$ 148,471,884	\$ 44,344,917	\$ 279,082,316
TOTAL FIRMS	\$77,588,842	\$ 19,730,563	\$ 158,820,947	\$ 45,215,375	\$ 301,355,727
Business Ownership Classification	Construction (%)	A&E Services (%)	Other Services (%)	Goods (%)	TOTAL (%)
African American	0.29%	1.44%	3.89%	0.16%	2.24%
Asian American	4.35%	2.79%	0.89%	0.00%	1.77%
Hispanic American	4.20%	0.00%	0.02%	0.02%	1.09%
Native American	0.84%	0.00%	0.00%	0.00%	0.22%
TOTAL MINORITY	9.68%	4.23%	4.80%	0.18%	5.32%
Nonminority Female	3.45%	0.14%	1.70%	1.75%	2.06%
Unidentified MWBE	0.01%	0.00%	0.01%	0.00%	0.01%
TOTAL MWBE	13.14%	4.37%	6.52%	1.93%	7.39%
TOTAL NON-MWBE	86.86%	95.63%	93.48%	98.07%	92.61%
TOTAL FIRMS	100.00%	100.00%	100.00%	100.00%	100.00%
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FINDING 6: SUMMARY OF DISPARITY ANALYSIS FOR FY2015-FY2019

Table 5 below indicates those MWBE groups where a statistically significant disparity (X) was found in prime utilization for Construction, A&E, Other Services, or Goods. There was underutilization in prime contracts for all MWBEs groups, except Asian American firms in Construction Services. Nonminority Female owned firms were underutilized in Goods, but it was not statistically significant. Non-MWBEs were overutilized.

Table 5: Summary of Statistically Significant Underutilization of MWBEs in Prime Contracting

Charles County Disparity Study

Business Owner Classification	Construction	A&E	Other Services	Goods
African American	X	X	X	X
Asian American		X	X	X
Hispanic	X	X	X	X
Native American	X	X	X	X
Nonminority Female	X	X	X	X*

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*Underutilized, but not statistically significant.

Table 6 below indicates those MWBE groups where a statistically significant disparity (X) was found in Total utilization (prime plus subcontracting) for Construction, A&E, Other Services, or Goods. There was underutilization in prime contracts for all MWBEs groups, except Asian American firms in Construction Services. Nonminority female owned firms were underutilized in Goods, but it was not statistically significant. Non-MWBEs were overutilized.

Table 6: Summary of Statistically Significant Underutilization of MWBEs in Total Utilization*Charles County Disparity Study*

Business Owner Classification	Construction	A&E	Other Services	Goods
African American	X	X	X	X
Asian American		X	X	X
Hispanic	X	X	X	X
Native American	X	X	X	X
Nonminority Female	X	X	X	X*

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*Underutilized, but not statistically significant.

Disparity was also examined eliminating larger prime projects. With few exceptions, disparity for all MWBE groups was also found for:

- (1) Prime payments less than \$50,000 for all procurement categories.
- (2) Prime payments less than \$500,000 for all procurement categories.

3. Policy Findings

FINDING 7 : PERCEIVED BARRIERS IN PROCUREMENT

The primary barriers reported by MWBE survey respondents were:

- Unfair competition with large companies, 18.9%
- Prequalification 15.3%
- Limited time to prepare bids 15.3%

Interviews with personnel indicated that bonding and insurance requirements have not been cited by vendors or potential bidders as barriers to participation. About 9.9% of MWBE survey respondents found bonding to be a barrier and 4.5% of MWBE survey respondents found insurance to be a barrier.

Personnel interviews revealed that there have been few complaints about prompt payment. No MWBEs reported being paid later than 59 days.

FINDING 8: COUNTY MWBE PROGRAM

The Charles County Minority Business Enterprise (MBE) program is expressly modeled after the MBE Program run by the State of Maryland Department of Transportation (DOT) and is promulgated in the County Code and the Purchasing Guidelines. The County does not offer any preferences or set asides for MBE participation but has established an aspirational goal of 25% and encourages utilization of MBEs “whenever possible and appropriate.” There is no formalized guidance regarding Good Faith Efforts and MBE inclusion.

The MBE Program includes African Americans, American Indians/Native Americans, Asian Americans, Hispanics, Women, physically or mentally disabled persons, and Disabled American Veterans. The County “automatically” recognizes the MBE status of any company certified by the Maryland DOT, and Federal 8-A program.

Multiple Departments are tasked with managing the MBE Program, and MBE utilization is confirmed through use of the Minority Business Enterprise Utilization Affidavit form, which indicates the MBE status of prime contractors and/or subcontractors. MBE utilization has not historically been tracked at any meaningful level.

The County does have a federal Disadvantage Business Enterprise (DBE) sub-recipient plan for purchases or contracts that include federal funding, and the current DBE liaison for the County is Director of the Planning & Growth Management Department.

FINDING 9: COUNTY SLBE PROGRAM

A Small Local Business Enterprise (SLBE) is defined as “a business that has been certified in the State of Maryland’s Small Business Reserve (SBR) program and then certified by the [Charles County Government’s] Economic Development Department as a ‘local business’ operating in Charles County, Maryland.”

Additionally, an SLBE is a for-profit, independently owned business (no brokers or subsidiaries) that meets the definitions and criteria for both a small and local business. A “local business” must have its headquarters physically located in Charles County; or either have a branch or satellite office in Charles County that generates at least 25% of the company’s annual gross sales or have 25% of its full-time equivalent employees residing in Charles County.

For informal procurement (up to \$25,000), the program is essentially a “reserve” program for SLBE firms, unless there are not at least three qualifying SLBE firms available to bid on/complete the work.

There are no SLBE reserves in formal procurements, but there are bid preferences for SLBEs, subject to some exceptions, including that the total contract be less than \$500,000.

As with the MBE Program, there is no formalized guidance regarding Good Faith Efforts to attain or increase SLBE inclusion.

FINDING 10: COUNTY BUSINESS DEVELOPMENT EFFORTS

The County has a micro-loan program, small business workshops (e.g., SLBE certification management assistance, resource opportunities), and a partnering program for small businesses with the Small Business Administration (SBA), Southern Maryland, the Minority Chamber of Commerce, and the Governor's Office of Small, Minority and Women Business Affairs.

4. Anecdotal Findings

FINDING 11: MORE THAN ONE-THIRD OF RESPONDENTS WERE NOT REGISTERED WITH THE COUNTY; MORE THAN ONE-QUARTER DID NOT KNOW HOW TO REGISTER.

Although Charles County has registration of local SLBE firms, more than 41% of businesses surveyed during the Study said they were not registered to do business with Charles County, and more than 62% of those unregistered firms admitted that they were unaware that there even was a registry to work with the County. Additionally, more than 28% of those surveyed said they did not know how to register with the County. Anecdotal evidence points to an absence of consistent, cohesive, and effective outreach as well as a lack of deliberate effort to inform and empower potential partners.⁶

FINDING 12: RESPONDENTS FOUND IT UNFAIR TO HAVE TO COMPETE WITH LARGE FIRMS.

Nearly 19% of the participants indicated that unfair competition with large firms was a barrier to obtaining work from the County. One-third of the firms polled said an informal network of businesses from which they were excluded prevented them from winning contracts with Charles County, and more than half said public contracting with the County was monopolized by this informal network. Nearly 34% of respondents agreed to some extent with the idea that an informal network kept them from doing business with the County. Anecdotal evidence from the Study suggests that County procurement practices focus on contracting with large firms, rather than capable local businesses, which are often MWBE able and willing to work.

⁶ You do not have to be registered to do business with Charles County, however If local businesses want to receive the SLBE preferences, they must register with the SLBE Program and become certified as a SLBE firm. Local businesses can still bid on county contracts without registering with the SLBE program, but they will not receive the discounted bid preferences.

5. Private Sector Findings

FINDING 13: LIKELY NEW FIRMS

Firms owned by African Americans and Women are more likely to be new firms. This suggests that for these types of SMWBEs, their relative inexperience in the market may partially explain disparities in public contracting between SMWBEs and non-SMWBEs in the Charles County Market Area, as tenure in the market also implies similar knowledge/experience about bidding and securing public contracts.

FINDING 14: NO DIFFERENCES IN BID SUBMISSIONS

With the exception of Women owned firms, there are no differences in bid submissions between broadly classified SMWBEs and non-SMWBEs. This suggests that for this type of SMWBEs, relative to non-SMWBEs any differential success in public contracting outcomes in the Charles County market area cannot be explained by lower bid submissions.

FINDING 15: AFRICAN AMERICAN AND WOMEN BUSINESS RECEIVE FEWER PRIME CONTRACTS COMPARED TO NON- SMWBES

Relative to non-SMWBEs, firms owned by African Americans and Women received fewer prime contracts relative to non-SMWBEs. To the extent that success in public contracting is proportional to having prior prime awards, this suggests that any contracting disparities between firms owned by African Americans and Women and non-SMWBEs can possibly be explained by past, and possibly discriminatory, constraints on SMWBE successfully winning prior prime contracts from Charles County, which could translate into future capacity to secure prime contracts.

FINDING 16: AFRICAN AMERICAN AND HISPANIC OWNED FIRMS RECEIVED FEWER SUBCONTRACTS

Relative to non-SMWBEs, firms owned by African Americans and Hispanics received fewer subcontracts. To the extent that success in public contracting is proportional to having prior Charles County subcontracts, this suggests that any contracting disparities between SMWBEs owned by African Americans, Hispanic, and those certified as Disadvantaged can possibly be explained by differences in having secured prior subcontracts from Charles County, which could constrain success in winning prime bids, as subcontracting experience could translate into prime bid success.

FINDING 17: AFRICAN AMERICAN AND HISPANIC FIRMS ARE MORE LIKELY TO HAVE NEVER BEEN A PRIME CONTRACTOR

Firms owned by African Americans and Hispanics are more likely to have “never” been a prime contractor or subcontractor. To the extent that success in public contracting is proportional to having prior prime contracts or subcontracts, this suggests that for certified minority, disadvantaged, and firms owned by African Americans and Hispanics, any contracting disparities between SMWBEs and non-SMWBEs can possibly be explained by their relative disadvantage in having secured prior prime contracts or subcontracts from Charles County.

FINDING 18: PERCEIVED DISCRIMINATION BY WOMEN, LOCAL, AND AFRICAN AMERICANS

Firms classified as Women owned, Local Business enterprise, and owned by African Americans experience perceived discrimination at Charles County. This suggests that, at least for SMWBEs owned by African Americans, and those certified as Women and Local business enterprises, contracting disparities between them and non-SMWBEs can, at least in part, be explained by perceived discrimination in Charles County that undermines their chances at successfully winning prime contracts.

FINDING 19: SMALL AND LOCAL AFRICAN AMERICAN OWNED FIRMS HAVE MORE COMMERCIAL BANK LOANS DENIED

Firms classified as Small, Local, and owned by African Americans have more commercial bank loan denials relative to non-SMWBEs. This suggests that among SMWBEs in the Charles County Market Area, firms that are Small, Local, and owned by African Americans are relatively more likely to have their capacity to compete in the market for public procurement constrained as a result of private sector credit market discrimination.

FINDING 20: PERCEPTION THAT INFORMAL NETWORKS ENABLE SUCCESSFUL CONTRACTING

Relative to non-SMWBEs, firms owned by African Americans and Asian Americans perceive that informal networks enable contracting success with Charles County. This suggests that, at least for SMWBEs owned by African Americans and Asian Americans, Charles County contracting disparities between them and non-SMWBEs are potentially explained by their perceived exclusion from Charles County public contracting networks that reduces their ability to secure prime contracts and subcontracts.

FINDING 21: SMWBE HAVE FAR SMALLER REVENUE SHARES THEN NON-SMWBE

For the Charles County Market Area, in every instance, SMWBEs have revenue shares far smaller than non SMWBEs. Relative to firms owned by non-SMWBEs in the Charles County Market Area, exclusive of Women owned firms—some of whom are Caucasian—the SMWBE revenue shares are of a large order of magnitude below their firm representation shares. This is consistent with and suggestive of, but not necessarily causal evidence for MWBEs facing discriminatory barriers in the private sector of the Charles County Market Area.

FINDING 22: MINORITY FIRMS HAVE BARRIERS OF SELF-EMPLOYMENT IN THE CHARLES COUNTY MARKET AREA

Relative to Caucasian Males, African Americans, Native Americans, and Pacific Islanders are less likely to be self-employed in the Charles County Market Area. This is suggestive of these groups facing barriers to self-employment in the Charles County Market Area.

FINDING 23: FIRMS OWNED BY WOMEN, AFRICAN AMERICANS AND NATIVE AMERICANS ARE LESS LIKELY TO BE SELF-EMPLOYED IN THE COUNTY CONSTRUCTION SECTOR

Relative to Caucasian Males, Women, African Americans, Native Americans, and Pacific Islanders are less likely to be self-employed in the Charles County Market Area construction sector. This is suggestive of these groups facing barriers to self-employment in the Charles County Market Area construction sector.

B. COMMENDATIONS

COMMENDATION #1: BONDING AND INSURANCE REQUIREMENTS

The County should be commended about the lack of complaints regarding bonding and insurance requirements. These are typical complaints made by small, minority, and women owned firms, but GSPC heard very few complaints in this area. In the Survey of Business Owners, when asked if performance bonding limits prevented them from bidding or obtaining work on a project, only 7.1% of all firms indicated that as an issue. Similarly, when asked about bid bond requirements, only 7.9% of all firms indicated that as an issue.

COMMENDATION #2: PROMPT PAY

The County should be commended that GSPC heard few complaints about late payments by the County or by prime contractors. In the Survey of Business Owners when asked the amount of time it takes to receive payments from the date they submit their invoice to Charles County as a prime contractor, none stated that their payments were made more than 60 days after invoicing.

COMMENDATION #3: COUNTY BUSINESS DEVELOPMENT EFFORTS

The County should be commended on its business development efforts. The County employs a micro-loan program, small business workshops (e.g., SLBE certification, management assistance, resource opportunities), and a partnering program for small businesses with the SBA, SBDC, the Southern Maryland Minority Chamber of Commerce, and the Governor's Office of Small, Minority, & Women Business Affairs.

C. RECOMMENDATIONS

A Small Local Business Enterprise program offered by the County provides set-asides for projects of \$25,000 or less, but more is needed to provide opportunities for local small firms. First, more outreach could be provided to inform eligible companies of the program. Second, raising the monetary project limit for participation in the Small Local Business Enterprise program (to anywhere from \$50,000 to \$100,000) would enable more small, local firms operating from within Charles County access to opportunity. Finally, County officials could invest more resources into oversight to ensure that prime contractors put a priority on utilizing local firms.

RECOMMENDATION #1: ENHANCE RACE NEUTRAL SMALL LOCAL BUSINESS ENTERPRISE SET ASIDE PROGRAM

The Small Local Business Enterprise program offered by the County provides set-asides for projects of \$25,000 or less, but more is needed to provide opportunities for local small firms.

The 2012 US Census shows that there are 5,024 minority firms and 4,220 women owned firms located in the County. Further, the County spent over \$34 Million in awards within the \$25,000 or less threshold. However, only 318 awards or \$1.37 Million (that were over \$100 but less than \$25,000) went to firms registered as SLBE firms.

Given the finding that smaller firms complained about unfair competition with larger firms and the disparity found in awards equal to or less than \$25,000, GSPC recommends continuing this program, but doing more outreach to get more local firms registered to access this program. GSPC agrees with the current County policy of only including an award in the set-aside program if there are at least three registered SLBE firms in the county that can perform the work. This avoids awards from essentially being sole source or otherwise non-competitive.

RECOMMENDATION #2: MWBE CONTRACT-BY-CONTRACT SUBCONTRACTOR GOALS WITH ROBUST GOOD FAITH EFFORTS

All MWBE groups were statistically significantly underutilized except Asian American and Native American owned firm in Construction and Non-Minority Female owned firms in Goods. Although GSPC recommends that the County continue and enhance its race and gender-neutral programs, for those groups that were not the exception, the Study provides a basis for the County to institute race and gender-based remedial efforts.

The County should set contract-by-contract goals separately for minority owned firms and Nonminority Female owned firms based upon a weighted availability by commodity codes based upon the various scopes of work under that contract. This process is similar to the goal-setting put in place for the federal DBE Program. Guidance for this process can be found in 49 CFR Part 26.

GSPC recommends that the County employ contract by contract goal-setting in the areas of Construction and A&E to begin for large dollar contracts and then expand the practice according to available resources, including staffing, to the other areas. GSPC does not recommend contract by contract goal setting for Goods as a matter of course because there are typically few subcontracting opportunities there. However, when such opportunities do arise, the County should have the option to apply contract goals.

Goals are typically set by a team, including purchasing, contract compliance, and the user department to assist in breaking down the scope of work and identifying the availability of firms. Variations sometimes

include business or community members, but ultimately, best practices calculate availability using a consistent formula.

Once goals are set for a contract, prime contractors, must meet the goal or demonstrate good faith efforts in attempting to meet the goals. Good faith efforts are best applied with a standard checklist by which the prime contractor submits evidence of its efforts. If a prime bidder fails to meet the goal or demonstrate acceptable good faith efforts, their bid should be deemed non-responsive. If a firm successfully demonstrates Good Faith Efforts, they cannot be treated any differently than a firm that met the goal in the bid evaluation.

RECOMMENDATION #3: ANNUAL ASPIRATIONAL GOALS

The County should set annual aspirational goals based upon the Availability found in the Study for each Industry Categories for each of minority owned firms and Nonminority Female owned firms. This is different from the current 25% goals which are obsolete based upon the more narrowly tailored findings and recommendations of the Study.

These aspirational goals are an internal measure, or benchmark, for achievement of MWBE participation as prime and subcontractors using all of the race and gender neutral and race and gender conscious tools.

Aspirational goals should also be applied to those solicitations where contract-by-contract goals are not used. This is achieved by including the aspirational goal in solicitation documents and asking prime bidders to provide an MWBE plan to assist the County to meet its goals. Once the prime bidder commits to subcontract work, those commitments are made part of the contract which is monitored.

RECOMMENDATION #4: STRENGTHEN CONTRACT COMPLIANCE

To effectively administer an MWBE subcontracting program or aspirational goals, the County must institute all aspects of contract compliance including robust monitoring to make sure that prime contractors utilize firms as committed to in their bid package. The five (5) steps of Contract Compliance are:

- Assessment – An initial assessment of individual firm Availability and capacity for specific scopes of work.
- Outreach – An on-going campaign to let the MWBE business community know that Charles County wants to do business with them and that Charles County is willing to work with firms to create opportunities and assist, particularly local firms in building capacity.
- Certification/Verification – Charles County should continue to encourage and assist firms in getting certified and should continue to accept third-party certifications but should have audit rights

including the right to reject the County's acceptance of a certification that it deems not sufficiently supported.

- Procurement – All applicable solicitation packages and awarded contracts should include the MWBE commitments as contract terms, as well as County participation requirements, such as all firms performing commercially useful functions.
- Monitoring – It is essential that there is close monitoring of vendor performance and the efficient closeout of projects to verify that MWBE firms are actually performing the work that they contracted to perform and that they are compensated in a timely manner and in the amounts committed. Monitoring vendor performance should also assure equal and fair treatment on contracts.

RECOMMENDATION #5: ELIMINATE OR LIMIT THE USE OF ON CALL CONTRACTS

On call contracts are essentially a form of prequalification. These types of contracts do not allow for open and complete competitive bidding. It also does not allow for a demonstration of qualifications on a contract-by-contract basis. These types of contracts should be used only when necessary because it is not practical to bid out, such as regular maintenance and repair contracts. GSPC does not recommend on call contracts for A&E services.

Where on-call contracts are unavoidable, the County should make sure that the call on these services is truly rotated to all firms on the on-call list and not just to the same firms over and over.

RECOMMENDATION #6: OUTREACH IMPROVEMENT

Outreach improvement is important to prioritize. Based on our anecdotal evidence, there seems to be a misunderstanding about the purchasing policies and practices from the public. There seems to be a lack of knowledge about certain programs that Charles County offers to small and minority business, and how to register to be notified about bids or to become an SLBE. There is also lack of knowledge about how the actual bidding process works. Those are all things that could be improved with proper and clear communications with the public.

According to the evidence in the private sector chapter, women owned businesses in Charles County tend to bid less than other businesses. It is important to add these women owned businesses to the Charles County outreach, to make sure that they are receiving bid opportunities.

When looking at new firms registering to work with Charles County, it is important that they are also included in the outreach and that they understand the policies and practices of County procurement. GSPC recommends creating a welcome package for these new firms, where the outreach is clearly outlined, and so is the bidding process and procurement practices.

RECOMMENDATION #7: FORECASTING

Finding 19 demonstrated a perception that informal networks enable successful contracting. One aspect of an informal network is that certain firms get information that is not available to all firms. This can be dismantled if bid opportunities are forecasted far in advance to give all firms ample time to prepare. GSPC recommends that the County publish upcoming bid opportunities, even if not complete or not yet issued, with the information it has as soon as possible. One year in advance is optimal.

RECOMMENDATION #8: DATA REFORM

Without the data infrastructure to manage and track data, the impact of many of the recommendations made above will be unknown.

- Track Subcontractor Data

It is important that the County immediately begin to track and monitor all subcontractor commitments and payments (both MWBE and non-MWBE).

- Cohesive Tracking of Awards

An award data system for tracking full award values and decision dates of contracts should be implemented. This award system should also track amendments and status changes of the contract. Necessarily, this system should be connected to the payment system by some sort of primary key that is shared in both systems (reference document ID, for example).

- Intentional Commodity Codes

The accuracy of any analysis done on data within Charles County relies on the commodity codes. An emphasis should be made at an organizational level to encourage assigning commodity codes. Audits should be done periodically by taking random samples of payments in every department to determine the accuracy of the codes being used. It is possible to generate reports using SQL which randomly select rows from a database by department.

- Vendor Registration and Bidders Must Register as Vendors

An outward facing vendor system should exist. It should be required for any interested vendor to register with this system in order to bid. This will allow for Charles County to have access to a greater pool of ready willing and able vendors and also give a deeper understanding of the firms interested in working with Charles County. This system should allow for vendors to also self-assign a limited number of primary and secondary codes which describe their main focus of work.