



WASHINGTON SUBURBAN SANITARY COMMISSION

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Attached is a copy of the 2005 disparity study commissioned by the Washington Suburban Sanitary Commission (WSSC) that provides detailed fact finding about WSSC's procurement activity with small and local minority business enterprises. It was released to the public by WSSC on June 29, 2005. Although the Commission has not yet reached conclusions about the report, we thought it important to share this information with our ratepayers, the legislative bodies in both Montgomery and Prince George's Counties, and other interested parties.

BBC Research & Consulting is a nationally recognized firm with expertise in assessing diversity contracting procedures. BBC examined WSSC's actual contracting award system to determine the legal and business perspective of that system. WSSC instituted this comprehensive study of factual data voluntarily, in the interest of good business practice.

On behalf of the WSSC, we hope that you will give your most thoughtful consideration to the results reported in the study. If you wish to share your comments, there are two ways to do so. You may send written comments either by mail or email. Mail comments to the Corporate Secretary, WSSC, 14501 Sweitzer Lane, Laurel, Maryland 20707. Email will be received at DiversityStudy@wsscwater.com.

A public hearing is set for July 18, 2005, 7 p.m. at WSSC's headquarters, 14501 Sweitzer Lane, Laurel, Maryland 20707. At that time, WSSC will receive all other public comments. After the Commission has reviewed the study and all public comments, a response and action plan will be developed.

Thank you in advance for your review and comments.

Very truly yours,

Andrew D. Brunhart
General Manager



Final Report

**WSSC 2005 Disparity Study—
Summary and Recommendations**

Washington Suburban Sanitary Commission

Final Report

June 24, 2005

WSSC 2005 Disparity Study— Summary and Recommendations

Prepared for

Washington Suburban Sanitary Commission
13501 Sweitzer Lane
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Summary of Recommendations From the BBC Disparity Study

The following summarizes BBC Research & Consulting recommendations concerning changes to WSSC MBE/WBE programs and procurement practices. A complete discussion of findings and recommendations can be found in the full disparity study report.

Goods and General Services

WSSC should take the following immediate actions.

1. Suspend the subcontracting goals program for goods and general services purchases. WSSC operates a subcontracting goals program that requires prime contractors on certain larger goods and general services contracts to subcontract a portion of the work to certified minority- and women-owned firms. BBC recommends that WSSC suspend this program.

Many MBE/WBEs BBC interviewed in these industries as well as majority-owned firms did not believe that this program was effective.

Although subcontracting opportunities may have introduced some MBE/WBEs to WSSC procurement that are now bidding on prime contracts, a small business program is a better way to achieve this objective. If a race- and gender-neutral program will be as effective as a race- and gender-based program, the race- and gender-based program is probably not defensible in court.

Further, subcontracting is not a typical practice in the goods and general services industries, and it is difficult to find meaningful subcontracting opportunities for MBE/WBEs. This program appears to add significant costs to these WSSC contracts, with little additional value. WSSC should continue to ask prime contractors in general services to identify any subcontractors that they plan to use on Commission contracts.

2. Fully implement the small business program in goods and general services. BBC links suspension of the current subcontracting goals program to full implementation of a small business program. One is meant to replace the other. To date, WSSC has yet to implement its small business program in goods and general services contracts. Under this program, MBE/WBE small businesses would only compete with other small businesses for certain goods and general services contracts. This will give more small firms a real chance to break into WSSC procurement that may lead to other opportunities outside the program.

3. Make other improvements for small business access to goods and services purchases. WSSC should conduct outreach to MBE/WBEs, and small businesses in general, to encourage bidding on Commission purchases and explain WSSC purchasing procedures. WSSC should improve the feedback it offers unsuccessful bidders. It may be useful for WSSC to re-build its bidders list for goods and general services procurement by joining with other public entities such as the State of Maryland in developing a comprehensive bidder registration system. Because of complaints from some past vendors, WSSC should also review how quickly it pays businesses for goods and general services purchases.

WSSC will need to fully implement this program, and undertake the other recommendations for these procurements identified in the full report, to maintain opportunities for MBE/WBEs in goods and general services.

Professional Services

BBC recommends the following immediate actions for professional services contracting.

1. Suspend the subcontracting goals program for most professional services contracts. As in goods and general services, WSSC operates a subcontracting goals program that requires prime contractors on certain larger professional services contracts to use MBE/WBE subconsultants. For professional services contracts where MBE/WBEs have meaningful opportunities to compete as primes, WSSC should no longer apply MBE/WBE subcontracting goals. Professional services work in the private marketplace typically does not have subcontracting and it is not clear that subcontracting on WSSC professional services contracts is effective in opening doors for prime contract opportunities at the Commission.

Subcontracting goals may still be applied on an interim basis for the few professional services contracts where there is little chance of MBE/WBE competition as primes. Because of the disparities in professional services contracting, and the time it may take for these contracts to open to MBE/WBE primes, it may be defensible to continue the subcontracting goals for these few professional services contracts for a short period of time.

2. Ensure competitive bidding for professional services contracts. WSSC should routinely compete its professional services contracts. Responsibility for professional services contracts over \$50,000 should be centralized in the Procurement Group, which already has procedures for competitively bidding professional services contracts (Competitive Sealed Proposal Procedure). For contracts under \$50,000, WSSC should implement contracting methods consistent with its Small Purchase procedures outlined in its Procurement Manual. Competitive bidding of professional services contracts was also a strong recommendation to the Commission from a 1999 study of its procurement.

WSSC will need to develop a list of professional services firms interested in WSSC work, and should conduct outreach to MBE/WBEs as part of developing this list. WSSC should also amend its rules to allow past proposals and past summaries of evaluation scores to be reviewed by other bidders. This should also be done in A/E contracting. Reviewing past winning proposals and proposal evaluations may be a good way for MBE/WBE firms that are new to WSSC to improve the proposals they submit to the Commission. It still may be appropriate for WSSC to not disclose names of individual evaluators.

3. Contract specifications or qualifications requirements that are not essential to WSSC work should be eliminated. There is some evidence of highly restrictive insurance requirements in some WSSC professional services work that had the effect of eliminating competition from MBE/WBEs. The Procurement Group and the SLMBE Group should carefully scrutinize any potentially over-restrictive contract requirements.

4. Retain the ability to award preference points to certified MBE/WBE proposers. For types of contracts that have not been open to MBE/WBE prime consultants in the past, WSSC should consider including evaluation preferences for MBE/WBE primes.

Architecture and Engineering

BBC recommends the following immediate actions for A/E contracting.

- 1. Retain the evaluation preference for MBE/WBE primes consultants.** WSSC awards extra points to certified MBE/WBEs when evaluating qualifications statements and proposals from these firms. This practice should be continued (with a modified points scale), and reevaluated after three to four years.
- 2. Improve the evaluation process.** The Commission should refine the consultant scoring process and the way it is applied to reduce potential advantages for the largest and oldest engineering firms.
- 3. Encourage MBE/WBEs to submit proposals for A/E prime contracts.** Most of the MBE/WBEs working as subconsultants on WSSC A/E contracts work as primes for other clients. WSSC should meet with these MBE/WBEs to encourage them to bid as prime consultants. WSSC should award evaluation points to firms that have been successful as subconsultants on past A/E contracts at the Commission and now submit proposals as primes (including majority-owned firms). These points would be in addition to the MBE/WBE preference.
- 4. Substantially revise the subcontracting goals program, and eventually phase it out.** WSSC must add more flexibility to its current subcontracting goals program for A/E contracts to comply with U.S. Supreme Court guidelines. The full report outlines the needed changes. As MBE/WBEs become more successful in obtaining A/E prime contracts, and there is no long-term need for the subcontracting goals program, WSSC should phase it out.

Construction

BBC recommends the following immediate actions for construction contracting.

- 1. Improve and expand the small business program for construction.** WSSC should continue to implement a sheltered market program for emerging construction firms. This program should first focus on pipeline construction. It should have two components: a “first stage program” that introduces new firms to WSSC pipeline work (very small contracts), and a “second stage program” that increases the size of pipeline jobs that more-established small firms can perform for WSSC (at least contracts in the \$25,000-\$100,000 range, and possibly higher). A small business should be eligible for only one of these stages of the small business sheltered market program at one time.

Established pipeline contractors at WSSC, regardless of size of the business or race/ethnicity/gender, should not be eligible for the small business program. This is a major flaw with the first version of the program, which defined “small” based on net income, not total revenues, and therefore allowed established contractors to participate in the program. WSSC will need to change the State legislation that governs this program, perhaps using new State of Maryland guidelines that define a small business.

Relatively few contracts to date have been awarded through this program. Once the problems of allowing large contractors in the program have been resolved, and additional emerging pipe contractors have been recruited into the program, WSSC should substantially increase the volume of contracts going through the small business program.

2. Increase the bonding threshold to \$100,000. WSSC's current practice of requiring bonding on \$25,000 contracts limits opportunities for small firms, and may disproportionately affect small MBE/WBEs. Bonding should be removed from most contracts under \$100,000. If WSSC needs to more closely scrutinize bidder capabilities on these contracts as a result of removing bonding, it should do so in a way that does not discriminate against MBE/WBEs.

3. Continue to operate the voluntary goals program, but extend it to minority- and women-owned prime contractors. BBC recommends several changes to this program:

- MBE/WBE prime contractors as well as majority prime contractors should comply with the program.
- Although the program should remain voluntary, WSSC should continue to closely monitor actual use of subcontractors and suppliers based on evidence of payments. Prime payments to both MBE/WBE and majority subcontractors and suppliers should be monitored. WSSC participation in a state-wide centralized bidder registration process might facilitate this tracking.
- Non-discrimination on WSSC contracting, and fair treatment of subcontractors and suppliers on WSSC, should be a written component of WSSC construction documents (or perhaps all contracts).

Through ongoing review, WSSC may find that some firms should be suspended or debarred from WSSC contracting because they have made false reports to WSSC and/or there is evidence that they have discriminated against minority- or women-owned subcontractors.

Final Report

WSSC 2005 Disparity Study

Washington Suburban Sanitary Commission

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EXECUTIVE SUMMARY

SECTION ES.

Executive Summary

The Washington Suburban Sanitary Commission (WSSC) retained BBC Research & Consulting (BBC) to assess whether WSSC's current efforts to open procurement opportunities to minority- and women-owned firms should be continued, expanded or disbanded.

As shown in Figure ES-1 below, BBC found a need for expanded efforts to encourage participation of minority- and women-owned firms in WSSC prime contracts in the areas of professional services, architecture and engineering (A/E) and construction. For race- and gender-neutral programs such as WSSC's small business sheltered market program to be effective, WSSC will need to seek legislation that refines eligibility criteria. BBC recommends that WSSC retain evaluation preferences for proposals submitted by certified MBEs and WBEs. BBC also recommends continuing the current voluntary subcontracting goals program for construction, substantially revising the current program for A/E and suspending subcontracting goals for goods and general services contracts.

Figure ES-1.
Summary of Recommendations

	Goods	General Services	Professional Services	A/E	Construction	Other Comments
Annual volume (millions)	\$24	\$17	\$9	\$9	\$70	
MBE/WBE utilization (% of 1999-2004 prime contract dollars paid to MBE/WBEs)	34%	60%	31%	15%	11%	
Benchmark (MBE/WBE availability)	24%	56%	50%	27%	16%	
Disparity in WSSC utilization?	No	No	Yes	Yes	Yes	No disparities in use of MBE/WBE subs
Utilization (primes):						
City of Baltimore	9%	18%	—	9%	4%	
State of Maryland	7%	12%		8%	12%	
Other key findings			More contracts should be competed	Few MBE/WBE proposers	Little MBE/WBE utilization in pipe work	
Remedies:						
MBE/WBE subcontracting goals	Suspend	Suspend	Retain for certain contracts	Restructure, gradually phase-out	Continue voluntary program	Need to better track payments to construction subs
Evaluation points for MBE/WBE primes	—	—	Retain for certain contracts	Strengthen	—	
Small business sheltered market program	Introduce	Introduce	—	—	Strengthen, focusing on pipe contracts	Amend legislation to redefine "small" and extend to Washington-Baltimore metro area
Other neutral remedies	Assist new bidders	Assist new bidders	Expand competitive bidding, reduce restrictive specs	Refine evaluation process	Raise bonding threshold to \$100,000	

Background

Since the 1970s, WSSC has had programs specifically designed to assist minority-owned businesses (MBEs) and women-owned businesses (WBEs). WSSC's subcontracting goals program is just one of these initiatives. WSSC has also attempted to open its procurement process to small firms in general through efforts such as setting aside some contracts for bids only by small businesses.

The reason to implement procurement programs that offer some explicit advantage to minority- and women-owned firms is to remedy the effects of discrimination against those firms. The ultimate goal of any public sector MBE/WBE program is to have it be so successful in opening doors for minority- and women-owned firms that these programs are no longer needed.

Other reasons for operating MBE/WBE programs, such as ensuring that the distribution of an agency's contract dollars matches the demographics of its constituents, or just because it is believed to be good public policy, are not sufficient to justify public agency MBE/WBE programs under the legal standards set by the U.S. Supreme Court. Any initiative that gives some preference to MBE/WBEs in WSSC procurement is subject to legal challenge, and has been in the past. Therefore, this study follows the guidance set forth by the U.S. Supreme Court for the types of information needed to assess whether any WSSC MBE/WBE program initiatives are required.

This executive summary briefly outlines WSSC success stories in developing a "level playing field" for minority- and women-owned firms seeking procurement opportunities, as well as some partial successes and areas that need further attention. This summary is organized in that order, and highlights the key findings and recommendations from a very long and comprehensive report. Much of the research cannot be summarized here. However, the recommendations presented in the executive summary are based on this comprehensive research.

Figure ES-2 further introduces this study effort. Figure ES-3 on the following page presents additional background on "disparity studies."

Figure ES-2. Introduction to the disparity study

WSSC selected BBC Research & Consulting to conduct this study of WSSC procurement after reviewing several proposals from different consultants. BBC has assisted many other state and local governments throughout the country in examining these issues.

BBC commenced work in spring 2004 and prepared a draft report in January 2005. BBC was assisted by Optimal Solutions Group, a Baltimore-based economic research firm, and Customer Research International, a Texas-based telephone survey firm. WSSC's Corporate Business Group coordinated this work effort at WSSC. BBC also worked closely with WSSC legal staff, the Project Delivery Group, the Procurement Group and the SLMBE Group.

Although BBC's analysis was conducted in close cooperation with WSSC staff, this report provides an outside, independent perspective of the success or failure of WSSC's efforts to open its procurement to minority- and women-owned firms. WSSC should view BBC's recommendations in light of a number of past outside studies of WSSC procurement, information from WSSC staff and feedback from local businesses. Because WSSC and many other local governments have faced legal challenges to race- and gender-based programs in contracting and procurement, and probably will continue to be challenged in court, the Commission should closely monitor legal developments in this area.

Successes: Goods and General Services Procurement

WSSC's Procurement Group typically makes goods and general services purchases. Most of the goods and general services dollars go to firms with offices in the Washington-Baltimore area.

Goods purchases range from industrial parts and equipment to the chemicals needed in treatment plant operation. Some of the goods purchases would be typical of any public agency (e.g., motor vehicles and computers). Goods purchases averaged about \$24 million per year from January 1999 through March 2004.

General services procurements range from landscape maintenance to more specialized work such as waste hauling, and water and sewer pipe cleaning and video inspection. WSSC spends about \$17 million per year on these types of services.

Why a success? Goods and general services procurement is a success story at WSSC, although more needs to be done. It is a success because:

- Most goods and services purchases are competitively bid, with the purchase nearly always going to the lowest bidder.
- The percentage of WSSC's purchase dollars going to MBE/WBEs from 1999 to 2004 increased substantially from prior years.
- Some of the firms receiving the most WSSC procurement dollars and winning the largest contracts are minority- and women-owned firms.
- WSSC's utilization of MBE/WBE goods and general services firms is much higher than other local public agencies such as the City of Baltimore and the State of Maryland.
- WSSC now gets more of its general services from MBE/WBEs than from majority-owned firms. There is no disparity between overall MBE/WBE utilization and the availability of MBE/WBEs to do this work.
- Disparities between overall utilization of MBE/WBEs in WSSC goods purchases have also been eliminated.
- For the most part, WSSC has been able to achieve this without giving preferences or advantages to minority- and women-owned firms when seeking prime contracts.

Figure ES-3. Background on disparity studies

"Disparity studies" examine whether there is a need for race- and gender-based programs to assist minority-owned firms (MBEs) and women-owned firms (WBEs) when seeking government procurement opportunities. One of the components of these studies is to compare a public agency's *utilization* of MBEs and WBEs in different industries with the *availability* of MBEs and WBEs to complete this work. If there is a *disparity* between MBE/WBE utilization and availability, this may indicate a need for remedial action (hence the name "disparity studies").

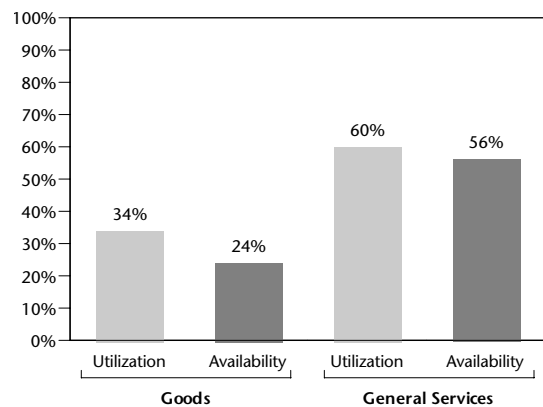
WSSC has operated MBE/WBE programs based on past evidence that discrimination directly or indirectly affects minority- and women-owned firms seeking WSSC procurement opportunities. A number of past disparity studies at WSSC have examined this issue and recommended race- and gender-based programs. The BBC disparity study takes a fresh look at whether these or other efforts are needed and, if so, whether they narrowly focus on the identified problems. The U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* in 1989 establishes the legal framework for this study. Under *Croson*, local governments must have a "compelling governmental interest" for such programs and "narrowly tailor" these programs.

As shown in Figure ES-4, 34 percent of WSSC's goods dollars go to MBE/WBEs. (This does not include MBE/WBE use as subcontractors.) About one-quarter of the firms in the local marketplace available to provide goods to WSSC are MBE/WBEs. Because WSSC's utilization of MBE/WBEs exceeds availability, there is no overall disparity in WSSC's utilization of minority- and women-owned firms in these purchases. The 34 percent overall MBE/WBE utilization divides into 10 percent utilization for white women-owned firms and 24 percent for minority-owned firms.

Figure ES-4 also shows that 60 percent of general services dollars went to MBE/WBEs, which means that only 40 percent went to majority-owned firms. WSSC's utilization of MBE/WBEs exceeded the availability of minority- and women-owned firms to perform this work (56 percent). The 60 percent overall MBE/WBE utilization for general services divides into 39 percent WBE utilization and 21 percent MBE utilization.

Figure ES-4.

WSSC utilization of MBE/WBE goods and general services firms from 1999 to 2004 exceeded MBE/WBE availability



Note: Utilization is percentage of total payments going to MBE/WBEs from January 1999 to March 2004.

What more needs to be done in goods and general services? It can still be tough for a small firm to break into WSSC goods and general services procurement because of the stiff price competition from larger firms. Slow payment is perceived as a problem on these purchases, and WSSC paperwork and bidding procedures are sometime seen as cumbersome. There is a need to provide technical assistance for small firms on WSSC's bidding process and provide more feedback to unsuccessful bidders.

Recommended actions for goods and general services contracting. WSSC should take the following immediate actions.

1. Suspend the subcontracting goals program for goods and general services purchases. WSSC operates a subcontracting goals program that requires prime contractors on certain larger goods and general services contracts to subcontract a portion of the work to certified minority- and women-owned firms. BBC recommends that WSSC suspend this program.

Many MBE/WBEs BBC interviewed in these industries as well as majority-owned firms did not believe that this program was effective.

Although subcontracting opportunities may have introduced some MBE/WBEs to WSSC procurement that are now bidding on prime contracts, a small business program is a better way to achieve this objective. If a race- and gender-neutral program will be as effective as a race- and gender-based program, the race- and gender-based program is probably not defensible in court.

Further, subcontracting is not a typical practice in the goods and general services industries, and it is difficult to find meaningful subcontracting opportunities for MBE/WBEs. This program appears to add significant costs to these WSSC contracts, with little additional value. WSSC should continue to ask prime contractors in general services to identify any subcontractors that they plan to use on Commission contracts.

2. Fully implement the small business program in goods and general services. BBC links suspension of the current subcontracting goals program to full implementation of a small business program. One is meant to replace the other. To date, WSSC has yet to implement its small business program in goods and general services contracts. Under this program, MBE/WBE small businesses would only compete with other small businesses for certain goods and general services contracts. This will give more small firms a real chance to break into WSSC procurement that may lead to other opportunities outside the program.

For an effective small business program, WSSC will need to seek legislative changes to eligibility criteria for participation in the program.

- Broaden the definition of “local” from just Prince George’s and Montgomery counties to the entire Washington-Baltimore metro area (since the program is intended to combat the effects of race and gender discrimination throughout the local marketplace);
- Redefine “small” to be based on just gross revenues, not net income and net worth (using State of Maryland or U.S Small Business Administration guidelines for small business as the maximum size levels, to be reduced by WSSC as needed); and
- Excluding from entrance to the program firms that have already done significant business with WSSC in that line of work or are affiliates of established contractors and vendors in that field.

The State Legislature must amend WSSC’s legislation authorizing the Local Small Business Enterprise Program for WSSC to make these program refinements. Without these changes, it will be difficult for the small business program to meet its objectives.

3. Make other improvements for small business access to goods and services purchases. WSSC should conduct outreach to MBE/WBEs, and small businesses in general, to encourage bidding on Commission purchases and explain WSSC purchasing procedures. WSSC should improve the feedback it offers unsuccessful bidders. It may be useful for WSSC to re-build its bidders list for goods and general services procurement by joining with other public entities such as the State of Maryland in developing a comprehensive bidder registration system. Because of complaints from some past vendors, WSSC should also review how quickly it pays businesses for goods and general services purchases.

WSSC will need to fully implement this program, and undertake the other recommendations for these procurements identified in the full report, to maintain opportunities for MBE/WBEs in goods and general services.

Partial Success: Professional Services

WSSC hires firms to provide IT consulting, legal services, management consulting and accounting services, spending about \$9 million per year with these firms. Most of this work goes to firms in the Washington-Baltimore area. Different departments throughout the organization make these purchases. Because procurement decisions are primarily based on perceived qualifications, they are inherently subjective.

Why a partial success? First, WSSC's achievements:

- The percentage of WSSC's purchase dollars going to MBE/WBEs from 1999 to 2004 increased substantially from prior years. Figure ES-5 shows that only 13 percent of the professional services prime contract dollars went to MBE/WBEs from the late 1980s to the mid-1990s. From 1999 through March 2004, minority- and women-owned firms received almost one-third of the professional services dollars.
- WSSC utilization of MBE/WBE IT consulting firms is even higher: 39 percent.
- Some of the firms receiving the largest WSSC professional services contracts are minority- and women-owned firms.
- For the most part, WSSC has been able to achieve this level of MBE/WBE utilization without giving preferences or advantages to minority- and women-owned firms when seeking prime contracts. (WSSC has the authority to give evaluation points to MBE/WBE primes, and sometimes does, but this practice appears to be relatively rare.)

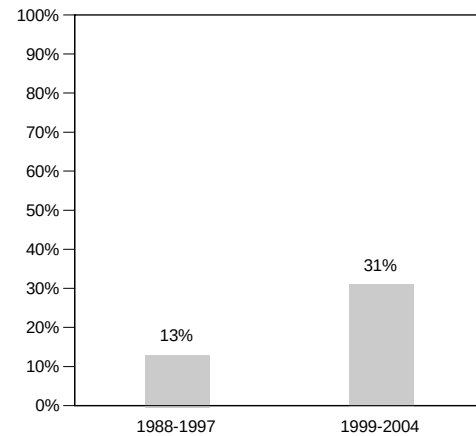
However, there were a number of findings that suggest areas for improvement.

- Utilization of MBE/WBEs in professional services prime contracts still falls below the availability of minority- and women-owned firms to perform this work.
- Only 6 percent of WSSC dollars paid to legal firms goes to MBE/WBEs.
- Smaller WSSC professional services contracts do not need to be competed according to WSSC procurement rules, and rarely are. BBC also found no evidence of competition for a number of the larger contracts researched in this study. WSSC contracts examined in this study typically went to firms known to Commission staff.
- There is evidence that WSSC sometimes favors large professional services firms over small firms.

As shown in Figure ES-6, about one-half of the professional services firms in the local marketplace that are available for WSSC work are MBE/WBEs, far greater than the 31 percent utilization of MBE/WBEs in these contracts. (About 17 percent of WSSC professional services prime contract dollars go to MBEs and 14 percent to WBEs.)

Figure ES-5.

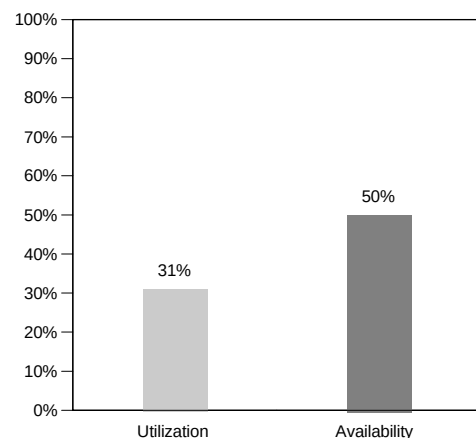
The percentage of WSSC professional services prime contract dollars going to MBE/WBEs substantially increased in recent years



Note: 1988-1997 utilization is from a 1999 disparity study completed by MGT of America.

Figure ES-6.

WSSC utilization of MBE/WBE professional services firms as prime consultants fell below availability of MBE/WBEs to do this work



Note: Utilization is the percentage of total payments going to MBE/WBEs from 1999 to 2004.

What more needs to be done in professional services? WSSC has procurement procedures it can use to open professional services contracts up to competition. These procedures can give minority- and women-owned professional services firms that do not now learn of these opportunities a chance to compete. These procedures may also give MBE/WBEs a better chance to win these contracts. Responsibility for professional services contracts above \$50,000 should be shifted from WSSC departments to the Procurement Group, which has experience with competitively bidding professional services contracts.

Recommended actions for professional services contracting. BBC recommends the following immediate actions.

1. Suspend the subcontracting goals program for most professional services contracts. As in goods and general services, WSSC operates a subcontracting goals program that requires prime contractors on certain larger professional services contracts to use MBE/WBE subconsultants. For professional services contracts where MBE/WBEs have meaningful opportunities to compete as primes, WSSC should no longer apply MBE/WBE subcontracting goals. Professional services work in the private marketplace typically does not have subcontracting and it is not clear that subcontracting on WSSC professional services contracts is effective in opening doors for prime contract opportunities at the Commission.

Subcontracting goals may still be applied on an interim basis for the few professional services contracts where there is little chance of MBE/WBE competition as primes. Because of the disparities in professional services contracting, and the time it may take for these contracts to open to MBE/WBE primes, it may be defensible to continue the subcontracting goals for these few professional services contracts for a short period of time.

2. Ensure competitive bidding for professional services contracts. WSSC should routinely compete its professional services contracts. Responsibility for professional services contracts over \$50,000 should be centralized in the Procurement Group, which already has procedures for competitively bidding professional services contracts (Competitive Sealed Proposal Procedure). For contracts under \$50,000, WSSC should implement contracting methods consistent with its Small Purchase procedures outlined in its Procurement Manual. Competitive bidding of professional services contracts was also a strong recommendation to the Commission from a 1999 study of its procurement.

WSSC will need to develop a list of professional services firms interested in WSSC work, and should conduct outreach to MBE/WBEs as part of developing this list. WSSC should also amend its rules to allow past proposals and past summaries of evaluation scores to be reviewed by other bidders. This should also be done in A/E contracting. Reviewing past winning proposals and proposal evaluations may be a good way for MBE/WBE firms that are new to WSSC to improve the proposals they submit to the Commission. It still may be appropriate for WSSC to not disclose names of individual evaluators.

3. Contract specifications or qualifications requirements that are not essential to WSSC work should be eliminated. There is some evidence of highly restrictive insurance requirements in some WSSC professional services work that had the effect of eliminating competition from MBE/WBEs. The Procurement Group and the SLMBE Group should carefully scrutinize any potentially over-restrictive contract requirements.

4. Retain the ability to award preference points to certified MBE/WBE proposers. For types of contracts that have not been open to MBE/WBE prime consultants in the past, WSSC should consider including evaluation preferences for MBE/WBE primes.

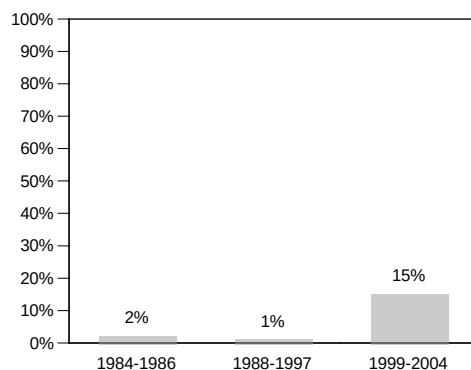
On the Road to Success: A/E Contracting

WSSC contracts with a number of engineering firms to plan system expansion; design treatment plants and other water and wastewater facilities; perform testing and inspections; and conduct other projects. WSSC also issues a few contracts for general architectural and engineering (A/E) work for WSSC buildings and other facilities. From 1999 through March 2004, WSSC averaged about \$9 million per year in engineering work, primarily with firms with Washington-Baltimore area offices.

The Commission has operated an MBE/WBE program for A/E contracts for many years. This program encourages proposals from MBE/WBE as prime consultants and requires use of MBE/WBE subconsultants. A/E contracts are awarded primarily based on qualifications, not price.

Figure ES-7.

The percentage of WSSC A/E prime contract dollars going to MBE/WBEs substantially increased in recent years

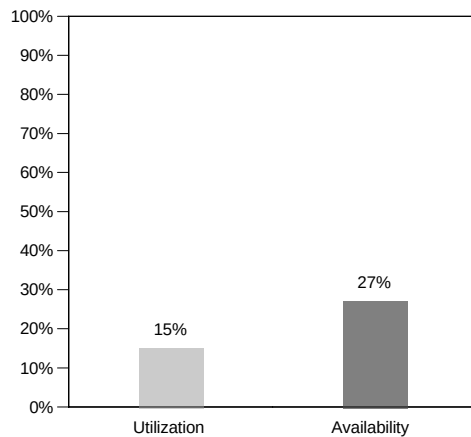


Note: 1984-1986 utilization is from a 1988 Minority Business Enterprise Legal Defense and Education Fund disparity study for WSSC; 1988-1987 utilization is from a 1999 MGT of America study for WSSC.

Why is A/E just “on the road to success”? There have been a number of recent successes in opening A/E contracts to MBE/WBE participation:

- The percentage of WSSC’s purchase dollars going to MBE/WBE prime consultants jumped from 1 percent for 1988-1997 to 15 percent for 1999-2004, as shown in Figure ES-7. WSSC utilization of MBE/WBEs as prime consultants is about double that of the City of Baltimore or State of Maryland.
 - Among the ten firms receiving the most prime consultant payments for 1999-2004, three were MBE/WBEs.
 - Most A/E contracts are competed; the Commission has standard procedures for scoring qualifications, experience and other factors from competing consultants.
 - WSSC’s subcontracting goals program has introduced many MBE/WBEs to WSSC engineering consulting opportunities. Typically, more than 24 percent of total A/E contract dollars go to minority- and women-owned subconsultants (exceeding the WSSC goal).
- However, WSSC needs to shift its focus from its subcontracting goals program for A/E to further encourage use of MBE/WBEs as prime consultants.
- The 15 percent of prime contract dollars going to MBE/WBEs falls well short of the 27 percent availability of MBE/WBE for these prime contracts (see Figure ES-8).
 - Some minority- and women-owned engineering firms find the subcontracting opportunities at WSSC so attractive that they limit their participation to a subcontracting role. Relatively few proposers on WSSC engineering contracts are MBE/WBE primes.
 - A number of criteria WSSC uses to score firm qualifications work against smaller, younger firms; MBE/WBEs tend to be younger and smaller firms. There is evidence that discrimination in the marketplace may be one of the reasons MBE/WBEs are smaller.

Figure ES-8.
WSSC utilization of MBE/WBE engineering firms as prime consultants fell below availability of MBE/WBEs to do this work



Note: Utilization is the percentage of total payments going to MBE/WBEs from 1999 to 2004.

Figure ES-8 compares utilization and availability of MBE/WBEs for A/E prime contracts. The 15 percent overall utilization includes 14 percent for MBEs and 1 percent for WBEs.

What more needs to be done in A/E contracting? WSSC appears to have been partially successful in opening prime contract opportunities to minority- and women-owned engineering firms. One reason behind the disparity between MBE/WBE utilization and availability for WSSC prime contracts is the relatively small number of qualifications statements or proposals submitted by minority- and women-owned engineering firms.

This pattern is unlikely to change unless (a) more minority- and women-owned firms believe that they have a real chance of winning these contracts, and (b) WSSC reduces the inducement for MBE/WBEs to

solely compete as subs. In part, the continuing disparity in use of MBE/WBEs as prime consultants is a legacy of the success of WSSC's MBE/WBE subcontracting goals program in this area.

Recommended actions for A/E. BBC recommends the following immediate actions.

- 1. Retain the evaluation preference for MBE/WBE primes consultants.** WSSC awards extra points to certified MBE/WBEs when evaluating qualifications statements and proposals from these firms. This practice should be continued (with a modified points scale), and reevaluated after three to four years.
- 2. Improve the evaluation process.** The Commission should refine the consultant scoring process and the way it is applied to reduce potential advantages for the largest and oldest engineering firms.
- 3. Encourage MBE/WBEs to submit proposals for A/E prime contracts.** Most of the MBE/WBEs working as subconsultants on WSSC A/E contracts work as primes for other clients. WSSC should meet with these MBE/WBEs to encourage them to bid as prime consultants. WSSC should award evaluation points to firms that have been successful as subconsultants on past A/E contracts at the Commission and now submit proposals as primes (including majority-owned firms). These points would be in addition to the MBE/WBE preference.
- 4. Substantially revise the subcontracting goals program, and eventually phase it out.** WSSC must add more flexibility to its current subcontracting goals program for A/E contracts to comply with U.S. Supreme Court guidelines. The full report outlines the needed changes. As MBE/WBEs become more successful in obtaining A/E prime contracts, and there is no long-term need for the subcontracting goals program, WSSC should phase it out.

On the Road to Success: Construction Contracting

By far, construction contracting is the largest area of WSSC procurement. The Commission paid an average of about \$70 million per year to construction firms in the 1999-2004 study period. WSSC spends more than three-quarters of its construction dollars on relatively narrow segments of the industry: water and sewer line construction, and treatment plant and storage tank construction. General building projects were a relatively small part of WSSC construction in recent years. Construction contracts are typically awarded based on low bid. WSSC primarily contracts with construction firms that have offices in the Washington-Baltimore area.

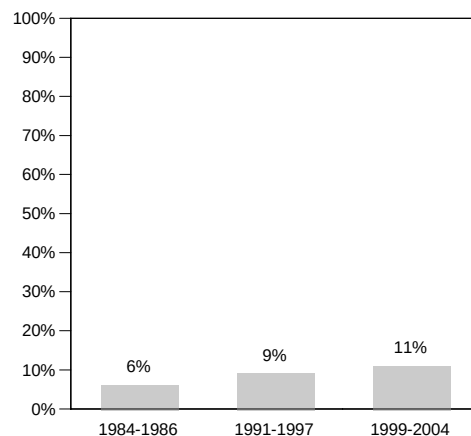
WSSC first implemented MBE programs related to construction in the 1970s. Over the past two decades, majority contractors have made legal challenges to the MBE/WBE subcontracting goals program in construction. WSSC currently operates a voluntary subcontracting goals program. The Commission has also begun implementing a small business program for small construction contracts. Only firms fitting WSSC's definition of small contractors can bid on these contracts.

Why is construction contracting just “on the road to success”? There have been a number of recent successes in opening construction contracts to MBE/WBE participation:

- The percentage of prime contract dollars going to MBE/WBE construction firms has slowly grown. MBE/WBE utilization for 1999-2004 was 11 percent, as shown in Figure ES-9. This is about the same as State of Maryland utilization of MBE/WBEs as prime contractors.
- Some of the contractors receiving the most WSSC prime contract volume are minority-owned.
- In one area of WSSC prime contracting, MBE/WBEs win a majority of the work.
- WSSC's current subcontracting goals program for construction, which was reinstated in 2001 and is now voluntary, may be opening opportunities for MBE/WBE subcontractors.
- Construction contracts are nearly always open to competition; awards are based on low bid among responsive bidders.
- Although WSSC periodically reviews qualifications of its bidders, it is rare for the Commission to reject a firm as unqualified to perform construction work.
- The Commission has recently developed a small business program and implemented it for several small contracts.

Figure ES-9.

The percentage of WSSC construction prime contract dollars going to MBE/WBEs has slowly increased since the 1980s



Note: 1984-1986 utilization is from a 1988 Minority Business Enterprise Legal Defense and Education Fund disparity study for WSSC; 1991-1987 utilization is from a 1999 MGT of America study for WSSC.

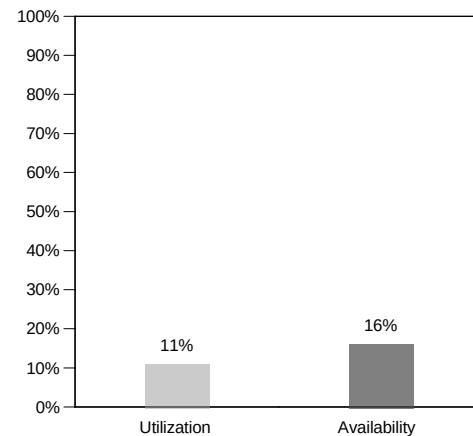
- On paper, most prime contractors are complying with the spirit of the voluntary goals program. Contractors do not have to use MBE/WBEs, but most appear to do so based on what they report to the Commission. In terms of dollars of subcontracts listed at time of contract award and at the completion of the project, more than one-half of the subcontracting work in construction is going to MBE/WBEs, which is what one would expect given the availability of MBE/WBE subcontractors and suppliers for WSSC work. Evidence from the local private sector suggests that, without such a program, MBE/WBEs do not have the same subcontracting opportunities.

The Commission has many of the tools in place to further open prime contract opportunities in construction, especially in pipe contracting. The Commission's voluntary goals program can also be strengthened to combat the potential that prime contractors will discriminate against MBE/WBE subcontractors. The reasons BBC concludes that the Commission has yet to be successful include the following:

- Overall utilization of MBE/WBEs as prime contractors (11 percent) is below the availability of minority- and women-owned firms to perform this work (16 percent). Figure ES-10 shows the disparity between overall MBE/WBE utilization as construction prime contractors and MBE/WBE availability for this work.
- Three-quarters of total MBE/WBE utilization as prime contractors is made up of one firm and its subsidiary. Without this firm, MBE/WBE utilization is 3 percent, not 11 percent.
- African American-owned firms won less than 1 percent of total contract dollars. The percentage of WSSC prime contract dollars going to African American-owned firms actually fell between 1988-1997 and 1999-2004.
- Utilization of WBE primes was also less than 1 percent for 1999-2004 and also fell from prior years. Disparities between utilization and availability for construction prime contracts are largest for African American-owned firms and WBEs.
- The State of Maryland and many local governments have raised the threshold for requiring bonding to contracts of \$100,000. WSSC has failed to raise its bonding threshold from its \$25,000 level. A large portion of WSSC's contracts are between \$25,000 and \$100,000, and bonding places many MBE/WBEs at a disadvantage in pursuing these contracts.
- Except for the large MBE firm that recently created a subsidiary to do pipe contracting, MBE/WBEs have not been very successful in breaking into pipeline work as prime contractors at WSSC. Less than 1 percent of WSSC pipeline prime contract payments from 1999 to 2004 went to African American-owned firms and no work went to white female-owned pipeline firms. Historically, this area had been difficult for any new firm to enter at WSSC. Many of the same majority contractors that were doing this work for WSSC in the 1970s and 1980s are still winning these contracts today.

Figure ES-10.

WSSC utilization of MBE/WBE construction firms on prime contracts fell below availability of MBE/WBEs to do this work



Note: Utilization is the percentage of total payments going to MBE/WBEs from 1999 to 2004.

- WSSC's initial small business program did not sufficiently restrict the types of firms that were allowed to participate. Several large pipe contractors that have been doing work with WSSC for decades successfully applied for the small business program and were allowed to bid against emerging MBE/WBEs for these small contracts.

What more needs to be done in construction contracting? WSSC has seen some limited successes in opening prime contract opportunities to MBE/WBEs, and at least one construction field (street construction) sees more than half of the prime contract dollars going to minority-owned firms. With the small business program and the voluntary goals program, the Commission has the beginnings of the tools it needs to make more progress.

Recommended actions for construction contracting. BBC recommends the following immediate actions.

1. Improve and expand the small business program for construction. WSSC should continue to implement a sheltered market program for emerging construction firms. This program should first focus on pipeline construction. It should have two components: a "first stage program" that introduces new firms to WSSC pipeline work (very small contracts), and a "second stage program" that increases the size of pipeline jobs that more-established small firms can perform for WSSC (at least contracts in the \$25,000-\$100,000 range, and possibly higher). A small business should be eligible for only one of these stages of the small business sheltered market program at one time.

Established pipeline contractors at WSSC, regardless of size of the business or race/ethnicity/gender, should not be eligible for the small business program. This is a major flaw with the first version of the program, which defined "small" based on net income, not total revenues, and therefore allowed established contractors to participate in the program. As previously discussed, WSSC will need to request changes to the State legislation that governs this program.

Relatively few contracts to date have been awarded through this program. Once the problems of allowing large contractors in the program have been resolved, and additional emerging pipe contractors have been recruited into the program, WSSC should substantially increase the volume of contracts going through the small business program. WSSC may also need to augment the program with training of new contractors.

2. Increase the bonding threshold to \$100,000. WSSC's current practice of requiring bonding on \$25,000 contracts limits opportunities for small firms, and may disproportionately affect small MBE/WBEs. Bonding should be removed from most contracts under \$100,000. If WSSC needs to more closely scrutinize bidder capabilities on these contracts as a result of removing bonding, it should do so in a way that does not discriminate against MBE/WBEs.

3. Continue to operate the voluntary goals program, but extend it to minority- and women-owned prime contractors. BBC recommends several changes to this program:

- MBE/WBE prime contractors as well as majority prime contractors should comply with the program.
- Although the program should remain voluntary, WSSC should continue to closely monitor actual use of subcontractors and suppliers based on evidence of payments. Prime payments to both MBE/WBE and majority subcontractors and suppliers should be monitored. WSSC participation in a state-wide centralized bidder registration process might facilitate this tracking.

- Non-discrimination on WSSC contracting, and fair treatment of subcontractors and suppliers on WSSC, should be a written component of WSSC construction documents (or perhaps all contracts).

Through ongoing review, WSSC may find that some firms should be suspended or debarred from WSSC contracting because they have made false reports to WSSC and/or there is evidence that they have discriminated against minority- or women-owned subcontractors.

Summary

Although the immediate WSSC actions BBC recommends are largely race- and gender-neutral, there continues to be substantial evidence of discrimination in the local marketplace that can place minority- and women-owned firms at a disadvantage when competing for WSSC work. The Commission's success in opening goods and general services purchases to MBE/WBEs, for example, is partly attributable to its long-term efforts to try to break down barriers to procurement opportunities for MBE/WBEs.

If in the future WSSC finds that neutral programs are not sufficient to remedy the effects of discrimination, it may have a basis to apply additional race- and gender-based programs. BBC reaches this conclusion based, in part, on the findings summarized in Figure ES-11.

Figure ES-11. Summary of key findings

#1. Discrimination affected the marketplace and WSSC procurement in the past. A number of studies have documented the discrimination against minority and female business owners in the Washington-Baltimore marketplace in the past. Even people who have supported past lawsuits against WSSC to strike down its MBE/WBE programs told BBC in interviews that they agreed that discrimination once affected opportunities for minority- and women-owned firms.

#2. There is evidence of lasting effects of past discrimination in the local marketplace and in WSSC procurement. The opportunities for minority- and women-owned firms today in the local marketplace and in WSSC procurement are affected by past discrimination. For example, some of the white male-owned firms that were advantaged 20 or 30 years ago because of this discrimination are the entrenched firms in some fields today.

#3. There is contemporary evidence of discrimination against minority- and women-owned firms in the marketplace. Some practices in the marketplace have the effect of disadvantaging minority- and women-owned firms. BBC also found evidence of negative stereotypes against MBE/WBEs, or more blatant discriminatory acts, that affect MBE/WBE opportunities and competitiveness.

Discrimination against minority and female business owners when seeking credit is well-documented within the local market. Beyond what MBE/WBE business owners told us, several white male business owners and managers said that they perceived this to be a problem and sometimes had to help MBE/WBE firms to obtain credit. Credit is needed for a firm to be successful in each of the industries examined in this study, especially in construction.

#4. There is evidence that MBE/WBE opportunities in WSSC procurement are affected by discrimination in the marketplace. MBE/WBE firms may be at a disadvantage in certain types of WSSC procurement because of discrimination that makes them smaller and with less experience than they would otherwise have. They also may be less able to compete on price or qualifications because of these effects. BBC received many reports from smaller MBE/WBEs that they were unable to compete against larger firms.

Figure ES-11. (continued)
Summary of key findings

#5. There is evidence that some prime contractors doing business with WSSC discriminate against MBE/WBE subcontractors. There is some anecdotal evidence, and perhaps some statistical evidence, that suggests that some prime contractors discriminate against minority- and women-owned subcontractors on WSSC projects and other public sector contracts.

Through Commission actions, or inaction, WSSC's contract dollars may have reinforced a discriminatory system, rewarding contractors that had discriminated or making it harder for the system to change for the better.

#6. Some of WSSC's actions may have a discriminatory effect. Certain WSSC policies and practices may have the effect of placing minority- and women-owned firms at a disadvantage when seeking WSSC work. There is also some evidence that Commission staff is not immune from holding some of these negative stereotypes that exist in the marketplace.

#7. In some areas of WSSC procurement, neutral programs, alone, may be adequate to address any effects of discrimination. Race- and gender-based subcontracting goals programs should be discontinued in goods and general services. WSSC should implement its small business sheltered market program in these areas once the program is revised. While there is evidence of discrimination affecting MBEs and WBEs in construction, at this time WSSC should focus on implementing a revised small business program for prime contracts and continue its voluntary subcontracting goals program.

WSSC should retain the ability to implement race- and gender-based programs in its contracting and procurement. If neutral programs prove to be ineffective, and any effects of discrimination persist, WSSC should consider implementing race- and gender-based programs.

#8. Criteria for determining eligibility for the small business program should be revised. WSSC should attempt to change State legislation to allow it to restrict participation in the small business program based on firm revenues, not net income as is currently the case. WSSC should expand the eligibility for the program to firms located within the Washington-Baltimore marketplace.

#9. WSSC should continue to operate race- and gender-based programs related to A/E and possibly professional services contracts. WSSC's preference points for MBE/WBEs proposing on A/E contracts should be retained and strengthened. WSSC may consider awarding MBE/WBE preference points on types of professional services contracts that have seen limited MBE/WBE participation as primes in the past.

SECTION I.
Introduction

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Introduction

The Washington Suburban Sanitary Commission (WSSC) retained BBC Research & Consulting (BBC) to assess whether WSSC's current efforts to open procurement opportunities to minority- and women-owned firms should be continued, expanded or disbanded. These efforts include race- and gender-neutral measures to increase opportunities for minority- and women-owned firms, and small businesses in general. WSSC also operates a number of race- and gender-based programs specifically designed to assist minority- and women-owned firms. Some of these programs date back to the 1970s.

BBC commenced work in spring 2004 and submitted a draft report for WSSC review in January 2005. BBC was assisted by Optimal Solutions Group and Customer Research International. Figure I-1 offers a brief introduction to the study team. WSSC's Corporate Business Group coordinated this work effort at WSSC. BBC also worked closely with WSSC legal staff, the Project Delivery Group, the Procurement Group and the SLMBE Group.

Background

"Disparity studies" examine whether there is a need for race- and gender-based programs to assist minority-owned firms (MBEs) and women-owned firms (WBEs) when seeking government procurement opportunities. One of the components of these studies is to compare an agency's **utilization** of MBEs and WBEs in different industries with the **availability** of MBEs and WBEs to conduct this work. If there is a **disparity** between MBE/WBE utilization and availability, this may indicate a need for remedial action (hence the name "disparity studies").

Figure I-1. Study team

WSSC selected BBC Research & Consulting to conduct this study after reviewing proposals from BBC and other consultants. The BBC study team consists of the following firms.

BBC Research & Consulting. BBC Research & Consulting (BBC) directed this study. Each aspect of the study effort was performed or supervised by BBC staff.

BBC is an economic research firm founded in 1970 in Denver, Colorado. Since 1989, the firm has conducted over 40 disparity studies and related studies for clients throughout the country, including a series of studies for the Washington Metropolitan Transit Authority and the Maryland-National Capital Park and Planning Commission. MBE/WBE programs implemented in part based on BBC studies have been successfully defended in court. In some past assignments, BBC has also recommended against implementing MBE/WBE programs.

Optimal Solutions Group. Optimal Solutions Group (OSG) is a Baltimore-based economic research firm. OSG was a sub-consultant to BBC on this study. OSG identified, compiled and entered information from past procurements into several key databases. These data included information on bidders on WSSC procurements and the prime contractors and subcontractors that received WSSC work. OSG also interviewed other local water and wastewater utilities about their procurement practices. OSG is a minority-owned firm.

Customer Research International. Customer Research International (CRI) is a telephone survey research firm in Austin, Texas. BBC retained CRI to perform interviews of randomly-selected firms in the goods and general services industries. CRI is a minority-owned firm.

Dun & Bradstreet. Although just a vendor to BBC on this project, information from Dun & Bradstreet was very important in completing this study. Dun & Bradstreet (D&B) is the foremost provider of business data in the United States. BBC used D&B data to identify characteristics of firms doing business with WSSC. BBC's random samples for telephone interviews with firms in the local marketplace were also drawn from Dun & Bradstreet.

The BBC disparity study follows a number of past studies of WSSC procurement. These past disparity studies include:

- **An Examination of WSSC's Minority Business Program**, completed in March 1988 by the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF) and Financial Research Associates, Inc. This study researched MBE utilization for some types of WSSC procurement as far back as the 1970s.
- **Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission**, completed in March 1999 by MGT of America, Inc. (the most recent study prior to BBC's study). The MGT study examined WSSC's utilization of MBEs and WBEs from the late 1980s through 1997.

The present BBC study focuses on WSSC procurement activity for the January 1999 through March 2004 time period. When examining long-term trends in WSSC's utilization of minority-owned firms (MBEs) and women-owned firms (WBEs), BBC has relied on the MGT and MBELDEF reports. These studies also provide useful information on any past barriers to MBE/WBE participation in contracting and subcontracting opportunities at WSSC. Each of these studies identified quantitative and qualitative evidence of discrimination that would affect MBE/WBEs when pursuing WSSC procurement opportunities, findings that are also useful background for the present BBC study.

BBC also examined information from recent disparity studies in the local marketplace. These include:

- **Utilization of Minority Business Enterprises by the State of Maryland**, a 2001 study by National Economic Research Associates;
- **City of Baltimore Minority Business Enterprise Disparity Study**, prepared by MGT of America in 2000;
- **Post-Croson Factual Predicate Study Update**, prepared by BBC in 2000 for the Washington Metropolitan Area Transit Authority;
- **Analysis of the Need for the M-NCPPC Anti-Discrimination Program**, authored by BBC in 2003; and
- **M-NCPPC Anti-Discrimination Policy Review**, a 2000 study prepared by BBC.

BBC also reviewed:

- **WSSC Disparity Study Update for 2005 – An analysis of Private Sector Market Dynamics**: an MGT of America report for WSSC that studied the local private market place;
- **Local, Small and Disadvantaged Business Opportunity Development Report**: prepared by The District of Columbia Mayor's Task Force on Local, Small and Disadvantaged Business Opportunity Development in October 2002;
- **Evaluation of the Local Small Disadvantaged Business Enterprise Program – Cost Effectiveness and Financial Impact Analysis**: submitted to the District of Columbia by Mason Tillman Associates in December 2002; and
- **A Procurement Disparity Study of the Commonwealth of Virginia**: prepared by MGT of America in 2004.

Legal Framework

The U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* in 1989 establishes the legal framework for this study. Under *Croson*, local governments must have a “compelling governmental interest” for such programs and “narrowly tailor” these programs. In separate litigation, opponents of MBE/WBE programs have argued that past programs enacted by WSSC, the City of Baltimore, the State of Maryland and the District of Columbia have not met this legal standard. Other state and local governments throughout the country have faced legal challenges as well. Many local governments have substantially revised or disbanded their MBE/WBE programs in response to this new legal environment.

One product of the post-*Croson* litigation is a number of lower court decisions that interpret and apply *Croson*. The BBC study approach is based on *Croson* and the subsequent case law. Figure I-2 summarizes key elements of the *Croson* decision.

Project Approach

BBC examined five different areas of WSSC procurement in this study, and organized research findings around each of these sectors:

- Architecture and engineering (Section II of the report);
- Professional services (Section III);
- Construction (Section IV);
- General services (Section V); and
- Goods (Section VI).

Figure I-2. Legal context

The *Croson* decision. The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the current judicial standard of review for state and local governments that take race into account when awarding contracts. Legal challenges to state and local MBE programs are considered based on the guidelines set forth in this decision.

Strict scrutiny standard of review. In *Croson*, the U.S. Supreme Court ruled that state and local governments’ classifications and policies that are based on race are “inherently suspect” and will be upheld by the courts only if they can withstand “strict judicial scrutiny.” This is the most restrictive standard that could have been applied by the Court. In other words, the Court set a very high bar for local governments to meet if they choose to operate and defend race-conscious programs.

The strict scrutiny standard requires minority business programs to be predicated upon two factors.

- A “compelling governmental interest,” as evidenced by ongoing effects of past or present discrimination against minority-owned businesses, must first be established. If it can be shown that the jurisdiction or agency is a “passive participant” in a pattern of marketplace discrimination, a jurisdiction or agency has a compelling governmental interest in addressing that discrimination even if there is no evidence that it is an active participant in such discrimination.
- Second, programs must be “narrowly tailored” to remedy the effects of such discrimination. In other words, programs must not be overly broad; rather, they should be narrowly designed to address the specific forms of discrimination identified by the jurisdiction or agency. The least restrictive types of remedies must first be considered. More restrictive remedies can be considered only if these less restrictive approaches appear to be insufficient to remedy the effects of the identified discrimination. The scope and duration of the remedy must not exceed the scope and duration of the identified discrimination.

Prima facie evidence of discrimination. Evidence falling short of “proof” of discrimination is relevant in considering whether a jurisdiction has met the strict scrutiny standard. *Croson* required jurisdictions to have a “strong basis in evidence” of discrimination “approaching a prima facie case.” For this study, evidence that is probative but that falls short of “proof” of discrimination will be considered. BBC employs research methods consistent with examining *prima facie* evidence of discrimination.

Evidence of societal discrimination. The U.S. Supreme Court states in *Croson* that evidence of “societal” discrimination would not meet the strict scrutiny standard. For purposes of this study, “societal discrimination” may be forms and incidents of discrimination that do not directly affect procurement outcomes in the relevant market that is the subject of the study. For example, if a country club in Maryland excluded women as members, that discrimination would not be pertinent to a disparity study unless contacts established at this club, or business conducted at the club, were important to business owners.

Standards of review for gender-based programs. Lower courts have sometimes applied a less restrictive standard of review for programs that assist women-owned businesses (“intermediate scrutiny”). For purposes of this study, BBC has performed the same types of analyses to assess whether there is a need for gender-conscious programs as conducted to assess race-conscious programs.

Federal DBE programs. Since *Croson*, the U.S. Supreme Court has extended the strict scrutiny standard to race-based programs enacted by the federal government. (Few WSSC contracts are subject to federal DBE programs.)

Procurement methods for general services and goods are essentially the same, and the Procurement Group is responsible for both of these types of purchases. Each of the other areas of procurement apply different procurement methods, and some are primarily handled by staff outside of the Procurement Group. MBE/WBE programs applied in each area also vary. In addition, there are unique business conditions for each of these local sectors. Factors important to formation and success of businesses in one sector may be different from another industry. For these reasons, BBC takes an industry-by-industry approach to this disparity study.

WSSC has operated MBE/WBE programs based on past evidence that discrimination affects minority- and women-owned firms seeking WSSC procurement opportunities. However, the BBC disparity study takes a fresh look at whether these or other efforts are needed and, if so, whether they narrowly focus on the identified problems. In other words, just because race and gender discrimination once affected these local industries does not mean that MBE/WBE programs are needed today. For each of the five procurement areas, BBC asked three sets of questions:

- Where is the local industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain or expand race- and gender-based programs for this type of procurement?

Common elements of BBC's analysis for each industry are listed in Figure I-3. For benefit of the reader, key terms used in this study are introduced in Figure I-4.

Figure I-3.
Common elements of BBC's analysis of A/E, professional services, construction, general services and goods sectors

- Detailed assessment of the specific types of WSSC work involved in each procurement area;
- Assessment of the geographic area from which WSSC makes purchases;
- Analysis of the types, sizes and total volume of WSSC contracts and subcontracts;
- Identification and description of the firms receiving the largest dollar volume of WSSC work, by field;
- Description of key factors and trends important in each industry, based on interviews with local firms and other research;
- Examination of the opportunity for minorities and women working within an industry to form businesses;
- Analysis of the relative success of MBE/WBEs within the local marketplace, based on available quantitative information;
- Assessment of qualitative information on any barriers for minority- and women-owned firms within the local industry;
- Analysis of trends in WSSC's utilization of MBEs (by race/ethnicity) and WBEs in prime contracts and in subcontracts;
- Evaluation of the effect of WSSC's MBE/WBE programs on this utilization;
- Comparison of WSSC's utilization of MBE/WBEs in each industry to the availability of MBE/WBEs to perform this work;
- Analysis of past procurement files, including any qualifications requirements, notification of firms about bids, review of bids, sole-sourcing of work, and awards to MBE/WBEs and non-MBE/WBEs;
- Review of comments from current and past WSSC vendors, subcontractors, bidders and other firms (MBE/WBEs and majority-owned firms) about any barriers to working with WSSC;
- Assessment of WSSC staff comments about any barriers for MBE/WBEs seeking to do business with the Commission;
- Analysis of other local water and wastewater utilities' experiences with similar contracts;
- Evaluation of the need for any remedies; and
- Recommendation of specific actions, if needed.

Figure I-4.
Key terms used in this report

Minority-owned firms. The study team's use of the term "minority" follows the longstanding federal definition and classification of groups that are "minority." These "minority" classifications include persons who are African American, Asian (including Pacific Islanders), Hispanic (people with origins in Latin America) and Native American. Persons with origins in India and Pakistan are defined as Asian. Persons with origins in the Middle East are not defined as minority. "MBE" or "minority business enterprise" means "minority-owned firm."

A "minority-owned firm" is at least 51 percent owned and controlled by minorities. The corollary is true for women-owned firms. "MBE/WBEs" refers to minority and women-owned firms, collectively. BBC includes firms not currently certified as an MBE in its reporting of MBE utilization and availability.

Women-owned firms. Although women-owned firms may be owned by white women or minority women, the study team's use of "women-owned firms" or "WBEs" when presenting statistics on WBEs refers to firms owned and controlled by white women, whether or not they are currently certified as such. Statistics for firms owned and controlled by minority women are included with MBEs.

Majority-owned firms. Firms that are not MBEs or WBEs are referred to as "majority-owned firms." BBC excludes non-profit firms in this definition.

Small firms. The study team uses the term "small firms" or "small businesses" as a general reference to firms with relatively low revenues. No particular revenues size standard applies. Also, a small business may have the capability to perform work substantially above its current revenues if given that opportunity.

Procurement. The study team uses the term "procurement" to refer to all purchases of goods, services, construction and other items.

Construction purchases. Construction purchases are contracts for building or repairing WSSC offices, treatment plants, reservoirs and tanks, pipelines, structures and other facilities. Construction materials and supplies may be part of a construction purchase if procured by the contractor. If construction materials and supplies are purchased directly by WSSC, they are classified as goods purchases.

Goods purchases. Goods purchases are for physical items such as treatment plant parts and supplies, office supplies and equipment, vehicles and other materials.

Architecture and engineering services. Services directly related to design and engineering are grouped as "architecture and engineering" or "A/E." Systems engineering related to WSSC information technology needs is included in professional services.

Professional services. This grouping of purchases refers to services of a professional nature other than architecture and engineering. Such services include IT consulting, management consulting, legal services and accounting.

General services. Services such as waste management, business services, cleaning and restoration and communications services are included under "general services" in this study.

Bid. A bid is the quote submitted by a bidder. It usually includes specification of the supplies or services to be provided plus a price for those goods or services.

Bidder. Although technically just a firm submitting a bid, BBC sometimes includes firms submitting a proposal or qualifications statement for a procurement in its definition of "bidders."

Proposers. Firms submitting proposals are referred to as "proposers" in this study.

Vendor. BBC uses the term "vendor" to refer to a firm that has received a WSSC purchase. Vendors do not include subcontractors.

Prime contractor or consultant. The prime contractor or prime consultant enters a contract with WSSC.

Subcontractor or subconsultant. A subcontractor or subconsultant enters a contractual relationship with the prime contractor or consultant and does not contract directly with WSSC. BBC sometimes includes suppliers to a contractor on a construction project or similar work in its definition of subcontractors.

Sole-sourced contracts. A sole-sourced contract is one that is awarded to a vendor without competition. Some sole-sourced contracts at WSSC go through a formal approval process. Others are sole-sourced without review.

Competed contracts. A "competed contract," as used in this study, is one in which WSSC solicited qualifications statements, proposals or bids from more than one firm.

Figure I-4. (continued)
Key terms used in this report

Basic ordering agreement. WSSC uses basic ordering agreements, or “BOAs,” to contract with firms for services on an as-needed basis. A firm awarded a BOA is usually not guaranteed any work from this contract.

Design-build. Design-build contracts are those in which the design and construction phases of the project are combined into one contract. For example, a design-build contract for a building would include architectural and engineering plans for the building plus actual construction of the building.

Qualifications statement. Certain types of WSSC procurements begin by soliciting qualifications statements from firms. The qualifications statements describe firm experience and other qualifications to perform the work, but usually do not include descriptions of the proposed approach to the work or a price for the work.

Proposal. A proposal describes the approach a firm would take in meeting WSSC’s needs, and often would also include the qualifications of the firm to conduct that work as well as a budget for the work. WSSC would usually solicit proposals for professional services or architecture and engineering work, but could on other work as well.

MBE/WBE utilization. MBE utilization usually refers to the percentage of contract dollars going to minority-owned firms. For example, if MBEs won \$10 million out of \$100 million in total contract dollars, MBE utilization would be 10 percent. WBE utilization refers to the percentage of dollars going to women-owned firms.

MBE/WBE availability. In this study, MBE availability refers to the percentage of firms interested and qualified to perform a specific type of work for WSSC that are minority-owned. For certain types of WSSC work, BBC distinguishes between availability to perform prime contracts and availability to perform subcontracts. MBE availability is a key benchmark when evaluating levels of MBE utilization.

Disparity. “Disparity” refers to a difference between an observed outcome and an expected outcome.

Qualitative evidence of discrimination. Descriptions of discriminatory practices made by business owners can be one example of what courts view as “qualitative” or “anecdotal” evidence of discrimination.

Quantitative evidence of discrimination. Quantified differences in the success of MBEs and WBEs as compared with majority-owned firms is one example of what courts may view as quantitative evidence of discrimination.

SLMBE. WSSC’s Small, Local and Minority Business Enterprise (SLMBE) program is operated by the Small, Local and Minority Business Enterprise Group.

Race- and gender-neutral programs. Efforts to open procurement opportunities in general, or specifically to small or newly-formed firms, are collectively described as “race- and gender-neutral” programs. These efforts are “neutral” because race or gender ownership of a firm would not be a factor in considering whether the firm would benefit from the assistance. Neutral programs also include bonding assistance and small business lending programs. A number of race- and gender-neutral business assistance programs are operated within the Washington, D.C.-Baltimore marketplace. WSSC has also implemented “neutral” efforts to further open procurement opportunities to all firms, or small firms in particular.

Race- and gender-based programs. Procurement measures or business assistance efforts that only assist minority- or women-owned firms are “race- and gender-based” programs. A traditional MBE/WBE subcontracting goals program fits this definition.

Local marketplace. BBC determined that the federally-defined Washington, D.C. Metropolitan Statistical Area (MSA) and the Baltimore MSA comprise the “local marketplace” for WSSC purchases. At the time of this study, this area included: the District of Columbia; Anne Arundel, Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George’s and Queen Anne’s counties in Maryland; the city of Baltimore, Maryland; Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford and Warren counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park in Virginia; and Jefferson County, West Virginia. This definition differs from WSSC’s definition of “local” in its SLMBE program and for awarding points to proposers with “local” offices.

SIC codes. Standard Industrial Classification (SIC) codes are federally-defined groupings of firms based on the type of work they do. Data vendors such as Dun & Bradstreet assign an SIC code to each firm in its database. This allowed BBC to identify the specific types of work involved in each area of WSSC procurement. BBC also drew samples of firms with certain SIC codes from D&B in order to survey firms in the local marketplace. In the 1990s, the federal government introduced North American Industrial Classification System (NAICS) codes, however, Dun & Bradstreet could not sample firms based on these codes at the time of this study.

Use of this Report

This report recommends certain modifications of WSSC's procurement systems and changes to its MBE/WBE program. It should be used to:

- Consider changes to WSSC procurement *policies*;
- Consider changes to WSSC procurement *practices*;
- Evaluate the future of WSSC's current race- and gender-based programs as they apply to each industry; and
- Create additional safeguards to prevent discrimination from affecting minority and women-owned firms in WSSC procurement.

WSSC should review these findings and recommendations in light of past disparity studies and other information it may have now or obtain in the future. Study findings should also be viewed in light of the limitations noted below.

The balance of this report considers research findings and study team recommendations for the architecture and engineering, professional services, construction, general services and goods procurement areas, beginning with A/E services in Section II. Section VII of the report summarizes the study team's findings.

Limitations of the Report

The analysis presented in this report is based on a very comprehensive analysis of WSSC procurements, including past payments to prime contractors, use of subcontracts and assessment of past bidding. Not all of the data that BBC sought concerning these topics were available. Some contract files could not be located and some subcontractor data are incomplete. There could also be some mis-coding of information in the databases. Further, BBC may have mis-identified race/ethnicity or gender for some firms. BBC also took statements in interviews of firm owners at face value. Even with these limitations in the information collected as part of this study, the analysis is thorough and comprehensive.

This report is not intended to document all possible findings related to evidence of discrimination against minority and women-owned firms. WSSC may have additional information, or may collect information in the future, that would have a bearing on the legal basis for any race or gender-conscious remedies. This study should be viewed as only one of the potential information sources available to the Commission in considering future actions.

The analytical framework for this study was based upon relevant legal decisions available through standard research methods as of December 2004. Because the past legal decisions take differing views on the quantity and types of information that are needed to form a factual predicate for a race or gender-conscious program, it is uncertain how any Commission programs would be viewed in court. The Commission should also review new court rulings in considering any future actions related to anti-discrimination programs.

SECTION II.

WSSC Engineering Contracts

SECTION II.

WSSC Engineering Contracts

WSSC contracts with a number of engineering firms to plan system expansion; design water and sewer treatment plants, pumping stations and water storage and conveyance facilities; perform testing and inspections; and conduct other work. WSSC also issues a few contracts for general architectural and engineering (A/E) work for WSSC buildings and other facilities. From 1999 through 2003, WSSC averaged about \$9 million per year in engineering work, which combines contracts issued through the Project Delivery Group and Procurement. WSSC primarily contracts with A/E firms that have offices in the Washington-Baltimore area. The Commission has operated an MBE/WBE program for A/E contracts for many years.

BBC conducted an in-depth analysis of the local engineering industry, WSSC engineering contracts, and the prime consultants and subconsultants involved in those contracts. Based on our research, we recommend a new WSSC Anti-Discrimination Program for this area of WSSC procurement.

We begin this chapter by reviewing the key questions to be answered through our research. We then review what A/E services WSSC procures, how WSSC procures those services, and how WSSC currently applies its MBE/WBE program in this area. The balance of this chapter assesses whether there is evidence that WSSC A/E procurement is directly or indirectly affected by race or gender discrimination.

This section closes with recommended changes to WSSC's process for selecting prime consultants for A/E contracts as well as suggested revisions to the current MBE/WBE subcontracting goals program. Figure II-1 summarizes BBC's recommendations.

Figure II-1.

Summary of recommendations for A/E

WSSC should change its MBE/WBE program for A/E to focus on prime consultant opportunities for minority- and women-owned firms. It should revise, and perhaps eventually phase out, its current subcontracting goals program.

- WSSC should retain an evaluation preference for MBE/WBE prime consultants, and reevaluate after three to four years.
- WSSC should improve its evaluation process to reduce how much it favors the largest and oldest engineering firms.
- WSSC should meet with MBE/WBEs to encourage them to bid as prime consultants. WSSC should award evaluation points to firms that have been subconsultants on WSSC A/E contracts but have had limited work as prime consultants.
- Because over-use of sole-source contracts may contribute to underutilization of MBE/WBEs, WSSC should implement tighter controls on the use of sole-source engineering contracts.
- WSSC should immediately introduce more flexibility in its MBE/WBE subcontracting goals program. These changes are needed to comply with U.S. Supreme Court guidelines.
- A subset of A/E contracts should be let without goals requirements, and WSSC should monitor use of subconsultants on these contracts. This will help WSSC to determine whether there is a long-term need for the subcontracting program.
- If MBE/WBEs become more successful in obtaining A/E prime contracts, and there is no long-term need for the subcontracting program, WSSC should phase out the MBE/WBE subcontracting goals program.

Key Questions

The engineering industry was once highly exclusionary, with very limited opportunities for minorities and women. In the past, few women and minorities were trained as engineers. The disadvantages for minorities and women in this field did not evaporate as engineering graduates became more diverse. Many women and minorities then faced barriers in employment and advancement within engineering firms. Ownership opportunities in engineering firms were often closed to women and minorities. If women and minorities started their own engineering firms, they faced an uneven playing field when competing for engineering contracts and subcontracts.

Based on BBC's past research and experience, the historic barriers for women and minorities in engineering were evident nationally and within the Washington-Baltimore market. By contracting with local engineering firms, WSSC at least indirectly participated in this discrimination. In addition, WSSC rarely retained MBE/WBEs as prime consultants for A/E work. Until the WSSC MBE/WBE subcontracting goals program was initiated in the mid-1980s, it appears that a small fraction of total A/E contract dollars went to MBE/WBE subconsultants.

It is equally clear that conditions have improved for women and minorities in the engineering field. As we show in this chapter, women and minorities now account for a much larger portion of the engineering workforce, and therefore the pool of potential business owners. Today, MBE/WBEs account for a significant portion of the available water and wastewater engineering firms in the local market. Most importantly, a much larger share of WSSC prime contract dollars now goes to MBE/WBE engineering firms. WSSC's MBE/WBE program for engineering over the past 20 years probably contributed to these changes in the environment for local MBE/WBE water and wastewater engineering firms.

If the local civil engineering industry is further down the path toward a race- and gender-blind environment than it was 20 or 30 years ago, is an MBE/WBE program in A/E services still needed at WSSC? Three areas of questions are pertinent to addressing this issue:

- Where is the local engineering industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain race- and gender-based programs for engineering contracts?

Based on the answers to these questions, BBC can address whether the current WSSC MBE/WBE program for engineering services is still needed or other measures are warranted.

WSSC A/E Work

Before examining the local engineering industry, it is important to understand how WSSC interacts with specific segments of that industry.

Total dollars of A/E work. BBC identified \$45 million of payments going to A/E firms from January 1999 through March 2004, or about \$9 million per year. BBC focused on firms receiving at least \$5,000 of payments as prime consultants over this 5+ year period, which appears to capture nearly all of the total dollars spent on A/E services. BBC identified 86 different A/E firms receiving at least \$5,000 in payments from WSSC over this period. This total excludes contracts with universities, public sector

agencies and not-for-profit organizations. The methods used to identify A/E firms are discussed in Figure II-2.

Types of firms involved in WSSC A/E work.

A number of firms work with WSSC to perform engineering services, and to a limited extent, architectural and surveying services. WSSC's need for systems engineers and other consultants for its information systems projects is separately examined under professional services. The Commission also has the ability to enter design/build contracts, which are discussed in the construction section of this report.

BBC found that nearly all (97%) of the prime contract A/E dollars went to firms with the four-digit Standard Industrial Classification (SIC) code for engineering services (8711). A very small proportion of WSSC's A/E spending went to companies that are primarily architectural firms. Based on these results, BBC focused on the engineering industry.

BBC also examined subconsultants for 69 WSSC A/E contracts issued from July 2001 to May 2004. There were 60 subcontracts listed in these WSSC contracts, and 45 noted information on dollar amounts. These subcontract dollars totaled \$5.7 million. Three-quarters of the subcontract dollars went to companies identified as engineering firms.

Based on our analysis of the types of prime consultants and subconsultants involved in WSSC A/E work, we refer to this category of WSSC procurement as "engineering services," recognizing that a small portion of the work is in other fields.

Location of firms involved in WSSC A/E

work. BBC also examined location of the firms receiving WSSC engineering contracts. Over 90 percent of the prime contract dollars went to firms with offices in the greater Washington-Baltimore area. Nearly all of the subcontract dollars went to firms with local offices.

Figure II-2.
Identification of WSSC
payments for A/E services

Although WSSC has an accounting code for A/E services that is appended to WSSC payment information, BBC found that this code was not consistently applied. Therefore, BBC had to identify payments to firms conducting A/E work through a combination of:

- The primary Standard Industrial Classification (SIC) codes for firms doing WSSC work as provided by Dun & Bradstreet;
- Assessment of the work performed in specific WSSC contracts;
- Review of information on WSSC vendors' websites;
- Phone calls to WSSC vendors; and
- Review by WSSC staff.

Also note that a small amount of the payment dollars included for A/E firms may be for construction services. BBC was not able to split these payments between construction and A/E services.

Figure II-3.
Engineering firms receiving \$1 million or
more in WSSC payments, Jan. 1999-Mar. 2004

Engineering Firm	WSSC Prime Contract Payments (millions)
Post, Buckley, Schuh & Jernigan	\$ 7.4
O'Brien & Gere Engineers	6.2
CH2M Hill	5.3
Whitman Requardt & Associates	3.0
Peer Consultants (MBE)	2.2
EBA Engineering (MBE)	1.8
Sverdrup Civil	1.5
Jackson and Tull (MBE)	1.2
Wilson T. Ballard Company	1.2
Black & Veatch	1.2
Greeley and Hansen Engineers	1.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS data.

Firms receiving the most work. Eleven engineering firms received \$1 million or more in payments from WSSC (as prime consultants) from January 1999 through March 2004. These firms, as shown in Figure II-3 on the previous page, account for about three-quarters of the total payments to engineering firms over the study period.

The history of these eleven firms provides some insights into the engineering industry. Based on information on firm websites and interviews with most of these firms, we have summarized key facts about each company in Figure II-4 on the following page.

Types and sizes of contracts. In addition to payments to engineering firms, BBC studied 69 engineering contracts issued by WSSC between July 2001 and May 2004. The study team faced several challenges in identifying contracts and compiling contract and proposal information from WSSC files, so the contract information is not complete. This is one reason BBC focused on payments data to understand WSSC utilization of prime consultants. Even so, the contract information does yield several important insights into how WSSC interacts with the local engineering industry:

- Engineering contracts typically vary from a few thousand dollars to \$2 million. One contract during our study period was for \$5 million in engineering services, however, this was unusual. Most WSSC A/E contracts are under \$500,000.
- WSSC issues one-time contracts for a specific assignment and Basic Ordering Agreements (BOAs) that retain consultants for multiple assignments for a particular type of work. There is no guarantee of work volume with a BOA, and sometimes more than one engineering firm is issued a BOA for the same type of service.
- WSSC can also use design-build contracts, and issued several of these contracts since the end of BBC's data collection period (spring 2004).

Insights Into the Local Engineering Industry

Using the history of the firms performing the most WSSC engineering work from 1999 to 2004 presented in Figure II-4, the interviews BBC conducted with other A/E firms in the local region, and limited quantitative analyses, we were able to provide some insights into the local engineering industry. Figure II-5 summarizes the breadth of the research the study team conducted.

Engineers start engineering firms. The path to starting an engineering firm for a white male, a minority individual or a woman is to be an engineer. BBC found this in other work around the country and in the Washington-Baltimore area. The eleven firms receiving the most WSSC engineering work were founded by engineers coming from other firms, out of the public sector or from academia.

Many major engineering firms today were started by engineers in the first half of the 1900s. Eight of the eleven firms discussed in Figure II-4 were formed prior to 1950. Given the climate for women and minorities in the

Figure II-5. Research into the local engineering industry

BBC attempted interviews with each current and past WSSC A/E consultant, subconsultant and proposer identified in this study. We successfully interviewed more than 70 firms. Eighteen engineering firms were interviewed in considerable depth. BBC also conducted in-depth telephone interviews with 189 other randomly-selected engineering firms located in the Washington-Baltimore area. We supplemented this research by collecting Dun & Bradstreet information for WSSC consultants and subconsultants and by researching firms on the Internet.

Figure II-4.
Background on engineering firms receiving at least
\$1 million in WSSC payments, Jan. 1999-Mar. 2004

PBS&J. Post, Buckley, Schuh & Jernigan (PBS&J) began as a small civil engineering firm in Florida in 1960. PBS&J has grown to 3,300 employees and 60 offices, including an office in Beltsville, Maryland. The firm has expanded into other types of engineering as well as architecture, planning, construction management and other disciplines. Engineering News-Record (ENR) ranks PBS&J as the ninth largest engineering firm for water supply work, tenth largest for water treatment work and 16th largest for wastewater treatment work. The company is employee-owned, and has been since 1961.

O'Brien & Gere. Four engineers who specialized in water and wastewater engineering formed O'Brien & Gere in Syracuse, New York in 1945. The firm now has 22 offices throughout the country, including Landover, Maryland. O'Brien & Gere has about 800 employees and is employee-owned.

CH2M Hill. CH2M Hill is a diversified, multi-national engineering firm with 168 offices throughout the world. An engineering professor and three former students formed CH2M in 1946 in Oregon. The firm became CH2M Hill with a merger in 1971. CH2M Hill has also purchased a number of other engineering companies to achieve its current size. The firm now offers engineering, planning, economic and scientific analysis across a number of fields; ENR ranks CH2M Hill as the second-largest engineering firm in water and the third-largest in wastewater engineering. CH2M Hill has over 14,000 employees. The company is employee-owned. CH2M Hill has offices in Washington, D.C. and northern Virginia.

WR&A. Whitman, Requardt & Associates was formed in 1915 to provide engineering services to water and wastewater clients. WR&A has expanded into other fields as well. The firm has engineers, architects and planners located in its Baltimore headquarters and branch offices in Virginia, Delaware and Pennsylvania. It is employee-owned.

PEER. PEER Consultants, with headquarters in Rockville, Maryland plus seven other offices throughout the U.S., is an environmental engineering firm specializing in water and wastewater engineering, civil engineering, and hazardous materials management and remediation. Dr. Lillia Abron formed the firm in 1978. The firm remains African American- and female-owned. PEER graduated from the SBA 8(a) program about 15 years ago and has grown to about 80 staff.

EBA Engineering. EBA Engineering was established in 1952 as Ewell, Bomhardt, and Associates. Five employees of the firm purchased EBA in 1981. The

firm provides civil engineering and other services throughout the Mid-Atlantic region from its three offices in Baltimore and northern Virginia. EBA employs over 130 people. The firm is an Asian-owned firm.

Sverdrup Civil. Sverdrup Civil provides engineering and construction in the transportation, environmental and water resources fields. Sverdrup was formed in 1928 and was purchased by Jacobs Engineering, a global provider of professional technical services, in 1999. Jacobs has offices in Baltimore and northern Virginia. Jacobs Engineering was founded in 1947 and became a publicly-traded company in 1970.

Jackson and Tull. Jackson and Tull was founded in 1974 by Knox Tull, Jr. The firm began in the Washington, D.C. area as a civil and environmental engineering firm, and has since expanded to a broad range of engineering and technical services with offices throughout the U.S. Jackson and Tull is a African American-owned firm.

The Wilson T. Ballard Company. The Wilson T. Ballard Company is a civil engineering firm with specializations in highways, bridges, water treatment and sewage collection. The firm primarily serves public sector clients in the Mid-Atlantic region from its offices in Owings Mill, Maryland and Shrewsbury, Pennsylvania. Mr. Ballard formed the firm in 1948.

Black and Veatch. Black and Veatch Corporation is a global engineering, consulting and construction company specializing in infrastructure development in the fields of energy, water and information. Black and Veatch was founded in 1915 by E.B. Black and N.T. Veatch. The employee-owned firm has more than 90 offices worldwide with 46 offices in the United States including, Gaithersburg, Maryland, Arlington, Virginia, and Philadelphia, Pennsylvania. The firm has more than 7,000 employees. Black and Veatch is ranked 92nd on the Forbes "500 Largest Private Companies in the U.S." listing for 2003. ENR ranks the firm as the third-largest engineering design firm for water treatment work, the fourth largest for water supply work, and the sixth largest for wastewater treatment work in 2003.

Greeley and Hansen Engineers. Greeley and Hansen Engineers is an environmental engineering firm specializing in water, wastewater and solid waste management. Founded in 1914 by Samuel A. Greeley in Chicago, Illinois, the firm employs about 300 people. Greeley and Hansen Engineers has 15 offices throughout the U.S., including Washington, D.C.

engineering field at that time, it would have been very unlikely for any of the firms to have been founded by a woman or a minority. Each of the three MBE/WBE firms listed in Figure II-4 was founded by a minority in the 1970s or 1980s, or had majority ownership purchased by minorities at about this time.

Among firms that received at least \$300,000 in WSSC prime payments from January 1999 to March 2004 (most of the total WSSC payments to primes), about one-half of the dollars went to firms founded before 1950. None of these firms was minority- or women-owned. (Only examining firms that received at least \$300,000 in prime payments and were formed since 1950, MBE/WBEs accounted for about one-third of the work.)

Initial capital requirements are relatively small. Capital does not present a major barrier to opening an engineering firm. The corporate histories of many of the firms listed above bears this out.

Working capital is needed to handle growth. Firms need to make payroll while waiting on payments from clients. This is particularly important for firms that have staffed up to handle specific projects.

Once founded, many engineering firms have diversified and opened branch offices. Businesses that may have started as water and wastewater engineering firms have often diversified into other types of engineering. Companies such as Jacobs Engineering and CH2M Hill have expanded into consulting services outside of professional design. A number of engineering firms now also perform construction.

MBE/WBE firms as well as the majority-owned firms discussed above have diversified beyond their initial specializations.

Opening branch offices is important to serve new geographic markets. Each of the eleven firms discussed in Figure II-4 has multiple offices and none exclusively serves the Washington-Baltimore marketplace. Three-quarters of all engineering firms working with WSSC as prime consultants or subconsultants have multiple offices.

Some of this growth and diversification has come through acquisitions. Among the largest firms, the engineering industry is consolidating, with global firms such as URS, Jacobs Engineering and AECOM acquiring large engineering firms such as Sverdrup and Metcalf & Eddy.

As firms expand over time, they often broaden ownership. In order to purchase ownership interests of retiring founders, build capital and retain key staff, engineering firms often need to expand their ownership beyond the initial founders and their families. Employee-ownership is common among larger engineering firms. Employee ownership can also facilitate mergers or acquisitions of other engineering firms. A few firms have publicly-traded stock.

It may be difficult for firms founded by minorities or women who seek to broaden ownership to retain MBE/WBE status. Some of the MBE/WBEs interviewed as part of this study are employee-owned, but most are still owned by the founder. Some of the owners and managers of the smaller, newer MBE/WBE firms BBC interviewed acknowledged this as an eventual concern, but thought that it was not yet an issue for their firms.

Many firms work as both prime consultants and subconsultants. The majority of firms that we interviewed work as both prime consultants and subconsultants on engineering assignments. Fewer than one-in-six of the local engineering firms BBC interviewed said that they primarily work as a subconsultant. Some very large engineering firms reported that they rarely work as subconsultants.

Smaller firms staff up to handle larger projects, whether as a prime or as a subconsultant. The nature of the project appears to be most important to whether the firm works as a prime or sub on that project.

Some A/E firms rarely subcontract out any work when not required. Many of the engineering firms we interviewed said that, absent MBE/WBE program requirements, they subcontracted out very little work. The firms had enough staff and diverse capabilities that they could handle most contract work in-house. This appears to be a growing trend as firms become larger and more diversified — true for MBE/WBEs as well as majority-owned firms. Many MBE/WBE firms bidding as prime consultants on WSSC work did not include any subconsultants on their teams.

MBE/WBE/DBE programs may have been very important to the early success of some minority- and women-owned firms. The minority and female business owners BBC interviewed generally reported that MBE/WBE or federal DBE programs were important to starting their businesses. MBE/WBE programs opened doors to government clients and prime consultants that might otherwise have been closed, especially in the early years for a firm. The age of MBE/WBE engineering firms closely correlates with the introduction of MBE/WBE programs — most were formed since the mid-1980s. A number of female and minority engineers said that the relationships first developed because of MBE/WBE programs had extended to work where no MBE/WBE participation was required.

Where is the Local Engineering Industry on the Path Toward Equal Opportunities for Minorities and Women?

BBC examined how far the local engineering industry has come toward a level playing field for women and minorities.

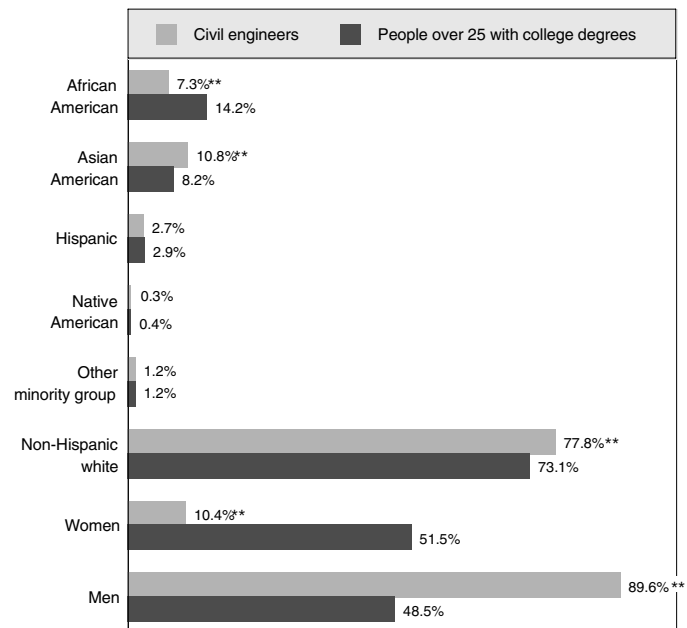
Do women and minorities have opportunities to become engineers?

In the past, few minorities and women became engineers. BBC examined the extent to which the industry has been opened to women and minorities.

Data from the 2000 Census of Population allow analysis of race, ethnicity and gender for individuals in very detailed occupations within a metropolitan area. BBC found that 22 percent of the civil engineers living in the Washington-Baltimore Consolidated Metropolitan Statistical Area (CMSA) in 2000 were minorities. Eleven percent were women, including minority women.

BBC then compared the racial/ethnic and gender composition of civil engineers with the proportion of college graduates who are minorities and women. In the Washington-Baltimore area, about 27 percent of college graduates ages 25 and older are minorities. The share of civil engineers who are minority is less than minorities' share of the college-educated population (see Figure II-6).

Figure II-6.
Race/ethnicity and gender of civil engineers and all people 25 and older with a college degree, Washington-Baltimore CMSA, 2000



Note: ** Statistically significant difference at the 95% confidence level.

Source: BBC Research & Consulting using PUMS data U.S. Census Bureau, 2000.

Results differ by minority group, however. African Americans in the Washington-Baltimore CMSA are about half as likely to be engineers as one would expect based on the number of African Americans with college degrees. African Americans comprise 14 percent of people with college degrees and only 7 percent of civil engineers in the local area. This difference is statistically significant.

On the other hand, Asian Americans with college degrees are more likely than other groups to become civil engineers. Asian Americans are about 11 percent of civil engineers in the local market.

In the Washington-Baltimore CMSA, Hispanics and Native Americans account for a very small fraction of both the total college-educated population and total civil engineers. Representation of Hispanics and Native Americans among civil engineers is very important when we turn to the number of civil engineering firms owned by Hispanics and Native Americans.

Women account for 52 percent of Washington-Baltimore residents with college degrees. Educational levels cannot explain the low representation of women among civil engineers in the local area (which is evident nationally as well).

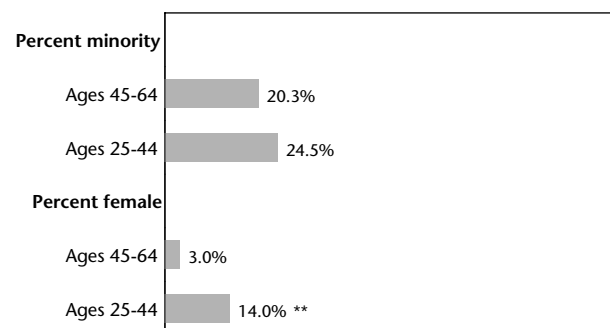
BBC also examined whether more women and minorities are becoming civil engineers now than 20 years ago. The 2000 Census data allow us to compare race/ethnicity and gender for the older generation of civil engineers compared with the younger generation of civil engineers. In 2000, minorities were about 20 percent of civil engineers in the local region between the ages of 45 and 65. Among civil engineers ages 25 through 44, 24 percent were minorities in 2000. Increases were most pronounced for African Americans. This suggests that career opportunities for African Americans in civil engineering have been improving (and that more African Americans are going to college). Asian Americans as a share of civil engineers was about the same for the older and younger generation of engineers.

As shown in Figure II-7, it is rare to find women among the cohort of engineers ages 45 through 64. In 2000, women accounted for only 3 percent of civil engineers in this age group. Among the younger generation of civil engineers, 14 percent were women. Civil engineering appears to be more open and attractive to women today than two decades ago. Again, the local trends examined here mirror national changes in this field based on statistics from the Society of Women Engineers.

Do women and minorities have opportunities for advancement and ownership within engineering firms?

Based on the interviews BBC conducted, career opportunities for minorities and women have markedly improved. While working as employees in other firms, many minorities and women are getting exposure to clients and to other engineering firms. A reputation for excellent work among potential clients and referral sources is critical to successfully opening one's own firm.

Figure II-7.
Minorities and women as a proportion of civil engineers ages 25 to 44 and 45 to 64, Washington-Baltimore CMSA, 2000



Note: n is approximately 218 for engineers 45 to 64 and 316 for engineers 25 to 44;
 ** Statistically significant difference at the 95% confidence level.

Source: BBC Research & Consulting using PUMS data U.S. Census Bureau, 2000.

Have women and minorities been able to start engineering firms? BBC conducted surveys of WSSC vendors and other engineering firms in the local market to determine the relative number of firms in the local marketplace available for WSSC prime contract work related to water or wastewater engineering. We found that 27 percent are minority- or women-owned (see Figure II-8). These results are similar to the 25 percent availability of A/E firms identified in a 2001 disparity study for the State of Maryland conducted by National Economic Research Associates. The 2000 disparity study performed by BBC for the Washington Metropolitan Area Transit Authority found 35 percent MBE/WBE availability.

Most of these firms are owned by African Americans or Asian Americans. Consistent with employment in the field, very few firms are owned by Hispanics or Native Americans only.

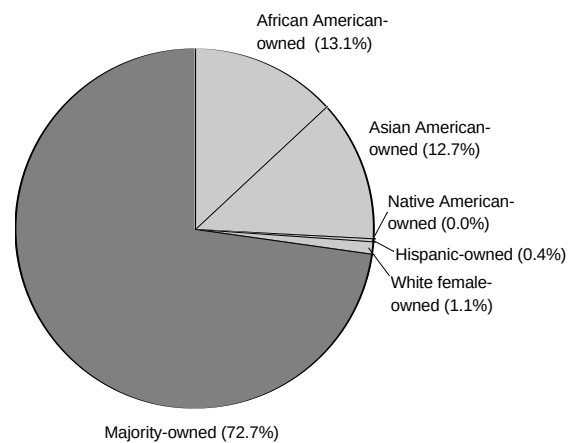
The relative number of MBE/WBE engineering firms identified in this study provides one answer to whether minorities and women working in civil engineering have been able to establish engineering firms. The proportion of local firms owned by minorities exceeds the proportion of local civil engineers who are minority. However, women do not appear to form engineering firms in proportion to their representation among local civil engineers. There is a very large disparity between the percent of local water and wastewater firms that are female-owned and the representation of women among local civil engineers (10 percent). Appendix A explains BBC's approach to conducting these surveys and calculating availability.

A statistical analysis of A/E firm ownership found disparities in the rates of business ownership for minorities and women in the combined construction and A/E industry. In its 2001 study for the State of Maryland, National Economic Research Associates (NERA) examined self-employment rates from the U.S. Bureau of the Census Current Population Survey. Data are for Mid-Atlantic states for 1992 to 1999. After controlling for personal characteristics, African Americans and Hispanics working in the construction and architecture and engineering industry were less likely to own businesses than whites with similar characteristics. These disparities were statistically significant. Similarly, women were less likely to own firms than men.

Have MBE/WBE engineering firms been successful? Available data indicate that local MBE/WBE engineering firms have not been as successful as majority-owned firms.

Average size of newer MBE/WBEs versus newer majority-owned firms. Only including WSSC vendors with local offices that were formed since 1970, MBE/WBE engineering firms had a staff of 65, on average, compared to an average staff size of 268 for majority-owned firms. This is one indication that MBE/WBE water and wastewater engineering firms are not as successful as majority-owned engineering firms. However, further analysis found that disparities narrowed if BBC controlled for age of firm.

Figure II-8.
MBE/WBE firms as a portion of
local water and wastewater engineering
firms available for WSSC prime contracts



Source: BBC Research & Consulting from surveys with 70 local WSSC vendors and bidders plus surveys from randomly sampled local engineering firms in 2004.

Revenues, expansion, contraction and firm deaths. In the 2000 study, Post-Croson Factual Predicate Study Update, for the Washington Metropolitan Transit Authority (WMATA), BBC assessed four different measures of success as indicators of whether or not there is evidence of marketplace discrimination in the Washington Metropolitan Area:

- MBE/WBE revenues in the local market area relative to majority-owned firms;
- MBE/WBE expansion and contraction rates compared with majority-owned firms;
- Firm birth rates for MBE/WBEs compared with majority-owned firms; and
- Firm death rates for MBE/WBEs compared with majority-owned firms.

For architecture and engineering, BBC found that African American- and white women-owned A/E firms in the Washington-Baltimore marketplace had revenues for their specific four-digit SIC codes that lagged majority-owned firms. To control for age of firm, only businesses formed in 1994 or earlier were examined. Differences were statistically significant.

Overall, BBC did not identify differences in the rate of expansion, decline, births or deaths for minority- and women-owned firms.

Do minority- and women-owned engineering firms have the same access to capital as majority-owned firms? Although A/E services is not a capital-intensive industry, working capital is needed at start-up and to fund growth. In the disparity studies BBC completed for the Washington Metropolitan Area Transit Authority, some owners of MBE A/E firms reported difficulty obtaining financing. For example, the African American female owner of an engineering firm reported that, despite repeated attempts, she had not been able to acquire financing for her company.

In the 2001 State of Maryland study, NERA mailed questionnaires to a random sample of firms in Maryland, the District of Columbia and Northern Virginia. Forty-five valid surveys were returned from MBE/WBE A/E firms. One of the survey questions asked MBE/WBEs whether they had been treated less favorably when applying for commercial loans. About one-quarter indicated that they had been treated less favorably. This was consistent with the statistical analysis NERA performed which showed that minority business owners, especially African Americans, do not have the same access to capital as similarly situated whites.

Receiving timely payment for services performed is closely linked to the amount of working capital needed. About one-third of MBE/WBE A/E firms surveyed by NERA indicated that they had been treated less favorably in receiving timely payment for work they had performed.

Is there a level playing field for MBE/WBEs when competing for prime contracts? BBC's interviews with local engineering firms and our review of recent research on the local A/E market suggests that there is not yet a level playing field for MBE/WBEs when competing for prime contracts.

The minority and female owners of engineering firms interviewed in this study indicated that clients have a bias toward older and larger engineering firms. New and smaller engineering firms have difficulties "getting a foot in the door" when seeking prime consulting opportunities. If a firm is not known by the potential client, it has little chance to get prime contract work according to the business owners we interviewed. Of course, the principal way to become known is to have worked with the client. Minority- and women-owned A/E firms appear to have been less successful getting contracts than majority-owned firms. This may be a self-reinforcing cycle.

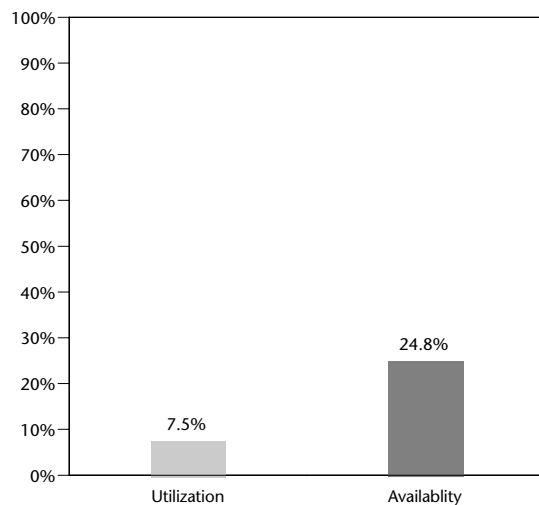
These findings are confirmed from interviews with A/E firms in the 2000 WMATA disparity study. For example, an Asian owner of an engineering firm reported that customers place a lot of emphasis on experience in awarding contracts. He explained that this makes it very difficult for new and emerging firms to compete in this line of business. He explained that in the past, the ability to obtain work was based upon a firm's technical proposal. He further explained that now, the ability to obtain work in his line of business is based upon past performance.

Another minority owner of an engineering firm interviewed in the WMATA study stated that there are certain contract requirements for a particular number of certified engineers on staff that he alleges, in many cases, are not needed to perform the scope of work.

An Asian American owner of an engineering firm interviewed in the WMATA study reported that it is very difficult to break into private sector work. He explained that clients and prime contractors select whom they want to perform the work. He reported that there are pre-selected groups of firms in the private sector that are allowed to bid on the majority of private sector projects. A firm has to rely on "who they know" to even find out about potential opportunities. He reported that the process that pre-qualifies firms for the submission of bids in the private sector prevents his firm from bidding on most private sector opportunities.

Information from interviews in this study and the WMATA study are borne out by available survey data. Two of NERA's survey questions in the disparity study for the State of Maryland pertained to experiences competing for prime contracts. One of the questions asked whether the firms had been treated less favorably when working or attempting to obtain work on public sector prime contracts. The same question was also asked about private sector prime contracts. About four-in-ten MBE/WBEs indicated that they had been treated less favorably when seeking prime contracts.

Figure II-9.
State of Maryland utilization of MBE/WBE
A/E firms compared with MBE/WBE
availability, 1996-1999



Note: Utilization for July 1, 1996 to December 31, 1999 for combined prime contracting and subcontracting. All differences are statistically significant at the 95 percent confidence level.

Source: NERA, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

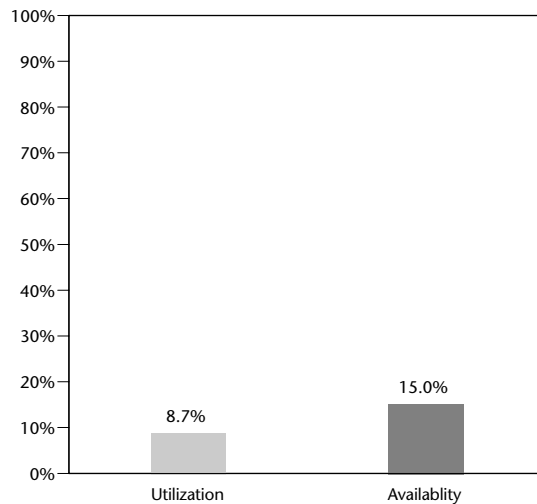
Even after NERA controlled for firm size and other factors, MBE/WBE architecture and engineering firms were more likely than majority-owned firms to state that large project sizes made it harder to obtain projects.

Statistical information on MBE/WBE utilization on other local public sector A/E contracts indicates disparities, even with MBE/WBE programs in place.

According to the 2001 disparity study, only 7.5 percent of State of Maryland prime contract dollars for A/E services between FY 1997 and mid-FY 2000 went to MBE/WBEs. NERA calculated 25 percent MBE/WBE availability in A/E for prime contracts. Figure II-9 shows these results. NERA found that each race/ethnic group as well as white women-owned firms were underutilized as prime consultants.

The 2000 disparity study by MGT of America for the City of Baltimore reported that MBE/WBEs received 8.7 percent of prime contract dollars from

Figure II-10.
City of Baltimore utilization of MBE/WBE A/E
firms as prime contractors compared with
MBE/WBE availability, 1990-1998



Source: MGT of America, City of Baltimore Minority Business Enterprise Disparity Study, 2000.

1990 to 1998. MGT estimated MBE/WBE availability for prime contracts to be 15 percent. MGT found disparities for African American-, Asian- and white women-owned firms. MGT did not find any Hispanic- or Native American-owned firms available for A/E work as primes, so it did not find a disparity for these two minority groups. MGT only included A/E firms within the City of Baltimore and Baltimore County as available for A/E prime contracts.

BBC found an extreme case of contract bundling when examining A/E contracting at WMATA in 2000. This practice largely eliminated prime contract work available to MBE/WBE A/E firms.

The combined information indicates that there is not a level playing field for local minority- and women-owned A/E firms in the market for prime contracts.

Is there a level playing field for MBE/WBEs when competing for subcontracts? The prevalence of MBE/WBE programs in the public sector complicates analysis of opportunities for minority- and women-owned A/E firms to pursue subcontracts in the local market place.

Many of the owners and managers of MBE/WBE firms that we interviewed suggested that MBE/WBE subcontracting programs were important to gain introductions to prime consultants that would otherwise ignore the MBE/WBE businesses. The “forced networking” was seen as critical to the early success of MBE/WBE firms. It creates an opportunity for MBE/WBEs to prove themselves to prime consultants and to clients. Many MBE/WBEs reported that they started out by relying on subcontract work. These findings are similar to what was found in other disparity studies in the local area.

We also interviewed firms about their experiences on non-goals projects. Some MBE/WBE firms said that they were used as subconsultants on non-goals public sector and private sector work. Other MBE/WBE firms said that primes that would use them as subconsultants to meet MBE/WBE goals would never call them for other work.

Many of the larger majority-owned firms we interviewed in this study said that they do not subcontract out much work at all when they do not have to comply with MBE/WBE goals. Because of their size, they believe they can do almost all of the work using their own staff.

A number of MBE/WBE A/E firms interviewed in the WMATA study said that they were not used on non-goals projects. For example, an Asian owner of an engineering firm stated that without DBE goals, there would not be opportunities in the public sector for most DBE firms. He stated that many of the large engineering prime contractors in the area who perform on public projects are the same firms that do not select DBEs for private sector work. He said that many prime contractors request that DBEs fill out a letter of intent to bid as a subcontractor only “because they have to do it.” He reported that his firm has submitted bids to a certain large majority-owned general contractor on 12 occasions with no response at all from that firm.

As an example of prime contractors' attitudes concerning minority-owned firms, an African American architect related the following incident. He reported going to the prime consultant's office for the first time after having exclusively dealt with the project manager by telephone. The architect described how he arrived, checked in with the receptionist, and had a seat in the lobby. He was clad in a "dress casual" outfit, button-down shirt, khakis, etc. Some time after, a white courier arrived in the lobby, dressed in a t-shirt and shorts. The project manager then entered the lobby, walked past the black architect and extended his hand to the white courier indicating that it was a pleasure to finally meet the architect. Based upon the expression of the manager's face when the architect corrected him, he believes that the "slight" was because the white manager had not expected that the person with whom he had spoken over many months and whose ideas he had liked was an African American.

In NERA's survey of local A/E firms, 40 percent of MBE/WBEs indicated that they had been treated less favorably when working or attempting to obtain work on private sector subcontracts, a higher percentage than for public sector subcontracts.

Another difficulty for some MBE/WBE subconsultants on A/E contracts is getting paid in a timely fashion, based on interviews completed in the WMATA studies.

BBC concludes from the combined information that:

- MBE/WBE subcontracting programs force firms to sub out work that they normally would not. This may explain part of why MBE/WBEs seeking subcontracts are not called for private sector work as much as they are contacted for public sector subcontracting opportunities.
- There is some evidence that MBE/WBEs do not face a level playing field when seeking subcontract work when a project does not involve MBE/WBE goals.

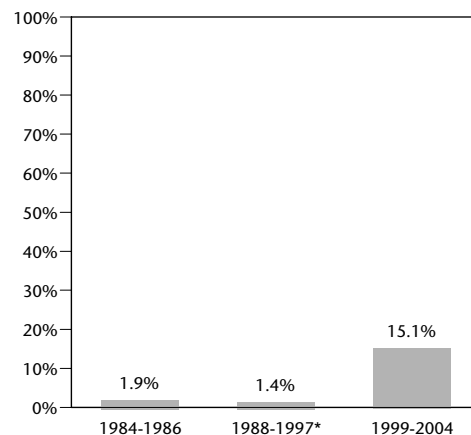
Is Discrimination Affecting MBE/WBEs When Competing for WSSC Prime Contract Work?

BBC next examined whether there was evidence that discrimination affected MBE/WBEs in pursuing prime contract opportunities for WSSC engineering work.

How much work are MBE/WBEs winning as prime consultants? According to past studies of WSSC contracting and procurement, WSSC rarely selected an MBE/WBE for an A/E contract in the 1980s and most of the 1990s. BBC found that this has changed since the late 1990s as shown in Figure II-11.

BBC was able to examine limited MBE/WBE utilization data for A/E contracts from the early 1970s through the 1990s based on past disparity studies conducted for the Commission.

Figure II-11.
MBE/WBE utilization as prime consultants on WSSC A/E contracts 1984-2004



Note: * Does not include A/E contracts issued through procurement.

Source: 1984-1986 statistics from Minority Business Enterprise Legal Defense and Education Fund and Financial Research Associates, An Examination of WSSC's Minority Business Program, 1988; 1988-1997 statistics from MGT America, Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data — Jan. 1999 - Mar. 2004.

1980s. The first point where MBE prime contract dollars could be compared with total A/E contract dollars was 1984 through 1986. Using the figures reported in the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF) study completed in 1988, only 7 out of 160 A/E prime contracts went to MBE/WBEs over these three years. MBE/WBEs were awarded 1.9 percent of prime contract dollars. Only one of these prime contracts was over \$75,000.

The series of MBE programs first implemented by WSSC in the late 1970s began to affect subcontracting on A/E contracts in the mid-1980s but did not appear to be directed toward prime contracts. In 1984, WSSC extended its program to require mandatory 10 percent MBE/WBE participation through subcontracts to A/E contracts exceeding \$75,000. Not surprisingly MBE/WBE subcontractors accounted for 10 percent of total A/E contract dollars from 1984 through 1986.

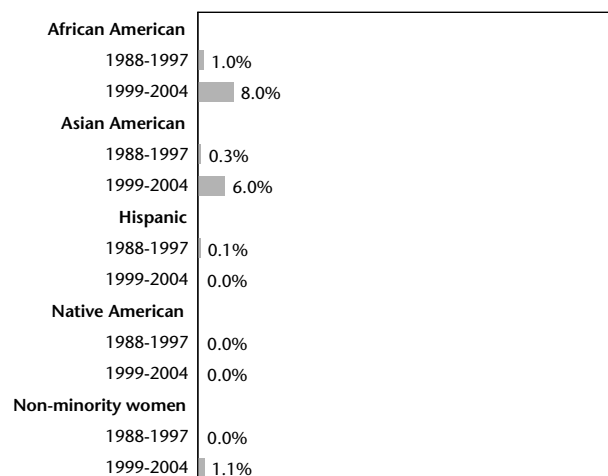
The 1988 MBELDEF study criticized WSSC for its emphasis on encouraging MBE/WBE participation in subcontracts while ignoring opportunities for MBE/WBEs as prime consultants.

1990s. MGT of America examined WSSC A/E contracts for 1988 through 1997 in the 1999 disparity study for WSSC. MGT reported that WSSC utilized only three Asian-owned firms, two African American-owned firms and one Hispanic-owned firm as prime consultants over this time period. No non-minority women-owned firms received an A/E contract. About 1.4 percent of prime contract dollars went to MBE/WBEs. MBEs were relatively more successful winning A/E contracts under \$100,000 than contracts over \$100,000. No MBEs won A/E contracts over \$750,000.

Primarily due to the WSSC MBE/WBE subcontracting requirements, 15.6 percent of total contract dollars went to MBE/WBE subconsultants from 1988 to 1997 according to the MGT report.

1999-2004. BBC counted 11 of the 86 A/E firms receiving prime contract payments between January 1999 and March 2004 as minority- or women-owned. BBC determined MBE/WBE status through phone calls to firms, assessment of WSSC records, D&B data, WSSC staff review and other sources.

Figure II-12.
Prime consultant utilization in WSSC A/E contracts
by race/ethnicity and gender, 1988-2004



Source: 1988-1997 statistics from MGT America, Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data — Jan. 1999 - Mar. 2004.

Approximately \$6.7 million of the \$45 million in A/E firm payments examined went to MBE/WBEs, or about 15 percent of the total dollars. (The MBE/WBE utilization reported here does not include subcontracts going to minority- or women-owned firms.)

As illustrated in Figure II-11, MBE/WBE utilization as prime consultants increased from less than 2 percent of prime contract dollars before 1998 to about 15 percent from January 1999 through March 2004.

Figure II-12 examines WSSC's utilization of MBE/WBEs in prime contracts by race/ethnicity/gender. Among MBE/WBEs, African American- and Asian American-owned firms received the most prime contract dollars for 1999 to 2004 (8 percent and 6 percent, respectively). Three white female-owned engineering firms received prime contract payments amounting to about 1 percent of total

dollars. Utilization of African American-, Asian American- and white women-owned firms increased from 1988 through 1997 to 1999 through 2004.

No firms identified as Hispanic- or Native American-owned appeared among engineering firms receiving \$5,000 or more in prime contract payments in the 1999 to 2004 time period.

Figure II-3, presented earlier in this section, identified the eleven engineering firms receiving \$1 million or more in prime contract payments from January 1999 through March 2004. The three MBE/WBEs listed in Figure II-3 accounted for most of the MBE/WBE utilization as prime consultants, as did the eight majority-owned firms identified in that table.

Effect of MBE/WBE points in evaluating qualifications and proposals. What success MBE/WBEs have had winning prime A/E contracts at WSSC is due in part to the point preferences awarded MBE/WBEs.

Firms seeking to win a particular A/E contract are usually directed to submit Form 255s (a standard federal form describing firm experience specific to the project) as the first step in competing for this work. An Ad Hoc Review Committee (formed for the specific contract) evaluates responses, develops scores for each evaluation criteria and prepares an overall score for each firm.

Figure II-13 presents the evaluation criteria and points awarded for this first stage of A/E procurement. Evaluation factor #10 gives an extra point to MBE/WBEs bidding as primes over the highest score that could be achieved by a non-MBE/WBE bidder. Because this factor has a weight of “2” when adding up all the points, an MBE with a score of 70 before adding the MBE points would be rated higher than a non-MBE with a score of 71.

Exhibit II-13.

Factors for step 1 of A/E consultant evaluation

1. The record of each consultant firm in avoiding documented conflicts of interest in violation of applicable federal, state and local laws. (If “no,” the consultant is excluded from any further evaluation.)
2. Whether the principal of the firm has a valid Professional Engineering Registration in the state of Maryland in the primary work discipline. (If “no,” the consultant is excluded from any further evaluation.)
3. The financial responsibility of the proposer and its ability to provide adequate insurance protection where required. (If “no,” the consultant is excluded from any further evaluation.)
4. The consultant’s technical competence and experience in performing the type of work contemplated based on past performance in providing the same or similar type of services for WSSC, for developers where the work received WSSC review, or for other governmental and public agencies. Grade 0 (low) to 5 (high).
5. The quality of the work performed by the consultant, including control of costs, is based on similar work performed by the consultant for WSSC, for developers where the work received WSSC review, or for other governmental and public agencies. Grade 0 (low) to 5 (high).
6. The ability of the consultant to perform the required work in the specified time frame is based on timeliness of actual performance on related previous work for WSSC or other governmental and public agencies, as well as an assessment of the firm’s current and planned workload. Grade 0 (low) to 5 (high).
7. The cooperation of the consultant in the performance of previous similar work is based on work experience with WSSC or other governmental and public agencies. Grade 0 (low) to 5 (high).
8. A score for the remaining dollar value of active WSSC contracts: 5 for no WSSC contract value remaining, 4 for under \$250,000, 3 for \$250,001 to \$500,000, 2 for \$500,001 to \$1 million, 1 for over \$1 million.
9. The location and adequacy of facilities: 4 for fully-staffed office within Montgomery or Prince George’s counties, 3 for offices within Maryland, 2 for project office in Montgomery or Prince George’s counties (main office elsewhere), 1 for office within the Washington-Baltimore Metropolitan Area but outside Maryland, 0 for no local office.
10. MBE/WBE participation: 5 if MBE/WBE firm, 4 if MBE/WBE subcontracting is 35 to 49 percent of contract amount, 3 if MBE/WBE subcontracting is above requirement but less than 35 percent of contract amount, 2 if just meets the MBE/WBE requirement, 1 if have MBE/WBE participation, but less than the MBE/WBE requirement, 0 if no MBE/WBE participation. (If score of 0 or 1, the consultant is excluded from any further evaluation.)
11. The extent of planned participation by a Principal or Officer: 3 if participation greater than 25 percent of Principal’s time, 2 if participation between 10 and 25 percent of Principal’s time, 1 if general supervision of work effort by Principal, 0 if no Principal participation.
12. The knowledge of the consultant firm relative to local conditions, codes, ordinances, etc.: 3 if extensive local work experience, 2 if performed significant local work, 1 if limited experience in local work, 0 if no local work experience.

WSSC rarely makes an award based on just the first step in the evaluation process. Usually, the Ad Hoc Review Committee recommends a short list of three to five firms to submit technical proposals and participate in interviews. The Ad Hoc Review Committee suggests short-listed firms to the Consultant Selection Committee (“CSC” is composed of the General Manager, Deputy General Manager, Chief Engineer and Head of Mission Support), which may accept or modify the short list.

Once firms submit proposals and are interviewed, the Ad Hoc Review Committee again scores firms against an established set of evaluation criteria. MBE/WBE status also figures into the scores for this second stage, as shown in Figure II-14. Each factor considered in the second stage receives an equal weight (i.e., each receives a weight of “1”). The effect of the MBE/WBE preference points is that MBE/WBE status of the prime consultant serves as the “tie-breaker” with a majority-owned firm, even if the non-MBE/WBE firm has subcontracted a substantial portion of the work to MBE/WBE subs.

The CSC reviews the Ad Hoc Review Committee’s evaluations and recommended selection, and makes the final determination for contract award. Upon selection, WSSC enters contract negotiations with the A/E firm. The evaluation criteria listed in Figures II-13 and II-14 help WSSC determine which firms make the second stage of the evaluation and the firm ultimately chosen for award, however, the ultimate decision rests with the Consultant Selection Committee.

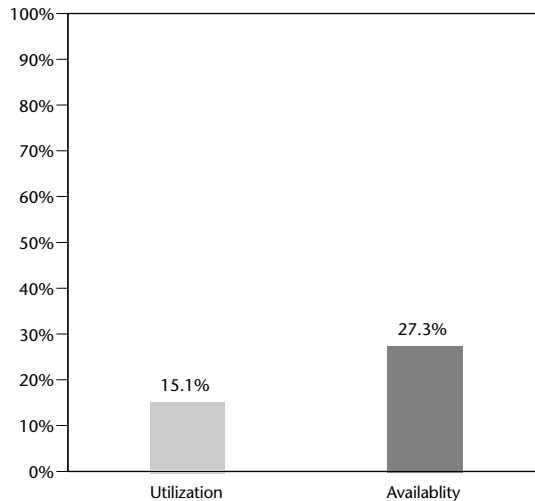
In reviewing A/E proposal evaluations, BBC identified at least one instance where the MBE/WBE valuation points appeared to make the difference between recommending award to a majority-owned firm and an award to an MBE/WBE. The evaluation points also help MBE/WBEs reach the second stage of the evaluation.

Exhibit II-14.

Factors for step 2 of A/E consultant evaluation

1. Evaluation of the firm’s analysis of the project, preparation of the proposal, and level of interest in the project. Grade 0 (low) to 5 (high).
2. Evaluation of the firm’s creativity and problem solving abilities applied to the proposed project. Grade 0 (low) to 5 (high).
3. Evaluation of related projects presented as previous work of the firm. Grade 0 (low) to 5 (high).
4. Evaluation of personal qualifications, skills and experience of key individuals. Grade 0 (low) to 5 (high).
5. Evaluation of firm’s ability to undertake project in a timely manner given their workload. Grade 0 (low) to 5 (high).
6. Evaluation of firm’s abilities related to meeting schedules, project cost estimating, construction cost estimating, establishing and updating project schedules and developing a project cost control plan. Grade 0 (low) to 5 (high).
7. Evaluation of the firm’s ability to form successful working relationships with effective communications with the public, government and permitting agencies. Grade 0 (low) to 5 (high).
8. Evaluation of firm’s ability to work cohesively with subconsultants and previous experience with planned subconsultants. Grade 0 (low) to 5 (high).
9. A score for the remaining dollar value of active WSSC contracts: 5 for no WSSC contract value remaining, 4 for under \$250,000, 3 for \$250,001 to \$500,000, 2 for \$500,001 to \$1 million, 1 for over \$1 million.
10. The location and adequacy of facilities: 4 for fully-staffed office (all disciplines and staff necessary to accomplish the project) within Montgomery or Prince George’s counties, 3 for offices within Maryland, 2 for project office in Montgomery or Prince George’s counties (main office elsewhere), 1 for office within the Washington-Baltimore Metropolitan Area but outside Maryland, 0 for no local office.
11. MBE/WBE participation: 5 if MBE/WBE firm, 4 if MBE/WBE subcontracting is 35 to 49 percent of contract amount, 3 if MBE/WBE subcontracting is above requirement but less than 35 percent of contract amount, 2 if just meets the MBE/WBE requirement, 1 if have MBE/WBE participation, but less than the MBE/WBE requirement, 0 if no MBE/WBE participation. (If score of 0 or 1, the consultant is excluded from any further evaluation.)

Figure II-15.
WSSC utilization of MBE/WBEs as prime contractors on A/E contracts, 1999-2004, compared with MBE/WBE availability for prime contracts



Source: BBC Research & Consulting, 2004.

Are there still disparities between WSSC utilization and availability of MBE/WBEs to work on prime contracts? MGT found disparities between the 1.4 percent utilization of MBE/WBEs as prime consultants for 1988-1997 and the availability of MBE/WBEs to perform this work. If MBE/WBE utilization has jumped to 15 percent for 1999-2004, do disparities still exist? Are WSSC's preferences when evaluating MBE/WBEs still needed?

BBC examined engineering firms in the local marketplace that provide services relevant to water and wastewater engineering that are interested, qualified and able to provide services to WSSC as a prime consultant. Many of these firms are already WSSC vendors or bid on WSSC work in the past. Among these firms available for prime contract work, 27 percent are minority- or women-owned. The 15 percent utilization of MBE/WBEs for 1999-2004 is just more than one-half of what would be

expected based on the availability of MBE/WBEs to perform this work, as shown in Figure II-15, even with the additional points WSSC awards MBE/WBE prime bidders. BBC can reject chance in the availability sampling process as a cause of the overall disparity (at the 95 percent confidence level).

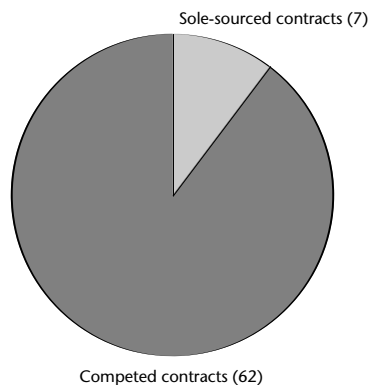
Figure II-16 examines prime contract utilization and availability for each minority group and for white women-owned firms. There are disparities between utilization and availability for African American- and Asian American-owned firms. As there are very few Hispanic-owned water and wastewater engineering firms in the local marketplace (0.4 percent of all firms), the fact that no WSSC prime contracts went to these firms is not surprising. BBC did not identify any Native American-owned water and wastewater engineering firms in the Washington-Baltimore area.

Figure II-16.
WSSC utilization of MBE/WBEs as prime consultants on A/E contracts, 1999-2004, compared with availability for prime contracts, by race and gender

	Utilization as Prime Consultants Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$3.6	8.0 %	13.1 %	(5.1) %	0.61
Asian American	2.7	6.0	12.7	(6.7)	0.47
Hispanic	0.0	0.0	0.4	(0.4)	0.00
Native American	0.0	0.0	0.0	0.0	--
Total MBE	\$6.3	14.0 %	26.2 %	(12.2) %	0.45
WBE					
	<u>0.5</u>	<u>1.1</u>	<u>1.1</u>	<u>0.0</u>	1.00
Total MBE/WBE	\$6.8	15.1 %	27.3 %	(12.2) %	0.55
Majority-owned	<u>38.1</u>	<u>84.9</u>	<u>72.7</u>	12.2	
Total	\$44.9	100.0 %	100.0 %		

Source: BBC Research & Consulting.

Exhibit II-17.
WSSC use of sole-source
A/E contracts, 1999-2004



Source: BBC Research & Consulting from WSSC A/E contract files.

Female-owned A/E firms received only 1.1 percent of WSSC prime contract dollars for 1999 to 2004. This was in line with the relative number of female-owned water and wastewater firms available for WSSC prime contracts. Although the data do not indicate a disparity for WBEs, utilization may be influenced by WSSC's preference points for MBE/WBE primes. In addition, WBE availability may be depressed due to ongoing affects of past discrimination.

What are some of the factors behind the disparity in WSSC's utilization of MBE/WBEs in A/E prime contracts? BBC reviewed WSSC A/E contract files to explore factors that could be behind the disparities in MBE/WBE utilization.

A/E contracts. Seven of the 69 A/E contracts examined by the study team were noted as "sole-sourced" in the contract files, as illustrated in Figure II-17. Each of these contracts went to a non-MBE/WBE. BBC would expect some A/E contracts to be awarded without competition, and the use of the sole source for A/E contracts is far less than what the study team found for other professional services (see Section III). Even so, any over-use of sole-source contracts may contribute to disparities in the utilization of MBE/WBEs.

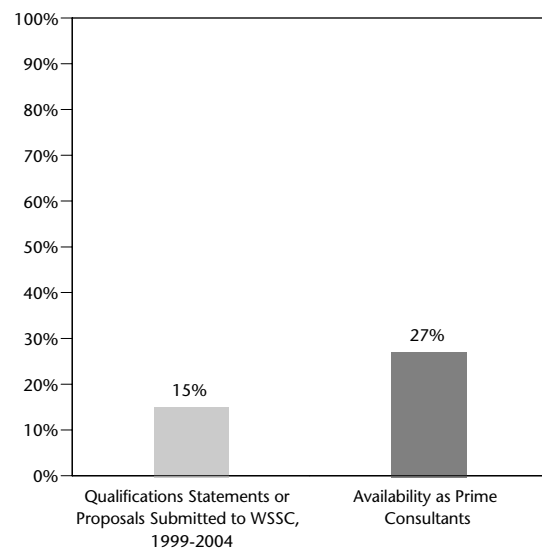
Does WSSC award many A/E contracts without competition? BBC examined how often WSSC sole-sources

Do MBE/WBEs submit proposals for WSSC A/E contracts? The study team sought information on firms submitting qualifications statements and proposals, and WSSC's evaluation of those submissions, for 30 randomly-sampled A/E contracts from 1999 to 2004. The sampled contracts dropped to 22 once BBC removed contracts that were out of the desired time frame or were sole-sourced. Thirteen of the remaining contracts had files containing information on proposers. For three of these contracts, the study team could only identify short-listed firms.

The available information for the 13 contracts identified 110 submissions by name. MBE/WBEs accounted for 16, or 15 percent, of the submissions for these contracts. Most of the MBE/WBE submissions were from Asian American-owned or white women-owned firms. A. Morton Thomas, a white woman-owned firm, proposed on three of the 13 contracts. One submission was from an African American-owned firm and none of the proposers was identified as Hispanic- or Native American-owned. In one-half of these procurements, one or more MBE/WBEs submitted a qualifications statement or proposal.

As illustrated in Figure II-18, these data suggest that MBE/WBE engineering firms are not submitting proposals in proportion to their availability in the local marketplace.

Figure II-18.
MBE/WBEs submissions for WSSC A/E prime contracts compared with MBE/WBE availability for WSSC prime contracts



Source: BBC Research & Consulting.

Are MBE/WBE successful once they submit proposals? The very limited data BBC was able to examine do not indicate a disparity in the success rate of proposals submitted by MBE/WBEs. MBE/WBE proposers appear to be equally successful given the relative numbers of qualifications or proposal submissions from minority- and women-owned firms. (This could be partially due to the evaluation preference for MBE/WBE prime consultants.)

- MBE/WBEs won two (15%) of the 13 contracts for which BBC had detailed bidding information;
- MBE/WBEs won 14 (20%) of the 69 individual contracts identified in the study period.

The disparity between overall utilization of MBE/WBEs as prime consultants and availability of MBE/WBEs to perform this work appears to be due in part to the relatively low number of MBE/WBEs submitting proposals.

Why might MBE/WBEs submit relatively few proposals as primes on A/E contracts? BBC researched several alternative explanations for why minority- and women-owned engineering firms might not submit proposals in proportion to their availability in the marketplace:

- Firms are not made aware of proposal opportunities;
- Contracts are so large or contract requirements so limiting that MBE/WBEs are discouraged from bidding;
- Other WSSC actions discourage MBE/WBEs from bidding; and
- Opportunities as subconsultants on WSSC projects are so favorable that MBE/WBEs are reluctant to bid as primes.

Are MBE/WBEs aware of prime contract opportunities? After identifying a need for A/E services, WSSC places a project announcement on the website requesting qualification statements from firms. WSSC places small ads in the Baltimore Sun, Washington Post, Afro-American newspapers, as well as Prince George's and Montgomery County Journals. It appears that WSSC widely advertises these contract opportunities, although it could do more to make it easier to find out about these contracts.

BBC asked firms doing business with WSSC and a sample of randomly-selected firms in the local marketplace how they learn of WSSC proposal opportunities. About one-third said that they look at the WSSC website. Some firms said that they check the website every week or two. Looking for notices in the newspaper was the second-most mentioned method of learning about WSSC opportunities. About 16 percent of firms doing work with WSSC said that they learn of opportunities through calls from WSSC staff. Some firms use an RFP tracking service that lists proposal opportunities for different government agencies. One-in-five firms mentioned "networking" as a way to learn about WSSC work.

Larger firms have marketing departments that routinely check government websites for work. Some of the smaller firms interviewed complained that this process was difficult and time-consuming. A few of the business owners or managers we interviewed wondered why WSSC did not have an e-mail notification or other more-automatic process for notifying firms of proposal opportunities.

BBC found evidence that larger firms might have an easier time keeping abreast of A/E contract opportunities at WSSC, but that this would not explain why WSSC receives relatively few bids from MBE/WBEs. One of BBC's recommendations is to extend WSSC's e-mail notification system to A/E contracting.

Are WSSC contracts so large or burdensome as to discourage bids from MBE/WBEs? WSSC does issue some relatively large A/E contracts. BBC identified a few in the range of \$1 million or more plus one \$5 million contract. There is some evidence that relatively more MBE/WBEs would see this size of A/E contract as outside of their range for bidding. When we surveyed local A/E firms about their interest and qualifications of performing work for WSSC, we informed them that WSSC contracts range from a few thousand dollars to several million dollars. We asked them if they were qualified and interested in the full range of these contracts, or only smaller contracts. Relatively more MBE/WBEs than majority-owned firms limited their qualifications and interest to a range of contracts of up to \$1 million, but not exceeding \$1 million.

Figure II-19.
Examples of WSSC A/E consultant evaluations

- In evaluating an MBE firm for a Basic Ordering Agreement, the comments from a WSSC project manager were, on the one hand “among the best,” but indicated that the firm was a “one man band.” This MBE currently has 27 employees. For the same BOA, WSSC’s comments for another MBE engineering firm was that they had “a lack of depth, 8 people in total.” The conclusion of this BOA was to award a contract to an MBE/WBE firm, but to split the award with a majority-owned firm due to concerns about whether the MBE/WBE firm could handle the volume of work in a timely manner.
- For a contract that only included majority-owned firms among the finalists, “large staff” was a strong point noted for the winning firm, and “small pool of resources to draw from” was cited as a weak point for the second-place proposer. The winning firm has one office in the Washington-Baltimore area with 250 employees, and a national staff of 450. The second-place firm currently has two offices in the Washington-Baltimore area with 35 employees and a total of 200 employees nationwide. The higher score for consultant resources made one-half of the difference between the winning proposer and the second-place proposer.
- In another contract that only included majority-owned proposers, WSSC noted as strong points the “large pool of resources to draw from” for one firm, “lots of people” for another firm and “large company” for a third firm. However, the total size of company resources did not appear to correlate with scores awarded. This same evaluation noted as positives the “50 year history” of one firm and “20 years of experience” of another firm.

Restricting MBE/WBE availability as primes to only firms that said they were interested and qualified to perform WSSC contracts exceeding \$1 million, MBE/WBEs comprise 22 percent of this total.

A lower relative availability of MBE/WBEs to perform the largest WSSC prime contracts is only one-half of the story. BBC also examined how much of total WSSC A/E contract dollars were represented in these large contracts. Only 10 percent of the contracts were this size. Eight-in-ten WSSC prime contracts were less than \$500,000, not a particularly large amount given that most engineering firms available for WSSC work, MBE/WBEs and majority-owned firms alike, have a staff of 10 or more.

In our interviews with local engineering firms, we did not find frequent complaints about WSSC contract requirements for A/E work. We cannot conclude that certain contract provisions do not present a barrier to smaller firms, or MBE/WBEs in particular. Rather, this was not a top-of-mind concern for firms we interviewed.

Are there other actions that discourage MBE/WBEs from bidding as primes? Many of the engineering firms BBC interviewed indicated that they would not have a good chance of winning prime contracts because WSSC proposal evaluations favor size and length of time in business. From the written comments made in WSSC evaluations, this appears to be true.

WSSC evaluations appear to put smaller and newer firms at a disadvantage. Figure II-19 provides examples from BBC’s review of WSSC A/E consultant evaluations from 1999 to 2004.

BBC's assessment of WSSC evaluation criteria for A/E contracts, and comments made in the sample of evaluation files reviewed by BBC, indicates that there is some merit to firms' perceptions that the largest and oldest engineering firms are favored in the competition for prime contracts. While this appears to be true for other public and private sector clients, some of the comments in the WSSC files suggest that WSSC sometimes takes this to an extreme.

There is also some qualitative evidence that MBE/WBE firms may not be evaluated as favorably as majority-owned firms. Certain comments made in the evaluation files could be interpreted in this way. The WSSC SLMBE Office has heard some of these complaints from MBE/WBE engineering firms, and report that they sometimes see this first-hand when participating in A/E evaluation committees.

Biases against certain MBE/WBE firms could certainly be possible because so much of the evaluation process relies on subjective evaluation of past firm performance. If an MBE/WBE firm obtains a negative reputation among WSSC A/E staff, it may be very difficult to dispel this view, even if it is long out-of-date. Some of the qualitative information provided by SLMBE staff suggests that this sometimes occurs. On some recent evaluations, WSSC has used RatingSource, Inc. to check consultant references and prepare scores for evaluation of past performance for other clients. This practice introduces a more independent view of firm performance into the evaluation process.

In sum, there is evidence that MBE/WBEs do not submit bids in proportion to their availability due to perceptions, perhaps well-founded, that they would be at a disadvantage competing for WSSC prime contracts.

Does the WSSC MBE/WBE goals program discourage MBE/WBEs from bidding as primes? Some of the minority- and women-owned engineering firms BBC surveyed indicated that subcontracting goals programs encouraged them to bid as subs and discouraged them to bid as primes.

MBE/WBEs can participate as subconsultants on a consulting team pursuing WSSC work with very little investment. The prime consultant spends most of the time putting together the qualifications statement and proposal and preparing for an interview. An MBE/WBE can also participate as a subconsultant on more than one team bidding on a specific WSSC contract.

When asked, some MBE/WBEs who said they were qualified and interested in WSSC prime contracts reported that the extra investment in submitting proposals as primes was "not worth the investment" given their odds of winning as a prime and the fact that they would not be able to participate on teams as a sub. These same firms bid as primes on other work. MBE/WBEs with past success obtaining subcontracts on WSSC projects saw future subcontracting work as fairly easy to win compared to prime contracts. Because of the size of WSSC's mandatory MBE/WBE subcontracting goal (24%), subcontract work could be sizeable for minority- and women-owned firms. (We further discuss subcontracting on WSSC engineering contracts in the next part of this report section.)

Conclusions for WSSC A/E prime contracts. WSSC appears to have been partially successful in opening prime contract opportunities to minority- and women-owned engineering firms. MBE/WBE utilization as prime consultants since 1999 has dramatically increased over previous years. Even with some qualitative evidence that some MBE/WBE proposals are not received as favorably as those from majority-owned firms, and WSSC evaluations that tend to work against firms that are not among the largest and oldest, utilization statistics over the past few years show minority- and women-owned engineering firms competing as primes have about the same success rate as majority-owned firms. The extra evaluation points given MBE/WBE primes may have contributed to this result.

The disparity between MBE/WBE utilization and availability for WSSC prime contracts appears to be due to the relatively small number of qualifications or proposal submissions from minority- and women-owned engineering firms. This pattern is unlikely to change unless (a) more minority- and women-owned firms believe that they have a real chance of being successful when proposing as primes, and (b) WSSC's inducement for MBE/WBEs to compete as subs is reduced relative to incentives to compete as primes. In part, the continuing disparity in use of MBE/WBEs as prime consultants is a legacy of WSSC's MBE/WBE subcontracting goals program.

Is Discrimination Affecting MBE/WBEs When Competing for WSSC Subcontract Work?

BBC next examined whether there was evidence that discrimination affected MBE/WBEs when pursuing subcontracting opportunities in WSSC engineering work.

How much work are MBE/WBEs winning as subconsultants? The BBC study team located subconsultant information for 43 of the 69 A/E contracts examined in this study. Sixty firms were listed as subconsultants, however, information on subcontract amounts was provided for only 45 firms.

MBE/WBEs were awarded 98 percent of the \$5.7 million in subcontract dollars counted, which reflects the influence of WSSC's subcontracting goals program.

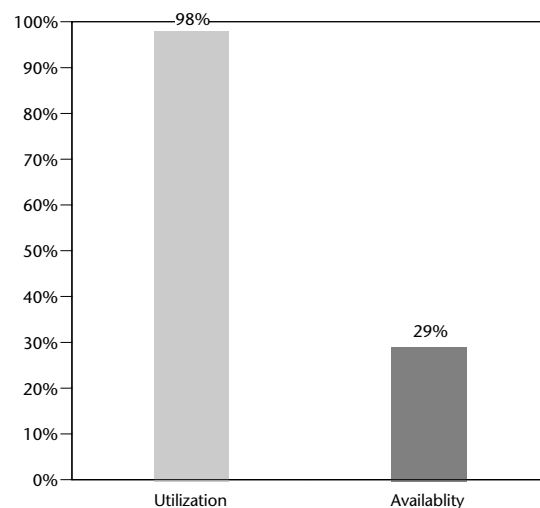
Over one-half of the subcontract dollars went to African American-owned firms and over one-third went to Asian American-owned firms. About 8 percent of the subcontract dollars went to white women-owned firms.

There are no disparities in WSSC's use of MBE/WBE subconsultants on engineering contracts, as shown in Figure II-20.

Who wins these subcontracts? The five firms listed in Figure II-21 on the following page, accounted for 58 percent of the dollars of subcontract awards included in the sample of A/E contracts. PEER Consultants won four of the subcontracts sampled, totaling \$1.8 million. Both PEER and EBA Engineering were among the engineering firms receiving the most WSSC prime contract dollars. The discussion below introduces E2CR, Delon Hampton and Shah & Associates (Figure II-4 discusses PEER and EBA). The firm receiving the largest number of subcontracts in the sample was Dacco Sci, with seven subcontracts. We introduce Dacco Sci as well.

There is some evidence that a small pool of MBE/WBE subconsultants is used by different proposers for the same contract. For example, four of the seven majority proposers on a roadway inspection contract selected the same MBE/WBE subconsultant. Two majority-owned proposers on a supply main engineering design contract included

Figure II-20.
WSSC utilization of MBE/WBEs as subcontractors on A/E contracts, 1999-2004, compared with MBE/WBE availability for subcontracts



Source: BBC Research & Consulting from WSSC contract files and survey of engineering firms in the local marketplace.

Figure II-21.

Background on engineering firms receiving the largest volume of subcontracts on WSSC engineering contracts, 1999-2004

E2CR, Inc. E2CR, Inc. is an engineering and construction firm that specializes in geotechnical engineering, environmental engineering, hazardous waste contamination sampling and testing, and construction inspection. The firm is located in Baltimore, Maryland and has 20 employees. E2CR is an Asian-owned firm.

Delon Hampton & Associates. Delon Hampton is a professional engineering firm established in 1973 in Washington, D.C. The firm provides services in program and construction management, civil and structural engineering design, and environmental and transportation infrastructure projects throughout the United States. Headquartered in Washington, D.C., Delon Hampton & Associates has three regional offices located in Silver Spring, Maryland, Atlanta, Georgia and Los Angeles, California. It also has a Baltimore, Maryland office. The firm has approximately 200 professionals. Delon Hampton & Associates is an African American-owned firm.

Shah & Associates. Shah & Associates provides services in engineering design, forensic engineering and controls and instrumentation. Since its establishment in 1977, the firm has provided professional engineering services to over 600 clients throughout the United States. Shah & Associates is located in Gaithersburg, Maryland and is Asian-owned.

Dacco Sci, Inc. Dacco Sci, Inc. is a diversified engineering firm that provides a comprehensive array of technical services to government, utility and commercial clients nationwide. Founded in 1988, Dacco Sci, Inc. specializes in corrosion engineering, corrosion science, surface analysis, field testing and inspection, failure analysis and problem solving. The firm operates through its two offices located in Columbia, Maryland and Washington, D.C. Dacco Sci, Inc. is a U.S. Small Business Administration (SBA), Small Disadvantaged Business (SDB) certified business and is African American-owned.

the same two MBE/WBE subconsultants on their teams. Three of the finalists for a water pumping station study had the same MBE/WBE subconsultant.

What explains the large utilization of MBE/WBEs as subconsultants in WSSC A/E contracts?

WSSC A/E contracts of more than \$50,000 are subject to mandatory MBE/WBE participation. WSSC currently requires consultants submitting qualifications statements and proposals for these contracts to have a minimum of 24 percent MBE/WBE participation on the contract.

When the subcontracting goals program is applied, proposals in which MBE/WBEs will not have 24 percent of the contract are not considered. Proposals receive one additional point in the evaluation if MBE/WBE participation exceeds 24 percent but is less than 35 percent, and two additional points if participation is at least 35 percent. MBE/WBEs bidding as prime consultants receive one more point than a majority-owned firm that submits a proposal with 35 percent MBE/WBE participation. MBE/WBEs bidding as primes do not need to include minority- and women-owned subconsultants, although some do.

BBC's review of WSSC contract files found that most A/E contract evaluations applied the 24 percent goal as a hard-and-fast standard for deciding whether to further consider a firm for that contract. We found only three examples of where the program did not appear to be properly applied, allowing proposals to be considered that did not meet the requirements of the MBE/WBE program.

The MBE/WBE program has a major influence on how much of WSSC's engineering work goes to subcontractors and how much of those subcontract dollars are awarded to MBE/WBEs.

Should the MBE/WBE subcontracting goals program be continued in the short-term?

There are substantial changes needed to the current MBE/WBE subcontracting program in response to U.S. Supreme Court requirements for "narrowly-tailored" programs. The threshold

question, however, is whether WSSC should immediately disband this program for a lack of need. In other words, can WSSC meet the U.S. Supreme Court's initial test for a "compelling governmental interest" for this program?

The arguments for retaining some type of program, at least in the short-run, are:

- There is some evidence that MBE/WBEs face disadvantages in the local marketplace that would affect their ability to compete for subcontracts as well as prime contracts;
- Some MBE/WBEs report that they do not get opportunities to compete for subcontract work when projects do not have MBE/WBE goals; and
- There is some evidence that any disadvantages MBE/WBEs face when considering WSSC work as primes would appear if they competed for subcontracts in the absence of an MBE/WBE program.

Another argument for retaining some type of program in the short-run is that the current program has been in place for so long that WSSC does not know what will happen to MBE/WBE subconsulting opportunities without the program. There clearly was once a need for such a program, and WSSC does not have all of the information necessary to determine whether the program has outlived the need.

An interim subcontracting program should include a provision for some contracts to be issued without goals in order to collect information on subconsultants when there are no requirements for MBE/WBE participation. If MBE/WBEs receive very little subcontract work on these contracts relative to majority-owned firms, WSSC might conclude that its subcontracting program should be continued. However, if MBE/WBEs received a proportion of subcontracting work close to the 29 percent availability of minority- and women-owned firms for this work, WSSC might conclude that the MBE/WBE subcontracting goals program is no longer needed.

If WSSC chooses to operate an interim subcontracting goals program for A/E contracts, it should be for several years. This length of time is probably necessary to collect the information necessary on non-goals contracts to determine whether MBE/WBEs continue to have subconsulting opportunities.

Should the MBE/WBE subcontracting goals program be continued in the long-term? BBC recommends that WSSC defer any decisions on the longer-term need for a subcontracting goals program until it has operated its interim program for several years. Unless MBE/WBEs receive a disproportionately small share of subconsultant dollars on A/E contracts, or other information indicating long-term need for the program is identified, WSSC should phase out the interim program. Beyond the U.S. Supreme Court requirements, there are several factors that argue for discontinuing the subcontracting program as soon as it is clear that it is no longer needed:

- The consolidation and diversification of engineering firms may be further reducing the need for firms to subcontract any engineering work. Continued operation of subcontracting goals programs may be creating an artificial market for A/E subconsulting work that could rapidly evaporate if government agencies suddenly discontinue programs. Given uncertainties of court decisions governing these programs, this is an added risk to minority and female business owners in this field.
- Operation of the subcontracting goals program discourages some MBE/WBEs from bidding on WSSC A/E work as prime consultants. It will be difficult for WSSC to eliminate disparities in the use of MBE/WBEs as primes until it changes or discontinues the subcontracting program.

Recommendations

BBC has prepared separate recommendations for a program for prime consultants in A/E contracts and a program for subconsultants in A/E contracts.

Prime contracts. WSSC should consider the following elements for its new Anti-Discrimination Program in Contracting and Procurement as it applies to A/E prime contracts.

1. In addition to its current efforts to inform firms of contract opportunities, WSSC should consider developing a list of firms interested in A/E work and sending e-mails with links to announcements on its website.
2. As much as possible, WSSC should seek ways to unbundle A/E contracts (however, most A/E contracts are already under \$500,000).
3. WSSC should review its evaluation criteria and how they are applied to minimize undue advantages given the largest and oldest firms. For example, WSSC may want to eliminate factors such as past knowledge of WSSC's system that give undue advantage to firms that have previously worked with WSSC as a prime. A/E staff should be trained on how to evaluate firms without a bias in favor of larger, older firms. WSSC should continue its policy of inviting an SLMBE staff person to participate in these evaluations.
4. WSSC should continue to formally evaluate past performance of firms. WSSC should also consider continuing to use outside evaluators such as RatingSource Inc. to develop an independent view of firm performance for other clients.
5. An additional evaluation criteria should be added to award points to firms that have successfully worked as subconsultants on past WSSC projects but have not received a prime contract in excess of \$50,000. The evaluation criteria for each of the two evaluation stages should be revised to include this new factor. To effectively implement this change, WSSC staff should develop a sound way to evaluate "past success" as a subconsultant.
6. WSSC should change its current policy of not sharing qualifications statements, proposals and evaluation scores with A/E firms that request to see these documents. Information that proposers deem to be proprietary or intellectual property could be withheld in these reviews.
7. WSSC A/E staff should contact firms that have proposed as subconsultants but never as primes to explain the evaluation process for prime contracts, review past proposals with firms, and encourage them to propose as primes in the future.
8. WSSC should retain the evaluation factor that favors firms with a smaller backlog of WSSC work (Factor #8 in the first-stage evaluation and Factor #9 in the second-stage evaluation). WSSC should improve its procedures for determining current backlog, or simplify the criteria by simply examining volume of prime contract payments over the past two years.

9. WSSC's evaluation criterion that favors firms with offices in Prince George's or Montgomery counties should be discontinued. This criterion favors larger firms with multiple offices. MBE/WBEs are more likely to have just one or two offices than majority-owned firms competing for WSSC prime contracts. This was a complaint of MBE/WBE firms interviewed by the BBC study team.

Each of the above recommendations are race- and gender-neutral. BBC concludes that these measures will likely be insufficient to overcome barriers to MBE/WBE participation in prime contracts. WSSC should also consider continuing the following race- and gender-based evaluation factor:

10. The additional points given an MBE/WBE prime consultant over a majority-owned prime should be increased from 1 (current) to 2. This evaluation factor should retain a weight of 2 in the first-stage evaluation. Evaluation points should be awarded to locally-certified African American-, Asian-, Hispanic-, Native American- and female-owned firms with offices in the Washington-Baltimore CMSA. WSSC should not apply its own graduation criteria, as it may be seeking larger and older MBE/WBEs to submit proposals for A/E work. The points for MBE/WBE participation are discussed in more detail in our recommendations for the interim subcontracting program.

Figure II-22.

Recommendations for A/E program monitoring and reporting

For each contract, WSSC should monitor and report the number of MBE/WBEs and total firms responding to each Request for Qualifications, scores for each firm for each criterion in the first-stage evaluations, number of MBE/WBEs and total firms short-listed, and scores for each firm for each criterion in the second-stage evaluations. A/E staff should also develop a quarterly summary report for the contracts awarded during that period. The General Manager and SLMBE Office should receive these quarterly reports with reports for individual contracts as back-up information.

WSSC should also consistently report MBE/WBE utilization as prime consultants on A/E contracts. This utilization report should also be maintained on a quarterly basis by A/E staff and be calculated in two ways: dollars of contract awards and dollars of payments made during that three-month period. WSSC should maintain its current practice of counting utilization of both certified and non-certified MBE/WBEs. Reports should identify race/ethnicity and gender ownership of firms. Any Procurement Group A/E contracts should be included in these reports.

Contracts related to A/E work that are currently let through the Procurement Group should be part of WSSC's Anti-Discrimination Program for A/E, including its reporting on A/E contracts.

WSSC's MBE/WBE program for prime consultants should not extend more than four to five years without reevaluation.

Subcontracts. WSSC should implement a new interim subcontracting program for A/E services as part of its broader Anti-Discrimination Program.

1. WSSC should examine each contract of at least \$50,000 to determine whether the contract has meaningful subcontracting opportunities (e.g., at least 5 percent of the contract). If so, the project may be eligible for the MBE/WBE subcontracting program. The SLMBE office should approve the designation of contracts for the program and A/E staff should report subconsultant use (MBE/WBE by race/ethnicity/gender and non-MBE/WBE on these contracts) in its quarterly reports.
2. WSSC should then estimate how much work could reasonably be subcontracted in the specific contract based on its past experience with similar work. For example, most past WSSC A/E contracts had at least 24 percent of the work subcontracted out. Some may have routinely had more work performed by subconsultants.

3. Once WSSC has determined that a contract has meaningful subcontracting opportunities and has quantified an expected amount of subcontracting, it should establish an anticipated level of MBE/WBE participation for that contract (an “ALP”). WSSC availability as A/E subconsultants, currently estimated to be 29 percent, is one factor to be considered in determining the ALP for a contract. WSSC should also consider past experience and the particular types of work involved in that specific contract. If WSSC expected 33 percent of the work on a contract to be subcontracted, and that MBE/WBEs might comprise 30 percent of available subconsultants, the anticipated level of MBE/WBE participation for that contract would be 30 percent of one-third, or 10 percent. The ALP for a contract should substitute for the current fixed minimum of 24 percent for A/E contracts. ALPs would be published in the Request for Qualifications or Request for Proposals for each contract. A/E staff should recommend the ALP, which should be approved by SLMBE staff prior to issuing a Request for Qualifications or Request for Proposals.
4. When submitting qualifications and proposals for a particular contract, potential prime consultants will need to list all subconsultants and the type and amount of work to be performed by each subconsultant. MBE/WBEs should be noted, including firms that are not currently certified as such. Each proposer will need to show that it has met the ALP for that contract through MBE/WBEs located in the Washington-Baltimore CMSA that have up-to-date certification through an agency approved by the SLMBE office.
5. If the proposer has difficulty in meeting the ALP, he or she may request assistance from the SLMBE office prior to the deadline for consultant submissions. The SLMBE office should maintain a list of MBE/WBE A/E subconsultants that it can provide potential proposers. If a proposer remains unable to meet the ALP, he or she will need to meet with SLMBE staff at least five working days prior to the deadline for submissions to show that the firm has made a good faith effort to attain the ALP. For example, if firm has an MBE/WBE subconsultant on its team that is seeking new certification or a certification renewal, SLMBE may grant a request for waiver and request that the firm be certified by the time of contract award or that it be replaced by a certified firm. (This addresses a complaint with the current system raised in our interviews with local engineering firms.) The SLMBE office must give a response to any firm requesting approval of good faith efforts within two working days of such a request.
6. The program would apply equally to majority-owned and MBE/WBE prime consultants.
7. The current “bonus points” for MBE/WBE participation beyond the minimum requirement should be discontinued.
8. A/E staff should require prime consultants to provide proof of subconsultant invoices and payments in each payment request or progress report submitted by the prime. The contract manager should prepare a quarterly report on subconsultant payments (MBE/WBEs and non-MBE/WBEs), as well as prime consultant payment. This tracking report, plus the information submitted by the prime, should be consistently forwarded to the SLMBE office for its compilation and review. Contracts for engineering services let through the Procurement Group should be included in this WSSC program, including reporting on A/E contracts. WSSC should continue its current practice of tracking utilization of certified and non-certified MBE/WBEs. It should develop reports by race/ethnicity and gender of firm.

9. For every fifth contract eligible for the subcontracting program (i.e., has meaningful levels of potential subcontracting), WSSC should issue the Request for Qualifications or Request for Proposals without stating an anticipated level of participation. This set of contracts will become the “control group” to identify whether the interim subcontracting program needs to be continued in the future. Prime consultants would still identify each subconsultant, the relative amount of work to be conducted by the subconsultant, and the MBE/WBE status of the subconsultant. Contracts should be randomly assigned to be let without an ALP (i.e., every fifth contract); such assignment should be reviewed by the SLMBE office prior to issuing the Request for Qualifications. A/E staff should send reports on subconsultant use on these contracts to the General Manager and the SLMBE office.
10. The requirement to comply with the subcontracting program should remain written into WSSC A/E contracts. A/E staff should quickly act if a prime consultant fails to comply. Failure to comply should also affect a firm’s evaluation when competing for future contracts. The SLMBE Office should be notified of any change in subcontracting plan or failure to comply with a plan.
11. WSSC should continue to identify and recruit new MBE/WBEs to participate in the subcontracting program.

A/E staff should also develop a quarterly summary report for the contracts awarded during that period. The General Manager and SLMBE Office should receive these quarterly reports with reports for individual contracts as back-up information. WSSC should also consistently report MBE/WBE utilization as prime consultants on A/E contracts. This utilization report should also be maintained on a quarterly basis by A/E staff and be calculated in two ways: dollars of contract awards and dollars of payments made during that three-month period. WSSC should count utilization of both certified and non-certified MBE/WBEs.

Contracts related to A/E work that are currently let through the Procurement Division should be included in WSSC’s program, including its reporting on A/E contracts. WSSC’s MBE/WBE program for subconsultants should not extend more than two to three years without evaluating whether the program can be discontinued, or whether the program should be continued and strengthened. When conducting this evaluation, WSSC should consider whether or not its new MBE/WBE program for A/E prime contracts has been fully implemented and shows initial success.

Summary

Opportunities for MBE/WBE engineering firms have improved at WSSC in recent years. MBE/WBE utilization as prime consultants increased from 1 percent in the 1990s to 15 percent for 1999 to 2004. Further efforts are still needed, however, BBC recommends a number of race and gender-neutral efforts to further encourage use of MBE/WBEs as prime consultants. The evaluation preference for MBE/WBE primes should be increased.

The MBE/WBE subcontracting goals program should be replaced with an interim program that is substantially revised in light of U.S. Supreme Court requirements. The long-term need for this program should be evaluated once WSSC has better information on relative MBE/WBE participation as subconsultants when goals are not applied. This assessment should take place within two to three years of implementing the interim subcontracting goals program.

SECTION III.
WSSC Professional Services Contracts

SECTION III.

WSSC Professional Services Contracts

BBC now turns to professional services outside the areas of architecture and engineering. Similar to A/E contracts, WSSC seeks firms to provide IT consulting, legal, management consulting and accounting services based on their qualifications to perform this work. WSSC spends about \$9 million per year on these types of services, primarily from firms with offices in the Washington-Baltimore marketplace. Because procurement decisions are largely based on perceived qualifications, they are inherently subjective.

Unlike A/E contracts, many different departments at WSSC handle their own professional services contracting. The Procurement Group may assist some end-user departments with these contracts, but in most cases, the end-user department decides the procurement process to follow, how potential proposers are contacted, and how proposers are evaluated. WSSC departments often sole-source these contracts without any competition. The Procurement Group does not oversee how these contract decisions are made, and unlike A/E contracts, there is no regular process for reviewing whether these contract procedures conform to WSSC policies such as the SLMBE program. In sum, the elements are in place for a potentially discriminatory contracting system. But is this the outcome? How do MBE/WBE professional services firms fare in such a system?

WSSC's procedures are not unlike other potential clients' for professional services firms. BBC sought information from minority and female firm owners about their experiences within a local marketplace where most contract decisions are primarily based on who you know and how clients perceive your abilities.

This chapter is organized in the same fashion as found for engineering services in Section II. It begins by reviewing the

Figure III-1. Summary of recommendations

WSSC should undertake a major restructuring of its policies and procedures for professional services contracts.

- Responsibilities for professional services contracts should be centralized in Procurement. End user departments, including General Counsel, should work with Procurement to identify which contracts should be sole-sourced and which should be competed.
- There should be formal review of requests to sole-source contracts.
- Contracts that are competed should be widely advertised. Standard evaluation processes should be developed, and WSSC should fully document its notification of firms concerning procurement opportunities and its evaluation of these firms.
- WSSC should implement a policy encouraging firms to review proposal evaluations.
- WSSC should make extra efforts to ensure that qualifications requirements are not discriminatory. For example, WSSC should carefully review the level of insurance required for certain contracts that may now exclude MBE/WBEs from competing.
- WSSC should retain the ability to give preference points to certified MBE/WBE proposers. This should be limited to fields with limited MBE/WBE utilization.
- The current subcontracting goals program should be limited to only those contracts that, realistically, are not currently open to MBE/WBE participation without such a program. WSSC should make extra efforts to open up these procurements to competition from MBE/WBEs over the next three to four years, and then reevaluate the need for the subcontracting goals program. The subcontracting goals program should not be applied to contracts where WSSC expects MBE/WBEs to propose as prime consultants.

questions important to understanding whether there is a level playing field for MBE/WBEs in WSSC professional services work.

We then discuss the professional services fields involved in WSSC contracts, which determined the industry focus when examining local marketplace conditions. The balance of this chapter assesses whether there is a level playing field for minority- and women-owned firms when seeking professional services contracts and subcontracts at WSSC.

Based on our research, we recommend a new WSSC Anti-Discrimination Program for this area of WSSC procurement, which is discussed in detail at the end of this chapter. Figure III-1 on the previous page summarizes these recommendations.

Key Questions

Compared with water and wastewater engineering, the subject of the preceding chapter, the local professional services industry (legal services, IT consulting, management consulting, etc.) is larger and broader in terms of work performed. Because public sector work comprises a smaller share of this market, it is not surprising that MBE/WBE programs have not shaped this industry as much as civil engineering. On the other hand, these professional services fields may have been more open to women, and perhaps minorities, than civil engineering. In past years at WSSC, the relatively small share of prime contract dollars going to MBE/WBEs in professional services was still substantially higher than for A/E.

As discussed above, the basic objective of professional services contracting at WSSC is the same as for A/E contracting. How this is accomplished is much different. Importantly, the evaluation preference for MBE/WBEs bidding as prime consultants found for A/E contracts is infrequently used in WSSC professional services contracting. The MBE/WBE subcontracting goals program is only sometimes applied. Subcontracting is also rare in the professional services marketplace. As a result, few WSSC professional services contracts have subconsultants.

Even with these differences, the questions BBC asks concerning professional services contracting are very similar to those found for A/E at the beginning of Section II:

- Where is the local professional services industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain or expand measures to assist MBE/WBEs in professional services contracting?

Based on the answers to these questions, BBC can identify needed changes in procurement procedures and other measures related to WSSC professional services.

WSSC Professional Services Work

WSSC interacts with narrow segments of the local professional services industry. Most of WSSC professional services dollars go to IT consultants, attorneys and management consultants and related firms. Systems engineering is included in these professional services. Although WSSC also retains accountants, a relatively small proportion of professional services dollars is spent on this work. BBC did not examine medical services in this study.

Total dollars of professional services work.

As with A/E and other fields examined in this study, BBC researched WSSC's use of professional services prime consultants by examining payments to firms from January 1999 through March 2004. BBC focused on firms receiving at least \$5,000 of payments as prime consultants over this 5+ year period, which appears to capture a very large share of total procurement dollars. BBC identified 265 different professional services firms receiving at least \$5,000 in payments from WSSC over this period, not including universities, not-for-profit organizations and government agencies. BBC identified professional services firms through the procedures listed in Figure III-2.

WSSC made a total of \$44.9 million in payments to professional services firms from January 1999 through March 2004. As shown in Figure III-3, two-thirds of this work was for IT consulting. About 23 percent of the professional services payments were for management consulting, accounting and related fields. Legal services accounted for 12 percent of the payments.

BBC also researched use of subconsultants on WSSC professional services contracts from July 2001 to April 2004. The study team identified 15 subconsultants, 10 of which had dollar amounts of their subcontracts identified in WSSC files. These subcontracts totaled approximately \$800,000.

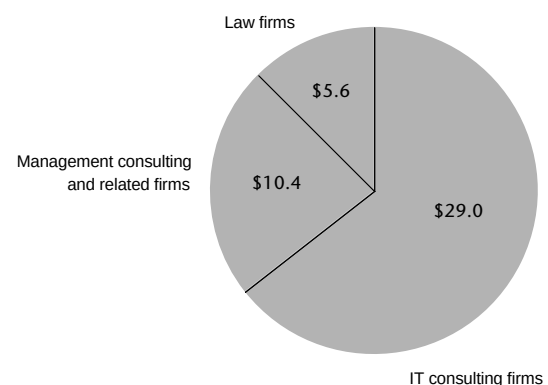
Location of firms involved in WSSC professional services work. WSSC largely draws professional services vendors from the Washington-Baltimore area. Eighty percent of WSSC's prime contract dollars for professional services went to firms with offices in the greater Washington-Baltimore area. Over 90 percent of the subcontract dollars went to firms with local offices. Based on these results, BBC focused the analysis of market conditions for professional services firms on the Washington-Baltimore area.

Figure III-2.
Identification of WSSC payments for professional services

Although WSSC has an accounting code for professional services that is appended to WSSC payment information, BBC found that this code was not consistently applied. Therefore, BBC had to identify payments to firms conducting professional services work through a combination of:

- The primary Standard Industrial Classification (SIC) codes for firms doing WSSC work as provided by Dun & Bradstreet;
- Professional services contract files produced by end-user departments;
- Descriptions of the work performed in specific WSSC contracts that went through Procurement;
- Review of information on WSSC vendors' websites;
- Phone calls to WSSC vendors; and
- Review by WSSC staff.

Figure III-3.
WSSC payments to professional services firms, Jan. 1999-Mar. 2004 (millions)



Source: BBC Research & Consulting from WSSC MAPS database.

Types of Professional Services Work at WSSC

Before turning to information on the professional services marketplace, it is important to define the types of professional services work at WSSC and review how WSSC procures these services. As information technology (IT) firms, management consulting businesses and law firms received the most WSSC work for 1999-2004, we focus on the largest vendors in these fields. Although accounting firms received less work and BBC did not perform a detailed study of the largest accounting vendors, accounting services is included with management consulting in the utilization analysis.

Figure III-4.
Information technology firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

IT Firm	WSSC Prime Contract Payments (millions)
Automated Business Systems & Services (MBE)	\$ 2.7
Golden Computer Solutions	1.7
Infosys Networks	1.7
Ready Computer Solutions (WBE)	1.5
Aspen Systems Corp.	1.5
Cyrus Technologies, Inc.	1.2
Corpssoft	1.2
Base2 Corporation (MBE)	1.1
Compuware	0.8
Alliance Technology Group (WBE)	0.7
TAC Worldwide Companies	0.7
Sterling Computer Services (WBE)	0.7
Mesa Information Corporation (WBE)	0.5
Sungard Recovery Services	0.5
Green Heron Systems	0.5

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

IT firms. Of the \$44.9 million in payments to professional services firms from 1999 through March 2004, \$29.0 million (two-thirds of total payments) went to IT consulting firms. This includes a broad range of systems engineering, computer programming, data processing and warehousing, and other IT services. A total of 146 IT consulting firms received at least \$5,000 in payments over this period. As much as possible, BBC did not include firms that primarily sold computer equipment or pre-packaged software to WSSC in this category of work. These firms, including IBM and Microsoft, are found in the Section IV analysis of goods purchases, even though some of their work may fit the description of IT consulting.

The 15 information technology firms listed in Figure III-4 received at least \$0.5 million in WSSC payments (as prime consultants) from January 1999 through March 2004. These firms received a total of \$17 million in payments, or about 59 percent of the \$29 million paid to all IT firms during the study period. Figure III-5 on the following page briefly introduces each firm.

Figure III-5.
Background on IT firms receiving at least \$0.5
million in WSSC payments, Jan. 1999-Mar. 2004

Automated Business Systems & Services. Automated Business Systems & Services, Inc. provides IT services to the commercial marketplace and the federal government. ABSS performs application development, facilities management, maintenance support, network services, client/server systems, customer/user training, hardware and software support, internet/intranet services and image systems support. Founded in 1972, the company has its headquarters in Washington, D.C. and maintains a branch office in Upper Marlboro, Maryland as well as other offices around the country. ABSS currently employs a staff of 200. The firm obtained 8(a) status from the Small Business Administration (SBA) in 1974 and graduated from the SBA 8(a) program in 1985. ABSS remains MBE certified by state and local governments.

Golden Computer Solutions. Golden Computer Solutions is based in Silver Spring, Maryland. The company provides technological service support for system applications. Founded in 1991 by Jeff Golden, the firm currently has five employees. Golden is a privately-owned firm.

Infosys Networks. Infosys Networks provides data network design and implementation, network management and security, and continuing support services for clients. Infosys Networks was founded in 1995 by three IT professionals. The firm has one office in Annapolis, Maryland and employs six people.

Ready Computer Solutions. Ready Computer Solutions is an IT company that performs network support and application development for public and private clients throughout the eastern U.S. Founded in 1991, this privately-owned company has four employees. The firm is an uncertified WBE.

Aspen Systems Corporation. Originally founded as a division of the Health Law Center of the University of Pittsburgh in 1958 to use computer technology to publish, store and retrieve legal data, Aspen Systems Corporation is now an information management company that serves the public and private sector markets. Headquartered in Rockville, Maryland, Aspen Systems employs 1,700 people and is an employee-owned firm.

Cyrus Technologies, Inc. BBC was unable to locate information for Cyrus Technologies, Inc.

Corpsoft/Internosis. Internosis provides business-driven IT services for Microsoft technologies, including IT strategy, application development, IT infrastructure, and productivity services. Internosis employs 300 people at four locations. The firm is headquartered in Greenbelt, Maryland. Internosis' clients include businesses as well as federal, state and local governments.

Base2 Corporation. Base2 Corporation is an IT firm that specializes in systems and network engineering. The firm was founded in 1986 and has two offices, one in Newport News, Virginia and the other in McLean, Virginia. The firm employs about 40 professionals and is Asian-owned. The firm was SBA 8(a) certified and has graduated from the program.

Compuware Corporation. Compuware Corporation is a global IT firm specializing in business applications such as IT governance and management, application development, quality assurance, service management and support. Founded in 1973 by Peter Karmanos, Jr., Thomas Thewes and Allen Cutting, Compuware serves corporations worldwide with over 90 percent of its business coming from Fortune 100 companies. Publicly-traded, the company has its headquarters in Detroit, Michigan and employs over 15,000 people worldwide. The company maintains offices in Baltimore, Maryland and McLean, Virginia.

Alliance Technology Group. Alliance Technology Group provides data integration, network support and computer maintenance services to clients throughout the U.S. Founded in 1995, the firm is a privately-held company based in Hanover, Maryland with about 30 employees. Alliance Technology Group is a women-owned firm.

TAC Worldwide Companies. TAC Worldwide Companies (TWC) delivers human capital management and technical/IT staffing solutions to global clients that include Fortune 1000 companies. The company has been in business for 34 years and maintains offices in 22 countries and all 50 states in U.S. TWC currently employs 700 people nationwide and is a publicly-traded firm.

Sterling Computer Services. Sterling Computer Services is no longer in business.

Mesa Information Corporation. Mesa Information Corporation is a Lincoln, Nebraska-based firm that provides information technology solutions for companies needing to manage vast amounts of data. The firm is women-owned.

SunGard Recovery Services. Founded in 1983 as a spin-off of Sun Oil Company, SunGard Recovery Services provides back-up support facilities for people and computer systems enabling data availability and access during times of disaster. The company has its headquarters in Wayne, Pennsylvania and has offices throughout the U.S. SunGard is a publicly-traded firm. SunGard primarily serves financial services institutions, but also works with higher education and public sector clients.

Green Heron Systems. Green Heron Systems is an information technology firm specializing in system design, implementation, and integration. The firm is based in Silver Spring, Maryland and is privately-held.

Figure III-6.
Management consulting firms receiving \$0.2 million or more in WSSC payments, Jan. 1999-Mar. 2004

Management Consulting Firm	WSSC Prime Contract Payments (millions)
EMA, Inc.	\$ 2.0
Wilson Consulting Group (WBE)	1.3
Gartner Group	0.7
Malcom Pirnie	0.6
Utility Revenue Management Co.	0.6
AON Consulting	0.3
Common Ground Consulting (MBE)	0.3
Public Advisory Consultants	0.2
Thompson Cobb Bazilio & Assoc.	0.2
Cook Ross, Inc. (WBE)	0.2
MGT of America	0.2
Devcorp (MBE)	0.2

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Management consulting firms. About \$10.4 million of WSSC's professional services work from 1999 through March 2004 went to management consulting and related firms. These firms accounted for 23 percent of total professional services payments. A total of 75 consulting firms received at least \$5,000 in payments from WSSC during this period

BBC identified 12 management consulting and related firms that received \$200,000 or more in payments from WSSC from January 1999 through March 2004. The 12 firms, shown in Figure III-6, received \$6.8 million in payments, or 65 percent of \$10.4 million in payments to all management-consulting firms for 1999-2004.

Figure III-7.
Background on management consulting firms receiving at least \$0.2 million in WSSC payments, Jan. 1999-Mar. 2004

EMA, Inc. EMA is a consulting company that serves utility, public works, and manufacturing organizations by addressing their business development and communication technology needs. Founded in 1975, EMA has offices throughout North America. The company currently employs 230 professionals qualified in different aspects of business consulting. The firm has its headquarters in Saint Paul, Minnesota and is privately-held.

Wilson Consulting Group. Wilson Consulting Group provides management and information technology consulting services to private and public sector clients throughout United States. The firm was founded in 1999 by Patricia Wilson and is based in Vail, CO. Wilson Consulting Group is a women-owned firm and has four employees.

Gartner Group. Gartner Group is a global consulting firm that supports clients in making informed information technology and business decisions by providing services on all aspects of technology. Founded in 1979, the company maintains 75 locations worldwide, including one in McLean, Virginia, and employs 975 analysts and senior consultants. Gartner Group is a publicly-held company.

Malcolm Pirnie. Malcolm Pirnie is a privately-owned company that provides environmental engineering, science and consulting services to public and private clients. The firm was founded in 1895 in White Plains, New York by Malcolm Pirnie and Allen Hazen to solve water and sewage disposal problems. The firm operates through 40 offices nationwide, including locations in Baltimore, Maryland and Arlington, Virginia, and employs 1,300 people.

Utility Revenue Management Co. Utility Revenue Management Co. is a Houston, Texas-based management consulting firm providing auditing services in billing, utility and management systems. The firm has four offices throughout the U.S., including one in Washington, D.C. Utility Revenue Management Co. is a partner-owned firm. The firm was founded in 1992 and employs 11 people.

AON Consulting. AON specializes in insurance, risk management and human capital consulting for the public and private sectors. Headquartered in Chicago, Illinois, AON was formed in 1982 from the merger of Ryan Insurance Group and Combined International Corporation. AON now employs 54,000 people in 600 offices across 22 countries. The company maintains several offices in Maryland, Washington D.C., and Virginia. AON Consulting is publicly-held.

Common Ground Consulting. Common Ground Consulting is an education/consulting firm specializing in workforce diversity education. Founded in 1994 by Liz Winfield, the firm serves clients ranging from small businesses to Fortune 1000 companies and large public agencies. The company focuses on race and gender education, sexual orientation education programs and domestic partner benefit consulting. Common Ground is a minority woman-owned firm.

Figure III-7. (continued)

Background on management consulting firms receiving at least \$0.2 million in WSSC payments, Jan. 1999-Mar. 2004

Public Advisory Consultants, Inc. Public Advisory Consultants is a management consulting firm specializing in financial advising. The firm was established in 1992 and is privately owned. Public Advisory Consultants is based in Owings Mills, Maryland, and employs nine people.

Thompson Cobb Bazilio & Associates. Thompson Cobb Bazilio & Associates (TCBA) is a consulting firm that performs financial consulting, management consulting, auditing, assurance and accounting, tax and information systems work. Founded in 1983, the firm serves a range of clients including small businesses, Fortune 500 companies, non-profit organizations, financial institutions and local, state and federal agencies. TCBA has its headquarters in Washington D.C. and maintains five offices nationwide including one in Bowie, Maryland. The firm is partner-owned with over 200 employees.

Cook Ross, Inc. Cook Ross, Inc., provides corporate consulting and training to clients in a broad range of industries across the public and private sectors. The company was founded in 1989 by Howard Ross and Dottie Cook in Silver Spring, Maryland. Cook Ross, Inc. is a women-owned firm.

MGT of America. MGT is an information technology and management consulting firm that serves public sector clients nationally. Founded in 1974 in Tallahassee, Florida, the firm now maintains five regional offices across the country, including Washington, D.C. MGT is partner-owned and currently employs 125 people.

Devcorp. Devcorp is a management consulting firm that specializes in helping small contractors participate in major capital construction projects. Founded in 1992, and headquartered in Washington, D.C., Devcorp aims to help small local contractors keep major construction compensation in the community. The firm is minority-owned.

Law firms. A total of \$5.6 million in WSSC payments went to 44 law firms from 1999 through March 2004. Legal services comprised about 12 percent of all professional services payments.

Nine law firms received \$100,000 or more in payments from WSSC for 1999-2004. These firms account for \$4.7 million in payments, more than 80 percent of all payments to law firms. Figure III-8 lists these firms. See Figure III-9 on the following page for a brief discussion of each firm. Only one of these law firms is an MBE/WBE.

Types and sizes of contracts. In addition to analyzing payments to professional services firms, BBC studied 109 professional services contracts issued by WSSC between July 2001 and April 2004. The study team requested that WSSC departments make contract files available, and also researched contracts going through Procurement.

Because there is no formal list of professional services contracts and they are not centrally stored, some professional services contracts within this time period are undoubtedly missing from our analysis. In addition, many contract files contained very limited information on the procurement process used for each contract. As bidding procedures were often not documented, it was difficult to determine if any competitive bidding was done or whether the contract was simply sole-sourced to the professional services firm used for the work.

Figure III-8.

Law firms receiving \$0.1 million or more in WSSC payments, Jan. 1999-Mar. 2004

Law Firm	WSSC Prime Contract Payments (millions)
Venable LLP	\$ 1.6
Holland & Knight	1.1
Piper Rudnick LLP	0.5
Shawe & Rosenthal LLP	0.4
Reed Smith LLP	0.3
Carl A. Harris and Associates PC	0.3
McCants and Associates (MBE)	0.2
Kollman & Sheenan, PA	0.1
McGuire Woods LLP	0.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure III-9.

Background on law firms receiving at least \$0.1 million in WSSC payments, Jan. 1999-Mar. 2004

Venable LLP. Venable LLP provides legal services in areas of corporate and business law, complex litigation, intellectual property and government affairs. Founded over 100 years ago, the firm serves a range of clients including individuals, corporations, non-profits and government agencies. Headquartered in Washington, D.C., the firm also has offices in Virginia and Maryland. Venable employs about 450 attorneys. The American Lawyer ranks Venable among the top 100 law firms in the United States.

Holland & Knight. Holland & Knight was founded by Peter O’Knight in 1889. The firm provides a broad range of legal services organized in five divisions: litigation, government, business, real estate and private wealth services. Holland & Knight maintains 27 offices throughout the U.S., including Bethesda, Maryland and Washington, D.C. The firm employs more than 1,200 lawyers and other professionals. The Tampa-based firm is partner-owned and is ranked fifth largest among all U.S. law firms by The American Lawyer.

Piper Rudnick LLP. Piper Rudnick is a result of a merger of two large law firms in the eastern U.S. — Piper and Marbury and Rudnick and Wolfe — in April 2002. Piper and Marbury began in 1952 and Rudnick and Wolfe was founded in 1936. The firm employs about 1,400 lawyers in its 19 offices throughout the United States. The firm has five offices in the Washington-Baltimore area with about 900 employees. Piper Rudnick’s practice is focused on litigation, real estate, information and technology securities, taxation, trade and dispute regulation, bond counsel and a number of other legal areas. Piper Rudnick is a partner-owned firm. As of January 1, 2005, the firm is known as DLA Piper Rudnick Gray Cary, US LLP.

Shawe & Rosenthal LLP. Founded in 1947, Shawe & Rosenthal LLP provides counseling and representation to management in labor and employment matters. The Baltimore-based partner-owned firm employs 16 attorneys.

Reed Smith LLP. Reed Smith LLP is an international law firm that specializes in counseling the energy, financial services, life sciences, media and entertainment, and technology sectors. Founded in Pittsburgh, Pennsylvania in 1877, the firm currently employs 1,000 lawyers. The firm maintains 16 offices globally including one in Washington, D.C.

Carl A. Harris and Associates PC. Carl A. Harris and Associates PC is an Upper Marlboro, Maryland based law firm specializing in title insurance, examination and settlements. The firm was founded in 1993 and is employee-owned. Carl A. Harris employs seven lawyers in its Maryland office.

McCants & Associates LLC. McCants & Associates was founded in 1980 by Leonard McCants as a real estate law firm. The firm serves individuals and businesses in the Washington- Baltimore area in the area of civil law, personal injury and property damage, real estate, accidents and adoption and divorce. McCants & Associates is African American-owned and MBE-certified. The firm has one office in Washington, D.C.

Kollman & Sheenan, PA. Kollman & Sheenan, P.A. (now Kollman and Saucier, P.A.) is a civil practice law firm specializing in management labor and employment law. The firm was established in 1998 in Baltimore, Maryland and has 13 lawyers.

McGuire Woods LLP. McGuire Woods LLP serves private sector, government and non-profit clients, across 80 areas of legal practice. The firm specializes in legal services related to litigations, financial law, labor and employment law, real estate law and environmental law. McGuire Woods LLP maintains 15 offices worldwide including one in Baltimore, Maryland, one in Washington D.C., and four in Virginia. The firm’s roots date back to 1834 when Egbert R. Watson founded the firm in Charlottesville, North Carolina. McGuire Woods currently has 750 attorneys.

The discussion below is based on the information reported in these files.

- The 109 professional services contracts collected by the study team varied from a few thousand dollars to over \$1 million. Twenty-two of the 92 contracts or contract amendments that listed dollar amounts were \$100,000 or more. Most of the remaining contracts ranged from \$10,000 to \$90,000.
- WSSC procurement rules allow sole-sourcing of professional services contracts under \$50,000. Above \$50,000, General Manager approval is required to waive competition on a professional services contract. Most of the 109 contracts examined by BBC were either sole-sourced or the contract files lacked sufficient documentation to know whether they were informally or formally competed. Only 19 of the 109 contracts were clearly competed. Most of these contracts were \$100,000 or more in value — more than half of the largest contracts were competed. (Interviews with firms involved in WSSC professional services work suggest that some of the other contracts may have been competed, but no documentation was found in the files.)

- Of the 90 contract actions studied that may not have been competed, four were change orders and 13 were contract extensions. The other 73 “non-competed” contracts were new contracts.
- Of the 19 contracts that were clearly competed, most were awarded based on qualifications alone or a combination of qualifications and price. Only one contract award was based on low bid.
- The MBE/WBE subcontracting goals program was sometimes applied in these contracts.
- For four of the 19 competed contracts, it was clear that WSSC had placed notices of opportunities to propose in local newspapers. Firms in WSSC’s bidders list were contacted in at least 12 of these contracts. When we asked professional services firms that had worked with WSSC how they learn of WSSC contract opportunities, many (about 40 percent) said that WSSC staff just call them. Very few looked for ads in newspapers. It appears that there is little public information about most WSSC professional services contract opportunities.
- In rare instances, the BBC study team was able to locate a justification for the sole source purchase in the procurement files. In several cases, a “time issue” was the reason given. In other instances, the WSSC staff responsible noted that they were looking for an expert and found that firm through prior relationships.
- WSSC can ride professional services contracts issued by other local or state government agencies or make cooperative purchases with other local governments. This practice is rare — only one of the 109 WSSC contracts was entered by either method. WSSC made a cooperative purchase with Baltimore County for a firm that would assist in preparing request for proposals for health insurance carriers.

In sum, most professional services contract decisions are sole-sourced or appear to be sole-sourced from the available information. Based on the information in the contract files, no standard procedures appeared to have been followed for the competed contracts.

Insights Into the Local Professional Services Industry

BBC was able to draw some insights into the local professional services industry from the history of the firms performing the most WSSC work (presented in Figures III-4, III-6 and III-8), the interviews BBC conducted with firms in the local region, and some limited quantitative analyses. Figure III-10 summarizes the breadth of the research the study team conducted.

Attorneys, IT professionals and other specialized professionals start professional services firms.

Similar to A/E firms, professional services firms are established by people who have specialized qualifications and work experience in these fields (i.e., attorneys start law firms). Therefore, employment in these fields is almost always a necessary step on the path toward forming a firm.

Figure III-10. Research into the local professional services industry

BBC attempted interviews with each current and past local area WSSC professional services consultant (over \$5,000 in payments from 1999-Mar. 2004), subconsultant and proposer identified in this study. We successfully interviewed over 60 of these firms. BBC also conducted telephone interviews with 496 other randomly-selected professional services firms located in the Washington-Baltimore area. In addition, BBC staff completed 19 in-depth telephone interviews with MBE/WBE and majority-owned professional services firms. We supplemented this research by collecting Dun & Bradstreet information for WSSC consultants and subconsultants and by researching firms on the Internet.

Although older law firms may be very important in the market for public sector legal services, many computer services firms are relatively young. BBC was able to obtain formation dates for twelve of the firms receiving the most WSSC IT work. Only one of these firms was formed prior to 1970. Six firms were started since 1990. IT consulting is a relatively new field.

Similar results were found for management consulting and related firms. BBC was able to obtain formation dates for each of the 12 firms receiving the most WSSC management consulting and related work. Only one of these firms was formed prior to 1970. Five firms were started after 1990.

On the other hand, one-half of the law firms receiving the most WSSC work trace their roots to the 1800s. The legal services industry in the U.S. has seen very old, large firms become even larger through acquisitions and mergers. According to local attorneys BBC interviewed, large firms are growing and there continue to be many one-person and other small law firms. Mid-sized firms are being squeezed. “They either make it and grow to become one of these large firms, or they don’t and become small as attorneys leave to join the large firms.”

Initial capital requirements are relatively small. As with A/E firms, initial capital does not present a major barrier to opening a professional services firm, but is needed to accommodate growth. This is particularly important for smaller firms that have staffed up to handle specific projects.

Firms are hired based on qualifications. Price can be a factor in retaining professional services firms, but qualifications are most important. According to an attorney BBC interviewed, “The legal field isn’t like the construction field where you just go with whoever can build this for me the cheapest.”

Importance of personal relationships. In the words of one of the managers at a large professional services firm BBC interviewed, “Companies like to work with people they know and trust.” She went on to say that you need to get your name out there and show people you can do the work. We found many owners or managers of professional services firms say that you need to be known for quality work before clients will feel comfortable hiring your firm. Having contacts with potential clients before starting a business is key.

Some customers favor larger firms. Many organizations prefer to hire organizations with a proven track record and a large staff. One business owner reported that it is getting more difficult for small firms, “Organizations get stuck in their ways and become convinced that a small firm can’t do the work they need to have done. In the meantime, large firms keep getting larger.”

Smaller IT firms may be at a particular disadvantage on assignments where they need to provide hardware. Larger firms may get better pricing from hardware suppliers. (Much more on the perceived disadvantages for smaller firms is presented later in this section.)

As firms expand over time, they often broaden ownership. Ownership structures of professional services firms, especially law firms and management consulting firms, are similar to A/E firms, although more law firms are limited liability companies. Because professional services firms face challenges in succession for retiring founders, building capital and retaining key staff, they often need to expand their ownership beyond the initial founders. Most firms accomplish this by broadening internal ownership of the firm. Very few are publicly-traded (only 4 percent of the randomly-sampled firms surveyed).

As with A/E firms, it may be difficult to retain MBE/WBE status for firms founded by minorities or women that are growing and want to broaden ownership. This was acknowledged as a potential problem by some of the businesses owners we interviewed.

Some firms have other difficulties remaining certified as an MBE/WBE. One MBE we interviewed also reported that revenue limits for certification by the Maryland Department of Transportation affected their ability to remain certified. (They were no longer certified in Maryland but remained certified in Michigan.) A female business owner reported that she sees MBE/WBEs “playing the game” to ensure that they remain certified in certain programs. These “games” include limiting the amount of work they take on so as to stay under revenue limits.

BBC also found a number of minority- and women-owned professional services firms that were not MBE/WBE certified.

Subconsulting is not a typical practice in this industry. Subconsulting occurs but is not prevalent in the professional services fields included in this study, according to firm owners and other professionals BBC interviewed. “We don’t bring on a sub because if we couldn’t do the work that’s stated in the RFP, then we wouldn’t have bid on the project in the first place.” In fact, some of our initial surveys found that owners and managers of professional services firms were not very familiar with this concept. Even some MBE/WBE firms retained as subconsultants on WSSC professional services contracts in order to comply with the goals program said that they rarely work as subconsultants. Other firms, including small majority-owned firms, indicated that they occasionally work as a subconsultant.

One exception to these conclusions regarding subcontracting is work for the federal government. We spoke with several MBE/WBEs that often do federal work as subconsultants.

MBE/WBE/DBE programs have been important to development of some MBE/WBE professional services firms and not for others. As reported in Section II, MBE/WBE/DBE programs were very important to expanding opportunities for A/E firms in the local marketplace. This is less true for professional services firms, especially for law firms. Only some of BBC’s interviews with MBE/WBE management consulting and IT firms found that MBE programs had been important to early success of some firms in those fields.

Where is the Local Professional Services Industry on the Path Toward Equal Opportunities for Minorities and Women?

BBC examined qualitative and quantitative information that helped explore where the local professional services industry might be on the path toward equal opportunities for minorities and women.

Do women and minorities have opportunities to become attorneys and computer professionals? BBC examined two ends of the spectrum of professional services careers: law and information technology.

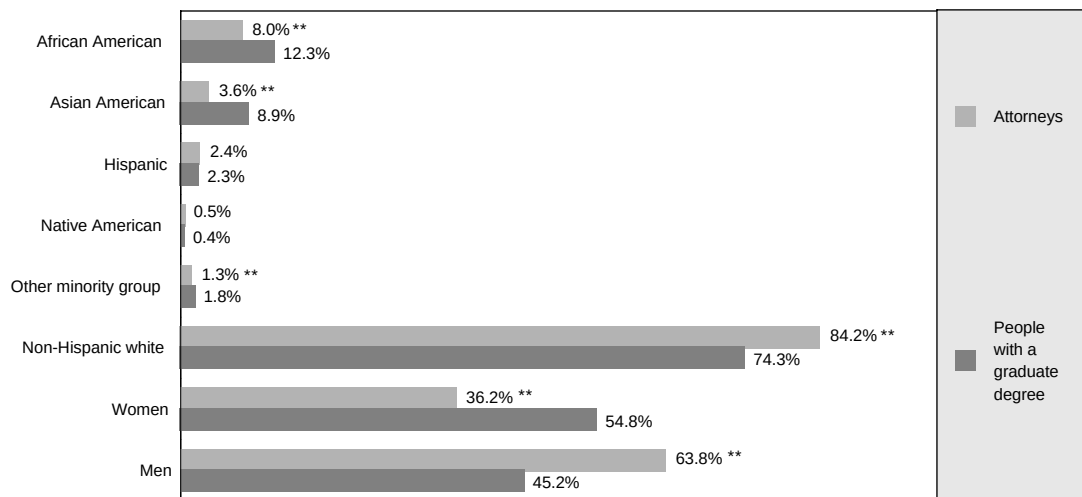
Attorneys. The barriers to women and minorities in the legal profession in the U.S. have been widely documented. Through U.S. history, entry into this field has been highly regulated, which made it easy to limit access.

In 2000, 36 percent of lawyers in the Washington-Baltimore CMSA were women, based on detailed U.S. Census data. Sixteen percent of attorneys were minorities. African American attorneys comprised about one-half of all minority lawyers.

As shown in Figure III-11, the representation of women in this field is still below what might be expected based on the representation of women among people with advanced degrees (55 percent). The proportion of attorneys who are minority also lags the proportion of people with graduate degrees who are minority (20 percent).

Comparing the younger generation of lawyers (those 25 to 44) with the older generation (45 to 64), 45 percent of younger attorneys are women compared with 27 percent of older attorneys. It appears that this field has been much more open to women in the past twenty years than in prior decades. Similarly, the proportion of attorneys who are minorities has nearly doubled when comparing younger attorneys to older attorneys. Among the younger generation of lawyers, 19 percent are minorities compared with 11 percent of attorneys ages 45 to 64. The largest proportional increases have been among Asian Americans and Hispanics.

Figure III-11.
Race/ethnicity and gender of attorneys and all people with a graduate degree,
Washington-Baltimore CMSA, 2000



Note: ** Statistically significant difference at the 95 percent confidence level.

Source: BBC Research & Consulting using PUMS data U.S. Census Bureau, 2000.

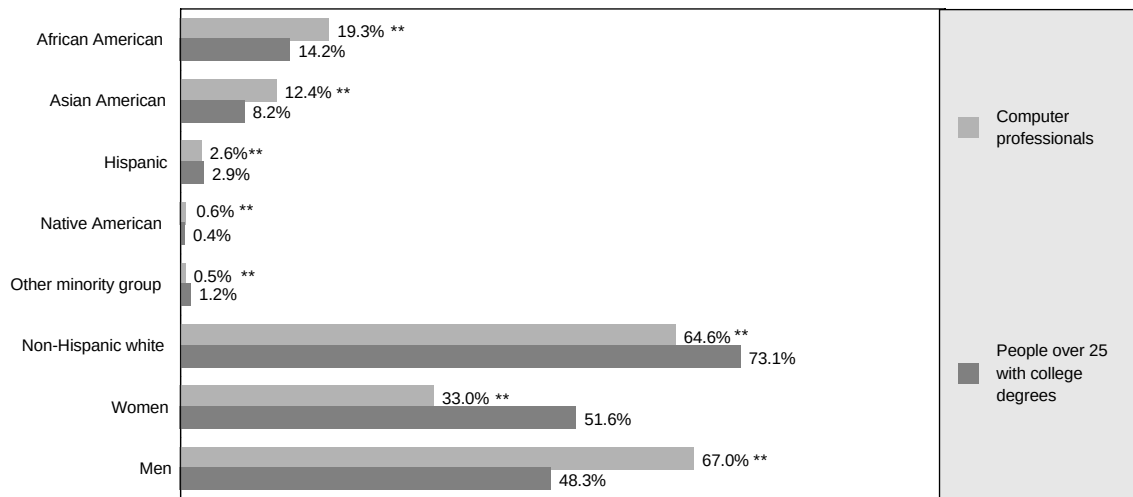
n is approximately 1,640 for engineers and 92,000 for people with a college degree.

Computer professionals. BBC examined gender and race/ethnicity of computer professionals in the same way as attorneys, but focused on people with a college degree as the relevant point of comparison. Computer professionals include computer and information systems managers, computer programmers and operators, computer hardware and software engineers, computer scientists and systems analysts, and computer support specialists.

As this is a younger field, the study team was interested in whether women and minorities comprised more of this workforce than in a profession such as law. We found this to be true when examining minority representation among these occupations. Minorities comprise more than one-in-three computer professionals in the Washington-Baltimore area. Most minority computer professionals are African Americans or Asian Americans. African Americans and Asian Americans are a greater share of local computer professionals than would be expected based on their representation among people with college degrees (statistically significant differences).

On the other hand, the fact that one-third of computer professionals in the Washington-Baltimore area are female suggests that women are underrepresented in this sector. Although women comprise more of this field than other technical fields such as engineering, representation of women among computer professionals still lags the proportion of college graduates that are women. Figure III-12 examines these data.

Figure III-12.
Race/ethnicity and gender of computer professionals and all people with a college degree,
Washington-Baltimore CMSA, 2000



Note: ** Statistically significant difference at the 95 percent confidence level.

Source: BBC Research & Consulting using PUMS data U.S. Census Bureau, 2000.

n is approximately 1,640 for engineers and 92,000 for people with a college degree.

Have women and minorities been able to start professional services firms? In BBC's survey of local WSSC vendors and randomly-sampled professional services firms in the local area, about one-half were minority- or women-owned. Overall, this appears to be in line with the relative number of minority and female professionals working in these fields. Another study of local professional services firms, the 2000 WMATA disparity study, found that one-in-three firms were MBE/WBEs. Even at the lower availability figure, the data suggest that women and minorities have been able to start professional services firms. (MBE/WBE availability for professional services is discussed in more detail later in this section.)

However, the MGT of America report, WSSC Disparity Study Update for 2005: An Analysis of Private Sector Market Dynamics study, found statistically significant disparities in the rates of self-employment for African Americans, Hispanics, Asian Americans and non-minority women working in this field within the Washington-Baltimore area in 2000.

In BBC's interviews with local MBE/WBE firms, some of the owners and managers of professional services firms still perceived barriers for minorities and women in starting firms. Others did not, citing the assistance to firms available from local MBE/WBE programs. The latter view was shared by owners and managers of majority-owned firms.

Have MBE/WBE professional services firms been successful? In general, local minority- and women-owned professional services firms have not been as successful as majority-owned firms as measured by number of employees. MBE/WBEs working with WSSC are about one-quarter the size on average as majority-owned firms. MBE/WBEs not working with WSSC but that do public sector work are one-third the size of majority-owned firms in the Washington-Baltimore marketplace.

Findings from 2004 surveys. BBC developed these data from telephone surveys with local professional services firms. BBC first reviewed the median number of employees for professional services firms working with WSSC as primes or subconsultants, or that bid on WSSC contracts in recent years. All employees working in local offices were considered in these figures (e.g., BBC counted the employees in a Baltimore office and a Washington, D.C. office in these figures, but not employees in a New York City office). MBE/WBEs had an average of 22 local employees and majority-owned firms had an average of 84 local employees.

BBC then grouped professional services firms formed between 1970 and 2000 by type (IT, consulting, legal) and age group (1970-80s firm formation dates versus 1990s formation dates). BBC calculated median number of local employees for each of the six groups, and then calculated the percentage of MBE/WBEs versus majority-owned firms that had more employees than the median.

Relatively fewer MBE/WBE professional services vendors had above-median local employment than majority-owned vendors — 36 percent versus 50 percent.

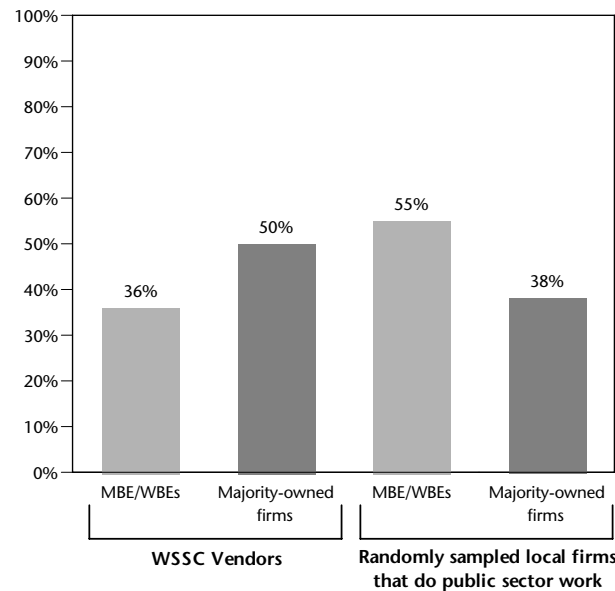
BBC also considered local professional services firms randomly sampled from D&B lists, only counting firms that reported doing public sector work that were formed between 1970 and 2000. Figure III-13 shows these results.

After controlling for age and sector, randomly selected MBE/WBE firms were no less likely to have above-median local employment than randomly sampled majority-owned firms.

Findings from the 2005 MGT study for WSSC. The 2005 MGT study for WSSC found statistically significant disparities in the 1999 earnings of Washington-Baltimore area professional services firms owned by African Americans, Hispanics, Asian Americans and non-minority women. These disparities in self-employment income persisted even after MGT controlled for demographic characteristics of the self-employed individual.

Findings from 2000 WMATA study. In a 2000 study for the Washington Metropolitan Transit Authority (WMATA), BBC assessed different measures of success as indicators of whether or not there is evidence of marketplace discrimination in the Washington Metropolitan Area. Relatively fewer MBE/WBE professional services firms had revenues higher than the median for their four-digit SIC codes compared with majority-owned firms. These disparities were found after controlling for particular specialty of the firm and only including firms that were formed in 1994 or before. Differences for MBE/WBE professional services firms were statistically significant at the 95 percent confidence level.

Figure III-13.
Percentage of professional services firms with Washington-Baltimore area offices with above-median number of local employees, 2004



Note: n = 25 for MBE/WBE vendors and 30 for majority-owned vendors. n = 44 for MBE/WBE and 40 for majority-owned randomly sampled firms that do public sector work.

BBC did not find disparities in rates of expansion, contraction or death for MBE/WBEs compared with majority-owned professional services firms.

Do minority and female owners of professional services firms have the same access to capital as white men? Some owners of MBE/WBE professional services firms interviewed by BBC reported that it is more difficult for a minority- or woman-owned firm to get access to capital, which can be one of the key obstacles for new firms. A minority business owner said that because minorities live in neighborhoods that do not see the same home price appreciation as white neighborhoods, they do not have the same access to capital.

Several firms BBC interviewed as part of this project noted the financial constraints placed by having to obtain expensive insurance coverage for bigger public sector jobs in advance of being paid on this work (or getting any work at all).

Interviews in the 2000 disparity study for WMATA contained evidence that discrimination in capital markets affects minority and female owners of professional services firms. For example, the manager of an African American-owned computer systems firm stated his opinion that discrimination in financing continues to be a problem for minority businesses. The female owner of a professional services firm reported that she attempted to get a line of credit for her firm. Even though she had been in business for 12 years and had a good balance sheet, the bank told her that her husband had to co-sign for the business line of credit. She reported that she refused. She was later able to find a bank where she did not need her husband to co-sign for the loan.

The 2001 disparity study for the State of Maryland found barriers for minority-owned firms in access to capital markets. The study did not break out findings for professional services firms.

Is there a level playing field for MBE/WBEs when competing for prime contracts? Minority and female owners of professional services firms who were interviewed in this study reported some continuing barriers to success unique to MBE/WBEs. Some of the owners or managers of majority-owned professional services firms held similar views while others did not believe that there was discrimination against minorities and women in these fields.

MBE/WBE firms are “outside the norm.” Several owners or managers of MBE/WBE firms across the professional services fields used the same words to describe a particular barrier for MBE/WBE firms. In their experience, potential clients had difficulty hiring minority- and women-owned professional services firms because they were “outside the norm.” These professionals reported that potential clients had little confidence in minority- and women-owned firms because clients did not have experience with hiring MBE/WBEs. This “catch-22” situation may make it harder for MBE/WBE professional services firms to break into working with new clients.

Negative stereotypes. Some business owners interviewed by BBC reported negative attitudes towards minorities that can affect opportunities for business. “Just a negative stigma with being a minority firm.” Female business owners report the same types of negative stereotypes, for example, “Potential clients assume a woman can’t do the work.”

A business owner said that potential clients are more critical of the previous work done by minority- and women-owned firms. “Just a lasting sense of minority and woman inferiority.” Another business owner reported that “people just assume that you can’t do the work.”

One white male attorney BBC interviewed offered the following perspective when asked whether discrimination affected minority and female attorneys. “I didn’t use to think that this was a problem. But about five years ago I served on [a panel to look into minority and women participation in the legal field]. After that experience, I definitely think that minorities and women are at a disadvantage. And it’s just because of past attitudes People and organizations get into a set mind frame, and that’s where the problems come from.”

Interviews of owners and managers of MBE/WBE professional services firms in the 2000 WMATA study found similar perceptions. The manager of an African American woman-owned technology services firm recalled one project where it was clear to him from the outset that the representative of the government agency with whom he had been dealing with did not want that firm on the project, and believed that his staff “did not know what they were doing.” This representative began to micro-manage the project and constantly complained about the slightest problem, which he reported as mostly imagined by the representative of the agency.

The female owner of a professional services firm interviewed in the WMATA study reported that clients and colleagues in her line of business initially believe that female professionals are not as competent as men in the industry. She recalled that when she was referred to a particular potential client, the client automatically assumed that she was not qualified to handle this type of activity. However, she had a very strong track record for that specific activity. She reported that male-dominated firms in her field rarely face such pessimism at the outset.

MBE programs and negative stereotypes. Some of the business owners interviewed by BBC said that MBE programs “end up giving firms a bad reputation.” These negative stereotypes, however established, may represent another form of discrimination.

According to a white male attorney, “It’s not good when firms bring on a minority firm when the minority firm can’t do the work, or maybe the majority firm doesn’t even make them do anything ... they just bring them on to ensure they get the contract and then do all the work themselves. That kind of stuff doesn’t help anyone.”

One manager of a WBE IT firm had the impression that WSSC has had problems in completing projects due to poor work by MBEs hired because of its goals program. This manager went on to say that “MBE goal programs are good but they should not be followed blindly ... there is a level of expertise and experience that an MBE firm must have in order to receive a project.”

A minority business owner said, “A lot of people I deal with think the [MBE] certifications are an entitlement to work; they’re not.”

These views are similar to what was found in the interviews conducted in the WMATA study. For example, the African American owner of a professional services firm stated that there is a negative stigma attached to DBE programs and that these programs tend to alienate majority prime contractors. In another interview, the African American manager of an African American woman-owned technology services firm described an incident at an industry conference where he was approached by a white conference participant who suggested that his firm must be cleaning up because the 8(a) program provides such an advantage to minority firms.

BBC heard similar comments directly from majority-owned firms as part of the WSSC interviews. For example, “Minority firms are basically guaranteed work [in Maryland and Washington, D.C.] no matter what.”

Networks. Some MBE/WBE firms reported that they do not have the same networks as majority-owned firms. “We don’t go to the country club; we don’t know the big bankers” Another business owner noted that minority- and women-owned firms don’t get opportunities to prove their work like majority firms can. A female business owner said that she endures slights such as people not putting her name on papers or reports when she was a co-author, which hurts her because she is not recognized for this work. She believes that happened because she is a woman.

Interviews conducted in the WMATA study yielded similar perceptions.

- For example, a manager of an African American woman-owned technology services firm indicated that one of the biggest problems is breaking into the “network” of established firms in the industry. These firms have been working together for some time, and tend to refer business to one another. They even share work when one firm has equipment that another does not. He reported that no one in his MBE firm has any social or other contact with members of these established firms, so it is virtually impossible to “break in” to that network. This has the effect of limiting his firm’s knowledge of bid opportunities.
- A manager of an African American-owned computer systems firm reported that it is easy for his firm and other minority businesses to be excluded from the mainstream market. He reported that white prime contractors and clients usually keep the same people in mind when opportunities become available. His firm has to constantly stay in touch with former customers because “out of sight equals out of mind.” He reported that the same does not hold true for white companies. He said that he has witnessed the “old boy system” look out for favored white contractors. He has witnessed no such “caretaking” demonstrated by these same contractors toward minority firms.

Denial of contract awards. Some minority firm owners interviewed in the WMATA study believed they had lost work when their clients learned their firms were minority-owned.

The African American manager of an African American-owned computer systems firm stated that his firm was scheduled to begin work on a project at an airport in Florida. Before the airport officials knew that his firm was a minority contractor, they apparently loved his company’s proposal. After learning more about his firm, the airport project manager changed his mind about the efficacy of the project. Subsequently, the airport went ahead with the project but was able to give the contract to a preferred white company. He also reported another instance in which his firm won a job, but the project manager did not want his firm on the job and terminated the contract. While he said that he could not prove that discrimination was the reason for the termination, based upon how the project manager had interacted with him, he thought it was clear that this manager had a problem working with minority firms.

The Hispanic owner of a technology services firm reported that on a particular contract with a suburban Maryland public entity, his firm had a lower bid (and in his opinion, a better technical proposal) but was not awarded the contract. The staff person responsible for this contract would not return his calls until the business owner had the DBE officer intervene.

Advantages for larger firms. The minority and female business owners as well as white male owners of small businesses interviewed in this study believed that larger firms have advantages over smaller professional services firms.

- “Size matters. [Clients] prefer to hire firms with a proven track record and a large staff.”
- “If you are not big enough, agencies are not even going to look at you ... same old problem of experience and size.”
- “Most of the time there is no opportunity for small or new firms in our local market.”
- “A new or small [IT] firm faces two key questions in the beginning: (a) will the firm be around for the longevity of the [IT] solutions, and (b) is the company too small to run the entire scope of project work?”
- “Proving that they are capable of handling projects within the defined scope is the biggest hurdle for a new or a small IT firm in the local market. Often, a large firm has an advantage over small and new firms.”
- “[Clients] like the prestige that comes along with [working with] a huge firm.”

This information was consistent with what was found in the WMATA study:

- Several African American owners of professional services firms interviewed in the WMATA study reported that most DBEs in their lines of business cannot compete with the large firms in the local marketplace.
- An African American female business owner who had a professional services contract with WMATA reported that WMATA had certain size specifications in a particular contract that were restrictive and unnecessary.
- An African American manager of an African American-owned computer systems firm stated that the greatest barrier in his field is the fact that government agencies have begun to “bundle” projects.
- The female owner of a professional services firm reported that certain revenue requirements on bids are unnecessarily restrictive and hurt her firm. Sometimes work is bundled and firms are required to have all those types of services in-house. She alleges that this type of restrictive specification is designed to preclude certain firms from bidding.
- The African American owner of a professional services firm reported that there are no small projects at WMATA for his line of work and that the size of WMATA contracts prevents him from attempting to do work on most WMATA projects. He further explained that some states and counties will put out bids for his line of work and will not want to do business with anyone less than \$5 million in revenues. He further reported that many of the size and experience requirements in his line of business are unnecessary.
- Many owners and managers of MBE/WBE firms interviewed in the WMATA study reported severe problems competing with larger firms for qualified personnel. Some owners of smaller firms say that they have trouble attracting the most highly-skilled personnel because the bigger firm names tend to look better on a resume, and because there is a misperception that the experience obtained at a big firm is more expansive. One of the business owners interviewed believed that this recruitment problem was heightened if the smaller firm were minority-owned.

Is there a level playing field for MBE/WBEs when competing for subcontracts? The comments on barriers noted in the past few pages would pertain to subcontracts as well as prime contracts. However, most of the experience of the MBE/WBE professional services firms interviewed as part of this study was for work as prime consultants, not subconsultants. Subcontracting was rare for these firms.

A number of MBE/WBE professional services firms interviewed in the WMATA study said that they had difficulties when seeking subcontracts.

- An African American owner of a professional services firm reported that prime contractors he works with in the public sector have not used his firm for work in the private sector. He further reported that he did not believe prime contractors would use his firm on public sector work without DBE goals.
- A similar comment was made by the manager of an African American-owned computer systems firm. He stated that prime contractors do not notify disadvantaged businesses when there are contract opportunities. He said the notion that the “good will” of the majority contractors will cause them to include minority contractors on projects other than when they have a goal requirement is a “fable.” He went on to say that he has personally observed a discriminatory attitude by certain majority contractors about minority companies with which they are to work even before the project begins. He stated that when prime contractors use minority-owned firms to meet contract goals, they distribute the “grunt” work to the minority firms. His firm experiences this currently. He reported that it is a challenge to find prime contractors that will allow his firm to handle the higher level work that they are capable of performing.

Is Discrimination Affecting MBE/WBEs When Competing for WSSC Work?

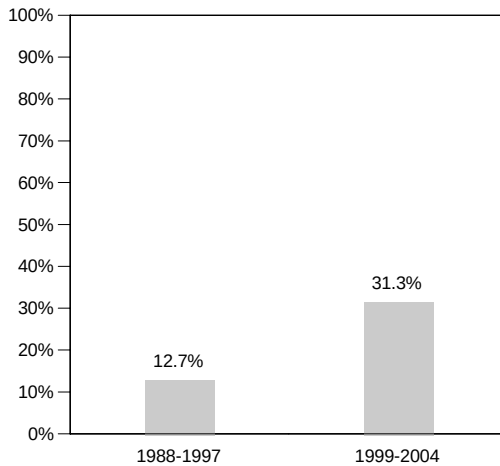
There is evidence that MBE/WBEs do not face a level playing field in the local marketplace. Does this carry over into work for WSSC?

How much work are MBE/WBEs winning as prime consultants? From 1988 through 1997, MBE/WBE professional services firms performed a modest amount of WSSC prime contract work. Since 1999, however, a relatively large share of this work has gone to MBE/WBEs.

1990s. In the 1999 disparity study for WSSC, MGT of America reported that MBE/WBEs won 13 percent of professional services prime contract dollars from 1988 through 1997. MBE/WBEs were relatively more successful winning smaller professional services contracts than larger contracts. MGT did not analyze MBE/WBE utilization as subconsultants.

1999-2004. BBC identified 54 MBE/WBEs among the 265 professional services firms receiving at least \$5,000 in prime contract payments between January 1999 and March 2004. BBC determined MBE/WBE status through phone calls to firms, assessment of WSSC records, D&B data and WSSC staff review.

Figure III-14.
MBE/WBE utilization as prime consultants on
WSSC professional services contracts 1988-2004



Source: 1988-1997 statistics from MGT of America, Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data — Jan. 1999-Mar. 2004.

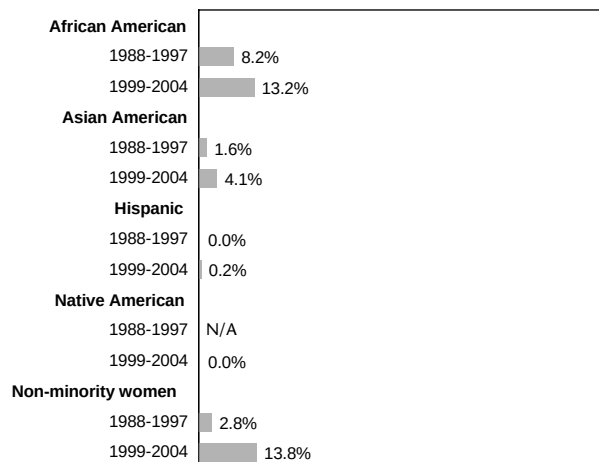
Of the \$44.9 million in payments to professional services firms, \$14.1 million, or 31 percent, went to MBE/WBEs. (The MBE/WBE utilization reported here does not include subcontracts going to minority- or women-owned firms.) This represents a very large increase over MBE/WBEs' share of contract dollars from 1988 through 1997, as shown in Figure III-14.

The relatively high utilization of MBE/WBE firms was confirmed when BBC examined the 109 professional services contract awards from July 1991 through March 2004. MBE/WBEs won more than 40 percent of these contract dollars. Wilson Consulting Group and Common Ground Consulting, both MBE/WBEs, won two of the largest contracts identified in this analysis.

Utilization by race/ethnicity and gender.

Although two Hispanic-owned firms performed professional services contracts, most of the minority-owned professional services firms receiving WSSC work in 1999-2004 were African American- or Asian American-owned. Twenty-three African American-owned prime consultants obtained a total of 13 percent of the professional services work and eight Asian American-owned firms received a total of 4 percent of the work from January 1999 through March 2004. White female-owned firms accounted for 14 percent of the professional services contract dollars; 21 WBEs received payments of at least \$5,000 for 1999-2004. Utilization of African American-, Asian American- and white women-owned firms increased from 1988-1997 to 1999-2004, as shown in Figure III-15.

Figure III-15.
Prime consultant utilization in WSSC professional
services contracts by race/ethnicity and gender,
1988-2004

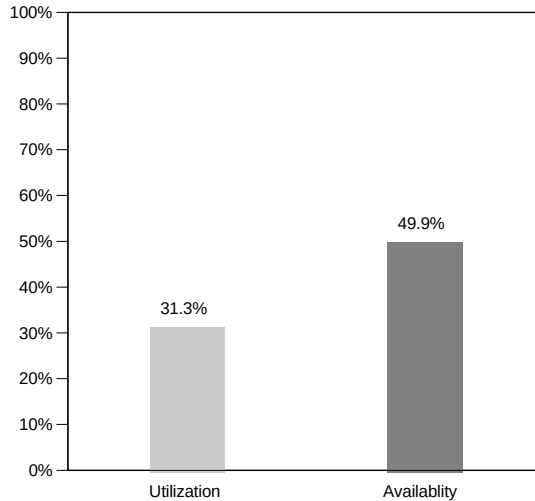


Note: Native American-owned firms included with Asian American-owned firms for 1988-1997.

Source: 1988-1997 statistics from MGT America, Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data — Jan. 1999-Mar. 2004.

Are there still disparities between WSSC utilization of MBE/WBEs and the availability of MBE/WBEs to work as prime consultants for professional services? In its 1999 disparity study for WSSC, MGT found disparities between the 13 percent utilization of MBE/WBEs as prime consultants for 1988-1997 and the availability of MBE/WBE professional services firms to perform this work. Given MBE/WBE utilization as prime consultants now at 31 percent, do disparities still exist?

Figure III-16.
WSSC utilization of MBE/WBEs as prime contractors on professional services contracts, 1999-2004, compared with MBE/WBE availability for prime contracts



Source: BBC Research & Consulting.

American- and white women-owned firms.) These findings emerged even with WSSC's occasional application of an evaluation preference for MBE/WBE primes.

As discussed previously in this section, BBC examined professional services firms in the local marketplace that provide services to the public sector and are interested, qualified and able to work for WSSC as a prime consultant. BBC weighted the results to reflect the relative dollars spent on IT firms, management consulting and related firms, and law firms. After this weighting, about one-half of the firms available for prime contract work are minority- or women-owned. The 31 percent utilization of MBE/WBEs for 1999-2004 is well below the availability of MBE/WBEs to perform this work. Figure III-16 compares MBE/WBE utilization and availability for professional services. BBC could reject chance in availability sampling as a cause of the observed disparity.

Utilization fell below availability for each racial/ethnic group of MBEs and for WBEs, as shown in Figure III-17. (Chance in availability sampling is rejected as the cause of the disparities for African

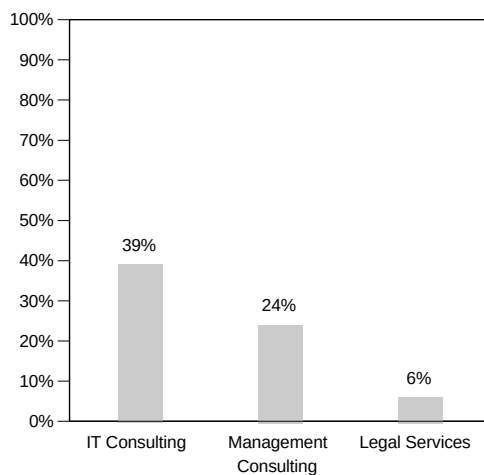
Figure III-17.
WSSC utilization of MBE/WBEs as prime consultants on professional services contracts, 1999-2004, compared with availability for prime contracts, by race and gender

	Utilization as Prime Consultants Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$5.9	13.2 %	20.3 %	(7.1) %	0.65
Asian American	1.9	4.1	5.4	(1.3)	0.76
Hispanic	0.1	0.2	2.3	(2.0)	0.09
Native American	0.0	0.0	0.9	(0.9)	--
Total MBE	\$7.9	17.5 %	28.9 %	(11.3) %	0.61
WBE					
	<u>6.2</u>	<u>13.8</u>	<u>21.2</u>	<u>(7.4)</u>	0.65
Total MBE/WBE	\$14.1	31.3 %	50.1 %	(18.8) %	0.62
Majority-owned	<u>31.1</u>	<u>68.7</u>	<u>49.9</u>	18.8	
Total	\$45.1	100.0 %	100.0 %		

Note: Rounding may affect subtotals.

Source: BBC Research & Consulting.

Figure III-18.
WSSC utilization of MBE/WBE IT, management consulting and law firms as prime consultants, 1988-2004



Source: BBC Research & Consulting based on WSSC MAPS data.

minority- or women-owned. MBE/WBEs received 6 percent of payments for legal services from 1999 through March 2004. Figure III-18 shows these results. (Due to limited sample sizes, we do not report availability estimates for each subindustry.)

Does utilization vary by field within professional services? MBE/WBEs performed a relatively large percentage of WSSC IT consulting work. About 39 percent of 1999-2004 payments to IT consulting firms went to MBE/WBEs. Utilization of MBE/WBEs was somewhat less for management consulting — about 24 percent of management consulting and related work went to minority- and women-owned firms (these data include accounting services). Thirty-four of the 146 IT firms receiving prime contract payments were MBE/WBEs and 17 of the 75 management consulting firms working as primes were MBE/WBEs. (This analysis is limited to firms paid at least \$5,000 from 1999 through March 2004.)

Analysis of MBE/WBE utilization for legal services yields a much different answer. Only three of the 44 law firms receiving work as prime consultants were

Is there any qualitative evidence of discrimination against MBE/WBE professional services firms on particular WSSC contracts? There is also anecdotal evidence consistent with an overall pattern of discrimination against MBEs and WBEs for WSSC professional services during the 1999-2004 period. Based on BBC's in-depth interviews with professional services firms, minority- and women-owned firms may not have had equal opportunities to compete for certain types of work or specific WSSC professional services contracts.

- A minority-owner of an IT consulting firm BBC interviewed who had done work with the Commission reported that it was very difficult to get the firm's foot in the door at WSSC. The firm owner reported that the MBE program at WSSC did not help, and that WSSC had a relationship with a large IT firm that made it difficult for his firm to get any business. He also reported that "there is a lot of bureaucracy and politics" at WSSC and that the contracting process was somewhat disorganized. The firm does not currently do any work with the Commission. The interviewee reported that he was "washing his hands" of work with WSSC.
- One MBE interviewed by BBC reported being awarded a WSSC contract, but never being called for work. This was a particular problem for them as they expanded their insurance coverage, at significant cost, just to meet WSSC requirements.
- One MBE law firm reported to BBC that it has given up any attempt to obtain work from WSSC.
- A WBE interviewed by BBC reported that she has not been able to branch out at WSSC past her primary contact at the Commission. She said that she never hears back from WSSC when she submits a proposal outside of her core area at WSSC.

- The female owner of a professional services firm reported that she loses work at WSSC because her firm is in Baltimore and is not deemed to be “local” by WSSC. Because MBE/WBEs are less likely to have multiple offices than larger majority-owned firms, any local preference given in WSSC procurement decisions may work against MBE/WBEs.
- In certain areas of professional services, WSSC places qualifications requirements that appear to exclude MBE/WBE firms from proposing. For example, several law firms BBC interviewed pointed out that WSSC requires \$25 million in liability insurance for bond work, a level that cannot be reached by small firms or any MBE/WBE firms in the state. Apparently this level of insurance is unusual, and in the opinion of some firm owners, was used by WSSC to exclude certain firms, including MBEs, from bidding on this work. Even a representative of a large, majority-owned law firm pointed out that large firms could easily qualify for this insurance but that it would exclude smaller or minority-owned firms. (A large majority-owned law firm typically gets WSSC’s bond counsel work.) BBC confirmed that WSSC applies a \$25 million insurance level for bond work and that this is higher than public agencies such as the State of Maryland (\$10 million level).

Impact of WSSC’s MBE/WBE program on prime consultants. Based on interviews with WSSC staff, some of WSSC professional services contracts that go through the Procurement Group award extra evaluation points to MBE/WBE primes when considering proposals. This did not appear in the information obtained by BBC. Some professional services contracts that go through Procurement may also set goals for MBE/WBE participation. Certified MBE/WBE primes could meet these goals through their own participation on the contract, while majority-owned firms would need to meet the goals through subcontracts with minority- and women-owned firms.

It did not appear that the WSSC MBE/WBE program efforts described above had much of an effect on MBE/WBE utilization as prime consultants on professional services contracts. The evaluation preference may not be used often enough on professional services contracts that are competed to have much impact on overall MBE/WBE utilization. Furthermore, very few professional contracts appear to be competed at WSSC.

BBC found very mixed experiences when interviewing MBE/WBEs about the impact of WSSC’s program. For example, one MBE law firm reported that the WSSC MBE/WBE program was no help in breaking into WSSC work while an owner of another MBE law firm said that the program was why he had first worked with WSSC. This introduction to WSSC as a subconsultant led to work as a prime consultant. Several IT firms reported no benefit from the MBE/WBE program while another said that the program made it easier for the firm to win a WSSC prime contract.

WSSC also conducts outreach to MBE/WBE firms, including professional services firms. Several MBE/WBE firms BBC interviewed commented favorably on the value of these outreach efforts. These firm owners appreciated being introduced to WSSC contracting opportunities.

Conclusions for WSSC professional services prime contracts. MBE/WBE utilization in WSSC professional services prime contracts from 1999-2004 is much higher than in prior years, and is high relative to utilization on A/E and construction prime contracts at WSSC. Even so, the 31 percent of prime contract dollars going to MBE/WBEs is substantially less than the relative availability of minority- and women-owned firms to conduct this work. This disparity, combined with qualitative evidence that discrimination may be affecting MBE/WBEs’ opportunities for WSSC professional services work, leads BBC to conclude that minority- and women-owned firms may not be facing a level playing field for WSSC professional services prime contracts.

As described at the outset of this chapter, WSSC's process for awarding professional services contracts could easily be affected by discrimination against minority- or women-owned firms. BBC's recommendations for professional services focus on remedying the defects in this system. These measures are race- and gender-neutral.

WSSC should continue to require formal competition for professional services contracts above \$50,000 (with certain General Manager-approved waivers of competition) and encourage informal competition for smaller professional services contracts.

The Procurement Group should take responsibility for the contracting process for professional services contracts above a minimum size, perhaps \$50,000. The Procurement Group should develop a standard system for awarding these contracts similar to the process for A/E consultant contracts. This process would consider consultant qualifications, proposed approach and price. The Procurement Group should develop standard procedures for how:

- Specifications and minimum qualifications are determined;
- Potential proposers are notified about each procurement opportunity;
- Firms' qualifications and proposals are evaluated (e.g., evaluation points are awarded); and
- Interviews are held.

WSSC should carefully monitor MBE/WBE participation as prime consultants in each stage of the procurement process for professional services.

The Procurement Group should also add professional services firms to the bidders list for use by Procurement staff and also by end-user departments when they are seeking professional services firms for smaller contracts.

The SLMBE office should conduct additional outreach to minority- and women-owned professional services firms. This was one area of past WSSC assistance that received favorable comments from some MBE/WBEs interviewed as part of this study. SLMBE should discuss potential professional services contract opportunities, outline the process for competing for that work, enter MBE/WBEs into the bidders list, and introduce these firms to end-user departments. For example, minority and female owners of law firms should be introduced to Legal staff at WSSC.

BBC is not recommending a long-term evaluation preference program for professional services contracts at this time. However, BBC recommends that WSSC retain the ability to include a small number of preference points for MBE/WBE primes on an interim basis while implementing the other changes proposed here. These points might be applied in professional services fields that have had very low MBE/WBE utilization as prime consultants. Perhaps two years after implementing the recommendations presented here, WSSC can determine whether the evaluation preference is effective or needed. The interim preference should be about the same magnitude as recommended for A/E contracts: about 2 to 4 points out of a total of 100.

Is There a Need for the WSSC MBE/WBE Subcontracting Program in Professional Services?

WSSC's current program. WSSC sometimes applies MBE/WBE subcontracting goals, usually 20 percent, on larger professional services contracts. WSSC has had a 20 percent goal for MBE/WBE utilization on professional services contracts since 1987.

MBE/WBE utilization among subconsultants involved in professional services contracts.

From the information available to BBC, it appears that most subcontracts on WSSC professional services contracts go to MBE/WBEs. WSSC provided information on 17 professional services subcontracts, 12 of which included dollar amounts. Ten went to African American-owned firms and two went to white female-owned firms. BBC analyzed about \$800,000 in subcontracts for professional services. One of the subcontracts without a dollar amount reported went to an Asian American-owned firm.

BBC interviews with WSSC staff and professional services firms confirmed that non-minority firms are rarely used as subconsultants on WSSC professional services contracts.

Although the data the study team received on professional services subcontracts are incomplete, BBC is able to reach the following conclusions.

- Subcontracting is not a typical practice in the types of professional services fields involved in WSSC work. Without the MBE/WBE goals program, there would be little subcontracting on WSSC professional services contracts. It is not surprising that only MBE/WBEs appear as subconsultants in these contracts.
- Ensuring that MBE/WBEs win a "fair" amount of the subcontracts let for professional services contracts is probably not a reasonable justification for WSSC's subcontracting goals program in this area. Without the program, neither MBE/WBEs nor majority-owned firms would receive many subcontracts. There is no need to ensure that MBE/WBEs receive a proportionate share of these subcontracts.

With these findings, is there any role for a subcontracting goals program for professional services? BBC concludes that there may be limited instances in which the program is justified during the time when WSSC is working to open more professional services contracts to bidding from MBE/WBEs and other smaller firms.

It is likely that WSSC will not be able to remove the barriers to MBE/WBE competition for certain professional services contracts, or could be slow in making these changes. These could include some very large contracts in the next few years that will not be open to any MBE/WBE participation absent a subcontracting goals program.

There may be certain types of large, highly-specialized legal services, management consulting and IT consulting contracts that fit this description as well. For example, if WSSC's \$25 million insurance requirement for bond work is necessary (at first blush it is not), these types of contracts may also be candidates for subcontracting goals. Without subcontracting requirements, MBE/WBEs appear to be completely excluded from this work.

In addition, a subcontracting goals program may be useful on a short-term basis to introduce more MBE/WBEs to areas such as WSSC legal services that have seen limited inroads from minority- and women-owned firms.

It may be reasonable and defensible for WSSC to continue to operate a subcontracting goals program for these few professional services contracts while making the long-term changes necessary to open this work to competition from MBE/WBE prime consultants. WSSC should be very selective in applying the program; only a small number of professional services contracts should be subject to MBE/WBE goals each year. This program should be of limited duration. WSSC should reevaluate whether any subcontracting goals program is needed for these contracts within the next three to four years.

Firms eligible for meeting the goals should have an office located within the greater Washington-Baltimore area (the “local marketplace” discussed in Section I) and be certified as an MBE or WBE.

WSSC should also operate this program with more flexibility. Goals should be set contract-by-contract given the amount of work that can be reasonably subcontracted and the availability of MBE/WBEs to perform this work. WSSC can suggest potential MBE/WBE subconsultants, but should be careful not to dictate the use of particular consultants, a complaint BBC heard in the interviews with professional services firms. Prime consultants should be able to make their own decisions about which MBE/WBE subs to include in their proposals. Prime consultants should also be able to request a waiver when they are unable to meet the MBE/WBE participation goal.

Recommendations

BBC has prepared separate recommendations for a program for prime consultants for professional services contracts and a program for subconsultants in professional services contracts. The following elaborates on the findings discussed in the previous pages of this chapter.

Prime contracts. WSSC should consider the following elements for its new Anti-Discrimination Program in Contracting and Procurement as it applies to professional services prime contracts.

1. WSSC should have formal competitive bidding for professional services contracts above \$50,000 and follow the Competitive Sealed Proposal Procedure (Part D) outlined in its Procurement Manual. There should continue to be a mechanism to waive competitive bidding when not practicable.
2. For contracts under \$50,000, WSSC should implement contracting methods consistent with its Small Purchase Procedures outlined in its Procurement Manual. WSSC should use the bidders list to contact potential vendors for the needed services. These vendors could respond with brief letter proposals. BBC recommends that WSSC consider a minimum contract size of \$10,000 before requiring competitive proposals (higher than the \$5,000 requirement for other goods and services).
3. The Procurement Group should be responsible for professional services contracts above \$50,000, working closely with end-user departments. If end-user departments handle smaller procurements, staff should be trained by the Procurement Group. The Procurement Group should also receive information on any of these contracts over \$10,000.
4. Highly restrictive contract specifications that are not essential to WSSC work should be revised or eliminated. For example, WSSC should seek to bring insurance requirements into line with industry standards.

5. The Procurement Group should develop standard evaluation worksheets similar to the A/E consultant evaluation spreadsheets. Staff on evaluation committees should be trained to properly evaluate professional services proposals. The Procurement Group should also develop procedures for interviews with professional services firms.
6. WSSC should build the number of professional services firms included in its bidders list, and use this list as a source for contacting potential proposers on all contracts. SLMBE should continue outreach to firms that have not been involved in WSSC professional services contracts in the past. These firms should be encouraged to meet with end-user departments to discuss firm qualifications and future needs of each department.
7. As with A/E, WSSC should develop a process for evaluating past performance of professional services firms. Because of the importance of quality of past work for WSSC when evaluating prime consultants, it may be necessary to implement a formal, written evaluation process for past consultants and subconsultants. Evaluations should be written by WSSC project managers and reviewed by senior staff and a representative of the SLMBE office. WSSC should attempt to complete reviews for past projects so that evaluations are available when determining new contract awards.
8. WSSC should consider expanding the information available to unsuccessful proposers through full access to qualifications statements, proposals and evaluation scores to professional services firms interested in WSSC opportunities (except proposal information that is proprietary and scoring information that would reveal the names of WSSC evaluators).
9. The SLMBE office should contact firms that have proposed as subconsultants but never as primes to explain prime contract opportunities, review past proposals with firms, and encourage them to propose as primes in the future.
10. If WSSC adopts an evaluation criterion favoring firms with local offices, it should consider counting as “local” those firms with an office in the greater Washington-Baltimore area. Added preference should not be given to firms with offices in Prince George’s or Montgomery counties. This criterion favors larger firms with multiple offices. This was a complaint of MBE/WBE firms interviewed by the BBC study team.

Each of the above recommendations are race- and gender-neutral. While making these changes and evaluating whether they will be sufficient to provide a level playing field to MBE/WBEs seeking WSSC professional services contracts, WSSC should also consider the following race- and gender-based evaluation factor for professional services fields that have seen limited MBE/WBE participation as primes.

11. WSSC would award points to an MBE/WBE prime consultant. This evaluation factor should be in the range of 2 to 4 points out of 100. Evaluation points should be awarded to locally-certified African American-, Asian-, Hispanic-, Native American- and female-owned firms with offices in the Washington-Baltimore area. WSSC should not apply its own graduation criteria, as it may be seeking larger and older MBE/WBEs to submit proposals for professional services work. After about two years, WSSC should review whether the evaluation preference is effective or needed. The information should be available to make this determination if WSSC follows the data collection guidelines recommended here.

For each contract, WSSC should monitor and report the number of MBE/WBEs and total firms responding to each Request for Proposals, scores for each firm for each criterion in the first-stage evaluations, number of MBE/WBEs and total firms short-listed for interviews, and scores for each firm for each criterion in the second-stage evaluations. WSSC should require proposers to identify race/ethnicity/gender ownership for reporting purposes.

Procurement Group staff should also develop a quarterly summary report for the professional services contracts awarded during that period by the Procurement Group or by end-user departments. The General Manager and SLMBE Office should receive these quarterly reports with reports for individual contracts as back-up information. WSSC should also consistently report MBE/WBE utilization as prime consultants on professional services contracts. This utilization report should also be maintained on a quarterly basis by Procurement Group staff and be calculated in two ways: dollars of contract awards and dollars of payments made during that three-month period. These reports should also track professional services contracts by end-user department. WSSC should count utilization of both certified and non-certified MBE/WBEs. Reports should identify race/ethnicity and gender ownership of firms.

WSSC's MBE/WBE program for prime consultants should not extend more than two to three years without reevaluation.

Subcontracts. WSSC should implement a new interim subcontracting program for professional services as part of its broader Anti-Discrimination Program in Contracting and Procurement.

1. WSSC should examine each contract of at least \$50,000 to determine whether the contract is likely to have competition from MBE/WBEs as prime consultants. If it is very unlikely for the contract to be open to competition from MBE/WBEs, and WSSC cannot make changes to the contract to ensure this competition, the contract is eligible for an MBE/WBE subcontracting goal. The SLMBE office should approve the designation of contracts for the program.
2. WSSC should then estimate how much work could reasonably be subcontracted in the specific contract based on its past experience with similar work. For example, some past WSSC professional services contracts had at least 20 percent of the work subcontracted out. This possible subcontracting level could then become the MBE/WBE subcontracting goal for the contract. Goals should not be set on contracts that do not have meaningful subcontracting opportunities.
3. Procurement Group staff should separately report subconsultant use (MBE/WBE and non-MBE/WBE) on each contract above \$50,000 in its quarterly reports, including noting when contracts did not have any subconsultants. The Procurement Group should require proposers to identify MBE/WBE/majority status of each subconsultant.
4. When submitting qualifications and proposals for a particular contract, potential prime consultants will need to list all subconsultants and the type and amount of work to be performed by each subconsultant. MBE/WBEs should be noted, including firms that are not currently certified as such. Each proposer will need to show that it has met the MBE/WBE goal for that contract through MBE/WBEs located in the Washington-Baltimore area that have up-to-date certification through an agency approved by the SLMBE office.

5. If the proposer has difficulty in meeting the goal, he or she may request assistance from the SLMBE office prior to the deadline for consultant submissions. The SLMBE office should maintain a list of MBE/WBE professional services subconsultants that it can provide to potential proposers. If a proposer remains unable to meet the goal, he or she will need to request assistance from the SLMBE office prior to the deadline for proposals. If the proposer is unable to meet the goal, he or she can request a waiver. There would be no “bonus points” for MBE/WBE participation beyond the minimum requirement.
6. For contracts containing MBE/WBE subcontracting goals, the requirement should be written into the contract. The WSSC contract manager should require prime consultants to provide proof of subconsultant invoices and payments in each payment request or progress report submitted by the prime. The contract manager should prepare a quarterly report on subconsultant payments (MBE/WBEs and non-MBE/WBEs), as well as prime consultant payment. This tracking report, plus the information submitted by the prime, should be consistently forwarded to the Procurement Group and SLMBE office for its compilation and review. WSSC should continue its current practice of tracking utilization of certified and non-certified MBE/WBEs. It should develop reports by race/ethnicity and gender of firm.
7. This program would apply equally to majority and MBE/WBE proposers, however, WSSC should not set goals on professional services contracts that are likely to have MBE/WBE proposers.

WSSC’s MBE/WBE program for subconsultants should not extend more than two to three years without evaluating whether the program can be discontinued. When conducting this evaluation, WSSC should consider whether or not the new contracting procedures and other recommendations to open prime contract opportunities have been fully implemented and show initial success.

Summary

Overall, utilization of MBEs/WBEs as prime consultants has improved substantially, although it still falls short of availability. Utilization of MBEs/WBEs remains the highest in IT contracts, followed by management consulting and legal services.

WSSC should focus on opening up more professional services contracts to competition.

The current subcontracting program should be discontinued for most contracts. For those contracts where the subcontracting goals program is appropriate, the goals may be set according to the scope of work and past experience with similar contracts.

SECTION IV.
WSSC Construction Contracts

SECTION IV.

WSSC Construction Contracts

Construction prime contracts at WSSC, and at most other public agencies, almost always go to the lowest bidder. Contract opportunities are usually publicly advertised and standard procedures apply, sometimes written into state law, on how contract requirements are structured and how bids are considered. WSSC contracting for construction services is, on paper, as objective as professional services contracting is subjective. How can discrimination affect construction contracts?

Similarly, how could a prime contractor discriminate against qualified minority- and women-owned construction subcontractors if the prime wanted to stay in business? Rejecting qualified subcontractors because of the race or gender of the business owner may be a luxury construction prime contractors do not have given the price-competitiveness of this industry.

These two sets of questions have been at the core of many years of controversy surrounding MBE/WBE programs applied for government construction contracts. They have been at the root of legal challenges to MBE/WBE programs, at WSSC and elsewhere, and continue to be raised today in the many interviews BBC completed with owners and managers of construction firms in the Washington-Baltimore marketplace. Some of the people BBC interviewed who raised these types of questions were minorities and women.

However, past studies of possible discrimination in the construction industry have suggested that discrimination can and has affected this industry. There is evidence of a playing field tilted against minority and female owners of construction firms — unequal access to capital being a well-documented contributor — and that MBE/WBEs are at a disadvantage when competing based on low bid. Also, there are aspects of the construction bidding process that are not as cut and dried as low price. Screening firms based on “qualifications” is one example. Requiring firms to obtain bonding for a project is another. The subcontractors that are hired by prime contractors are often those that are known and trusted by the prime. Sometimes, negative stereotypes can affect how a prime might evaluate a potential subcontractor even before the subcontractor has a chance to offer a price.

Even when MBE/WBEs win construction contracts or subcontracts, they can be treated differently while performing the work. Past studies of construction contracting have found many reports of harassment by primes, inspectors and others, as well as other discriminatory treatment of MBE/WBEs working on the construction job site. Sometimes this predatory treatment has come in the form of delaying payments to the minority- or women-owned firms. MBE/WBEs can suffer financially as a result of these actions, and may be discouraged from submitting future bids to that prime contractor or client.

Many people in the construction industry would admit that, in the past, discrimination affected opportunities for minority and female business owners to obtain subcontracts on construction projects in the Washington-Baltimore area. Even one of the contractors who was part of a legal challenge to WSSC’s MBE program reported in a BBC interview that discrimination once affected the industry. Although he and many others would say that these days are long since gone, it does suggest that, even with competitive forces in the marketplace, some prime contractors and clients were willing to discriminate against minority and female business owners.

These arguments apply across the United States in many different subsectors of the construction business. However, there is a unique history to construction contracting at WSSC that also points to how anti-competitive behavior by certain contractors can limit opportunities for other firms.

WSSC helped to establish many of the early water and sewer pipe contractors within the Washington-Baltimore area construction industry. A small set of contractors obtained most WSSC pipe work, which WSSC staff once referred to as their “family” of contractors. This closed system of contracting came under severe scrutiny in the mid-1970s with an investigation that pipeline contractors had bribed WSSC officials. It appears that at least one of the firms named in this investigation still does business with WSSC today.

Some of BBC’s information on the bribery investigation comes from a series of Washington Post articles from August 1980. The Washington Post conducted a two-month investigation into WSSC contracting with local pipeline construction firms. The August 24, 1980 Washington Post article described the small group of contractors as a “clan bound together by close personal and professional ties and a powerful old-boy sense of turf.” The Washington Post reported that it was “very difficult for a contractor to enter this tight circle.” “You have to prove yourself in the area,” according to one local contractor quoted in the article.” He went on to say that you have to be known and accepted by the existing group of contractors to break into the WSSC work. According to the president of one firm that continues to do work with WSSC today, “It’s an accepted practice that you don’t undercut the other guy.” One of the biggest beneficiaries of this system, according to the Washington Post analysis, still receives a large volume of WSSC pipeline contracts based on BBC’s review of 1999-2004 contracts. Not surprisingly, research conducted in the 1988 MBELDEF disparity study found that very few minority-owned firms were getting work from WSSC in the early 1980s, even though there were some firms available for this work at that time.

The Washington Post concluded that the entrenched contractors were hostile to firms outside this closed group. Most of the entrenched contractors at that time were part of the Public Works Contractors Association, or PWCA, a group that may have helped to reinforce this close system for many years, according to the Post investigation.

One of the motivations for keeping a closed group, according to the Washington Post investigation, appeared to be the ability to collude in the pricing of bids on WSSC contracts. The investigation concluded that a small set of firms would work together to set prices for WSSC work in order to increase profits and distribute the work. Such collusion might not have been possible if more firms were competing for WSSC pipeline construction contracts. When a new contractor bid on work, the group would work together to make sure that he did not get the contract. “I’d rather have someone from here [the established group of contractors] lose money than have someone from the outside come in and take the business,” according to one contractor quoted in the Washington Post articles. The Washington Post also alleged that WSSC management and staff helped these contractors maintain this closed system. According to those interviewed, this system operated well unless work was tight; then there was more price competition.

If these allegations are accurate, it is likely that opportunities for any MBE/WBE firms to perform pipeline construction for WSSC 25 years ago were affected by anti-competitive conditions. Even the remedies established by WSSC to address the shortage of MBE pipeline contractors were allegedly sabotaged by majority contractors. When WSSC established a set-aside program for minority businesses in the late 1970s, a number of white male-owned firms set up phony MBE/WBE firms to profit from the

program, according to the same series of Washington Post articles in August 1980. One pipeline contractor allegedly set up his wife as a business and another was reported to have had a black foreman create a business that was controlled by the white contractor. The latter majority contractor appears to still do business with WSSC.

One of the issues BBC examines in this chapter is whether this closed system 25 years ago is still relevant today. Does the failure of initial MBE assistance efforts have a lasting effect? Do the same contractors that have done business with WSSC for years still get the bulk of the work, to the exclusion of MBE/WBEs and other firms outside of a core group?

It is also useful to review the history of legal challenges to WSSC's MBE/WBE program in construction. The program has faced two legal challenges since its inception. In the late 1980s, WSSC's legal authority to operate such a program related to construction contracts issued through Procurement was challenged by a local contractor. A U.S. District Court ruled against WSSC in a 1991 decision. WSSC obtained legislation from the State to remedy this deficiency. In the mid-1990s, majority pipeline contractors again challenged the MBE goals program. In 1996, WSSC suspended the mandatory goals program for construction. It was replaced by a voluntary goals program in 2001. Therefore, in 2002, the beginning of the period for which BBC was able to study WSSC subcontracting in detail, no mandatory MBE/WBE subcontracting goals were applied for most construction contracts. However, WSSC did continue to set mandatory goals for related contracts issued through Procurement. Contracts for some construction work outside of pipeline projects still have mandatory goals.

WSSC has also recently established a small business sheltered market program which sets aside certain construction contracts to bidding from firms fitting the Commission's small business guidelines. A number of pipe contracts were let in 2004 through this program. Like the MBE set-aside program from the late 1970s, some well-established majority contractors have qualified for this program, including the contractor that submitted more bids for WSSC pipeline work than any other contractor from 2002 through spring 2004.

Even though these issues and history are somewhat unique for construction, BBC follows many of the same steps to researching these questions as found in Sections II and III. This chapter begins by

Figure IV-1. Summary of recommendations

WSSC should continue to implement race- and gender-neutral efforts that can remove barriers to MBE/WBE participation as prime contractors on WSSC construction projects:

- The initial small business set-aside program should be revamped to exclude established contractors. BBC recommends a first-stage program to introduce new firms to WSSC contracting and a second-stage program to encourage smaller contractors to take on bigger WSSC contracts.
- WSSC should eliminate bonding requirements for contracts under \$100,000, unless special circumstances apply. WSSC currently applies this bonding threshold for "procurement construction" contracts. Such a change would also bring WSSC practices in line with State of Maryland rules for local government bonding.
- The current voluntary subcontracting goals program should be applied across all areas of procurement, replacing the "mandatory" subcontracting goals now in place for "procurement construction" contracts.
- WSSC should better monitor prime contractor payments to subcontractors and suppliers. Contractors that show a pattern of not extending subcontracting opportunities to MBE/WBEs should be further investigated for discriminatory practices. If there is strong evidence that a contractor has discriminated against MBE/WBEs, the contractor should be subject to suspension or debarment from future bidding on WSSC contracts.

reviewing key questions and then discussing the construction services fields involved in WSSC contracts, which allows us to focus on these areas when examining local marketplace conditions. The balance of this chapter assesses whether there is a level playing field for minority- and women-owned firms in the construction industry as a whole and for construction contracts and subcontracts at WSSC.

Based on our research, we recommend changes to WSSC's current programs in construction that are designed to assist MBE/WBEs and small firms in general. Figure IV-1 on the previous page summarizes these recommendations, and the pages at the end of this chapter describe recommended actions in some detail.

Key Questions

As with the other industry assessments, BBC poses three areas of questions concerning construction contracting:

- Where is the local construction industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain or expand measures to assist MBE/WBEs in construction contracting?

WSSC Construction Work

By far, construction contracting is the largest area of WSSC procurement. The Commission paid an average of about \$70 million per year to construction firms from 1999 through March 2004. WSSC spends more than one-half of its construction dollars on relatively narrow segments of the industry: water and sewer line construction and treatment plant and storage tank construction. General building projects were a relatively small part of WSSC construction in recent years.

Total dollars of construction work. As with other sectors examined in this study, BBC researched WSSC's use of prime contractors in construction by examining payments to firms from January 1999 through March 2004. BBC focused on firms receiving at least \$5,000 of payments as prime contractors. BBC identified 224 different construction firms receiving at least \$5,000 in payments from WSSC over this period, not including not-for-profit or public agencies. BBC identified construction firms through the procedures listed in Figure IV-2.

Figure IV-2. Identification of WSSC payments for construction

BBC identified payments to firms conducting construction work through a combination of:

- The primary Standard Industrial Classification (SIC) codes for firms doing WSSC work as provided by Dun & Bradstreet;
- WSSC databases on construction contracts;
- Hard copy construction contract files;
- Descriptions of the work performed in specific WSSC contracts that went through Procurement;
- Review of information on WSSC vendors' websites;
- Phone calls to WSSC vendors; and
- Review by WSSC staff.

One engineering firm that primarily works with WSSC on A/E projects also won a pipeline contract. Its payments are counted in A/E utilization.

WSSC made a total of \$374 million in payments to construction firms from January 1999 through March 2004. As shown in Figure IV-3, almost one-half of this work was for pipeline construction, or, more precisely, to firms specializing in pipeline construction and performing that work for WSSC. Over 35 percent of the work went to firms that primarily do water and sewer treatment plant construction and did that work for WSSC. BBC also classified cleaning and relining of pipe as construction. Video inspection of pipes is included in our discussion of general services in Section V.

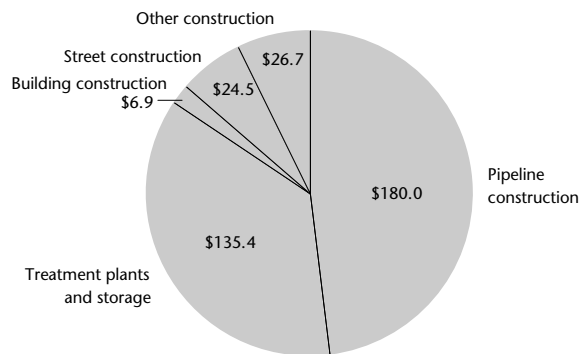
BBC also researched use of subcontractors on WSSC construction contracts from 2002 to spring 2004. The study team identified 98 firms working as subcontractors and suppliers, 79 of which had dollar amounts of their subcontracts identified in WSSC files. Proposed subcontractors and suppliers accounted for nearly 30 percent of total contract dollars.

Location of firms involved in WSSC construction work. Although WSSC does not limit bidders to any particular geographic area, 90 percent of WSSC's prime contractors are from the Washington-Baltimore area. Nearly 80 percent of the construction prime contract dollars went to firms within this area.

Of the 79 subcontractors for which BBC could determine location, 76 were located in the Washington-Baltimore area, and nearly all of the subcontract dollars went to these firms.

Based on these results, BBC focused the analysis of market conditions for construction firms on the Washington-Baltimore area. Our analysis of availability of construction firms to work as prime contractors or subcontractors also focused on this geographic area. (See the discussion in Section I for a list of counties included in the definition of the Washington metro area and Baltimore metro area.)

Figure IV-3.
WSSC payments to construction firms,
Jan. 1999-Mar. 2004 (millions)



Source: BBC Research & Consulting from WSSC MAPS data.

Types of Construction Work at WSSC

As demonstrated in Figure IV-3, much of WSSC's construction work is spent in relatively narrow fields. From January 1999 through March 2004, WSSC spent about \$180 million with firms doing water and sewer line construction, or 48 percent of total construction expenditures over this period. Water and sewer treatment plant work, combined with water tanks and other storage, accounted for about \$135 million in payments. Street construction and building construction were about \$25 million and \$7 million of 1999-2004 payments, respectively.

Pipeline construction firms. Pipeline contracting is, by far, the largest area of WSSC construction expenditures, with \$180 million in expenditures from 1999-spring 2004. There were 55 different firms performing water and sewer line construction work that received payments from WSSC from January 1999 through March 2004. Fifteen firms received the bulk of WSSC water and sewer line work, accounting for 73 percent of all payments to firms performing water and sewer line work.

WSSC once issued even more pipeline contracts, but has since transferred over to developers responsibility for contracting for certain water and sewer pipes. (A few of these types of projects may appear in BBC's payments data as this transfer began in the late 1990s.)

Figure IV-4 lists the pipe contractors receiving the most prime contract payments from 1999 to March 2004. Figure IV-5 gives a brief description of each firm.

Figure IV-4.
Water and sewer line construction firms receiving \$5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Water and Sewer Line Contractors	WSSC Prime Contract Payments (millions)
Cianbro Corp.	\$ 17.8
FMC Civil Construction LLC (MBE)	14.9
Mainlining Service, Inc.	12.4
City Contractors, Inc.	12.3
Spiniello Companies	9.2
Joseph Canova & Son, Inc.	9.1
J. Fletcher Creamer & Son, Inc.	7.9
Taylor Utilities	7.0
Curtis Contractors and Associates, Inc.	6.8
Orbit Construction Services	6.5
Marona Construction Company	6.2
Ross Contracting, Inc.	6.0
Heitkamp, Inc.	5.2
AM-Liner East, Inc.	5.1
J & M Utilities	5.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure IV-5.
Background on water and sewer line firms receiving at least \$5 million in WSSC payments, Jan. 1999-Mar. 2004

Cianbro Corporation. Cianbro Corporation began in 1949 as a family-owned construction firm in Pittsfield, Maine. Now an employee-owned company, Cianbro is one of the East Coast's largest civil and heavy industrial construction companies. The firm provides construction services for water and wastewater treatment plants, chemical and cement plants, oil, coal, nuclear, gas distribution plants, buildings, and transportation projects. The firm employs over 2,000 people in its corporate office located in Pittsfield, Maine, and three regional offices in Portland, Maine, Bloomfield, Connecticut, and Baltimore, Maryland. BBC included Cianbro in the water and sewer line group because of its primary work for WSSC.

FMC Civil Construction, LLC. FMC Civil Construction is a Cheverly, Maryland-based firm specializing in installation of water, storm and sewer pipes; highway, street and bridge construction; excavation; paving and asphalt related services. The firm was established in 2000 and has worked with both public and private sector clients. Fort Myer, a Hispanic-owned firm, is the parent company of FMC Civil Construction.

Mainlining Service, Inc. Mainlining Service is a family-owned construction and engineering services company established in 1957. The firm operates through its office in Elma, New York, and specializes in providing water and sewer pipeline cleaning and relining systems. Mainlining Service provides its construction and engineering services to customers throughout the world.

City Contractors, Inc. City Contractors is an underground utilities construction firm located in Crofton, Maryland. The firm specializes in construction and replacement of water and wastewater pipelines in the Washington-Baltimore area. The firm is privately-owned and has over 25 employees. The firm was formed in 1962 and was doing work for WSSC in the 1970s.

Figure IV-5. (continued)

Background on water and sewer line firms receiving at least \$5 million in WSSC payments, Jan. 1999-Mar. 2004

Spiniello Companies. Spiniello Companies is a privately-held construction and engineering firm specializing in underground utility design, cleaning and relining. The firm was established in 1942 and has over 200 employees in its three offices in Maryland, New Jersey, and California.

Joseph Canova and Son, Inc. Joseph Canova and Son is a privately-owned construction company located in Laurel, Maryland. The firm specializes in water main construction, sewer pipe installation and lining. The firm also provides contracting services for landscaping and excavation in the Washington-Baltimore area. The firm was established in 1991 and has about 45 employees.

J. Fletcher Creamer & Son, Inc. J. Fletcher Creamer & Son is a multifaceted contracting company that was established in 1923 in Fort Lee, New Jersey as a trucking company. The firm expanded into underground utilities construction in the mid 1960s and is rated among the nation's top 250 contractors today. The family-owned business enterprise provides water and sewer pipeline installation and repair, rodding, cleaning and relining water and other utility pipelines, heavy and highway construction, fiber-optic cable installation and traffic safety. J. Fletcher Creamer & Son has its headquarters in Hackensack, New Jersey, and has four regional offices including one in Beltsville, Maryland.

Taylor Utilities. Taylor Utilities is a privately-held construction company located in Capitol Heights, Maryland. The firm specializes in water and sewer mains construction and replacement. The firm was established in 1979.

Curtis Contractors & Associates, Inc. Curtis Contractors & Associates was a construction firm that specialized in water mains and wastewater pipeline installation and maintenance. The Washington, D.C.-based firm was founded in 1965. The firm is out of business.

Orbit Construction Services. BBC was unable to locate any information on this firm.

Marona Construction Company. Also known as George Tripp, Inc., Marona Construction is a Colmar, Pennsylvania-based construction firm specializing in underground utility construction and civil work, building construction and maintenance. The firm began in 1977 and is privately-owned by the founder, George Tripp.

Ross Contracting, Inc. Ross Contracting, a Mount Airy, Maryland-based construction site development firm was founded by David Ross in the mid 1970s. The firm provides construction services (installation and repair) for water mains and sewer works. The firm also performs site surveys, trenching and excavation work. Ross Contracting is privately-owned and employs over 50 people at its Maryland office.

Heitkamp, Inc. Founded in 1982 by E. Heitkamp, the firm specializes in system-wide water and sewer pipeline inspection and evaluation, repair, cleaning and upgrade. The firm also provides operation and management of municipal water systems, primarily in the New England and Mid-Atlantic States. Heitkamp is based in Watertown, Connecticut with a branch office in Gambrills, Maryland.

AM-Liner East, Inc. AM-Liner East is a construction firm headquartered in Sterling, Virginia. The firm provides sewer and manhole rehabilitation and construction services to clients throughout the U.S. The firm is wholly-owned by American Pipe and Plastics, a Binghamton, New York-based privately-owned firm that manufactures PVC pipes and related products.

J & M Utilities. J & M Utilities is a privately-owned water and sewer pipeline construction and rehabilitation firm located in Beltsville, Maryland. The firm began its operations in the 1960s in Maryland working for public utility agencies.

Water and sewer treatment plants and storage tank construction firms. From January 1999 through March 2004, WSSC spent about \$135 million, or 36 percent of total construction expenditures, with firms doing water and sewer treatment plant and storage tank construction work.

BBC identified 13 firms performing water and sewer treatment plant and storage tank work that received payments from WSSC from January 1999 through March 2004. Five firms received the bulk of WSSC water and sewer treatment plants work, accounting for \$124 million in payments, or 92 percent of payments to all water and sewer treatment plant construction firms. Figure IV-6 identifies these firms and Figure IV-7 briefly discusses their structure and history.

Figure IV-6.
Water and sewer treatment plant and storage tank construction firms receiving \$5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Water and Sewer Treatment Plant and Storage Tank Contractors	WSSC Prime Contract Payments (millions)
Pizzagalli Construction Co.	\$ 49.0
Danis Environmental Industries	42.2
Whiting-Turner Construction Co.	16.1
Fru-Con Construction Corporation	9.5
Constellation Energy Source, Inc.	7.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure IV-7.

Background on water and sewer treatment plants and storage tank construction firms receiving at least \$5 million in WSSC payments, Jan. 1999-Mar. 2004

Pizzagalli Construction Company. Pizzagalli Construction Company was established in 1958 as a small pre-cast stone-manufacturing firm in Middlebury, Vermont. In 1960, the firm phased out its masonry operation and concentrated on commercial, industrial and institutional construction projects. The firm's primary line of business is installation and improvement of water and wastewater treatment plants and pump-stations, building construction and design work. Engineering News-Record (ENR) ranks Pizzagalli Construction Company as the eighth largest construction firm for wastewater treatment work and fifth largest for water treatment work in 2004. Pizzagalli Construction Company is employee-owned and has three offices in South Burlington, Vermont, South Portland, Maine, and Garner, North Carolina.

Danis Environmental Industries. Founded in 1916 by B.G. Danis, Danis Environmental Industries is a third-generation, privately-owned corporation based in Dayton, Ohio. The firm offers expertise in general construction that includes water and wastewater treatment plants, and residential and nonresidential buildings. ENR ranks Danis as one of the top contractors for water and wastewater treatment facilities in the U.S. Danis employs approximately 350 people in its four offices in Ohio and one in Florida.

Whiting-Turner Contracting Co. Whiting-Turner Contracting Co. was founded in 1909 by G.W.C. Whiting and LeBaron Turner. The firm specializes in providing contracting services in residential and non-residential building construction and renovation, and utilities construction work (water treatment plants). The firm has its headquarters in Baltimore, Maryland and has 19 offices throughout United States. Whiting-Turner is employee-owned.

Fru-Con Construction Corporation. Fru-Con Construction Corporation was established in 1908 by Jeremiah Frunin and Redmond Colnon in Saint Louis, Missouri. During the early years, the firm specialized in sewer mains construction and building construction. Since the 1940s, Fru-Con Construction Corporation expanded to include construction and engineering work in water and wastewater treatment facilities and remediation, street, highway and bridges, residential and non-residential buildings. The firm is employee-owned and operates through its headquarters in Saint Louis and nine offices throughout the U.S. (including two in Virginia).

Constellation Energy Source, Inc. Constellation Energy Source develops, finances and manages energy savings projects throughout the Washington, D.C. area. The firm also provides electrical cable installation and maintenance to homeowners. Constellation Energy was established in 1997 and operates from its location at Woodlawn, Maryland. The firm is a subsidiary of Constellation Energy Group of companies, which is a publicly-held firm based in Baltimore, Maryland.

Street construction firms. From January 1999 through March 2004, WSSC spent about \$24 million with firms doing street construction work, or 7 percent of total construction expenditures over this period. Street construction includes highway, elevated highway, bridge, tunnel and street contractors.

BBC identified ten firms involved in street construction work that received payments from WSSC from January 1999 through March 2004. The four firms listed in Figure IV-8 received at least \$1 million in payments for street construction, accounting for 98 percent of all payments to firms doing street construction work. Each of the four firms is reviewed in Figure IV-9.

Figure IV-8.
Street construction firms receiving \$1 million or more in WSSC payments, Jan. 1999-Mar. 2004

Street Contractors	WSSC Prime Contract Payments (millions)
Fort Myer Construction Company (MBE)	\$ 16.4
Concrete General, Inc.	4.6
Romano Concrete Construction (MBE)	1.8
Manuel Luis Construction Co. (MBE)	1.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure IV-9.
Background on street construction firms receiving at least \$1 million in WSSC payments, Jan. 1999-Mar. 2004

Fort Myer Construction Company. Fort Myer Construction Company is a Washington, D.C.-based construction firm with a focus on excavation, asphalt and concrete paving, and building construction. The firm is also involved in water mains, wastewater and storm drain system installation and maintenance. Fort Myer was founded in 1972 and is a Hispanic-owned firm.

Concrete General, Inc. Concrete General was founded in 1970 in Gaithersburg, Maryland. The firm's practice area focuses on highway, street and bridge construction for public sector firms throughout the eastern U.S. The firm is privately-owned and employs over 100 people.

Romano Concrete Construction. Romano Concrete Construction is a Silver Spring, Maryland-based firm established in 1972. The firm's practice areas include concrete and asphalt construction work on roads, highways, bridges, driveways and buildings. Owned by Torcato Romano, a Hispanic American, Romano Concrete only provides construction services for public sector clients in the Washington-Baltimore area.

Manuel Luis Construction. Manuel Luis is a Clinton, Maryland-based minority construction firm with a focus on maintenance and repair of highways and streets using concrete and asphalt. The firm was founded in 1984 by Manuel Luis. The firm has three offices in the eastern U.S. and works mostly for public clients. The firm is Hispanic-owned.

Building construction firms. WSSC spent about \$7 million with firms involved in building construction work, accounting for 2 percent of total construction expenditures from January 1999 through March 2004. Building construction includes firms that specialize in industrial buildings and warehouses, and commercial and office buildings.

BBC identified 22 firms performing building construction work that received payments from WSSC from January 1999 through March 2004. Two firms received at least \$1 million in payments for building construction work, accounting for \$6 million or 83 percent of all building construction payments. Figure IV-10 identifies these firms; Figure IV-11 briefly introduces them.

Figure IV-10.
Building construction firms receiving \$1 million or more in WSSC payments, Jan. 1999-Mar. 2004

Building Construction Contractors	WSSC Prime Contract Payments (millions)
The Donohoe Companies, Inc.	\$ 3.6
Tito Contractors (MBE)	2.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure IV-11.
Background on building construction firms receiving at least \$1 million in WSSC payments, Jan. 1999-Mar. 2004

The Donohoe Companies, Inc. Founded in 1884 by John F. Donohoe, The Donohoe Companies is the oldest full-service real estate organization in the Washington, D.C. region. The firm specializes in construction of commercial, multi-family residential, hotel, education, health facilities and senior living facilities throughout the mid-Atlantic region of the U.S. The firm is privately-owned and has five regional offices in the eastern U.S. Donohoe is among the top 25 contractors in the Washington, D.C. region according to the Washington Business Journal.

Tito Contractors. Tito Contractors provides building construction and renovation services including painting, concrete work, carpentry, remodeling, landscaping and janitorial services. The firm was established in Washington, D.C., in 1979 by Maximo A. Pierola. Eighty percent of the firm's work is for private sector clients. The firm is Hispanic-owned and employs four people.

Insights Into the Local Construction Industry

BBC was able to draw some insights into the local construction industry from the history of the firms performing the most WSSC work, the interviews BBC conducted with firms in the local region, and some limited quantitative analyses. (See Figure IV-12 for a summary of the research the study team conducted.)

People with experience in the construction industry start construction firms. Experience selling and managing construction work is usually necessary for individuals to start their own construction firms.

Age of firms. Most of the construction firms doing the most business with WSSC were formed prior to 1980 and many were formed before 1950.

Diversification. Construction firms specializing in one field will often work in related fields. For example, some pipeline construction firms will also do excavation or other site work. Others will construct treatment plants.

One MBE pipe installation and repair firm BBC interviewed reported that their roots were in locating utilities and site survey work. They expanded into pipeline construction. They now also do highway and street construction. Diversification sometimes made it difficult for BBC to assign a construction firm to one primary line of work.

There are many different sizes of construction projects. For many of the companies doing business in the construction fields BBC studied, prime contracts can range from several thousand dollars to many millions of dollars.

Initial capital requirements can be large. Initial capital requirements for construction firms can be large. For some lines of WSSC construction work, it can take \$1 million to start a relatively small firm. Some interviewees identified the up-front capital requirements as a barrier to new MBE/WBE construction firms.

Beyond start-up, capital is needed because cash flow can be uneven. Some owners of small construction firms told BBC that there were jobs they would be afraid to take on if they thought the cash flow would not be smooth. One MBE reported that difficulty accessing capital may make it difficult for small and new firms to get work.

Other start-up requirements. According to business owners BBC interviewed, other start-up requirements are credit, bonding and knowledge. More than one contractor told us that “you need a good reputation, a bank and bonding.”

Figure IV-12. Research into the local construction industry

BBC attempted interviews with each current and past local area WSSC construction prime contractor (over \$5,000 in payments from 1999-Mar. 2004), subcontractor and bidder identified in this study. We successfully interviewed 115 of these firms. BBC also conducted telephone interviews with 167 other randomly-selected construction firms located in the Washington-Baltimore area. In addition, BBC staff completed 24 in-depth telephone interviews with MBE/WBE and majority-owned construction firms, plus additional interviews with general services and goods firms that work as subcontractors and suppliers on construction contracts. We supplemented this research by collecting Dun & Bradstreet information for WSSC prime contractors and subcontractors and by researching firms on the Internet. Some of our research draws upon past studies of the Washington-Baltimore construction industry performed by BBC and other consultants.

Firms are hired based on price and confidence in ability to perform the work. Most prime contract decisions are based on price if the client is confident that the bidder can do the work. “Price makes all the difference.” Other firm owners and managers pointed out that customers or prime contractors needed to feel comfortable with the quality of a firm’s work before they would be hired.

Bonding. Unlike other industries included in this study, bonding is particularly important in the construction business for government agencies. Getting access to a large bond can be difficult for smaller firms, and larger firms can get better pricing on bonds than smaller firms. Options such as SBA bonds are attractive, but time-consuming. A third difficulty with bonding relates to cash flow. Bonds can be expensive and are purchased up-front. Bonding may lock smaller firms out of a portion of the public sector market.

Some customers favor larger, older firms. According to people BBC interviewed, size of firm can be a factor in getting work. There may be a perception by some clients that smaller firms will not be able to complete the job on time or not have enough resources to do the work.

Similarly, potential clients may view small firms with suspicion. “If you do not have enough experience in the construction market, no one will look twice at your proposal.” Another firm reported that it is difficult for a new firm in the local market to get many opportunities. “A new firm will usually get only very small jobs and work overflows that cannot be filled by other firms.”

Other advantages for larger firms. Smaller firms may not have the credit and resources to bid large work. Other firms reported that larger firms get better pricing on materials and supplies because they can buy in larger quantities. They can also stockpile supplies to take advantage of when prices are low.

Subcontracting is standard practice within most fields in this industry. Most construction projects of any size involve subcontracting. Primes choose subs based on price, expertise and prior working relationships. When MBE/WBE goals programs are applied, this affects selection of subs.

Some firms work as both primes and subs, depending on the job. BBC’s surveys with firms available for WSSC work found that about one-half typically work as primes and another quarter work as both prime contractors and subcontractors.

Sometimes large construction projects involve more than one tier of subcontractors. For example, a first-tier subcontractor might have a large enough portion of the project that this firm would hire its own subs.

A portion of the construction industry is the supplier market. Depending on the WSSC project, primes need suppliers that can provide equipment, parts, building materials and other supplies.

MBE/WBE/DBE programs have been important to development of some MBE/WBE construction firms. Owners and managers of minority- and women-owned firms interviewed as part of this study reported that MBE/WBE programs were important in the early stages of their business, and continue to be important for the younger firms. The people BBC interviewed suggested that these programs may open doors to obtain experience working with public sector agencies, and some private sector clients as well, that would otherwise remain closed.

Where is the Local Construction Industry on the Path Toward Equal Opportunities for Minorities and Women?

BBC examined qualitative and quantitative information that helped us explore where the local construction industry might be on the path toward equal opportunities for minorities and women.

Have women and minorities been able to start construction firms? BBC examined whether minorities and women have been able to form construction firms based on the relative number of MBE/WBEs available for government construction work and analyses of business formation rates.

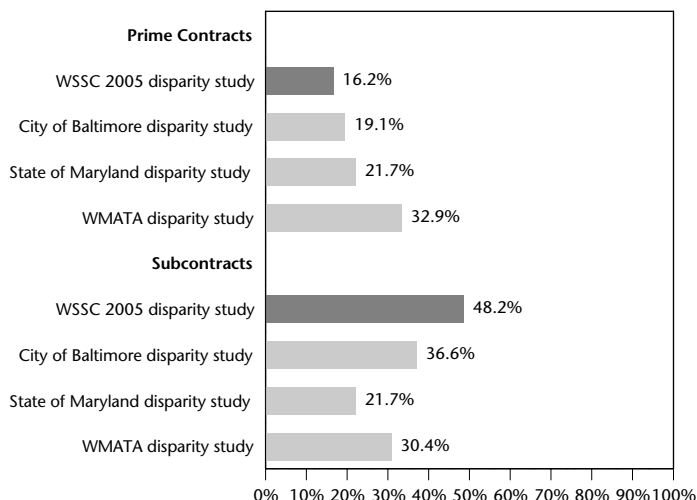
Relative number of MBE/WBEs. Two recent disparity studies completed in Maryland suggest that one-in-five firms available for construction prime contracts is minority- or women-owned. MGT of America found that more than one-third of available construction firms were MBE/WBEs when firms primarily working as subcontractors were included. The WMATA disparity study found that about one-third of available construction firms were MBE/WBEs.

BBC's availability analysis for WSSC prime contracts found that about 16 percent of available firms were MBE/WBEs. This is lower than was found in the City of Baltimore and State of Maryland studies. This may be due to the low availability among firms in water and wastewater pipeline and plant construction, an area of construction that is more prevalent for WSSC than for other government agencies. Figure IV-13 shows these availability estimates.

Recent disparity studies also agree that most MBE/WBE firms are African American, Hispanic- or white female-owned. There are relatively few Native American- or Asian American-owned construction firms.

The MBE/WBE availability in construction is considerably lower than in A/E, professional services and general services.

Figure IV-13.
Availability of MBE/WBEs to perform construction prime contracts and subcontracts in other local disparity studies



Source: MGT of America, City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001; BBC Research & Consulting, WMATA Post-Crosen Factual Predicate Study Update, 2000.

Rates of firm ownership. Statistical analyses of rates of business ownership have found that minorities and women are less likely to form construction firms.

In the 2001 disparity study for the State of Maryland, NERA examined self-employment rates of minorities compared with whites, and men versus women, from the U.S. Bureau of the Census Current Population Survey. Data are for Mid-Atlantic states for 1992 to 1999. After controlling for personal characteristics, African Americans, Hispanics and other minorities working in the construction and architecture and engineering industries were less likely to own businesses than whites with similar characteristics. Similarly, men were 11 percent more likely to own firms than women.

Disparities for African Americans, Hispanics and women were statistically significant. Figure IV-14 shows these results.

MGT's 2005 analysis of self-employment rates in construction in 2000 for the Washington-Baltimore area confirmed the disparities in rates of business ownership identified in the NERA study for African Americans, Hispanics and women.

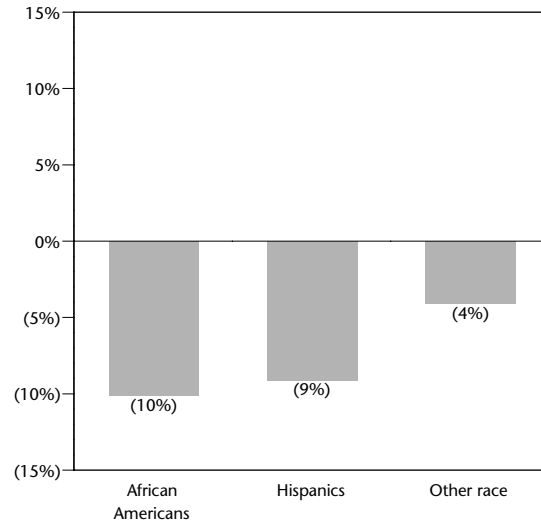
Have MBE/WBE construction firms been successful? In general, minority- and women-owned professional services firms have not been as successful as majority-owned firms as measured by number of employees or revenues.

Findings from 2004 surveys. BBC found that MBE/WBEs available for WSSC prime contracts were more likely to be “small” in terms of local revenues, after controlling for subindustry and age of firm. BBC examined revenues classes for each firm (e.g., \$1 million to \$2.49 million) to identify the median revenues class for each subindustry by age group. One age group was firms formed in the 1970s or 1980s. A second age group was firms formed in the 1990s. Only revenues generated by Washington-Baltimore offices were included in the analysis.

Compared with similar firms, only 29 percent of MBE/WBE construction vendors had “above median” revenues. In other words, about three-in-ten MBE/WBEs had revenues higher than typically found for that subindustry among firms generally the same age. About one-half of majority-owned firms had revenues higher than the median found for their specific industry and age group, as shown in Figure IV-15.

When BBC examined revenues from surveys completed with construction firms that were randomly sampled from the local marketplace, and performed the same analysis, 10 percent of MBE/WBEs had revenues

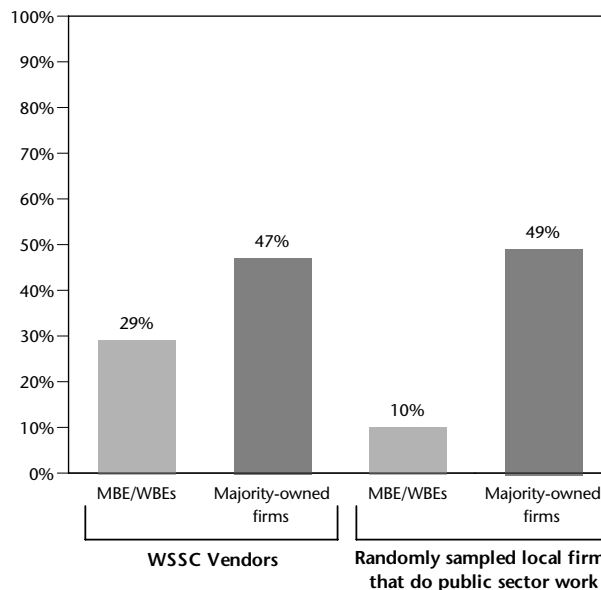
Figure IV-14.
Self-employment rates in the construction and architecture and engineering industries for African Americans, Hispanics and other minorities relative to whites, after controlling for personal characteristics, Mid-Atlantic states, 1992-1999



Note: All results are statistically significant at the 95 percent confidence level. Mid-Atlantic states include Maryland, Delaware, Virginia, Pennsylvania and the District of Columbia.

Source: NERA, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

Figure IV-15.
Percentage of construction firms with Washington-Baltimore area offices with above-median revenues, 2004



Note: n = 31 for MBE/WBE vendors and 38 for majority-owned vendors. n = 10 for MBE/WBE and 43 for majority-owned randomly sampled firms that do public sector work.

higher than typically found for that subindustry among firms the same age. About one-half of majority-owned firms had “above median” revenues. This difference was statistically significant at the 95 percent confidence level.

Findings from 2000 WMATA study. In the WMATA study, BBC performed a similar analysis of firm revenues within each four-digit SIC code for construction. BBC determined whether firms had revenues about the same or lower than the median revenues for that subindustry, or whether firms were in a revenues size class that was higher than the median size class for that industry. Only firms formed in 1994 or before were included in the analysis (the survey was conducted in 1999).

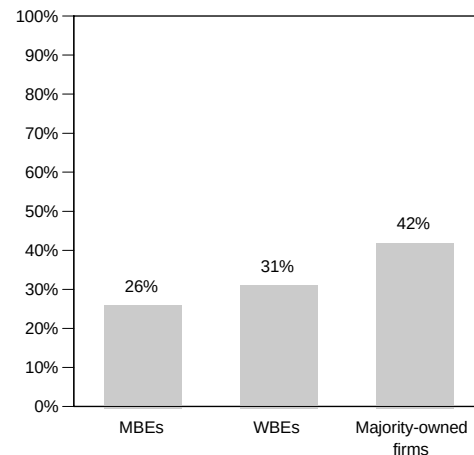
BBC found that few MBE construction firms had high revenues relative to other firms in their industry specialization. About one-quarter of MBE construction firms reported revenues that were higher than the median for all firms in their four-digit SIC code. Over 40 percent of majority-owned firms reported high revenues. This result suggests that majority-owned construction firms are achieving much higher revenues than minority-owned firms, after controlling for particular specialty of the firm (and only including firms that were formed in 1994 or before). Differences were statistically significant at the 95 percent confidence level. Figure IV-16 summarizes these results.

BBC also examined results by race/ethnicity/gender of MBE/WBEs. African American-, Asian-, Hispanic - and white female-owned firms were less likely to have “above median revenues” for their fields than majority-owned firms. Differences were statistically significant for African American-, Hispanic- and white female-owned firms.

Because BBC also performed a survey of local firms in 1994 research for WMATA, we were able to examine changes in revenues for these firms between 1994 and 1999. When BBC examined firms that had survived from 1994 to 1999, we found no meaningful differences in rates of expansion or contraction of MBE/WBE construction firms compared with majority-owned construction firms. However, MBE/WBEs were more likely than majority-owned firms to have gone out of business during this period. “Survival” from 1994 to 1999 was based on whether firms had a working local phone number in 1999. (Firms without working phone numbers may have also moved outside the region with no forwarding phone information, been absorbed into another firm and had the phone number disconnected, or been a Washington area branch that was closed with no forwarding information.) The study team analyzed firm survival based on the 1999 telephone survey, the 1994 telephone survey and a separate telephone survey conducted by BBC in February 2000.

Only two-thirds of MBE construction firms identified in 1994 could be found in the local area in 1999. The survival rate for women-owned construction firms was slightly higher: 72 percent. Over 80 percent of majority-owned construction firms survived over this period. Age of firms in 1994 could not explain these disparities.

Figure IV-16.
Proportion of construction firms with above-median revenues for their four-digit SIC code, 1999



Note: Construction and construction services firms in the Washington, D.C. Metropolitan Area formed in 1994 or before.

Source: BBC Research & Consulting, WMATA Post-Croson Factual Predicate Study Update, 2000.

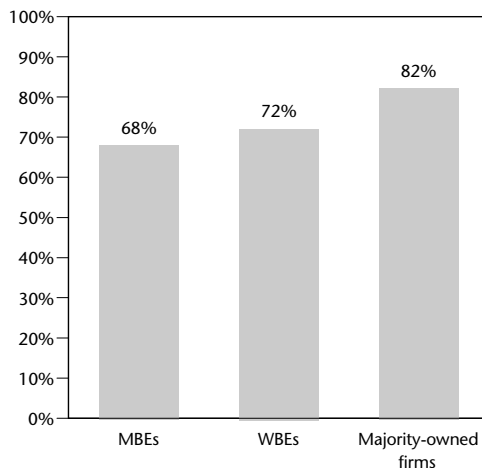
Figure IV-17 compares survival rates for MBE, WBE and majority-owned construction firms. Differences between MBE/WBE survival rates and rates for majority-owned construction firms were statistically significant.

Findings from the 2001 State of Maryland study. Using the same data from the Current Population Survey for Mid-Atlantic states as previously described for the formation rate analysis, NERA examined whether self-employed people who are minority earn less from their businesses than similarly situated whites. After controlling for age, hours worked and education, African American business owners earned 60 percent less than whites. Disparities in self-employment earnings were larger for African Americans living in the Mid-Atlantic states than found nationally. Self-employed women in the Mid-Atlantic states earned less than one-half of what men earned from their businesses. Disparities for African Americans and women were statistically significant.

The 2005 MGT study for WSSC confirmed these findings using 2000 Census data for the Washington-Baltimore CMSA. Disparities in self-employment earnings in construction were statistically significant for African Americans, Hispanics, Asian Americans and non-minority women.

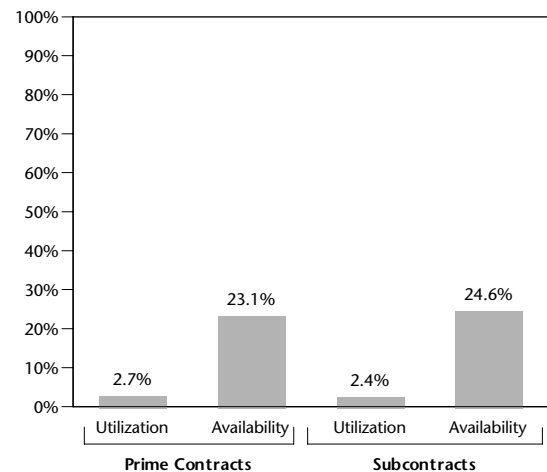
Findings from the 2005 MGT study. MGT of America studied utilization of MBE/WBE firms doing work in Prince George's County and Montgomery County based on building permits issued by these counties from 2001 through 2003. MGT found substantial underutilization of MBE/WBEs as prime contractors and as subcontractors. Disparities were identified for African American-, Hispanic-, Asian American-, Native American- and non-minority female-owned firms (see Figure IV-18).

Figure IV-17.
Survival rates of MBE/WBE and majority-owned construction firms in the Washington D.C. Metropolitan Area, 1994-1999.



Source: BBC Research & Consulting, WMATA Post-Croson Factual Predicate Study Update, 2000.

Figure IV-18.
Utilization of MBE/WBE construction firms as prime contractors on projects issued building permits in Prince George's and Montgomery counties, 2001-2003



Source: MGT of America, WSSC Disparity Study Update for 2005: An Analysis of Private Sector Market Dynamics, 2005

MBE/WBE utilization by other public sector agencies. Disparity studies for the City of Baltimore and the State of Maryland reported disparities in the utilization of MBE/WBEs as prime contractors in construction. As shown in Figure IV-19, MBE/WBEs received only 4 percent of City of Baltimore prime contract dollars from 1990 to 1998, less than one-quarter of what would be expected based on MBE/WBE availability to conduct that work. A larger percentage of State of Maryland prime contract dollars went to MBE/WBE primes, about 12 percent, still below the 21.7 percent MBE/WBE availability calculated in that study.

Do minority and female owners of construction firms have the same access to capital as white men? Of the three industries examined thus far in this report — A/E, professional services and construction — access to capital is most important in construction. A number of the construction firm owners and managers surveyed by BBC as part of this study underscored the importance of credit to the successful start and growth of a construction firm.

BBC 2004 interview results. A minority business owner reported to BBC that cash flow is a major problem for minority-owned firms and that his firm could not get good financing from banks. He believed that the security or guarantee required by credit sources was much higher for minority-owned firms than from majority contractors. He attributed this to negative stereotypes. “Very rarely does a MBE get good financing, and that is usually because they have some majority firm helping them.”

Another MBE business owner pointed out working capital as holding back MBEs. A number of business owners pointed out that delays in payments can be particularly difficult for MBE/WBEs.

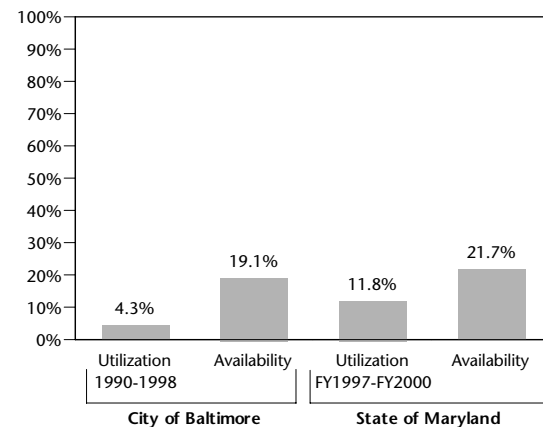
One MBE business owner BBC interviewed said that there is unequal access to capital for MBE firms due to race discrimination. His comments also pointed to the possible self-perpetuating nature of such discrimination — banks could discriminate against MBEs because minority-owned firms may not be as successful as white male-owned firms in the local marketplace.

One manager of a majority-owned firm pointed out that MBEs and WBEs (because they are often smaller) do not have the credit and resources to bid large work. This interviewee thought there was a level playing field for MBEs and WBEs if it is a small enough job.

Interviews in the 2000 disparity study for WMATA contained similar evidence that discrimination in capital markets affects minority and female owners of construction firms.

The minority female owner of a construction firm reported on experiences of minority firms in getting financing. She served as a mentor to other 8(a) firms and has a finance background as well as 13 years as the owner of a business. Even with her accounting skills, she reported that she has been unable to get financial institutions to give her protégés a fair shot. She reported that these problems are not just what would be expected to happen to any small firm. She reported that there is a discriminatory view taken by lenders in evaluating the creditworthiness of minority-owned firms.

Figure IV-19.
City of Baltimore and State of Maryland utilization of MBE/WBEs as prime contractors on construction contracts compared with MBE/WBE availability for prime contracts



Source: MGT of America, City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

The African American owner of a construction firm reported that access to financing continues to be a major problem for MBE/WBEs. His experience with local banks has been that once they see a loan applicant is a minority, they automatically place the loan application in the SBA loan guarantee program. Otherwise, he reported, the banks will not even consider making the loan. The rates for these SBA loans are not competitive with market rate loans. According to this business owner, it also takes longer to get SBA loans approved and the underwriting criteria are at least as stringent as regular market bank loans.

Findings from the 2001 State of Maryland study. The 2001 disparity study for the State of Maryland found barriers for minority-owned firms in access to capital markets. NERA examined data from the 1993 National Survey of Small Business Finances (NSSBF) to study whether banks are less likely to approve loans for minority- and women-owned firms compared with white male-owned firms (after controlling for several measures of the creditworthiness of the firm). The federally-collected data relate to 1992 and 1993 for firms with fewer than 500 employees. NERA examined data for the South Atlantic region, which includes Maryland. Because of the size of the sample for this region, they could only examine African American- and white-owned firms.

Before controlling for creditworthiness, 70 percent of African American-owned firms reported being denied credit during the three previous years, compared with 26 percent of white-owned firms. After controlling for type of loan, different measures of the firm's credit history, strength of balance sheet, sales and profits, other firm characteristics and firm owner's education, African American-owned firms were still 29 percent more likely than white owned firms to be denied loans. Results held when NERA separately examined sole proprietorships and partnerships versus corporations. These findings are particularly interesting in light of the fact that African American and white business owners appear to have the same access to business and personal credit cards. Only when they apply for loans where the financial institution is likely to be aware of the race of the business owner do differences in access to credit emerge.

The researchers also examined interest rates that banks charge minority- and white-owned firms for loans that are approved. The data suggest that banks charge African American-owned firms interest rates nearly one percentage point higher than similarly situated white-owned firms in the South Atlantic region. These findings are based on 1992-1993 data. A 2005 MGT of America study for WSSC revealed similar patterns of loan denials and higher interest rates using 1998 NSSBF data.

Finally, African American- and Hispanic-owned firms are more likely than white-owned firms to report that they needed credit but did not apply for a loan because they feared being rejected. After controlling for other factors, African American-owned firms in the South Atlantic region were 29 percentage points less likely to apply for loans fearing denial. Hispanic-owned firms were 18 percentage points less likely to apply for loans.

NERA supplemented the analysis of the NSSBF survey in 1993 with its own survey of 656 firms in Maryland distributed across construction, architecture and engineering, other services and goods. After controlling for other factors, African American- and Hispanic-owned firms were 25 to 29 percentage points more likely than white-owned firms to have been denied a loan in the prior three years. Similar results were found when separately examining the Maryland construction sector and commodities and other services firms.

The disparities reported here are statistically significant. There were no statistically significant disparities when examining female-owned firms or firms owned by other minority groups.

NERA also conducted a mail survey of minority and female owners of construction businesses in the 2001 State of Maryland study. Over 150 participated in the survey. One set of questions pertained to whether business owners had been treated less favorably in a number of types of business dealings. Thirty percent of MBEs and 10 percent of WBEs reported that they had been treated less favorably when applying for commercial loans. More than one-third of African American-owned firms reported that credit market conditions was a serious problem compared with only 12 percent of white-owned firms.

Closely linked to the issue of access to capital is receiving timely payment on construction projects. Nearly one-half of MBEs and over one-third of WBEs surveyed indicated that they had been treated less favorably in terms of receiving timely payment for work performed. More than one-third of MBE/WBEs surveyed said that obtaining working capital made it harder to obtain contracts.

Is there a level playing field for MBE/WBEs when competing for prime contracts?

Comments from firm owners and managers BBC interviewed as part of this study usually fell into one of three groups:

- There is discrimination against MBE/WBEs in the local construction marketplace;
- Because MBE/WBEs are more likely to be smaller, newer firms, there is not a level playing field for these firms due to barriers such as access to capital, bonding, size of contracts and pricing on supplies;
- MBE/WBEs face the same opportunities and challenges as any other construction firm.

Most owners and managers of majority-owned firms had comments consistent with second or third points of view, as did some representatives of MBE/WBE firms. However, some of the minority business owners BBC interviewed explained how they thought discrimination affected opportunities for MBE/WBEs in the local marketplace.

Access to capital. Any disadvantages for minorities and women when seeking capital can limit opportunities to form a firm, remain in business or grow. The previous pages of this chapter describe evidence that minority and female owners of construction firms do not have the same access to capital as white males.

Bonding. Bonding can be a problem for any newer or smaller construction firm, but several MBEs BBC interviewed as part of this study reported particular difficulties. A minority business owner reported that MBE firms get charged a higher rate for the same bonding as compared to a general contractor. SBA bonding was a poor substitute for private bonding because of the paperwork and lag time with SBE bonds. The owner of an eight-year-old MBE firm reported that his firm is constrained by the amount of bonding it can get, which he attributed, in part, to the negative attitudes bonding institutions have toward MBEs. One manager of a 15-year-old MBE firm BBC interviewed said that the firm no longer has any problems getting bonding, but that this is a problem for other firms.

A number of construction firms interviewed by the BBC study team in the 2000 WMATA disparity study had difficulty obtaining bonding. This affected the size of the contracts they could bid on or whether they could ever bid as a prime when a bond was needed. Even business owners who had been in operation for as much as 15 years had relatively recent difficulties obtaining bonding. Although several MBEs attributed their difficulties to the age or size of their firms, others thought that minority-owned firms were at a particular disadvantage. For example, a manager of a Hispanic-owned construction firm

said that his firm had trouble obtaining bonding until relatively recently when they found a new bonding company. Still, he found that his firm was still paying much higher rates than its white-owned competitors. After discovering this, he searched for lower rates and found them. He reported that procurement officers and other bidders often challenge his firm's bonding rates because they do not believe that a minority-owned firm can get such low rates.

Other firm owners interviewed indicated that bonding had been a problem in the past, but that access to bonding for MBE/WBEs had improved. Compared with other barriers, relatively few MBE and WBE construction firms surveyed by NERA in its 2001 disparity study for the State indicated that they had been treated less favorably when applying for surety bonds. However, one-third of MBEs and one-third of WBEs still reported that bonding requirements made it harder to obtain contracts.

Negative stereotypes. Some owners or managers of MBE/WBE firms BBC interviewed said that clients have negative stereotypes of MBE/WBE capabilities that present a barrier to getting work.

- “Most of the clients still feel that a minority firm is not qualified to compete with a general contractor because of their pre-established notions.”
- “The local construction market has a problem with skin color. People make assumptions about us when we walk through the door.” This African American contractor said that this is a major factor explaining limited success of minority-owned firms.
- A minority business owner said that “there is a preconceived notion that MBE/WBE firms will not be able to handle work pressure and that we are not professional.”
- According to a manager of a majority-owned firm, “Construction is still a white male-dominated field.”

The manager of an MBE business said that it was difficult for a minority firm in the local construction marketplace to start and be successful. “Most people think that a minority-owned business will not have the required skill to perform well.” He went on to say that there was still discrimination against MBE firms, especially if they were not well established and recognized for their work.

The owner of an MBE construction firm said that “a minority firm ... is always looked upon with skepticism — can they perform the work on time? Do they have the right people?” “There is a performance-based discrimination ... you are seen as inferior to majority firms and that you cannot do what they can.” These conditions contribute to his perception that minority firms are at a disadvantage to other firms.

More than one minority business owner said a common problem was perception of minorities within the construction industry as “laborers.” Another business owner said that minorities are not seen as professionals on par with whites within the industry.

NERA's survey of Maryland construction businesses found that one-third of MBEs and 13 percent of WBEs believed that they had been treated less favorably when working on or attempting to obtain work on private sector prime contracts. A similar percentage of MBEs and a greater share of WBEs reported being treated less favorably when working or attempting to obtain work on public sector prime contracts.

BBC's recent interviews with majority firms can be interpreted as evidence that negative impressions of MBE/WBEs persist.

- “Most of the MBE/WBE subs [from the WSSC-approved list] that we call are totally unprofessional. One would think that they are either daycare centers or kitchens. They are not even qualified to do the work. Only one of ten firms that we contact are really good at doing what they do,” according to the female manager of a majority-owned construction firm.
- “If a general contractor is looking for an MBE, it’s discrimination because you have to hire him. For the MBE, he just expects the work. It lends itself to some negative stereotypes.”
- The manager of a majority-owned construction firm reported, “Sometimes a firm is started with one guy who has all the knowledge and another guy with the MBE background. Then when the guy with the knowledge leaves, the firm dies. An MBE with knowledge is rare.” This interviewee also expressed frustration with trying to find qualified MBE subs from WSSC lists.
- “Hispanics actually work and that’s why they survive. You can’t find legitimate African American firms,” according to the white male owner of a construction firm.

A number of minority and female owners of construction businesses interviewed in the WMATA disparity study said that Disadvantaged Business Enterprise certification had not been a real advantage for their firms. Some reported that there is a negative stigma attached to being a DBE.

Networks. BBC interviews with local construction firms as part of the WSSC study found that networking was an important way to locate work. Networking was mentioned by about one-half of the construction firms available for WSSC prime contracting that were randomly sampled from the local marketplace.

The importance of business networks was also a major topic in the WMATA interviews. For example, a manager of a Hispanic-owned construction firm indicated that there is an “old boys network” in which a lot of business is done that is difficult to break into. He stated that his firm could not bid on what they do not know about.

A Hispanic owner of a construction firm pointed out the existence of established networks in which a start-up must gain a foot-hold in order to have a chance to bid on much private sector work. He recalled that he is often told that his bid did not win because the entity is going with the contractor it has worked with for years. In one instance, he contacted a major local utility to receive information on bid opportunities, and after being asked and telling them that his firm had been in business for about two years, he was told to call back “if he was still in business two years later.” He waited three years and called back, but still was not afforded any opportunities.

One example of racial attitudes coming out in networking situations is the experience of the Hispanic owner of a construction firm who recalled a conversation he had with three white men at an industry conference. Not realizing that an African American man attending the conference worked for the owner or that they were close friends, the three white men pointed to the African American man across the room and started making comments about the “nigger.”

A Hispanic owner of a construction firm reported that, to be competitive, a firm needs consistent performance and solid relationships. It is also extremely important, particularly for minority-owned start-ups, for there to be a mechanism by which those start-ups can “break-in” to the established networks that are sharing the business and the opportunities.

The Hispanic female owner of a construction firm reported that, because of her prior bad experiences, she does not even try to break into the commercial market. She reported that she does not want to put herself or her employees through the process of continuously trying to get work from majority owners with no or very little success. Based on her experiences, “the old boy network only gives work to those companies that are owned by their members; no others need apply.”

The Hispanic female owner of a construction firm reported that her firm was denied the opportunity to bid on a contract involving a school project in Maryland. The architectural firm that was in charge of the project would not let her bid. In the end, the construction contract that she wanted went to a company owned by one of the sons of the owners of the architectural firm. Although this evidence of nepotism is not necessarily race or gender-motivated, it may be more likely that non-minorities are in a position to steer contracts to firms owned by family members than minorities.

Denial of contract awards. In the WMATA studies, several representatives of minority- and women-owned construction firms reported that they had won contracts only to be denied the awards from what they suspected was race or gender discrimination.

- A manager of a Hispanic-owned construction firm recalled an instance where his company was the low bidder, but was told his bid was too low and did not get the work. In another instance for a local county, his firm was initially told that he lost the bid because of its references. When he challenged that statement, he was told that his firm was not qualified to install bathrooms. The manager said that he concluded that there was something else going on, and that, by mutual agreement, he and the county signed a letter saying that his firm did not want the contract.
- The female owner of a design/build firm reported that her firm was awarded a contract with a public entity in Maryland that was later combined with another public entity’s work because of similar scope of work. She reported that her firm performed work on one of the contracts, but alleged that the other public entity was hostile to her firm and gave them no work under that contract. She alleged that the entity maintained that her firm was not qualified to do the work. After making a complaint, she has received some work under the other contract.
- The Hispanic female owner of a construction firm alleged that she was unfairly denied a project for a local school system. She was the low bidder but the contract was awarded to a majority-owned firm.
- The African American owner of a construction firm recalled a recent instance in which a public agency made three solicitations for a project. In each case, his firm was the low bidder. He came to learn that the agency did not want his firm and they were trying through the re-advertisements to get another bidder through the process. Eventually, he won the contract.

Suppliers. An MBE business owner BBC interviewed noted that large firms have the advantage of better resources and access to capital. He also reported that large firms get materials and supplies at a lower price because they buy in large volume.

MBE/WBE construction firms interviewed in the WMATA disparity study had similar experiences:

- The African American owner of a design/build firm reported that suppliers typically charge MBE/WBEs more for supplies. He explained that large competitors are always going to get lower prices than his firm. He added that this might be because of past business or volume discounting, not necessarily race.
- A Hispanic owner of a construction firm explained that small and new firms will always be charged more when it comes to obtaining supplies, particularly on credit. He stated that when a firm is just starting to establish credit, they are always given less favorable terms from the supplier.
- The African American owner of a construction firm explained that supplies and general costs are higher for minority-owned businesses because smaller companies are charged higher rates. This disproportionately affects minority-owned businesses because most MBEs are small. As an example, he cited the cost of insurance on company vehicles. The cost of insuring a vehicle is lower for a company with 50 vehicles compared with a company with only ten vehicles.
- Another African American construction firm owner agreed, stating that all small, new construction companies, whether minority-owned or not, will pay higher prices until they are able to establish relationships with suppliers.
- The Hispanic female owner of a construction firm asserted that she has had a problem with suppliers providing short-term financing to her firm. She reported that this happens in particular with her cement supplier. There was a period when she was not ordering much cement because she was not very busy. When her workload picked up again and she went back to the supplier, the cement company refused to give her the same terms as they had before, although she had paid her bills promptly and nothing had happened in the interim period that should have affected the terms of this relationship.
- A manager of a Hispanic-owned construction firm reported that his firm was able to unseat an incumbent firm for a project for a university in Virginia (through competitive bidding), and that it was clear from the start that no one at the university was happy about his firm taking over the contract. Further, he was unable to hire seasonal employees in the area, could not find any subcontractors willing to help and no one in the area would sell paint to them. He solved the problem by contacting the regional sales representative for the paint company. The sales representative loaded up several trucks with the paint, drove to the store that would not sell paint to his firm and sold him the paint in the very parking lot of the store.

- A Hispanic contractor indicated that suppliers discriminate in their prices, but that they claim that the discrepancies are based on volume and the fact that the supplier may have a longer relationship with a business that it gives lower prices and favorable credit. He also observed that in some circumstances, the contractors are part owners of the supply company. The female owner of a supply firm reported that discrimination in prices and access to supplies does happen in the marketplace, but that it is nothing that she “can prove.”
- The African American owner of a construction firm reported that discrimination still exists between supply companies and minority subcontractors. Without giving specific examples, he stated that suppliers charge higher rates to minority-owned firms.

In the NERA surveys performed as part of the State of Maryland study, one-third of minority owners and 16 percent of female owners of construction firms indicated that they had been treated less favorably because of their race or gender when obtaining price quotes from suppliers or subcontractors. More MBE/WBEs than non-MBE/WBEs reported that the price of supplies or materials made it harder to obtain awards.

Advantages for larger firms. If MBE/WBEs are smaller due, in part, to discrimination, there are other factors that favor larger firms that could perpetuate the effects of any such discrimination.

- One owner of an MBE firm BBC surveyed in this study reported that smaller firms do not have the in-house staff to analyze contract documents, prepare bids and prepare the paperwork necessary to get bonding. (Almost 30 percent of MBE/WBEs surveyed by NERA in the Maryland study reported that the cost of bidding made it harder to obtain contracts. Several MBE/WBE construction firms surveyed in the WMATA study reported similar constraints.)
- “There is too much competition by larger firms who have the funds and resources to force the small firms like us to go out of business,” according to one MBE business owner.

Representatives of smaller majority-owned firms BBC interviewed also reported that they have difficulty competing against the largest firms, and that potential clients have negative impressions of smaller firms.

Interviews with construction firms conducted as part of the WMATA disparity study found similar impressions. For example, the Asian owner of a construction firm reported that some of the size and technical specifications customers required in his line of business can be unnecessarily restrictive. He explained that requirements for minimum annual revenue and minimum number of contracts per year have prevented his firm from bidding on certain contracts.

The Hispanic owner of a construction firm explained that there are many contracts that his firm and most MBE/WBEs cannot bid on because of their size. He also added that in many instances, different scopes of work are combined into one contract and this precludes his firm and many MBE/WBEs from bidding on potential contracting opportunities.

Harassment on work sites and double standards for evaluating performance. Several examples of unequal treatment once the construction firm starts work come from the WMATA interviews:

- A Hispanic owner of a construction firm described winning a large contract for a local federal installation through a competitive process, and then immediately being made to feel unwelcome. He was told by a white friend that many people there wanted him out. Although the project was ultimately completed successfully, he said that for several months, he was scared that this customer would put him out of business.
- The African American owner of a construction firm reported that his crew suffered racially-based harassment by an inspector while they were working on a public construction project in suburban Virginia. The inspector continually complained about the quality of work provided by his firm. He also requested numerous changes. After his firm accommodated the requests, the inspector continued to complain about his firm. While he stated that racial discrimination and harassment are difficult to prove unless it is overt, based upon his experience he believes that the inspector's animosity toward his company was racially motivated.
- A manager of a Hispanic-owned construction firm reported routinely experiencing double standards when customers evaluate his firm's performance, but that they deal with this fact by endeavoring at all times to exceed the accepted standards.
- The Hispanic female owner of a construction firm reported that she has witnessed instances in which she and her firm have been held to a higher standard. She reported that this has been a recurrent problem for her and for other minority firms.
- The African American owner of a construction firm reported that upon winning a significant contract for a major company in Washington, D.C. in 1994, the customer was hostile towards his firm due to stereotypical attitudes about MBEs not being capable of handling large contracts. After successfully completing this large contract, his firm has only been awarded one small job with the company since that time.
- The female owner of a specialty construction business stated that sometimes contractors have a double standard as it relates to judging the performance of a minority or woman-owned company. There is one prime contractor that set a higher standard of performance for her work than it did for its own crew.
- The African American owner of a construction firm reported that expectation levels of prime contractors regarding minority firms are negative in two ways. First, the expectation level can be so high that no firm will be able to meet that standard. Primes do not have the same expectation level for small white-owned firms. Other times, the expectation level is so low that the prime will limit the minority-owned firm's involvement in the project and the MBE will not have the opportunity to display what it is capable of doing. In both instances, the minority-owned firm has to continuously prove its competency.
- A Hispanic contractor recalled one instance when his firm was called back two or three times to wash the concrete it laid after other work on the project dirtied it. He had never heard of that before, and was sure that the concrete was as clean, if not cleaner, than the concrete he had seen on every other project he had ever been involved with.

- A female business owner described an instance in which her firm was brought in on a job where four prior contractors had been kicked off the project. She went to a meeting of the firms working on the project where the owners of the other firms, all white males, insulted her. She reported that it appeared that these business owners were trying to intimidate her so that they would not have to use a minority firm and could bring in who they wanted to do the job. She eventually successfully performed the work.

Many minorities and women who owned construction and architecture and engineering firms surveyed in the Maryland disparity study complained of:

- Not being able to function without hindrance or harassment on the work site (especially true for African American and female owners of construction firms);
- Having to do inappropriate or extra work not required of comparable majority contractors; and
- Having to meet quality, inspection, or performance standards not required of comparable majority-owned firms.

Up to one-third of the firm owners surveyed reported differences in treatment because of their race or gender.

Is there a level playing field for MBE/WBEs when competing for subcontracts? Many of the disadvantages for MBE/WBEs described in the previous pages would also apply to subcontractors.

In addition, some of the construction firms BBC interviewed in the course of this study cited discrimination by prime contractors.

- One African American-owned electrical contractor that works as a prime and subcontractor reported that “primes never contact us for subcontracting work That is one of the reasons why we decided to start working as a prime.”
- “We rarely get calls from primes for subcontracting opportunities, so we decided to start our own prime work,” according to another MBE business owner.
- One MBE business owner said that negative stereotypes affect his opportunities to get work from primes. “There is a prevalent attitude among general contractors that MBE firms are non-qualified and the personnel will be difficult to deal with.”
- A minority business owner said, “A general firm usually makes assumptions about a minority firm when they hear an accent or hear a women’s voice over the phone ... that this person will not be qualified enough to handle our work. This is the biggest obstacle for an MBE/WBE firm. This discrimination is still very evident in the local marketplace and we have to deal with it every now and then.”
- An owner of an MBE trucking firm that subs on construction projects reported that there were two tiers of per hour rates in the local marketplace: one for majority and white female-owned trucking subcontractors, and a lower one for minority-owned trucking subcontractors.
- Several business owners complained of front companies getting construction subcontracts.

Other minority business owners had better experiences:

- A manager of an MBE pipe firm said that they do get called by primes to work as a subcontractor, sometimes when there are no MBE goals.
- “We keep getting jobs even if there is no [MBE] requirement,” according to a manager of an MBE business. In fact, this firm was pointed out by some majority contractors as one that was used even without goals.

Several construction firms interviewed in the WMATA study expressed difficulties dealing with prime contractors. A Hispanic owner of a construction firm alleged that a prime contractor was going to use his firm as a subcontractor while they were only dealing with his company’s estimator, a white male. The subcontract was subsequently given to a non-minority firm. He further alleged that there have been several other instances such as this. The African American owner of a construction firm reported that he often gets solicitations from prime contractors and submits bids only to never hear from them. He alleged certain large majority-owned prime contractors do not like to use MBE/WBEs and, in fact, resent DBE programs. The African American owner of a construction firm reported that his firm has been and continues to be denied contract bid opportunities as a subcontractor because prime contractors are more comfortable with non-minority firms.

In NERA’s survey of Maryland construction businesses (part of the 2001 State of Maryland disparity study), about one-third of MBEs and nearly 20 percent of WBEs indicated that they had been treated less favorably when working or attempting to obtain work on public sector subcontracts. About the same percentage agreed that they had been treated less favorably on private sector subcontracts.

The survey also asked minority and female business owners, “How often do prime contractors who use your firm as a subcontractor on public sector projects with requirements for minority, women and/or disadvantaged businesses also use your firm on public sector or private sector projects without such goals or requirements?” Depending upon sector, about 60 percent of MBE/WBEs responded “seldom” or “never.”

Slow payment and non-payment. Interviews completed by the BBC study team in 2000 for the WMATA disparity study indicate that payment of subcontractors by prime contractors is a significant source of conflict. Prompt payment may be a particular problem for construction subcontractors.

One MBE construction firm owner reported that slow pay from public entities is the only time financing becomes a critical issue for him. The Hispanic female owner of a construction firm reported that she had had some bad experiences in either not getting paid or being paid slowly when working as a subcontractor. In those instances, she was told that the problems in getting paid as a subcontractor resulted from the fact that the prime contractor had underbid the project. She said that she will no longer work as a subcontractor.

A female owner of a construction firm stated that she had to file a complaint with the WMATA Office of Civil Rights in order to get paid by the prime on a WMATA contract.

One of the BBC study team's interviewees reported that complaints of slow pay and non-payment made by MBE/WBE subcontractors, particularly in construction, are quite common at WMATA. It was further reported that it is somewhat difficult to determine whether the slow pay/non-pay occurs because of discrimination. There were several reasons cited for this: (a) contract terms requiring a subcontractor to wait until the prime is paid by the agency; (b) the ease with which primes can justify the withholding of payment by claiming poor performance and/or nonconforming goods; (c) other predatory, but legal, business practices engaged in by prime contractors against financially weaker subcontractors and suppliers; (d) poor record keeping on the part of subcontractors; (e) the lack of access to the records that demonstrate the manner in which a prime paid all of its subcontractors and suppliers; and (f) the failure or refusal of government agencies such as WMATA to intervene at the earliest possible moment, or at all.

The African American owner of a construction firm stated that payment discrimination is rampant for public sector work in the Washington area. He reported that some prime contractors have a pattern of holding funds owed to a minority-owned firm until that firm is in serious financial trouble, then negotiate a much smaller payment to the MBE or a "kickback" that the minority-owned firm is forced to accept.

A female manager of a construction firm reported that a big problem is that prime contractors tend to withhold retainage fees for long periods of time, sometimes for up to a year. While she does not believe that this is intended to discriminate against MBE/WBEs, she recognizes that the practice can have a disparate impact on MBE/WBEs that must rely on subcontract work. She reported that some government agencies are attempting to address this problem by lowering the percentage of its retainage, which may lower what primes keep from subs.

Is Discrimination Affecting MBE/WBEs When Competing for WSSC Work?

There is evidence that MBE/WBEs did not face a level playing field in the local marketplace in the past and that this continues today. There is also evidence that discrimination affected MBE/WBE opportunities on WSSC construction contracts in the past. Is this true now?

How much work are MBE/WBEs winning as prime contractors? MBE/WBE utilization as prime contractors on WSSC construction contracts has gradually increased from the 1980s to 1999-2004.

1980s. The 1988 MBELDEF study for WSSC found that 5.9 percent of construction prime contract dollars went to MBE/WBEs in the mid-1980s.

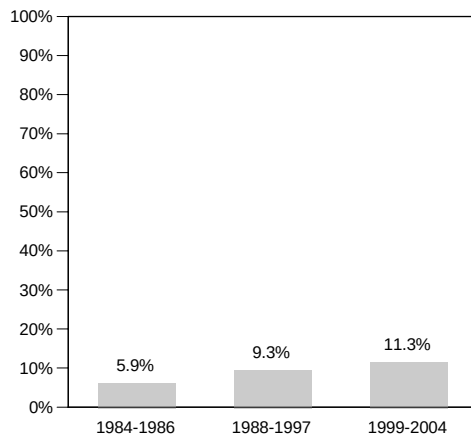
1990s. MGT of America separately analyzed construction contracts going through the Contract Technical Services Section (CTSS) and contracts going through Procurement. Adding utilization data for these two areas for 1991 through 1997, 9.3 percent of prime contract dollars went to MBE/WBEs. Relative utilization of MBE/WBE primes was less when MGT only examined the CTSS contracts. MGT did not analyze use of MBE/WBEs versus majority-owned firms as subcontractors.

1999-2004. BBC identified 45 MBE/WBEs among the 224 construction firms receiving at least \$5,000 in prime contract payments between January 1999 and March 2004. This includes construction work that WSSC labeled as "procurement construction." BBC determined MBE/WBE status through phone calls to firms, assessment of WSSC records, D&B and other data, and WSSC staff review.

Of the \$373.5 million in payments to construction firms, \$42.3 million, or 11 percent, went to MBE/WBEs. The MBE/WBE utilization reported here does not include subcontracts going to minority- or women-owned firms. Trends in from the 1980s through 2004 are illustrated in Figure IV-20.

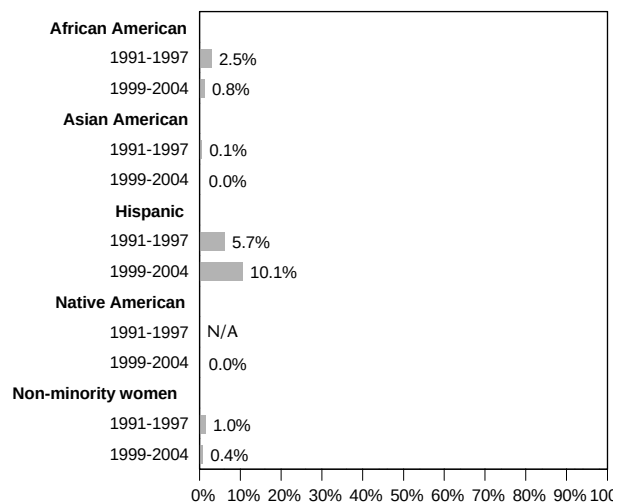
Utilization by race/ethnicity and gender. Most of the prime contract dollars going to MBE/WBE construction firms went to Hispanic-owned firms. Hispanic-owned firms received about \$38 million in prime contract payments for 1999-2004. African American-owned and white female-owned construction firms were paid \$2.9 million and \$1.6 million, respectively. One of the construction firms receiving prime contract payments was identified as Asian-owned and no Native American-owned firms received more than \$5,000 in prime contract payments. Figure IV-21 reports these data.

Figure IV-20.
MBE/WBE utilization as prime contractors on WSSC construction contracts, 1984-2004 (percent of total contract dollars)



Source: 1984-1986 statistics from the Minority Business Enterprise Legal Defense and Education Fund, An Examination of WSSC's Minority Business Program, 1988; 1988-1997 statistics from MGT America, Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data—Jan. 1999-Mar. 2004.

Figure IV-21.
Prime contractor utilization on WSSC construction contracts by race/ethnicity and gender, 1991-2004 (percent of total contract dollars)



Note: Asian American utilization includes Native American-owned firms for 1991-1997.

Source: Minority Business Enterprise Disparity Study for the Washington Suburban Sanitary Commission, 1999; 1999-2004 statistics from BBC Research & Consulting analysis of WSSC MAPS data—Jan. 1999-Mar. 2004.

The utilization statistics for African American- and white female-owned firms — 0.8 percent and 0.4 percent, respectively — are striking given that there are African American-owned and WBE construction firms available in the local marketplace, and utilization as prime contractors actually decreased from 1991-1997 to 1999-2004. By comparison, 3.6 percent of State of Maryland prime contract dollars in construction goes to African American-owned firms, according to NERA's 2001 disparity study for the State. Over 5 percent of State prime contract dollars goes to WBE construction firms.

Are there still disparities between WSSC utilization of MBE/WBEs and the availability of MBE/WBEs to work as prime contractors for construction contracts? In its 1999 disparity study for WSSC, MGT found disparities between the utilization and availability of MBE/WBEs when examining prime contracts going through the Contract Technical Services Section. BBC researched whether disparities in WSSC construction contracting persist.

BBC examined construction firms in the local marketplace that provide the types of construction important to WSSC work and that reported they were interested, qualified and able to work for WSSC as a prime contractor. Some of the firms BBC surveyed were already working as primes or subcontractors for WSSC, or bidding as primes on past work. BBC weighted the results to reflect the relative dollars spent on four major areas of WSSC construction:

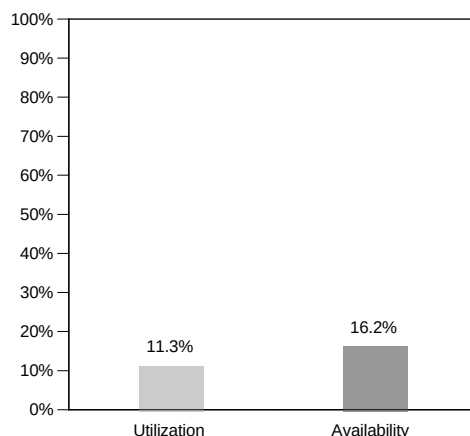
- Pipeline construction;
- Treatment plant and storage tank work;
- Streets; and
- Buildings.

Because about one-half WSSC's construction dollars are spent on pipeline construction, the relative number of MBE/WBEs available for this type of work counted most in determining overall availability (e.g., half of the overall availability figure for construction is based on availability of pipeline construction firms). For each subsector of construction, BBC separately determined MBE/WBE availability among firms bidding or doing WSSC work versus firms contacted in a random survey of local construction companies. Only firms indicating that they were qualified and interested in work as prime contractors on WSSC projects were counted in the prime availability figure.

Based on BBC's research, and after the weighting described above, about 16 percent of the firms available for prime contract work were minority- or women-owned. BBC used one figure for availability in 2004 as a point of comparison for 1999-2004 utilization because a very large proportion of firms available in 2004 were in business throughout this time period.

The availability figure is based on the distribution of WSSC work. It is somewhat lower than construction availability calculated in recent disparity studies for other Washington-Baltimore area public agencies (see Figure IV-13). MGT's study for the City of Baltimore found MBE/WBE availability for construction contracts of about 19 percent. The NERA State of Maryland study reported availability of about 22 percent.

Figure IV-22.
WSSC utilization of MBE/WBEs as prime contractors on construction contracts, 1999-2004, compared with MBE/WBE availability for prime contracts



Source: BBC Research & Consulting.

The 11 percent utilization of MBE/WBEs for prime contracts for 1999-2004 is about seven-tenths of the availability of MBE/WBEs to perform this work. Figure IV-22 compares MBE/WBE utilization and availability for construction prime contracts.

Because of the small numbers of available firms for certain sectors, and the fact that BBC was unable to interview each of these firms, BBC's estimate of MBE/WBE availability has a relatively large margin of error: plus or minus 7 percentage points at the 95 percent confidence level. BBC cannot reject the possibility that sampling in the availability analysis is the cause of the observed disparity, even though this is a relatively large disparity. (There were also large margins of error for availability estimates by race/ethnicity and gender, reported later in this section.) This would be more problematic if the

availability figures reported here were not in line with or lower than other recent disparity studies, which provides confidence in the identified disparities.

BBC explored MBE/WBE utilization and availability for WSSC prime contracts in more detail. Further investigation finds that firms owned by Hispanics, especially in certain subindustries, receive a very large share of WSSC construction dollars.

Figure IV-23 presents utilization and availability for WSSC construction prime contracts by race/ethnicity and gender. BBC estimated availability of African American-owned firms for WSSC construction prime contracts to be about 2 percent. Availability of WBEs for WSSC construction prime contracts is more than 7 percent, based on BBC's surveys. There were disparities between utilization and availability for these two groups of firms.

Figure IV-23.
WSSC utilization of MBE/WBEs as prime contractors on construction contracts, 1999-2004,
compared with availability for prime contracts, by race and gender

	Utilization as Prime Contractors Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$2.9	0.8 %	2.0 %	(1.2) %	0.40
Asian American	0.0	0.0	0.7	(0.7)	0.00
Hispanic	37.9	10.1	5.8	4.3	1.74
Native American	<u>0.0</u>	<u>0.0</u>	<u>0.7</u>	<u>(0.7)</u>	0.00
Total MBE	\$40.8	10.9 %	9.2 %	1.7 %	1.18
WBE	<u>1.6</u>	<u>0.4</u>	<u>7.1</u>	<u>(6.7)</u>	0.06
Total MBE/WBE	\$42.4	11.3 %	16.2 %	(4.9) %	0.70
Majority-owned	<u>331.2</u>	<u>88.7</u>	<u>83.8</u>	4.9	1.06
Total	\$373.5	100.0 %	100.0 %		

Note: Rounding may affect subtotals.

Source: BBC Research & Consulting.

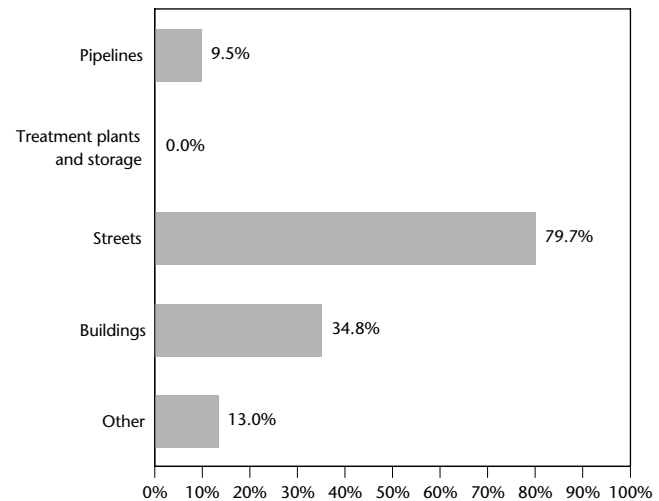
BBC's estimates of availability for Asian- and Native American-owned firms for WSSC prime contracts were much smaller — less than 1 percent for each of these groups. The disparities indicated for construction firms owned by Asian Americans and Native Americans are less surprising based on their low availability, yet utilization for Asian-owned firms not even reaching 0.1 percent is notable given the 2 percent utilization on State construction prime contracts.

WSSC utilization of Hispanic-owned firms as prime contractors substantially exceeds availability of Hispanic-owned firms (10.1 percent compared with 5.8 percent). The analysis presented in the next pages further explores this finding.

Does utilization vary by field within construction? As shown in Figure IV-24, MBE/WBE participation in WSSC prime contracts varies dramatically among construction fields.

Street work. Ten contractors primarily performed street work for WSSC. One Hispanic-owned firm, Fort Myer Construction, was paid \$16 million out of the total of \$24 million for this work for 1999-2004. Three other Hispanic-owned firms also performed work as prime contractors on WSSC street projects. In total, Hispanic-owned firms received about eight out of every ten dollars paid to prime contractors for street work. One white female-owned firm received a small dollar volume of prime contracts for street-related work.

Figure IV-24.
MBE/WBE utilization as prime contractors on WSSC construction contracts, by type, 1999-2004



Source: BBC Research & Consulting from WSSC MAPS data.

Pipeline construction. Of the 55 firms receiving prime contractor payments for pipeline construction and repair, five were MBE/WBEs. In total, MBE/WBE primes received \$17 million, or 10 percent, of the \$180 million in prime payments from January 1999 through March 2004.

One Hispanic-owned firm, FMC Civil Construction LLC, received \$15 million in prime contract payments for what BBC believes were primarily pipeline contracts, but includes at least a small volume of street construction. (The WSSC data sources for 1999-2004 limited BBC to classifying firms by only one type of work, so all the payments for this one business are reported under pipeline construction.)

Other work. None of the prime contracts for water and sewer treatment plant construction or repair appeared to go to MBE/WBEs. About \$2 million of the \$7 million in payments to firms primarily performing building construction for WSSC for 1999-2004 went to MBE/WBEs. Five of the 22 firms performing this work were MBE/WBEs, and one firm, a Hispanic-owned contractor, accounted for most of the MBE/WBE prime contract dollars.

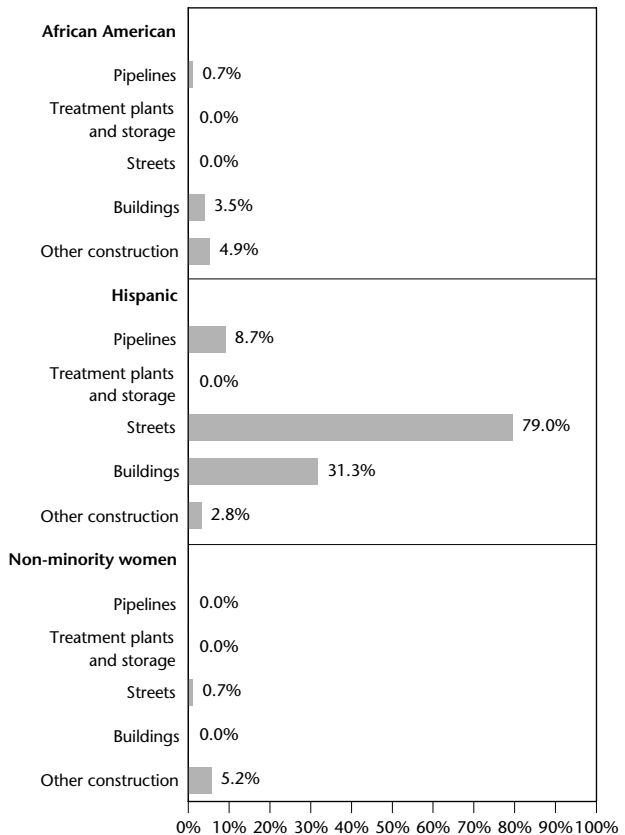
Over 100 construction contractors received prime contracts for a diverse set of WSSC construction projects that BBC grouped into “other construction.” This work, ranging from roofing to installation of security systems, totaled only \$27 million for 1999-2004. Thirty MBE/WBEs received prime contracts, accounting for about 13 percent of the dollar volume of other construction prime contracts. No one MBE/WBE accounted for a large volume of this work — the MBE/WBE firm receiving the most work was a white female-owned painting company, with \$0.8 million in payments over this period.

Figure IV-25 presents MBE/WBE utilization by primary type of work for African American-, Hispanic- and white female-owned firms. Because no prime contracts appeared to go to Native American-owned firms, and utilization of Asian American-owned firms is 0.0 percent for each type of work (only winning a small amount of “other construction”), Figure IV-24 does not show results for these two groups.

Utilization and availability for pipeline construction. Because half of WSSC construction contract dollars go toward pipeline contracts, BBC separately examined utilization and availability for this type of work.

Figure IV-26 compares utilization of MBE/WBEs as prime contractors on pipeline contracts from 1999 through March 2004 with the availability of firms to conduct this work. Disparities are still evident for MBEs/WBEs, except for Hispanic-owned firms. Less than 1 percent of WSSC pipeline prime contract payments went to African American-owned firms, and no work went to Asian American-, Native American- and white female-owned pipeline firms, based on these data.

Figure IV-25.
Prime contractor utilization on WSSC construction contracts, by type and by race/ethnicity and gender, 1999-2004



Source: BBC Research & Consulting from WSSC MAPS data; Jan. 1999–Mar. 2004

Figure IV-26.
WSSC utilization of MBE/WBEs as prime contractors on pipeline contracts, 1999-2004, compared with MBE/WBE availability for prime contracts

	Utilization as Prime Contractors Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$1.3	0.7 %	3.3 %	(2.6) %	0.21
Asian American	0.0	0.0	1.3	(1.3)	0.00
Hispanic	15.7	8.7	7.2	1.5	1.21
Native American	<u>0.0</u>	<u>0.0</u>	<u>1.3</u>	<u>(1.3)</u>	0.00
Total MBE	\$17.0	9.5 %	13.1 %	(3.6) %	0.73
WBE	<u>0.0</u>	<u>0.0</u>	<u>2.7</u>	<u>(2.7)</u>	0.00
Total MBE/WBE	\$17.0	9.5 %	15.8 %	(6.3) %	0.60
Majority-owned	<u>163.0</u>	<u>90.5</u>	<u>84.2</u>	6.3	1.07
Total	\$180.0	100.0 %	100.0 %		

Note: Rounding may affect subtotals.

Source: BBC Research & Consulting.

The preceding analysis is based on payments. BBC also examined awards of 200 pipeline contracts for 2002-2004. In these data, one Asian American-owned firm won a contract accounting for 0.4 percent of total prime contract dollars for pipe work. This firm is primarily an engineering firm and was counted in that field in the 1999-2004 payments data. Utilization for other groups was consistent with the 1999-2004 payment data: African American-owned firms won 1.3 percent and Hispanic-owned firms won 8.8 percent of pipeline prime contract dollars from 2002 through spring 2004. No prime contracts went to Native American- or white female-owned firms.

Distribution of work by MBE/WBE firm. The relatively high utilization of Hispanic-owned firms in WSSC construction is partially explained by the success of Fort Myer Construction and FMC Civil Construction LLC.

WSSC payments data indicate that two firms, Fort Myer Construction and FMC Civil Construction LLC, received the most prime payments of any MBE/WBE construction firm. A BBC telephone interview with Fort Myer Construction indicated that FMC Civil Construction LLC is actually a subsidiary of Fort Myer Construction. Combined, these two entities, perhaps better thought of as one large firm, received \$31.3 million in WSSC prime contract payments from 1999 to 2004. The 43 other MBE/WBEs received \$11.0 million in prime contract payments, as shown in Figure IV-27.

This paints a different picture of MBE/WBE utilization on WSSC prime contracts. Fort Myer Construction/FMC Civil Contractors LLC received a total of 8.4 percent of WSSC prime contract payments for 1999-2004 and all other MBE/WBEs received a total of 2.9 percent.

What are some of the factors behind the disparity in WSSC's utilization of MBE/WBEs in construction prime contracts? BBC reviewed WSSC construction contract files and conducted other analyses to explore factors that could be behind the disparities in MBE/WBE utilization.

Does WSSC award many construction contracts without competition? BBC examined how often WSSC sole-sources construction contracts. We found that awards without competition are rare.

One reason WSSC could award a construction contract without competition is that it "rode" a contract with another public sector agency. This appears to be rare, accounting for a small fraction of WSSC construction contract dollars. The BBC study team identified four contracts going to one firm (a WBE) that appeared to be made under this provision (see Figure IV-28 for a discussion of these contracts).

Figure IV-27.
Fort Myer Construction/FMC Civil Construction LLC as a portion of total MBE/WBE utilization as prime contractors on WSSC construction contracts, 1999-2004

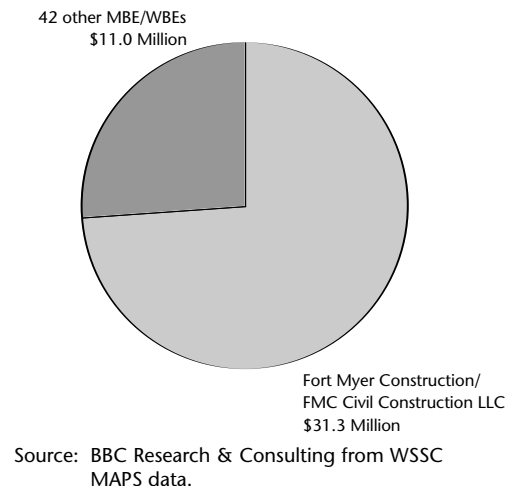


Figure IV-28.
WSSC construction awards that rode other public agencies' contracts

Highway and Safety Services, Inc., a WBE, appeared to have received two \$80,000 contracts for flagging services without WSSC bidding the work out. It appears that WSSC rode a Montgomery County contract to make these awards. A \$43,000 contract and a \$32,000 contract also went to Highway and Safety Services without any other firms being contacted for bid. The rationale for these contracting procedures was not identified in the files.

WSSC often has emergency construction work. Sometimes WSSC solicits bids for this work, even if formal procedures are suspended. WSSC often will get six or more bids for these contracts. In other cases, WSSC awards the work without bids. BBC identified six contracts awarded under the emergency exception to the competitive bidding requirement and that did not appear to have any bidding. These “sole-sourced” emergency awards are identified in Figure IV-29. Each of the firms receiving sole-sourced emergency contracts was a majority-owned firm. If the emergency sole-sourcing of work is limited to these contracts, this procedure does not account for a large portion of WSSC work. However, there may be more contracts awarded through these procedures that were not identified as such in the files.

Figure IV-29.
WSSC sole-sourced construction contract awards
identified as made according to emergency procedures

Contractor	Year	Contract Amount	Work Performed
Cherry Hill Construction Company	2003	\$31,000	Sewer main repair
F.R.S. Construction Company, Inc.	2002	\$14,000	Sewer main repair
Instuform East, Inc.	2002	\$220,000	Sewer lining
New Hope Pipeliners	2003	\$1,258,000	Rehab of sanitary sewers
Taylor Utilities	2002	\$38,000	Not identified
Taylor Utilities	2003	\$19,000	Water bypass
W.F. Wilson and Sons	2003	\$43,000	Sewer main repair

Note: Other contracts may have been awarded according to these procedures but not identified as such in the contract files.

Source: BBC Research & Consulting from WSSC construction contract files.

Does WSSC have restrictive contract specifications? To be considered for construction work as a prime, a firm must have been in business for at least one year. Although this could favor larger, older firms, very few of the construction firms available for prime contract work were less than one year old. Under the SLMBE program, this requirement can also be waived. SLMBE staff report that this occasionally happens. This does not appear to be a major barrier for MBE/WBEs.

WSSC contracts typically require bid bonds or another form of bid guarantee. Occasionally, firms that fail to include a bid bond or bid guarantee are rejected as non-responsive. This has happened to MBEs as well as majority-owned firms, as discussed in more detail later in this chapter.

WSSC construction contracts of \$25,000 or more require labor and materials bonds and performance bonds. Contracts may also require maintenance bonds. In general, WSSC bonding requirements are more restrictive than WSSC needs to apply, as State of Maryland statute has been amended to only require bonding for contracts of \$100,000 or more. WSSC’s “procurement construction” contracts must have bonding when they reach \$100,000.

More than one-half of the nearly 200 construction contracts BBC examined were between \$25,000 and \$100,000. The SLMBE program provides for waiving or reducing bonding requirements for MBE/WBEs, but appears to be rarely done. One difficulty is identifying an MBE/WBE bidder prior to the time of bid to waive the bonding requirement for that firm.

Given the problems that some MBE/WBEs report in obtaining sufficient bonding on a timely basis at a reasonable cost, WSSC’s bonding requirements may have an adverse impact on MBE/WBEs.

Is “pre-qualification” a constraint to doing business with WSSC? WSSC has added a formal pre-qualification step for construction contracting for only two or three recent projects. According to WSSC staff, each contractor that submitted qualifications was deemed to be qualified to bid.

WSSC also operates what it calls a “pre-qualification” process for construction contracts, but appears to be a review of contractor responsibility prior to going ahead with the contract. A contractor can submit a bid if not “pre-qualified.” WSSC assesses qualifications if that contractor is the low bidder and is new to WSSC. WSSC also may periodically review qualifications of other contractors that receive WSSC prime contracts. Although WSSC can choose to not approve a bidder, this rarely, if ever, happens. BBC found no evidence of this in the contract files.

Are low bidders often not awarded the contracts? On occasion, WSSC does not award the contract to the lowest bidder. BBC identified perhaps 10 to 15 instances in which the low bidder did not receive the contract (about 5 percent of WSSC construction contracts). In these cases, bidders are deemed “non-responsive.” WSSC can also reject all bids if they substantially exceed the engineer’s estimate for the contract.

BBC examined whether there was any pattern of MBE/WBEs being disadvantaged by review of responsiveness. Although MBE/WBEs were twice as likely to be rejected as a low bidder than benefit from the rejection of a majority-owned firm, this happened relatively infrequently and it is difficult to determine whether any of these actions were unwarranted. Figure IV-30 reviews contracts where the contract files indicated that one or more bidders were rejected.

Do MBE/WBEs submit bids on WSSC construction contracts? BBC sought to answer this question by focusing on bids on pipeline construction contracts, the largest area of WSSC contracting and a field with low MBE/WBE utilization.

Figure IV-30.
Possible low bidders on WSSC construction contracts rejected as non-responsive

In one case, the bidder submitted a non-conforming bid without a bid bond and was rejected (a majority-owned pipeline firm).

A contract for preventive maintenance on overhead and fire doors had two bidders, one of which was deemed non-responsive.

A majority-owned firm was awarded a \$251,000 contract in early 2004 for repairs to a parking garage after another unidentified bidder was deemed unresponsive (reason unknown from the information in the files).

BBC identified a majority-owned firm that had its low bid rejected because it failed to acknowledge an addendum. This work went to another majority-owned pipe firm.

An African American-owned firm was the low bidder on a house connection contract (March 2002 bid date) but was deemed non-responsive because the firm failed to acknowledge receipt of an addendum to the request for bids. A majority-owned firm won the contract.

The same African American-owned firm was the low bidder on a similar contract (May 2002 bid date), but was denied the contract award because it had already been awarded two contracts that it had yet to start. The contract went to the second-lowest bidder, a majority-owned firm. The firm has since bid on any WSSC work and BBC was unable to locate the firm for an interview. (This might be an example of a rejection of a firm as “not-responsible” rather than non-responsive, but did not appear to be noted as such in the files.)

An annual contract for emergency water main repairs had two bidders deemed non-responsive. The contract went to majority-owned firms.

Three bidders on a roof repair contract were deemed non-responsive. The bid went to a Hispanic-owned firm. A majority-owned firm was the low bidder but was deemed non-responsive because it did not meet the MBE/WBE subcontracting goal nor did it request a waiver of the requirement.

A majority-owned contractor submitted a bid deemed to be non-conforming for a small water and sewer house connection contract that went to a majority-owned firm.

A majority-owned low bidder failed to provide a bid guarantee for a small house connection contract that went to another majority-owned firm.

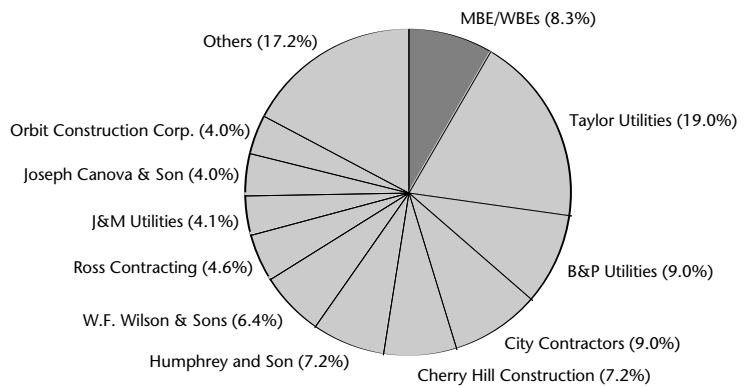
A minority-owned firm was deemed non-responsive on a contract because they only submitted a 5 percent bid guarantee. The contract went to a majority-owned firm. However, on another contract, a majority-owned firm won a contract with only a 5 percent bid bond. Only majority-owned firms bid on this contract.

An MBE firm submitted the low bid on a house connection contract, but was deemed non-responsive because it did not submit a bid guarantee. The contract went to a majority-owned firm.

An African American-owned firm won an asbestos remediation contract after the low bidder was deemed unresponsive (firm unknown) and the second lowest bidder failed to honor its bid.

BBC examined the number of bids submitted for pipeline construction work from 2002 to spring 2004. BBC identified 803 bids on these contracts based on information in the contract files. Taylor Utilities submitted 152 bids, or nearly 19 percent of the total. Including Taylor Utilities, ten majority-owned contractors submitted three-quarters of all bids for pipeline work during this time period. In all, MBEs submitted about 8 percent of the bids on pipeline construction work. Only Hispanic- and African American-owned firms submitted bids. Among MBEs, Harkless Construction submitted the most bids, about 20, followed by Fort Myer/FMC Civil Construction LLC with 17. Figure IV-31 examines the number of bids on WSSC pipeline construction contracts, from 2002 to spring 2004.

Figure IV-31.
Proportion of total bids submitted for WSSC pipeline construction contracts, by firm, 2002-2004



Source: BBC Research & Consulting from WSSC construction contract files, 2002–spring 2004.

Overall, the number of bids from MBE/WBEs relative to the total number of bids in 2002-2004 (8%) is in line with the dollar volume of 2002-2004 pipeline work won by MBE/WBEs, about 10 percent. However, African American-owned firms submitted 4.2 percent of the bids and got 1.3 percent of the work, based on dollar volume. African American-owned firms were as likely to win their bids, but they typically bid on some of the smallest contracts, as discussed further below.

Are MBE/WBEs more likely to bid on smaller contracts? Analysis of construction bids for 2002-2004 indicates that Hispanic-owned firms as a group bid on and won larger as well as smaller WSSC contracts. This group goes beyond Fort Myer Construction/FMC Civil Construction LLC to include Tito Contractors, Manuel Luis Construction Company and Romano Contractors. African American-owned firms, especially in the area of pipeline construction, tended to bid on smaller jobs.

Why might MBE/WBEs submit relatively few bids as primes on construction contracts?

BBC researched several alternative explanations for why minority- and women-owned construction firms might not submit proposals in proportion to their availability in the marketplace, especially in pipe contracting:

- Firms are not made aware of contract opportunities;
- Contracts are so large or contract requirements so limiting that MBE/WBEs are discouraged from bidding;
- Other WSSC actions discourage MBE/WBEs from bidding; and
- Opportunities as subcontractors on WSSC projects are so favorable that MBE/WBEs are reluctant to bid as primes.

Are MBE/WBEs aware of prime contract opportunities? If the construction contract will exceed \$50,000, WSSC publicly advertises the contract, typically with Dodge, a leading source of construction bid notices, as well as the Afro-American newspapers, the Prince George's and Montgomery County Journals and La Nacion. It appears that WSSC widely advertises these contract opportunities. WSSC may also send notices of invitations for bids out to its construction vendor list.

BBC asked firms doing business with WSSC and a sample of randomly-selected firms in the local marketplace how they learn of WSSC proposal opportunities. Most contractors bidding on WSSC work say that they learn about opportunities from WSSC postcard notifications. About one-third use a tracking service. Six percent mentioned the WSSC website. Few vendors or randomly-sampled firms said that they look for notices in the newspaper.

MBE/WBEs were about half as likely to say that they hear about opportunities from WSSC staff as majority-owned firms.

Are WSSC contracts so large or burdensome as to discourage bids from MBE/WBEs? Although WSSC will occasionally have some very large construction contracts, most contracts are less than \$500,000. BBC identified fewer than 20 contracts that exceeded \$1 million from 2002 through spring 2004, and most of these were annual contracts for a range of on-call services. The dollar value given in the contract files was for estimated services, which could have been less. Two-thirds of the largest contracts were for street repair, and Hispanic-owned firms won most of these.

As noted previously, more than one-half of WSSC construction contracts are between \$25,000 and \$100,000. With a few exceptions, most WSSC construction contracts are relatively small.

BBC also examined contract amounts for pipe construction work. Very few contracts were over \$1 million, and there were only 20 contracts above \$500,000. MBEs won two of these contracts. Most contracts were in the \$25,000 to \$100,000 range.

Are MBE/WBEs not available for the largest contracts? Would the disparities identified in WSSC utilization of MBE/WBE construction prime contractors disappear if BBC only counted as available firms that say they could do very large projects?

Based on firm responses to the availability questions in the telephone surveys BBC conducted with construction firms, one would have to limit availability to firms that say they could work on projects over \$1 million in order to bring availability in line with the 11 percent overall MBE/WBE utilization as primes. As discussed above, projects of that size were rare in the 1999-2004 time frame except for water and sewer treatment plant projects. The disparities cannot be explained by limited availability of MBE/WBEs to perform very large contracts.

In sum, limiting availability to only firms that can conduct very large contracts does not make sense given the size distribution of WSSC construction contracts.

Are there other actions that discourage MBE/WBEs from bidding as primes? BBC conducted in-depth telephone interviews with 24 construction contractors, plus shorter interviews with over 250 additional construction firms. Many of the construction firms BBC interviewed that have not done work with WSSC indicated that they were not interested or capable of doing the type of work involved in WSSC construction contracting. Because BBC sampled firms from throughout the Washington-Baltimore area, some firms indicated that they simply didn't work in Maryland. Others do not do public sector work. Several had negative comments about working for public sector clients.

A few of the majority business owners or managers BBC interviewed had specific comments about not wanting to work with WSSC:

- “In the construction area, WSSC’s reputation is negative in Maryland.”
- “We just finished working with them, and I don’t think that we’re going to bid on any other work at WSSC.”
- “We’re general contractors. The way WSSC’s procurement works just doesn’t fit into our business model. They generally break up work and it winds up being done by several specialty contractors. Not worth our time to go through the bid process at WSSC.”
- “Have worked with WSSC before and had problems. Their inspections are not very objective and it demoralizes us.”
- “Work with WSSC is tedious ... our work takes only one to two days. But, WSSC inspectors take up so much of our time that working down there takes three to four days. If inspecting work were done more efficiently, we’d be more enthusiastic about working there.”
- “WSSC’s bid process is rushed.” He would appreciate more than two weeks to submit a bid.
- Several commented that they thought the contracts would be too large, for example, “I’m just a small contractor and I would imagine that the work is too large for me to do.”

There were also some negative comments from MBE/WBEs:

- A MBE business owner said that breaking into WSSC work is difficult, similar to other clients who were unfamiliar with his firm.
- One minority business owner reported that the playing field is not level for minority firms at WSSC. He said, “what matters [to WSSC] is how big our firm is and how much experience we have.”
- “There is a lot of internal politics that prevent MBE firms from getting jobs. Usually larger firms get the larger projects and MBEs get very small jobs.” This minority firm owner reported that his lack of success was demoralizing and would at least want to be allowed to know where he went wrong. He acknowledged that WSSC jobs go to the lowest bidder.
- Another MBE firm said that breaking into WSSC work is difficult. However, he had submitted a bid in the past and intends to in the future.
- One MBE contractor complained about slow pay at WSSC.

A number of MBE/WBEs that work with WSSC reported that they were not helped in any way by the WSSC MBE program. Any success they have had with WSSC has been as a prime winning work based on low bid.

Other MBE/WBEs BBC interviewed had more positive comments. A business owner who had yet to break into WSSC work, but was familiar with WSSC from experience at a majority-owned firm, said that WSSC deals with the contracting process in a fair way. A manager of an MBE construction firm said that there is a level playing field for MBE firms for WSSC work.

Impact of WSSC's MBE/WBE program on prime contracts. The utilization of minority- and women-owned construction firms analyzed here reflects any effect of WSSC's MBE/WBE program on prime contractor utilization. Many of the MBE/WBEs BBC interviewed indicated that the program had not helped them win prime contracts. They indicated that they won work at WSSC without any assistance.

However, BBC's data did include several 2004 contracts won by an MBE pipeline contractor that went through the new small business program, which limits bidding to firms deemed to be small businesses by WSSC. In addition, an MBE prime that was not the low bidder won a contract because the low bidder failed to meet the subcontracting goal. Certified MBE/WBE primes do not have to meet subcontracting goals.

Conclusions for WSSC construction prime contracts. WSSC's utilization of African American-, Asian American-, Native American- and white women-owned firms on construction prime contracts fell well below availability of these firms to perform this work: 1.2 percent of WSSC prime contract dollars went to these groups of MBE/WBE firms compared with 12.5 percent availability to perform this work, a statistically significant disparity. BBC's review of how WSSC awards contracts did not find a clear explanation for these disparities, however we did observe the following:

- MBE/WBE low bidders were more likely than majority-owned low bidders to be rejected by WSSC for a bidding technicality (e.g., adequate bid bond or bid guarantee) or some other reason. BBC did not fully investigate these instances, but we did find that WSSC rejected majority-owned firms for some of the same bidding technicalities. These practices may have a disproportionate impact on firms that are relatively new to the process.
- The fact that WSSC requires firms to have bonding for contracts between \$25,000 and \$100,000 may limit MBE/WBE opportunities in pipeline work given the evidence of disadvantages in accessing capital and bonding for some minority- and women-owned firms. WSSC does not usually require bonding for most other types of construction projects under \$100,000.
- There was evidence that WSSC is seen as a particularly difficult client, especially when it comes to inspections. WSSC staff will admit as much. Although this may be a way of ensuring quality work, WSSC's reputation may also discourage firms, particularly MBE/WBEs, from bidding.

An overriding concern could be the comfort WSSC has with the ten or so majority contractors that make up the firms that typically bid on WSSC pipe contracts. This work is highly specific to WSSC, and these firms are typically older and have worked with the Commission for many decades. As mentioned at the outset of this chapter, an investigation 25 years ago suggested that many of these firms actively defended their WSSC "turf," and would try to find ways to keep new contractors from coming into the WSSC market.

Although BBC did not conduct the type of investigation to see if this were still true today (or true in the past), the composition of the industry suggests that the any past efforts to "defend turf" would continue to have lasting effects. Not all of the contractors that get the most pipe work are the same as 20+ years ago, but many are. "Construction is still a white male-dominated field," according to a representative of a majority-owned firm.

Also, WSSC's subcontracting goals program did little to encourage new MBE/WBE pipeline construction firms from entering this market. The fact that the top bidder on pipe work was able to enter WSSC's small business program and bid on sheltered market contracts against legitimate emerging firms is further indication that WSSC's programs, to date, have been ineffective for MBE/WBE pipeline prime contractors.

Conclusions for WSSC construction prime contracts. There is evidence that past discrimination against minority- and women-owned firms may have a lasting impact on WSSC's utilization of MBE/WBE construction firms as prime contracts, especially non-Hispanic MBE/WBEs. BBC found this to be true for construction in general and pipe contracting in particular. There may be continued race and gender discrimination that reinforces these outcomes.

BBC also concludes that encouraging MBE/WBE participation in construction prime contracting adds competition and can save WSSC money. BBC examined pipeline contracts that MBEs won and found that WSSC saved 11 percent on what it spent on those contracts than if the work did not have any MBE bids (i.e., the work had gone to the lowest non-MBE bidder). This amounted to about a \$400,000 savings. Some MBE bids were substantially less than the closest bid from an established majority-owned pipe contractor. This savings does not count any positive effect new competition may have on lowering the bid prices from majority-owned firms.

Is There a Need for the WSSC MBE/WBE Subcontracting Program in Construction?

WSSC's current program. WSSC often applies mandatory MBE/WBE subcontracting goals for construction contracts that go through Procurement, usually 20 percent. Contractors must meet the goal or make good faith efforts to meet the goal. They must also use the MBE/WBE subs that they show at time of award.

At one time, the mandatory program applied across all construction contracts; most contracts had a goal of 20 percent. The Commission had discontinued the goals program for other construction contracts in the face of litigation in the mid-1990s. However, effective January 2001, WSSC enacted a voluntary subcontracting goals program for these contracts. Under the voluntary program, contractors are encouraged to subcontract 20 percent of the contract to MBE/WBEs, but are not required to do so. Contractors that win a job must list proposed subcontractors and suppliers, including majority-owned firms.

Perceptions of the program. A number of minority- and female-owned firms seeking subcontracting or supply work on WSSC construction contracts reported to BBC that the subcontracting goals program was not effective. Their comments appear to pertain to the "mandatory" subcontracting goals program. For example:

- A minority business owner said that the MBE program did not help his firm, and that he saw that majority prime contractors could get around the program. He perceived that WSSC staff helped them avoid the program. For example, he reported that majority-owned firms would indicate that they could not find any MBE to work as a subcontractor or that the subcontractor list that WSSC supplied did not have any qualified MBE for subcontracting work. "The truth is that the larger firms are not willing to spend the time or effort looking for a minority firm."

- Another MBE contractor also reported that majority-owned primes on WSSC contracts can find ways around the program. “Most of the larger contractors indicate to WSSC that MBE firms were non-responsive or they were quoting too high.”

Owners and managers of majority-owned construction firms also confirmed that contractors play tricks to get around the MBE program.

- “The program doesn’t do what it’s supposed to do.” This manager went on to say that his firm has difficulty finding subs so they find a supplier or a sub to buy the materials, pay the extra 2 to 3 percent mark-up, and just install the materials themselves.
- A manager of a majority contractor says that he complies with the WSSC program by just buying materials from a WBE supplier who tacks on an extra 3 percent. “It satisfies the requirement and that way, I don’t have to worry about fly-by-night subs.”

A WSSC staff person reported that one of the established majority pipeline contractors at WSSC set up his daughter as a WBE supplier for pipeline jobs, another possible example of “playing tricks” with MBE/WBE programs. Her firm appeared among the WBE subcontractors listed on WSSC work.

One of the MBE subcontractors BBC interviewed reported that he stopped bidding on WSSC work because of manipulation of the MBE program. He reported that, in the industry as a whole, large majority firms are using false MBE names as subcontractors in order to get the project. He reported that the named MBE firm does not get the work. This business owner actually sued one of WSSC’s pipe contractors about fraudulent listing of his firm’s name to get a public sector job (not a WSSC contract). He took the case to court, but was apparently unsuccessful in showing that his firm had been harmed by this action. This business owner also reported about the cost of litigation, and the financial advantage the large contractor had over his firm when he pursued this legal action. This instance suggests that effective legal remedies may not be available to individual MBE/WBE subcontractors when disadvantaged by prime contractors; the direct legal cost plus the cost of possible loss of future business are too great for subcontractors in light of the unlikely benefits from the litigation.

Effect of the voluntary subcontracting goals program. BBC examined subcontractor and supplier use on WSSC contracts based on planned use reported by the prime contractor at the time of award and payments to subs reported by prime contractors at the completion of the contract.

The information that prime contractors report to WSSC on their expected and actual use of subcontractors and suppliers shows relatively high utilization of MBE/WBE subcontractors and suppliers.

Proposed MBE/WBE subcontracting as a share of total contract dollars. The BBC study team compiled information on subcontractors and suppliers at time of award from contract files for 2002 through spring 2004. We first focus on pipeline contracts, as all or most of these contracts were subject to the voluntary goals program. Although this information was not complete, BBC could still reach conclusions from the reported information.

Information on pipe contracts that clearly included subcontracting found that about 20 percent of the contract dollars for contracts won by majority-owned firms was awarded to MBE/WBE subcontractors and suppliers based on the proposed list of subcontractors and suppliers. Most projects were under the voluntary goal program, although this figure includes data for contracts that had subcontracting but were too small to be subject to the program.

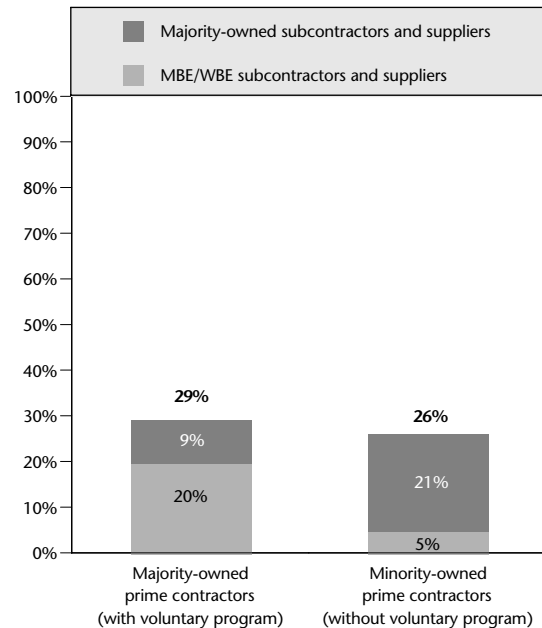
The fact that the awarded percentage matches the target for the voluntary goal does not mean that most contractors subcontracted 20 percent of the contract to minority- and women-owned firms. In fact, none of the contracts examined proposed exactly 20 percent MBE/WBE utilization. Ten of the 64 contracts going to majority-owned primes that reported subcontracting had MBE/WBE subcontractor utilization exceeding 20 percent. On the other hand, some contractors receiving relatively large pipe contracts only used majority-owned subs or suppliers on these contracts. Ten of the 64 contracts going to majority-owned primes had no MBE/WBE utilization, although many of these were in the range of a few thousand dollars to \$24,000.

BBC also examined minority-owned primes' proposed use of MBE/WBE subcontractors on pipeline contracts. Because the voluntary goals program does not apply to MBE/WBE primes, it provides one benchmark to examine MBE/WBE subcontractor utilization by majority-owned firms. As shown in Figure IV-32, majority-owned prime contractors subcontracted out about 29 percent of total contract dollars (subs and suppliers) and minority-owned prime contractors spent about 26 percent of the contract dollars on subcontractors and suppliers. However, majority-owned prime contractors reported that 20 percent of the total contract dollars would go to MBE/WBE subs and suppliers and that 9 percent would go to majority-owned subcontractors and suppliers. On contracts awarded to minority-owned prime contractors, only 5 percent of the work was to go to MBE/WBE subcontractors and 21 percent would go to majority-owned subcontractors/suppliers.

These data show that majority- and minority-owned pipeline contractors planned to spend about the same proportion of contracts, overall, on subcontractors and suppliers, but that the bulk of this work would go to MBE/WBEs if the voluntary goals program is applied and a small portion goes to MBE/WBEs if the voluntary goals program is not applied. As discussed in the next pages of this chapter, it also indicates that any future voluntary goals program should apply to MBE/WBE primes as well as majority-owned primes.

MBE/WBE subcontracting as a share of total subcontract dollars. The subcontracting statistics examined in the previous pages focus on the percentage of total proposed contract dollars going to MBE/WBE subcontractors and suppliers. Another way to examine this information is to compare the share of total proposed subcontracting/supply dollars awarded to MBE/WBEs versus majority-owned firms. In this analysis, total **subcontracting** dollars is the focus, not total **contract** dollars. It is similar to the analysis conducted for A/E and professional services subcontracting in Sections II and III of this report.

Figure IV-32.
Percentage of total contract dollars going to MBE/WBE and majority-owned subcontractors and suppliers for WSSC pipeline contracts, 2002-2004 (proposed)

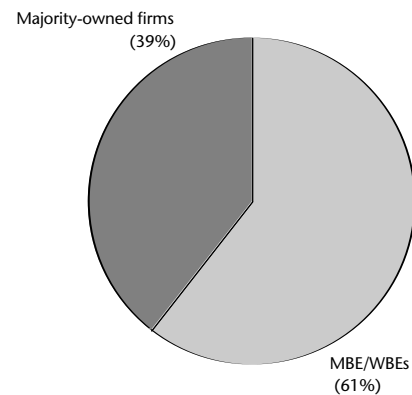


Source: BBC Research & Consulting from WSSC construction contract files.

The contractor listings of subs and suppliers contained in the contract files identified \$3.9 million in expected payments to subcontractors and suppliers. Of this total, \$2.4 million was to go to MBE/WBEs. These data combined subcontractor use of majority- and minority-owned prime contractors.

As shown in Figure IV-33, well over one-half of the “committed” or “awarded” subcontracting and supply dollars on pipeline contracts went to minority- and women-owned firms. (We use “awarded” here because what firms were actually paid may differ.) Nearly all of the contracts examined were subject to the voluntary rather than the mandatory goals program, as most were pipeline contracts. These data again indicate that the voluntary goals program has been relatively successful in opening opportunities for MBE/WBE subcontractors if the awarded dollars are actually paid to MBE/WBE subcontractors.

Figure IV-33.
Proposed subcontractor and supplier utilization on WSSC pipeline construction contracts, 2002-2004

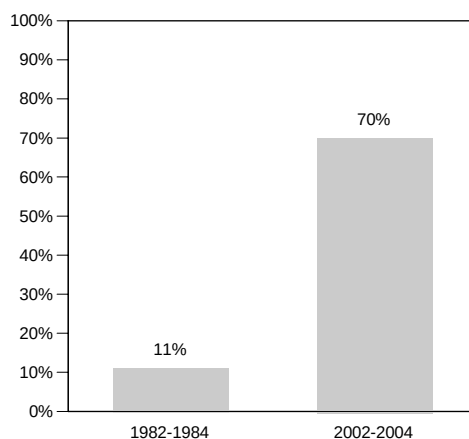


Source: BBC Research & Consulting from WSSC construction contract files.

Utilization of MBE/WBEs as subcontractors and suppliers, based on reports at time of award, is much higher today than 20 years ago. Data from the 1988 MBELDEF disparity study showed that only 11 percent of subcontracting dollars on WSSC construction contracts went to MBE/WBEs from January 1982 through November 1984. Figure IV-34 illustrates the increase in MBE/WBE utilization as subcontractors and suppliers for 2002-2004 including all construction subcontracts, not just pipeline contracts.

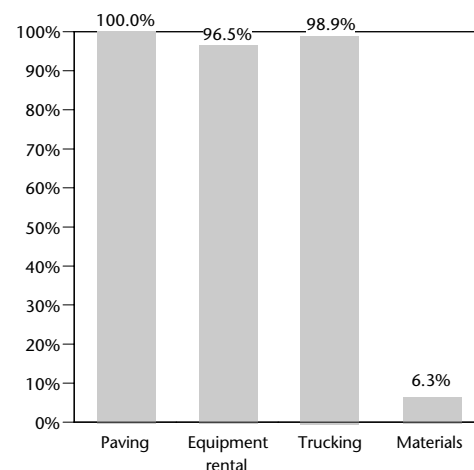
BBC also examined the distribution of work among subcontracting disciplines. Nearly all of the paving, equipment rental and trucking subcontract dollars were reportedly awarded to MBE/WBEs, as illustrated in Figure IV-35. Majority-owned firms were awarded most of the dollars going to suppliers. MBE/WBE participation among suppliers was 6 percent.

Figure IV-34.
Proposed MBE/WBE subcontractor and supplier utilization on WSSC construction contracts, 1982-1984 and 2002-2004



Source: 1984-1986 statistics from the Minority Business Enterprise Legal Defense and Education Fund, An Examination of WSSC's Minority Business Program, 1988; BBC Research & Consulting from WSSC construction contract files.

Figure IV-35.
Proposed MBE/WBE subcontractor and supplier utilization on WSSC construction contracts, by type, 2002-2004

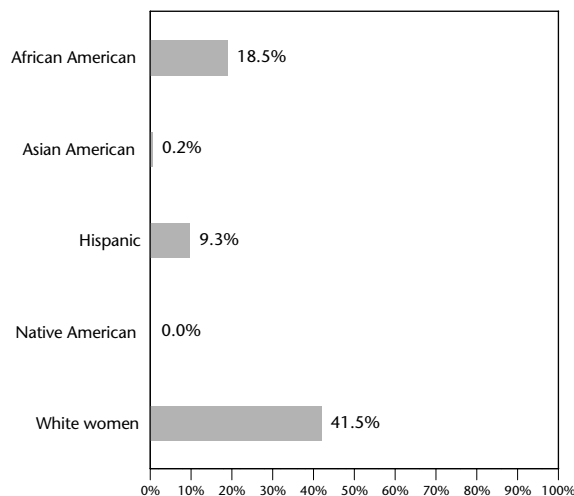


Source: BBC Research & Consulting from WSSC construction contract files.

Figure IV-36 presents proposed percentage utilization as subcontractors/suppliers by race/ethnicity and gender. White women-owned firms were awarded 42 percent of total subcontract and supply dollars. African American-owned firms were awarded 19 percent of the work and Hispanic-owned firms were awarded about 9 percent of subcontracting dollars. This utilization pertains to all construction contracts, including ones subject to mandatory goals.

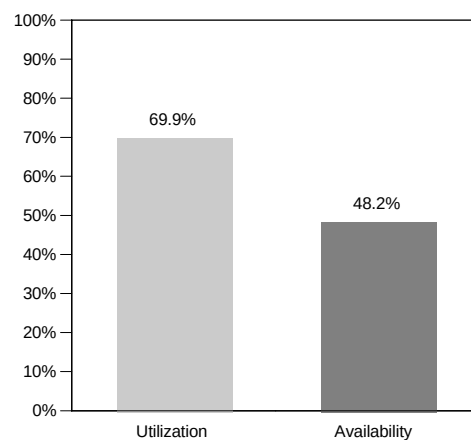
Overall, proposed MBE/WBE utilization substantially exceeded MBE/WBE availability for subcontracting and supplies on WSSC construction contracts, as shown in Figure IV-37.

Figure IV-36.
Proposed subcontractor and supplier utilization on WSSC construction contracts, by race/ethnicity and gender, 2002-2004



Source: BBC Research & Consulting from WSSC construction contract files and MAPS subcontract data.

Figure IV-37.
Proposed utilization of MBE/WBEs as subcontractors and suppliers on WSSC construction contracts, 2002-2004, compared with MBE/WBE availability for subcontractors



Source: BBC Research & Consulting.

Are the MBE/WBE subcontractors listed at time of award actually used on the construction contracts? It appears that the current program has worked in opening opportunities for MBE/WBEs if contractors actually use the firms listed at time of award. We now turn to data on payments to subcontractors and suppliers submitted by prime contractors at the completion of the project.

Reporting on actual payments to suppliers, subcontractors and manufacturers. WSSC requests information from prime contractors regarding their actual use of suppliers and subcontractors before dispensing the final payment. A WSSC “final payment form” is used to gather information for all subcontractors, suppliers and manufacturers on each project. Once these forms are received by the construction managers they are forwarded to the SLMBE office. While we recognize the limitations of these data, primarily that the information reported on these forms is simply a statement from the prime contractor without any supporting documents such as cancelled checks, this is the best available information on the outcome of the implementation of the voluntary goals program.

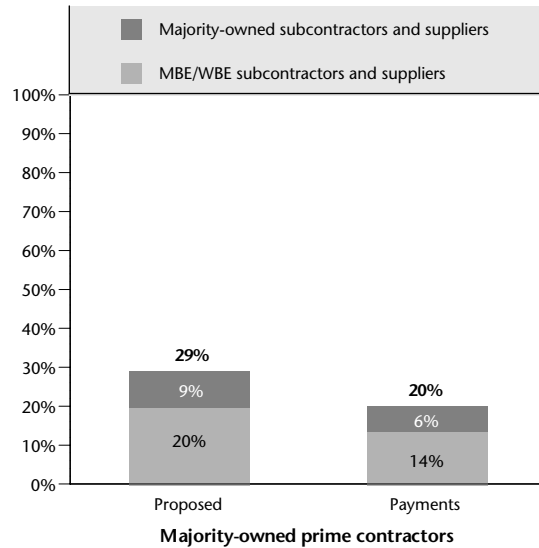
BBC received final payment data from the SLMBE office for about 25 of the 110 contracts issued from January 2003 to April 2004. We requested copies of the missing forms from the Technical Services Group and subsequently received data for most of these contracts (101 of the 110).

Analyses of the final payment forms submitted by primes for the sampled pipeline contracts found that actual use fell short of the proposed use of subcontractors and suppliers. These results held for both majority-owned and MBE/WBE prime contractors. Prime contractors subcontracted less than what they originally proposed for both majority-owned and MBE/WBE subcontractors and suppliers. As shown in Figure IV-38, majority-owned prime contractors proposed to subcontract an average of 29 percent of these contracts, with 20 percent to be received by MBE/WBEs and 9 percent to be received by majority-owned subcontractors and suppliers. The final payment forms suggest they actually subcontracted an average of 20 percent of each contract. MBE/WBE subcontractors and suppliers received 14.5 percent of total contract dollars and majority-owned subcontractors received 5.5 percent. Actual use of subcontractors and suppliers dropped more dramatically for contracts won by MBE/WBE prime contractors.

Figure IV-39 shows total dollars paid to MBE/WBE versus majority-owned subcontractors and suppliers on pipeline contracts for 2002-2004. As shown, 69 percent of the payments went to MBE/WBEs and 31 percent went to majority-owned subcontractors and suppliers. Examining payments data for pipeline subcontractors and suppliers confirms BBC's conclusion that more than one-half of the subcontracting dollars on WSSC pipeline contracts go to MBE/WBEs.

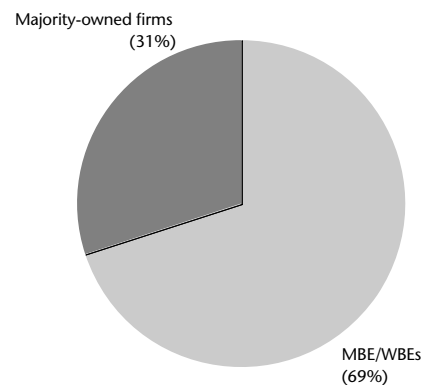
BBC also examined all contracts issued from January 2003 to April 2004. We were able to locate final payment information on 101 of the approximate 110 contracts. Results of the analysis were similar to what is reported above for pipeline contracts. Both majority-owned and MBE/WBE prime contractors subcontracted less than originally proposed. This was true for both majority-owned and MBE/WBE subcontractors and suppliers. Nevertheless, the share of actual subcontractor payments going to MBE/WBE subcontractors and suppliers, 65 percent, was similar to MBE/WBE utilization reported at time of contract award (70 percent).

Figure IV-38.
Planned versus actual percentage of total contract dollars going to MBE/WBE and majority-owned subcontractors and suppliers for WSSC pipeline contracts, 2002-2004



Source: BBC Research & Consulting from WSSC construction contract files.

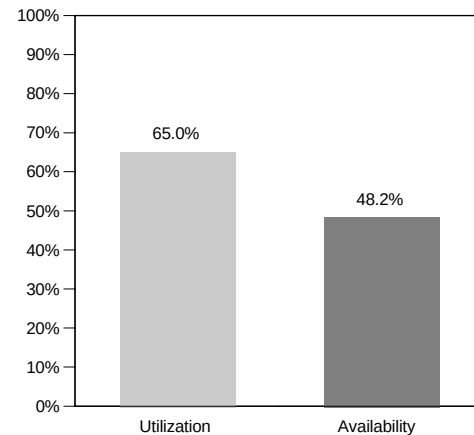
Figure IV-39.
Actual subcontractor and supplier utilization for WSSC pipeline contracts, 2002-2004



Source: BBC Research & Consulting.

The share of subcontracting and supply dollars apparently going to MBE/WBEs substantially exceeds what would be expected based on MBE/WBE availability for this work (48 percent). Figure IV-40 compares utilization and availability for MBE/WBE subcontractors and suppliers from payments data (similar to Figure IV-37, which is based on proposed utilization). There is no evidence of disparities in the use of MBE/WBEs as subcontractors and supplier for pipeline contracts or overall construction contracts based on either proposed or actual utilization.

Figure IV-40.
Actual utilization of MBE/WBEs as subcontractors and suppliers on WSSC construction contracts, 2003-2004, compared with MBE/WBE availability for subcontractors.



Source: BBC Research & Consulting.

Figure IV-41.
Further analysis of proposed versus actual subcontracting

Entries on the final payment forms revealed many insights into construction subcontracting at WSSC.

- In some cases, prime contractors used each subcontractor initially proposed and reported identical payments to those proposed.
- In other cases, prime contractors used each of the subcontractors initially proposed but the final payments differed from those originally proposed.
- Other contracts listed a mix of subcontractors originally proposed and subcontractors not originally listed.
- Some contracts list final payments to a list of subcontractors, none of which were originally proposed.

BBC did not verify these reports of payments to subcontractors and suppliers. (WSSC does not currently require further documentation under the voluntary goals program.) To gain some insight as to why the usage of subcontractors may differ from the original proposal, BBC conducted follow-up interviews with some prime contractors. One follow-up interview with a minority-owned contractor to find out why a final payment amount to a proposed majority supplier fell short of his intended usage found that he had changed suppliers after the original supplier increased his price. We also heard other reasons as to why actual subcontractor usage might differ from the proposed usage. One reason given is that because the goals program is voluntary, a firm can feel free to change plans when they experience difficulty scheduling with a particular subcontractor (or as above, agreeing on price with a supplier). Another reason given is that a situation may arise where the prime contractor firm is able to complete the work on their own. For example, a firm may own a dump truck but they may have proposed subcontracting out the dump truck work on a project because their dump truck was to be in use on another project. If their truck becomes available, the firm will cancel the use of the outside trucking firm.

Recommendations

BBC has separate recommendations concerning WSSC prime contracts and subcontracts in construction.

Prime contracts. Should WSSC implement a race- and gender-conscious program for MBE/WBE contractors? As outlined in Section I, the U.S. Supreme Court’s “strict scrutiny standard” for reviewing government MBE programs is a two-pronged test:

1. Does the local government have a “compelling governmental interest” in remedying the identified discrimination?
2. Is the program “narrowly tailored” to remedy the effects of such discrimination?

One of the factors to consider in assessing the second part of the strict scrutiny standard is whether race- and gender-neutral programs will be effective, alone, in remedying the identified discrimination.

Compelling governmental interest. The facts presented here may meet the first part of the strict scrutiny review for a race- and gender-based program. Much of what is reported in this chapter supports this finding. For example:

- Very little of WSSC construction prime contract dollars currently goes to African American-, Asian American-, Native American- and white female-owned firms. The finding that African American-owned firms receive less than 1 percent of WSSC prime contract dollars is particularly striking.
- There is evidence that majority pipe contractors became entrenched at WSSC over the years and remain so. There is also evidence that some of these firms once worked together to shut out other firms from receiving WSSC work.
- Some majority-owned pipeline contractors have actively tried to circumvent past MBE/WBE programs, or establish their own front companies to take advantage of the program. There is evidence that this continues today.
- There is evidence of disparities between utilization and availability of MBEs and WBEs in the local marketplace.
- There is statistical and anecdotal evidence of discrimination in the lending industry, and anecdotal evidence of unequal treatment of MBE/WBEs when seeking bonding. If true, this could severely limit the types of work and sizes of contracts performed by MBE/WBEs, or whether these firms stay in business or form new businesses in the first place. A BBC analysis of construction firms in the local marketplace in the 1990s found that MBE/WBE construction firms were more likely to go out of business than majority-owned firms. A NERA analysis found disparities in the rates of business formation for African Americans, Hispanics and women working in the construction industry.

This is only some of the evidence that would support a race- and gender-based program for prime contractors in construction.

Narrow tailoring prong of the strict scrutiny standard. Meeting the first part of the strict scrutiny standard does not necessarily mean that WSSC should immediately enact such a program. Availability of neutral programs to remedy the identified discrimination should also be considered.

WSSC only recently implemented a small business program for construction, and this program was flawed from the start as it allowed established WSSC contractors to compete for these contracts. In addition, there appears to be some lack of WSSC staff commitment to the program based on BBC's internal interviews at WSSC. Even so, the program may have shown some initial promise in opening contract opportunities to MBE/WBE construction firms. During 2004, the program awarded nine contracts to two firms. A majority of these contract dollars (and seven of the contracts) went to a minority-owned firm.

A further race- and gender-neutral initiative is to remove bonding requirements for construction contracts under \$100,000, thereby making more small construction firms competitive for these contracts. WSSC requirements are highly restrictive compared with other local government and the State of Maryland. Even though removing bonding requirements for these contracts does increase the risk to both WSSC and subcontractors/suppliers if a contractor were to default, removing this barrier has merit.

BBC recommends that WSSC improve the small business program and change the bonding requirements, and give both of these actions time to work before making a determination that neutral programs, alone, will be ineffective in remedying the identified discrimination.

Possible improvements to the small business program. WSSC should continue to implement a sheltered market program for emerging construction firms. This program should initially focus on pipeline construction. It should have two components: a "first stage program" that introduces new firms to WSSC pipeline work (very small contracts), and a "second stage program" that increases the size of pipeline jobs that more established small firms perform for WSSC (contracts in the \$25,000-\$100,000 range, or higher). A small business should be eligible for only one of these stages of the small business sheltered market program at one time.

One way of enhancing the implementation of the "first stage" program component is to have firms bid once for annual contracts, and then assign specific jobs based on those contracts. For example, a firm could win an annual contract through the small business program to perform pipeline jobs up to \$25,000 in size. The annual contract might be for \$99,000 worth of work. The firm might get four or five small jobs during the year.

The process for obtaining work through the first-stage program would be to first demonstrate that the firm is qualified to perform small pipeline construction jobs and that the firm is truly an emerging pipeline contractor with the potential to become a regular prime contractor on WSSC pipeline work. Any businesses formed by larger firms for purposes of benefiting from this program should be rejected, whether they be majority- or minority-owned. If the firm qualifies, it could bid on the annual contract for small pipeline jobs. WSSC could award work to more than one firm. WSSC could then direct specific small jobs to firms based on the nature of the assignment and each firm's performance over the course of the annual contract. A firm could participate in this first-stage program for a second or third year. After that time, the firm would move up to the second stage of the program, or leave the program altogether.

Firms that perform well in the first stage program, as well as certain other pipeline firms, would be eligible to participate in the second stage of the program. Certain larger pipeline contracts would be assigned to the program. “Second-stage” firms would then bid on these contracts, without competition from other WSSC contractors. WSSC should assign some pipeline contracts that require bonding to the second-stage program (contracts over \$100,000 if WSSC's bonding threshold is raised). This will serve to require contractors that may not have much experience obtaining bonding to develop relationships with bonding companies. WSSC could make sure that firms needing technical assistance related to bonding were able to access these resources.

Firms should be able to participate in this second-stage program for another two to three years. After that time period, firms should graduate from the program. Firms could bid on other WSSC contracts at the same time they were in the second-stage program.

This initiative will be successful if three to five pipeline contractors become sufficiently well established at WSSC to compete against established contractors, and that many of the new contractors are MBE/WBEs. Even though the intention is to open opportunities for MBE/WBEs, the program should not be limited to minority- and women-owned firms unless it appears that this is necessary to address the exceedingly low utilization of non-Hispanic MBE/WBEs as prime contractors in WSSC construction work.

Established contractors at WSSC, regardless of size of the business, should not be eligible for the small business program. This is a major flaw with the first version of the program, which allowed Taylor Utilities and other established contractors to participate in the program. As mentioned previously, Taylor Utilities has been working with WSSC for many years, and from 2002 to 2004, submitted more bids for WSSC pipeline work than any other firm.

WSSC should allow three to four years of program implementation before considering whether race- and gender-neutral remedies are needed for construction prime contracting.

WSSC will need to revise its legislation to define small businesses based on firm revenues, not net income, perhaps using State of Maryland size guidelines. WSSC should exclude firms that have done a substantial amount of work for WSSC in the relevant field for more than three years. The current program largely limits participants to firms in Prince George's and Montgomery counties; WSSC should consider broadening the geographic limits to the entire Washington-Baltimore marketplace as this is the area from which BBC found evidence of discrimination.

If WSSC finds these neutral efforts to be ineffective, it should consider implementing a sheltered market program for African American-, Asian-, Native American- and white women-owned construction prime contractors.

Subcontracts. WSSC should extend the voluntary subcontracting goals program to all construction contracting including any “procurement construction” contracts, and implement the following changes to the program to improve its effectiveness:

- MBE/WBE prime contractors as well as majority contractors should be captured within the program.
- WSSC should closely monitor actual use of subcontractors and suppliers. It should be made clear to prime contractors that they are required to report payments to all subcontractors, suppliers and manufacturers, including those firms not originally listed on the bid documents.

- Evidence of prime payments to both MBE/WBE and majority-owned subcontractors and suppliers should be required and monitored. Findings from this analysis should be one component of periodic evaluation of WSSC construction contractors. Prime contractors found to have consistently low use of MBE/WBE subcontractors and suppliers, or who are found to have filed false reports on the use of subcontractors and suppliers, should be investigated further and may be recommended for temporary suspension from WSSC contracting.
- Non-discrimination on WSSC contracting, and fair treatment of subcontractors and suppliers on WSSC and other work in the local marketplace, should be a written component of WSSC construction documents (or perhaps all contracts).
- WSSC may have cause to investigate contractors for other reasons as well, such as the reported fraudulent listing of an MBE subcontractor on other public sector work (discussed previously in this chapter).
- Through this ongoing review, WSSC may find that some firms should be suspended or debarred from WSSC contracting.

If, over time, WSSC finds that relatively little of its total subcontract/supplier dollars goes to MBE/WBEs, or that the program is otherwise ineffective, it should consider reinstating the “mandatory” subcontracting goals program. If needed, WSSC should model this program along the lines of the subcontracting goals program for A/E contracts outlined in Section II.

Summary

Opportunities for MBE/WBEs outside of a few Hispanic-owned firms appear to be no better in WSSC prime contracting than they were many years ago. WSSC needs to vigorously implement a small business sheltered market program to open opportunities to emerging MBE/WBEs. This program should also provide opportunities for MBE/WBEs to grow into larger WSSC prime contracts. This need is greatest in pipe contracting, where MBE/WBEs appear to have been at a disadvantage for many years.

WSSC should also remove other barriers to construction prime contracting, including changing its bonding requirements. These initiatives are race- and gender-neutral. If neutral programs prove to be ineffective, WSSC should implement narrowly-tailored race- and gender-based programs in this area.

WSSC should continue a voluntary subcontracting goals program, but carefully monitor actual use of subcontractors and suppliers. Firms that appear to discriminate against MBE/WBE subcontractors should be investigated, and if warranted, suspended or debarred from future bidding.

If the voluntary goals program proves to be ineffective, WSSC should consider implementing a stronger program such as the new interim subcontracting goals program BBC recommended for A/E (see Section II).

The voluntary goals program appears to be working to open subcontracting opportunities to MBE/WBEs. There is no need to move toward a mandatory race-and gender-based program at this time. WSSC should be clear that a 20 percent MBE/WBE goal is aspirational and is for construction as a whole, not any particular contract. WSSC should recognize that many contracts will not achieve total subcontracting at that level, let alone MBE/WBE subcontracting. Even so, the apparent success of this program as currently structured argues for its continuation.

SECTION V.
WSSC General Services Contracts

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WSSC General Services Contracts

BBC's analysis of WSSC procurement of general services completes the analysis of services purchases. "General services" refers to a wide range of services to private and public sector clients that fall outside A/E and professional services. In contrast to A/E and professional services discussed in Sections II and III, general services procurements are typically made based on low bid. Qualifications may be considered as a screen, but the work usually goes to the qualified firm that submits the lowest price.

WSSC general services procurements vary from landscape maintenance to more specialized work such as waste hauling, and water and sewer pipe cleaning and televising. BBC also included communications in general services, combining equipment and service. Other large areas of purchases include inspection and testing, and cleaning and restoration. BBC grouped services including security and staffing into a "business services" category. Some specialized services border on A/E, professional services and construction work.

WSSC spends about \$18 million per year on these types of services, primarily from firms with offices in the Washington-Baltimore marketplace. The Commission spends about twice as much per year on general services as it does on professional services. WSSC's Procurement Group typically makes these purchases.

This chapter is organized in the same order as the previous three sections of the report. It begins by reviewing the questions important to understanding whether there is a level playing field for MBE/WBEs in WSSC general services procurement. We then discuss the specific fields involved in WSSC contracts, which allows us to focus on these areas when examining local marketplace conditions. The balance of this chapter examines how minority- and women-owned firms have fared when seeking WSSC general services contracts.

WSSC applies an MBE/WBE subcontracting goals program to certain general services contracts. BBC assessed whether there was a need to continue this initiative, given the U.S. Supreme Court guidance on race- and gender-based programs. BBC's recommendations for a new Anti-Discrimination Program for this area of WSSC procurement are summarized in Figure V-1 and reviewed in detail at the end of this chapter.

Figure V-1. **Summary of recommendations**

Given MBE/WBEs success in obtaining WSSC general services prime contracts, WSSC should consider the following changes to its policies and procedures for general services procurement.

- Apply the small business sheltered market program in general services, especially in fields such as business services.
- Discontinue the current subcontracting goals program for general services contracts, but continue to track use of MBE/WBE and majority subcontractors.
- Continue to conduct outreach to MBE/WBEs and train new bidders on procurement procedures.
- Review if vendor payment times can be improved.
- Re-build the bidders list for general services.
- Seek new vendors, especially smaller firms, for small purchases that need not be competitively bid.

Key Questions

General services procurement at WSSC is similar to construction in that it is usually based on low bid. In addition, some of these services fields are involved in subcontracting on construction projects. General services also has parallels with professional services because firms need to be perceived as qualified to perform the work to be hired by clients. As with professional services, the types of work can be very diverse. Some of these fields may have been more open to, or at least identified with, MBE/WBE participation, while others may have been traditionally closed to minority- and women-owned firms. Cleaning services, landscape services and trucking are examples of the former, and local MBE/WBEs in these fields may have also been assisted by local government MBE/WBE programs and the federal DBE program. Communications service and equipment is a field that just recently became open to competition from smaller firms.

In past years at WSSC, MBEs and WBEs have obtained a higher share of general services procurement dollars than A/E or professional services. WSSC's subcontracting goals program has a long history in this procurement area, even though subcontracting in general services is rare in private industry.

BBC examined the same questions for general services as for other types of services:

- Where is the local industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain or expand measures to assist MBE/WBEs in general services contracting?

Based on the answers to these questions, BBC can identify needed changes in procurement procedures and other measures related to WSSC general services.

WSSC General Services Work

WSSC purchases many different types of work from the local services industry.

Total dollars of general services work. BBC researched WSSC's use of prime contractors by examining payments to firms from January 1999 through March 2004. BBC focused on firms receiving at least \$5,000 of payments as prime contractors over this 5+ year period, which appears to capture a very large share of total procurement dollars. BBC identified 292 different vendors receiving at least \$5,000 in payments from WSSC over this period, not including universities, not-for-profit organizations and government agencies. BBC identified general services firms through the procedures listed in Figure V-2.

Figure V-2. Identification of WSSC payments for general services

Because most general services purchases go through Procurement, BBC could often identify purchases as general services based on the description of the service in WSSC's electronic contract files. Other methods included:

- The primary Standard Industrial Classification (SIC) codes for firms doing WSSC work as provided by Dun & Bradstreet;
- Review of information on WSSC vendors' websites;
- Phone calls to WSSC vendors; and
- Review by WSSC staff.

Also note that WSSC payments to one engineering firm was classified as general services because the firm primarily performs inspection and testing services for the Commission.

WSSC made a total of \$88.9 million in payments to general services firms from January 1999 through March 2004. As shown in Figure V-3, waste and refuse management and hauling accounted for over 40 percent of this spending. Business services, cleaning and restoration, and communications equipment and service were the next three largest areas of spending.

BBC also researched use of subcontractors on WSSC general services contracts from July 2001 to spring 2004. The study team identified over 30 subcontractors. These subcontracts totaled approximately \$15 million.

Location of firms involved in WSSC general

services work. WSSC draws general services vendors from the Washington-Baltimore area. Nearly 90 percent of WSSC's prime contract dollars for general services went to firms with offices in the greater Washington-Baltimore area. Based on these results, BBC focused the analysis of market conditions for general services firms on the Washington-Baltimore area.

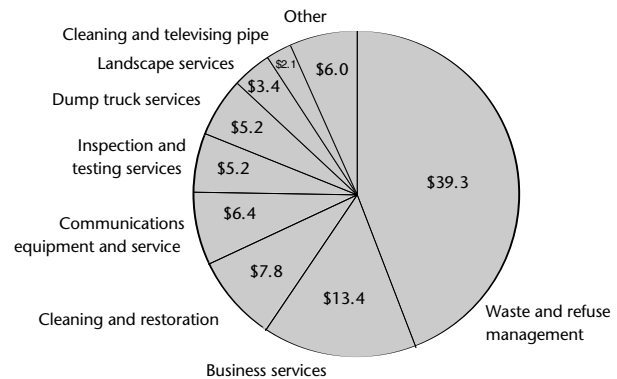
Types of General Services Work at WSSC

Because of the variety of general services procured by the Commission, it is useful to summarize the largest areas of work at WSSC. BBC examined the eight largest areas of general services spending for 1999-2004, including each of the areas identified in Figure V-3. BBC examined firms receiving the most WSSC payments for refuse management and hauling, dump truck services, inspection and testing, water/sewer pipe cleaning and video inspection, business services, cleaning and restoration, landscape maintenance and lawn services and communication equipment and services.

Waste/refuse management and hauling

firms. WSSC spends a considerable amount of money on waste management and hauling in order to transport and dispose of waste products from its treatment plants, plus other waste and refuse transport and disposal. The six firms listed in Figure V-4 received at least \$1 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These six firms received a total of \$38 million or nearly all of the \$39 million paid to all waste management and hauling firms during the study period. Figure V-5 on the following page briefly introduces each firm.

Figure V-3.
WSSC payments to general services firms,
Jan. 1999-Mar. 2004 (millions)



Source: BBC Research & Consulting from WSSC MAPS data.

Figure V-4.
Waste/refuse management and hauling firms
receiving \$1.0 million or more in WSSC
payments, Jan. 1999-Mar. 2004

Waste Management and Hauling Firms	WSSC Prime Contract Payments (millions)
Recyc Systems, Inc. (WBE)	\$24.8
Milton F. Wright Trucking (MBE)	6.0
Synagro Mid-Atlantic	2.5
Mobile Dredging and Pumping	2.4
Spectraserv	1.3
Jabb II, LLC (MBE)	1.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-5.
Background on waste/refuse management and hauling firms
receiving at least \$1.0 million in WSSC payments, Jan. 1999-Mar. 2004

Recyc Systems, Inc. Recyc Systems is a Remington, Virginia-based firm providing waste-management and disposal services to utility agencies in the Washington-Baltimore area. The firm primarily works as a prime contractor. Recyc Systems was established in 1983 and has a total staff of 20 people. The firm is a women-owned enterprise.

Milton F. Wright Trucking. Milton F. Wright Trucking provides waste management of biosolids, trucking and land application services. The firm was founded by Milton Wright in 1975. Milton Wright Trucking is based in Silver Spring, Maryland, and employs four people. The firm is African American-owned.

Synagro Mid-Atlantic. Synagro is a residuals management company that transports, treats and monitors biosolids for municipalities and industrial customers. Originally founded in Nevada in 1984, the firm has offices nationally including one in Baltimore, Maryland. The firm employs over 1,000 people. Synagro is a publicly-held firm.

Mobile Dredging and Pumping. Mobile Dredging and Pumping provides services in waste management and disposal, water and sewer pipeline cleaning and excavation. The firm is based in Chester, Pennsylvania and has another office in Accokeek, Maryland for its Washington-Baltimore clients. Mobile Dredging and Pumping is a wholly-owned subsidiary of Caryl Corporation, a private environmental management company founded in 1949 and based in Chicago, Illinois.

Spectraserv. Originally known as Modern Transportation, Spectraserv was founded in 1961 in South Kearny, New Jersey. The firm provides water and wastewater residual management and hauling services and wastewater treatment facility design and engineering services to public and private concerns. The firm is privately-owned by Joseph P. Miele.

Jabb II, LLC. Jabb II is a waste management and disposal firm based in Clinton, Maryland. The firm was established in 1991 by Carl D. Jones. Jabb works mostly as a prime contractor with public clients in the Washington-Baltimore area. The firm is African-American owned and employs approximately, five permanent and 45 temporary staff.

Dump truck services. The two firms identified in Figure V-6 received at least \$0.5 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These two firms received a total of \$4.5 million, or nearly 90 percent of the \$5.2 million paid to all dump truck service firms during the study period. Figure V-7 provides some background on TSC Transport, but BBC was unable to obtain information on Jeda Trucking.

Figure V-6.
Dump truck service firms receiving \$0.5 million
or more in WSSC payments, Jan. 1999-Mar. 2004

Dump Truck Service Firms	WSSC Prime Contract Payments (millions)
TSC Transport, Inc. (WBE)	\$2.8
Jeda Trucking, Inc. (MBE)	1.7

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-7.
Background on dump truck service firms receiving
at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

TSC Transport. TSC Transport was founded in 1989 in Hyattsville, Maryland. The firm provides debris hauling and trucking services to private and public firms throughout North America. The firm also provides truck rentals to commercial clients. TSC Transport is a women-owned business and employs six permanent and 25 temporary staff.

Jeda Trucking. BBC was unable to locate any information on this firm (phone is disconnected). WSSC reports that this firm is African American-owned.

Inspection and testing services.

Recognizing that inspection and testing services border on A/E work, professional services and goods, they are combined here in general services, primarily based on how they are treated at WSSC. These services include water and wastewater inspection and testing laboratories, meter services and environmental consulting firms. Just two firms — ADS Environmental Services and Metro Meter Service — received at least \$0.5 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These two firms were paid a total of \$4.0 million, as shown in Figure V-8. A number of other inspection and testing firms received work as well. The two largest vendors received about three-quarters of the \$5.2 million spent in this area for 1999-2004. Figure V-9 discusses the two largest vendors.

Figure V-8.
Inspection and testing service firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Inspection and Testing Service Firms	WSSC Prime Contract Payments (millions)
ADS Environmental Services, Inc. (WBE)	\$2.9
Metro Meter Service (WBE)	1.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-9.
Background on inspection and testing service firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

ADS Environmental Services. ADS Environmental Services helps customers improve management and operations of their wastewater systems by providing waste collection system assessment tools. These include permanent flow monitoring networks and software, real-time flow information, flow data and analysis for short-term projects, and sewer evaluation surveys. The firm is headquartered in Huntsville, Alabama and has 20 offices worldwide. Founded in 1975 by Peter Petroff, ADS was acquired by Axel Johnson in 1989.

Axel Johnson is a \$2.2 billion privately-owned corporation with interests in the environmental, energy and communications technology sector. Axel Johnson was established in 1873 and remains privately held by the Johnson family. The company's president is Antonia Johnson, the great granddaughter of Axel Johnson. Ms. Johnson was recognized by the National Federation of Women Business Owners as a Top 50 women business owner and by Working Woman Magazine as the head of the fourteenth largest women-owned business in the U.S.

Metro Meter Service. Metro Meter Service specializes in project management for water meter tests, installation and repair for water utilities, nationally. The company has worked with meter programs in several U.S. cities including Baltimore, Maryland. Metro Meter Services is located in Owensboro, Kentucky. The firm is women-owned.

Water and sewer pipe cleaning and

televising. Two firms received at least \$0.5 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These five firms were paid a total of \$1.8 million, or nearly all of the \$2.1 million paid to the five cleaning and televising water and sewer pipe firms during the study period. Figure V-10 identifies total payments by firm and Figure V-11 introduces each firm. Riviera, the vendor receiving the most prime work, also works as a subcontractor on WSSC contracts. However, only prime contract payments are listed in Figure V-10.

Figure V-10.

Water and sewer pipe cleaning and televising firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Water and Sewer Pipe Cleaning and Televising Firms	WSSC Prime Contract Payments (millions)
Reviera (MBE)	\$ 1.1
Video Pipe Services	0.7

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-11.

Background on water and sewer pipe cleaning and televising firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

Reviera Enterprises. Reviera Enterprises (trade name- REI/DRAYCO) is an engineering and construction firm established in 1985 in Forestville, Maryland. The firm is minority-owned and is headed by Stan Udhiri. Reviera Enterprises specializes in catch basin cleaning, sewer cleaning, water, sewer and pipeline construction, engineering services, surveying services and facilities support management. Because Reviera primarily provides sewer line cleaning for WSSC, BBC classified the firm in this field. The firm is U.S. Small Business Administration (SBA) certified and operates through eight offices in the U.S. Reviera Enterprises is an African American-owned firm.

Video Pipe Services. Video Pipe Services began in 2000 in Beltsville, Maryland. The firm provides services related to pipe inspection, monitoring and cleaning using video equipment. The firm works mostly with public sector and government clients. Video Pipe Services has 18 offices in U.S. and is an employee-owned firm.

Business services. The seven firms listed in Figure V-12 received at least \$0.5 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These seven firms were paid a total of \$9.7 million, or three-quarters of the \$13.4 million paid to all business services during the study period. The largest vendors are briefly introduced in Figure V-13.

Figure V-12.
Business services firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Business Services Firms	WSSC Prime Contract Payments (millions)
Burns International Security Services	\$ 2.3
MCS Group, Inc	2.3
Day & Zimmerman Facilities Services	1.7
Manpower, Inc.	1.0
Knight Protective Service (MBE)	1.0
PermitsNow, Inc	0.8
Charter Business Services	0.6

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-13.
Background on business services firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

Burns International Security Services. Also known as Burns Pinkertons or Securitas Securities, Inc., Burns International Security Services provides electronic security systems and security personnel for buildings. The firm was founded in 1972 and is based in Los Angeles, California. Burns International has 50 offices throughout the world including 10 regional offices in the United States. The firm employs over 200,000 people in its offices. Burns International is publicly-owned.

MCS Group, Inc. Co-founded in 1979 by David Bean and Rosemary Gould Esposito, MCS specializes in providing management services, document support, and record retrieval solutions. The company works as an outsourced consultant to public as well as private sector clients. MCS maintains offices nationally, with headquarters in Philadelphia, Pennsylvania. The company employs about 500 associates.

Day & Zimmerman Facilities Services. Day & Zimmerman Services provides security services for buildings, personnel support and building maintenance and repair to commercial establishments, industrial facilities, government and public utilities. Founded in 1901 and headquartered in Philadelphia, the firm is a recipient of the U.S. National Family Business of the year award for 2003. Operating from more than 150 locations worldwide, the firm employs 20,000 people.

Manpower, Inc. Manpower is a global staffing company that maintains three regional and over 100 temporary offices nationwide, including several in Maryland. Founded in 1948, the company is headquartered in Milwaukee and employs over 1,000 people. The firm is publicly-held.

Knight Protective Service. Knight Protective Service provides security systems for buildings and security staff for clients in the Washington-Baltimore area. The firm was founded in 1988 by Macon Sims and is located in Capitol Heights, Maryland. Knight Protective Service was certified by the SBA in May 1994, and graduated from the 8(a) program in May 2003. The firm is African American-owned.

PermitsNow, Inc. PermitsNow specializes in providing local builders and contractors in the Washington-Baltimore area with e-Commerce solutions by improving their ability to collect and deliver construction permit applications online, pay and track payments over the internet, and maintain project folders and supporting documents in a secure web-based environment. In addition, the firm provides sales and marketing services including trade shows, public relations and reciprocal-website links. PermitsNow was founded in 1984 and is located in Rockville, Maryland.

Charter Business Services. Charter Business Services provides temporary and permanent personnel support to the legal, corporate and government sectors. The firm is based in Bowie, Maryland. Charter Business Services is privately-owned.

Cleaning and restoration. Eight firms received at least \$0.2 million in WSSC payments (as prime contractors) from January 1999 through March 2004, as shown in Figure V-14. These eight firms were paid a total of \$5.7 million, or about 75 percent of the \$7.8 million paid to all cleaning and restoration firms during the study period. Figure V-15 describes the seven firms that BBC could research.

Figure V-14.
Cleaning and restoration firms receiving \$0.2 million or more in WSSC payments, Jan. 1999-Mar. 2004

Cleaning and Restoration Firms	WSSC Prime Contract Payments (millions)
Fireclean (MBE)	\$ 1.2
Capitol City Restorations	1.0
PuroFirst of Metropolitan Washington	0.8
Disaster Restoration Services (WBE)	0.8
Duraforce Cleaning Service (WBE)	0.7
Quality Home Services (WBE)	0.5
Servpro of Marlton Morningside	0.4
Spotless Janitorial Services (MBE)	0.3

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-15.
Background on cleaning and restoration firms receiving at least \$0.2 million in WSSC payments, Jan. 1999-Mar. 2004

Fireclean. Fireclean serves Maryland, Northern Virginia, and the District of Columbia as a remediation contractor that cleans construction sites, businesses and homes after fires and floods. Founded in 1996, Fireclean is a Hispanic female-owned business. The company is headquartered in Rockville, Maryland and is one of four cleaning companies that is contracted to clean up water disasters for the WSSC.

Capitol City Restoration. Capitol City Restoration is a cleaning, treatment and restoration company that specializes in emergency water and sewer extractions, carpet and upholstery cleaning and mold and mildew treatment. Founded in 1985, the company maintains two offices in Maryland and Virginia. The firm is privately-held and employs eight people.

PuroFirst of Metropolitan Washington. PuroFirst of Metropolitan Washington provides fire, smoke and water restoration and reconstruction services. The firm's headquarters is in Rockville, Maryland and its three satellite offices are located in Columbia, Maryland, Woodbridge, Virginia, and Martinsburg, West Virginia. The firm was established in 1994 and employs 90 people in its offices. PuroFirst is privately-owned.

Disaster Restoration Services. Disaster Restoration Services provides immediate response, remediation and restoration services in water and wastewater disasters. The firm was founded in 1994. Disaster Restoration Service is based in Gaithersburg, Maryland and employs 15 full time staff. The firm is women-owned and is certified with the Maryland Department of Transportation.

Duraforce Cleaning Service. Duraforce Cleaning Service provides post construction clean-up, removal of debris, water removal, drying service, sewage clean-up, mold remediation, carpet cleaning, sanitizing and deodorizing, and drywall repair service. The company is located in Clinton, Maryland. Duraforce was founded in 1998 and is a women-owned firm.

Quality Home Services. BBC was not able to locate any information on this firm.

Servpro of Marlton-Morningside. Servpro of Marlton-Morningside is an authorized dealership of Servpro, a national clean-up and restoration company for fire, water, sewer, mold and more. The company maintains 1,250 locations nationally, including several in Maryland. Servpro was founded in 1967 by Ted and Dorris Isaacs in Sacramento, California. Servpro of Marlton-Morningside began its operations in 1995 and has 22 employees in the firm.

Spotless Janitorial Services. Spotless Janitorial Services is a commercial and residential cleaning company specializing in interior window cleaning, strip and wax, parking lot sweeping, vertical blinds cleaning, and other services. The firm was founded in 1990 and is based in Lanham, Maryland. Spotless Janitorial is African American-owned and employs six people.

Landscape and lawn service firms. The four firms shown in Figure V-16 received at least \$0.5 million from WSSC for landscape and lawn service work from January 1999 through March 2004. These four firms account for a total of \$2.4 million in payments from WSSC during this period or more than two-thirds of the \$3.4 million paid to all the landscape and lawn service firms. (Subcontract dollars are not included.) Figure V-17 describes each of the large WSSC vendors.

Figure V-16.
Landscape and lawn service firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Landscape and Lawn Service Firms	WSSC Prime Contract Payments (millions)
Ultra Lawn Landscape and Property Assoc. (MBE)	\$ 0.9
Valley Green Landscaping (MBE)	0.5
Duke's Sales and Service, Inc.	0.5
R.J. Sunday Landscaping (WBE)	0.5

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-17.
Background on landscape and lawn service firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

Ultra Lawn Landscape and Property Assoc. Ultra Lawn Landscape and Property Association is a landscape contractor and designer located in Upper Marlboro, Maryland. The firm was founded in 1992 and is African American-owned.

Valley Green Landscaping. Valley Green Landscaping was established in 1989 in Falls Church, Virginia. The firm provides services in landscaping, lawn mowing and erosion and sediment control. The firm employs 10 people in its office. Valley Green is African American-owned.

Duke's Sales and Services, Inc. Duke's Sales and Services provides services in root control through sewer pipes to public utilities and residential facilities. The firm also provides landscaping services. The firm was founded in 1946 and operates from four offices in Syracuse, New York. Duke's employs 41 people and is employee-owned.

R.J. Sunday Landscaping. R.J. Sunday is a full service landscaping firm that serves residential and commercial customers by installing and maintaining landscape programs and irrigation systems. The women-owned business was founded in 1980. R.J. Sunday maintains offices in Bowie and Baltimore, Maryland.

Communication equipment and service.

Four firms received at least \$0.5 million in WSSC payments (as prime contractors) from January 1999 through March 2004. These four firms were paid a total of \$4.6 million, as shown in Figure V-18. Although the top four vendors received over 70 percent of WSSC payments in this area, many other firms provided communications equipment and service. Figure V-19 discusses the largest vendors, each a derivative of AT&T.

Figure V-18.

Communication and equipment service firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Communication and Equipment Service Firms	WSSC Prime Contract Payments (millions)
Verizon	\$ 2.9
AT&T	0.6
Bell Atlantic	0.6
Verizon Network Integration Corp.	0.5

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure V-19.

Background on communication and equipment service firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

Verizon. Verizon is one of the world's leading providers of communication services. With a diverse workforce of over 208,000, Verizon has four business units: domestic telecom that includes long distance and telecom, Verizon Wireless, information services and international telecommunications. The firm is ranked 12th among Fortune 500 companies. Verizon was formed by the merger of two large telecommunication firms, Bell Atlantic and GTE, in 2000 and is publicly-held.

AT&T. AT&T, formerly known as American Telephone and Telegraph Corporation, provides voice and data solutions for U.S. businesses and residences. The firm was established in 1885 in New York. AT&T is publicly-traded.

Bell Atlantic. Bell Atlantic was one of the leading providers of wireless communication services. The firm merged with GTE to form Verizon in 2000.

Verizon Network Integration Corp. Verizon Network Integration Corporation is a wholly-owned Verizon business providing high-speed internet connection services to residences and businesses throughout the U.S.

Types and sizes of contracts. In addition to analyzing payments to general services firms, BBC studied a sample of general services contracts issued by WSSC between July 2001 and April 2004. The discussion below is based on the information reported in these files.

- The general services contracts collected by the study team ranged from a \$3,000 purchase order for landscaping services to a \$1.7 million debris hauling contract and a \$2.2 million pipe cleaning and video inspection contract.
- The Procurement Group typically competes general services contracts, at least among the sample BBC reviewed.
- Sometimes the low bidder does not get the work, but this could be a difficulty with the bidder, not WSSC. For example, on a landscape maintenance contract, the first and second lowest bidders did not want to perform work in all WSSC zones. BBC also reviewed landscaping contracts that were shifted to other firms because of non-performance of the firm originally awarded the contract.

- WSSC will sometimes sole-source a general services contract, but most work is competed. BBC identified a sole-sourced manpower contract. WSSC also awarded a contract for hazardous waste removal based on a firm's contract for another public agency
- Some work goes to general services by simply extending their current WSSC contracts.

The files reviewed for the sampled general services purchases suggest that WSSC's procurement of general services is typically competitive and similar to the practices of other public sector agencies.

Insights Into the Local General Services Industry

As with BBC's analysis of other local industries, BBC was able to draw some insights into the fields that make up what BBC has grouped into the local general services industry from the history of the firms performing the most WSSC work, the interviews BBC conducted with firms in the local region, and other analyses. Figure V-20 summarizes the breadth of the research the study team conducted.

Many firms in this field are relatively young. BBC was able to obtain formation dates for most of largest WSSC general services vendors. Many firms doing the most business with WSSC were formed in the 1980s and 1990s.

Initial capital requirements can be large in some fields and relatively small in others. One of the specialized services fields BBC examined was pipe cleaning and video inspection. One business manager BBC interviewed estimated that the capital outlay to start a video inspection/cleaning firm would be about \$750,000. Other fields, such as staffing or maintenance, require less capital at start-up.

Some fields require substantial insurance and bonding. Certain general services fields require high levels of general liability insurance. Bonding may also be required on even small public sector jobs.

Firms are hired based on reputation and price. Potential customers' impressions of the quality of the firm can be a factor in determining who gets work. In the public sector, most general services procurements are based on low bid.

Importance of personal relationships. Several business owners explained to BBC circumstances where their business relationship with a client could change overnight. Personal contacts with a client are very important to maintaining and increasing the volume of work with that client.

Some customers favor larger firms. As we heard in our interviews with business owners in other industries, many clients prefer to hire organizations with a proven track record and a large staff. Many small general services firms complained about the negative view some potential customers had concerning small firms.

Figure V-20. Research into the local general services industry

BBC attempted interviews with each current and past local area WSSC general services vendor (over \$5,000 in payments from 1999-Mar. 2004) identified in this study. We successfully interviewed over 90 of these firms. BBC retained Customer Research International (CRI), a Texas-based telephone survey firm, to conduct telephone interviews with randomly-selected general services firms in the Washington-Baltimore marketplace. CRI reached 422 firms. In addition, BBC staff completed in-depth telephone interviews with 16 MBE/WBE and majority-owned general services firms. We supplemented this research by collecting Dun & Bradstreet information for WSSC consultants and subconsultants and by researching firms on the Internet.

Subcontracting is relatively rare in the private marketplace. Past studies of the local general services industries have found that most large companies do not want to subcontract at all, and without MBE/WBE goals, will not contract with MBE/WBEs in the marketplace.

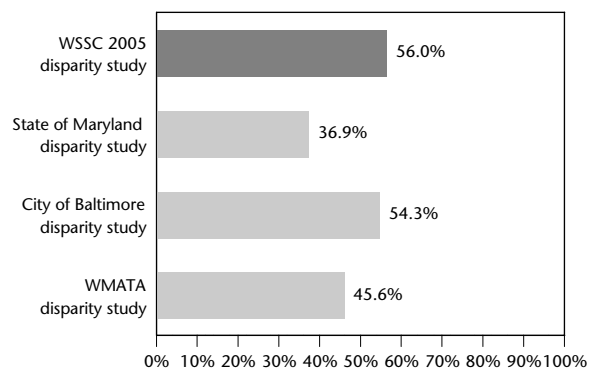
MBE/WBE/DBE programs have been important in the development of some MBE/WBE general services firms and not for others. A few of the largest WSSC vendors participated in the 8(a) program, but most minority and female general services business owners reported that MBE/WBE programs did not help them much, especially WSSC's program.

Where is the Local General Services Industry on the Path Toward Equal Opportunities for Minorities and Women?

BBC examined qualitative and quantitative information that helped us explore where the local general services industry might be on the path toward equal opportunities for minorities and women.

Have women and minorities been able to start general services firms? Similar to what BBC found for the local professional services industry, about one-half of the firms available for WSSC general services work are minority- or women-owned.

Figure V-21.
MBE/WBEs availability to perform prime contract work for public agencies



Source: MGT of America, City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001; BBC Research & Consulting, WMATA Post-Croson Factual Predicate Study Update, 2000.

Relative number of MBE/WBEs. Minorities and women have been able to form general services firms in the Washington-Baltimore marketplace. About one-half of firms available for WSSC prime contracts are MBE/WBEs based on BBC's surveys of vendors and randomly-sampled general services firms in the local marketplace. This is about the same proportion as found in the recent Baltimore disparity study and the WMATA disparity study. It is somewhat higher than reported by NERA in the State of Maryland disparity study. Figure V-21 shows these availability estimates.

Recent disparity studies also agree that most MBE/WBE firms in this industry are owned by African Americans or white women.

Rates of firm ownership. The statistical analysis of rates of business formation reported in previous

chapters also considered rates of ownership of other services firms. In the 2001 disparity study for the State of Maryland, NERA examined self-employment rates of minorities compared with whites, and men versus women, from the U.S. Bureau of the Census Current Population Survey. Data are for Mid-Atlantic states for 1992 to 1999. After controlling for personal characteristics, African Americans and

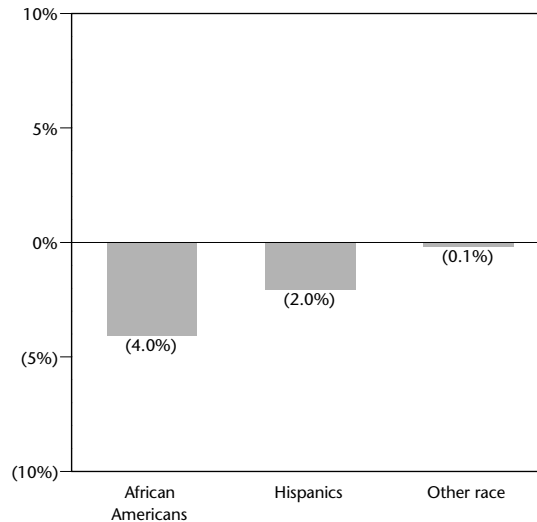
Hispanics working in the services industry were less likely to own businesses than whites with similar characteristics. Figure V-22 shows these results. Similarly, men were more likely to own firms than women. Disparities were statistically significant. The 2005 MGT study for WSSC confirmed these findings for African American and Hispanics working in the Washington-Baltimore area in 2000.

Have MBE/WBE general services firms been successful? Several studies have examined relative success of MBE/WBE general services firms.

Findings from 2004 surveys. BBC's surveys of local general services firms conducted in this study found that MBE/WBEs had fewer employees, on average, than majority-owned firms. BBC examined annual revenues size classes (e.g., \$1-\$2.49 million) for each type of general services firm. BBC separated firms in each subindustry into two age groups; firms formed in the 1970s and 1980s versus firms formed in the 1990s. BBC determined the median annual revenues for each grouping. We then determined the percentage of MBE/WBEs that had revenues higher than the median for their respective "peer group." BBC compared this percentage with the percentage of majority-owned firms with "above-median" revenues. (Firms that are in the same size class that had the median annual revenues for their group were not coded as "above-median.") BBC separately examined WSSC general services vendors and general services firms randomly sampled in the local marketplace that do public sector work.

After controlling for type of work and age group, about the same percentage of MBE/WBE and majority-owned general services firms had revenues higher than the median for their subindustry/age group. Figure V-23 shows these results.

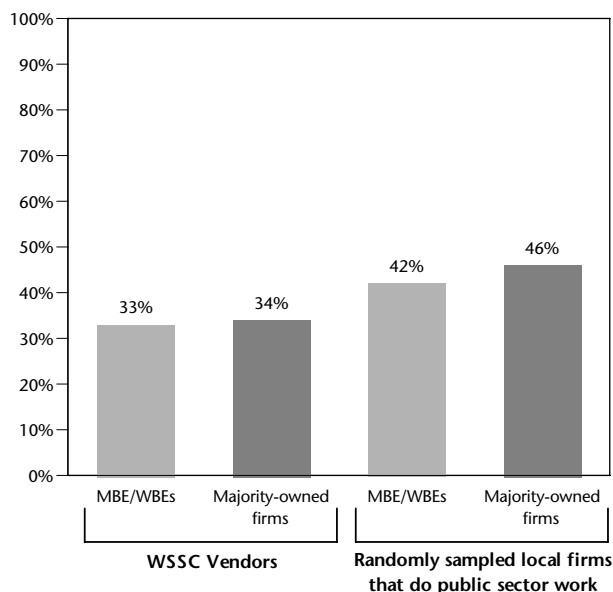
Figure V-22.
Self-employment rates in the other services industry of African Americans, Hispanics and other minorities relative to non-minorities after controlling for personal characteristics, Mid-Atlantic states, 1992-1999



Note: Differences for African Americans and Hispanics are statistically significant at the 95 percent confidence level. Mid-Atlantic states include Maryland, Delaware, Virginia, Pennsylvania and the District of Columbia.

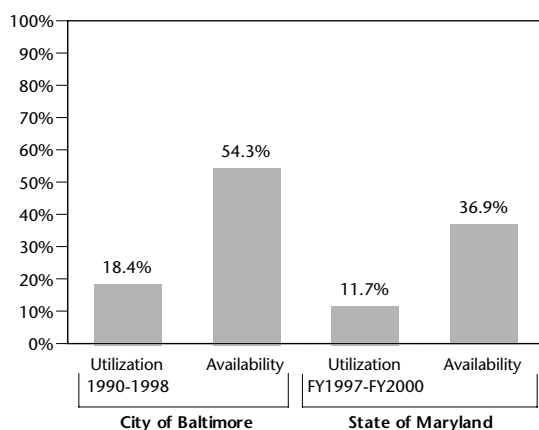
Source: NERA, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

Figure V-23.
Percentage of general service firms with Washington- Baltimore area offices with above-median revenues, 2004



Note: n = 30 for MBE/WBE vendors and 29 for majority-owned vendors. n = 71 for MBE/WBE and 76 for majority-owned randomly sampled firms that do public sector work.

Figure V-24.
City of Baltimore and State of Maryland
utilization of MBE/WBEs as prime contractors
on general services contracts compared with
MBE/WBE availability for prime contracts



Source: City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

Findings from 2000 WMATA study. As previously discussed, BBC performed a similar analysis of firm revenues in the 2000 study for the Washington Metropolitan Transit Authority.

The WMATA study found that relatively fewer general services firms owned by African Americans and white women had revenues higher than the median for their four-digit SIC codes as compared with majority-owned firms. These disparities were found after controlling for particular specialty of the firm and only including firms that were formed in 1994 or before. These differences were statistically significant.

Findings from the 2005 MGT study. MGT analyzed 1999 earnings of people who were self-employed in the Washington-Baltimore general services industry based on 2000 Census data. MGT found that African Americans, Hispanics, Asian Americans and non-minority women earned considerably less from their businesses than similarly situated white men. These disparities were statistically significant.

MBE/WBE utilization by other public agencies. Both the City of Baltimore and the State of Maryland disparity studies found that MBE/WBE utilization as prime contractors fell far short of the availability of MBE/WBE general services firms to work as prime contractors. The City of Baltimore had MBE/WBE utilization of 18 percent as general services prime contractors from 1990 to 1998. However, availability of MBE/WBEs to perform this work was over 50 percent. Similarly, about 12 percent of State of Maryland spending on general services (prime contracts) went to MBE/WBEs, less than the 37 percent MBE/WBE availability found in that study. Figure V-24 presents these comparisons.

Do minority and female owners of general services firms have the same access to capital as white men? Several owners and managers of general services firms reported the importance of access to capital to starting and operating firms in different services fields.

- “The key hurdle to start an MBE firm is availability of capital or funds.”
- Another minority business owner indicated that experience and working capital were the key requirements for starting a firm.

Some of business owners and managers BBC interviewed indicated that discrimination in access to capital affected MBE/WBEs.

- “Racial prejudice is the biggest issue that a minority firm faces when starting a general services firm. This issue is obvious at a financial level — we do not get equal credit from financial institutions — as well as at a social level.”
- A manager of a small majority-owned firm reported that some minority firms he had worked with had problems getting credit. His firm assisted the MBEs in getting these loans.

Interviews in the 2000 disparity study for WMATA also found evidence that minority owners of business services firms found that financing was a barrier when they first went into business and remained a constraint in ongoing operations.

The 2001 disparity study for the State of Maryland found barriers for minority-owned firms in access to capital markets. In particular, African American-owned businesses had more difficulty obtaining credit than similarly situated white-owned firms. NERA found these disparities for the South Atlantic region, which includes Maryland, and for goods and general services firms in Maryland.

More than one-third of MBE and WBE general services firms surveyed by NERA reported that working capital constraints made it harder or impossible to obtain contracts. Thirty percent of MBEs and 12 percent of white women owners of general services businesses indicated that they had been treated less favorably while applying for commercial loans than white men.

Is there a level playing field for MBE/WBEs when competing for prime contracts? A number of minority and female business owners reported disadvantages for MBE/WBEs when competing for prime contracts in the local marketplace. Many also reported that conditions were better for MBE/WBEs than found in the past. Some of the white male business owners and managers BBC interviewed said that they perceived some discrimination in the market, while others believed these disadvantages were true for any small firm.

Negative stereotypes. As we found in the other industry assessments, general services business owners interviewed by BBC reported negative attitudes towards minorities that can affect opportunities for business.

- “People automatically assume that a minority firm cannot do quality work.”
- “Private firms assume that MBE firms can only do menial work and that they can get away with discrimination,” reported a minority business owner. “There is a presumption that MBE firms cannot perform good work.”
- “There is always gender discrimination,” according to a manager of a WBE firm.

About one-third of the MBE general services firms surveyed by NERA in the 2001 State of Maryland study reported that they had been treated less favorably when working or attempting to obtain work on prime contracts, whether it be in the private sector or public sector. About one-quarter of women business owners expressed this view.

Experience requirements and size of contracts. One of the female business owners BBC interviewed reported that a challenge for MBE/WBEs in getting a foothold with large clients such as WSSC is the level of experience required by these clients. She went on to say that MBE/WBEs may not have enough resources to handle the largest contracts.

Interviews with other general services firm owners and managers found similar views. Several business owners reported that public sector clients sometimes have onerous experience requirements and other barriers to competition from small businesses.

Bid process. A number of MBE/WBEs described the bid process at WSSC and other clients as difficult and time-consuming. This was seen as disadvantaging smaller firms, especially MBE/WBEs. “Many small MBE firms do not understand the process and provide incomplete information.”

Other advantages for larger firms. Many minority and female business owners believed that larger firms have advantages over smaller general services firms. Some said that public agencies or private sector clients in the local marketplace have an affinity toward larger firms. Another business owner said that competition from larger firms eliminates any job prospects for small minority firms in the local area.

In addition, there are some large fixed costs for certain types of general services firms that are difficult for small firms to afford. For a trucking firm owner, it was the premiums for general liability insurance. For another, it was the time and money needed to obtain bonding.

One minority business owner framed his problems as a “chicken or egg” issue. “We don’t get work if we are not staffed enough and we don’t have enough experience, however, we don’t get experience unless we get an opportunity to work with firms. So, where does a small firm find its foothold in this vicious cycle?”

“We are a small firm ... and cannot manage to compete with large organizations on cost,” according to the manager of a female-owned firm.

White male owners or managers of general services firms interviewed in this study indicated that there was discrimination in the marketplace for small businesses. A minority business owner said that, although there still is built-in discrimination in the system, the key problem is that larger firms are beating out the smaller minority firms.

Delayed payments from clients can also present a disadvantage for small firms, especially MBE/WBEs, based on the business interviews.

Is there a level playing field for MBE/WBEs when competing for subcontracts? The owners of trucking firms BBC interviewed explained many barriers for MBEs seeking subcontracting opportunities in their field. Most of the other business owners did not typically work as subcontractors.

The owners of the trucking firms reported that prime contractors favor majority-owned firms. They also reported that majority-owned firms in their field get better rates than minority-owned firms.

These firm owners also explained that fronting was a major issue and that many WBE firms were not legitimate. Minority-owned firms were hurt as a result.

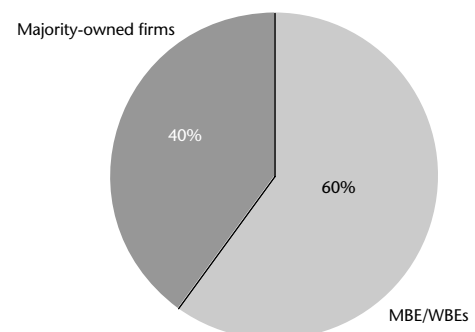
Is Discrimination Affecting MBE/WBEs When Competing for WSSC Work?

There is some evidence that MBE/WBEs do not face a level playing field in the local marketplace. Does this carry over into work for WSSC?

How much work are MBE/WBEs winning as prime consultants? There were 292 firms receiving at least \$5,000 in prime contract payments for WSSC general services work between January 1999 and March 2004. Seventy-three of these firms were MBE/WBEs. BBC determined MBE/WBE status through phone calls to firms, assessment of WSSC records, D&B data and WSSC staff review.

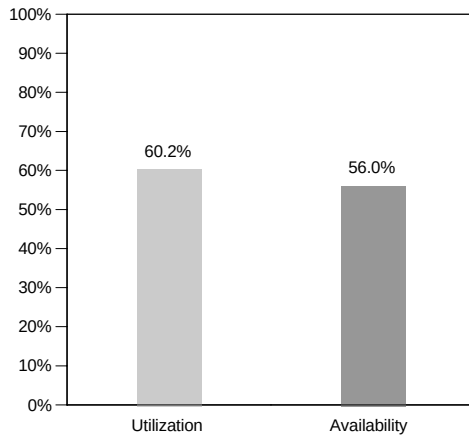
About 60 percent of WSSC payments to general services prime contracts went to MBE/WBEs, a higher share than

Figure V-25.
MBE/WBE utilization as prime contractors on WSSC general services contracts, 1999-2004



Source: BBC Research & Consulting from WSSC contract files.

Figure V-27.
WSSC utilization of MBE/WBEs as prime contractors on general services contracts, 1999-2004, compared with MBE/WBE availability for prime contracts



Source: BBC Research & Consulting.

any other area of WSSC procurement. Of the \$88.9 million in payments to general services firms, \$53.5 million went to MBE/WBEs. (The MBE/WBE utilization reported here does not include subcontracts going to minority- or women-owned firms.) Utilization of MBE/WBEs probably increased over the 1990s, although direct comparison is not possible because the MGT disparity study utilization figures also include goods purchases.

This level of utilization is not surprising given the representation of minority- and women-owned firms among the largest WSSC general services vendors presented earlier in this section. Of the eight fields examined, majority-owned firms were the largest vendors in only two — business services and communications. MBE/WBEs are winning both large and small prime contracts across most areas of general services procurement.

Utilization by race/ethnicity and gender. Most of the general services work at WSSC is performed by white female- and African American-owned firms. WBEs received 39 percent of total contract payments and African American-owned firms received 19 percent of total payments, as shown in Figure V-26.

Relatively little work went to Asian American-owned and Hispanic-owned firms. BBC did not identify any Native American-owned firms receiving WSSC general services prime contracts.

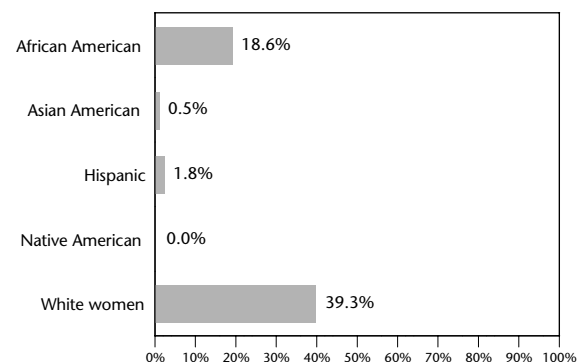
The work that went to white female- and African American-owned firms was distributed across a broad number of firms. Thirty-four African American-owned firms received at least \$5,000 in prime contract payments over the study period. Thirty-one WBEs received prime contract payments of this size. However, one WBE firm stood out in terms of total payments, as discussed below.

Are there disparities between WSSC utilization of MBE/WBEs and the availability of MBE/WBEs to work as prime contractors on general services contracts?

Previously in this section, BBC reported that over one-half of the general services firms available for WSSC prime contracts were MBE/WBEs. Figure V-27 shows that WSSC's utilization of MBE/WBEs as primes in general services exceeds MBE/WBE availability to perform this work.

BBC weighted the availability results to reflect the relative dollars spent on waste management, dump truck services, inspection and testing, cleaning and televising sewer pipe, business services, cleaning and restoration, communications equipment and service, and lawn service. The area with the most dollars of prime payments — waste management — received the highest weight. About 44 percent of

Figure V-26.
Prime contractor utilization on WSSC general services contracts by race/ethnicity and gender, 1988-2004



Source: BBC Research & Consulting from WSSC MAPS data.

general services dollars were spent in this area. After this weighting, 56 percent of the firms available for prime contract work are minority- or women-owned. The 60 percent overall utilization of MBE/WBEs for 1999-2004 is in line with availability.

WBE availability is about 21 percent for WSSC prime contract work in this industry. Utilization of WBEs substantially exceeded WBE availability. MBE utilization, however, is just over one-half of what would be expected based on availability.

Figure V-28 compares utilization with availability by race/ethnicity and gender.

Figure V-28.

WSSC utilization of MBE/WBEs as prime contractors on general services contracts, 1999-2004, compared with availability for prime contracts, by race and gender

	Utilization as Prime Contractors Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$16.6	18.7 %	29.8 %	(11.1) %	0.63
Asian American	0.4	0.5	4.3	(3.8)	0.11
Hispanic	1.6	1.8	0.5	1.3	3.60
Native American	<u>0.0</u>	<u>0.0</u>	<u>0.2</u>	<u>(0.2)</u>	--
Total MBE	\$18.6	20.9 %	35.3 %	(14.4) %	0.59
WBE	<u>35.0</u>	<u>39.3</u>	<u>20.7</u>	<u>18.6</u>	1.89
Total MBE/WBE	\$53.5	60.2 %	56.0 %	4.2 %	1.08
Majority-owned	<u>35.3</u>	<u>39.8</u>	<u>44.0</u>	(4.2)	0.90
Total	\$88.8	100.0 %	100.0 %		

Note: Rounding may affect subtotals; Total MBE availability includes 0.5 percent unknown MBE.

Source: BBC Research & Consulting.

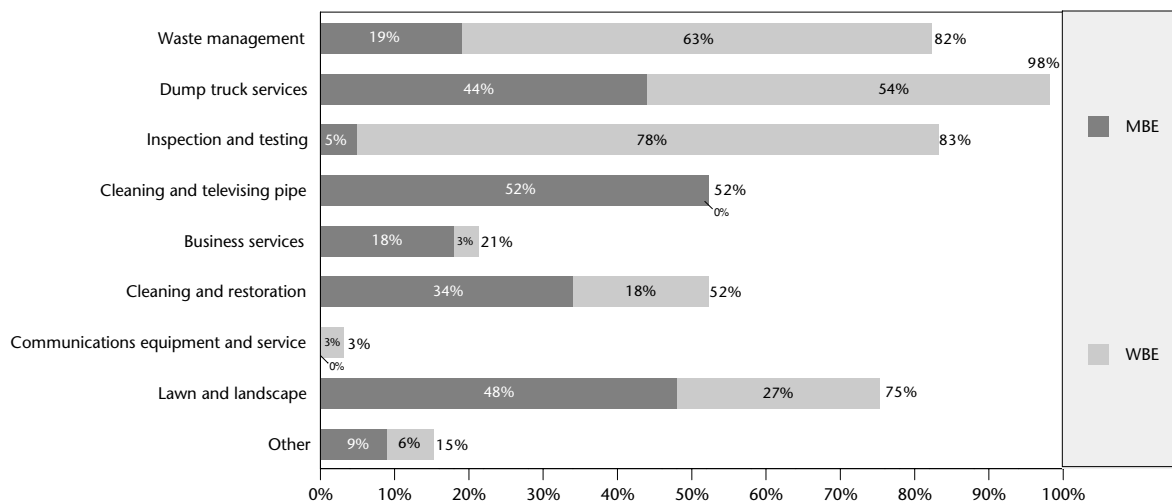
Does utilization vary by field within general services? MBE and WBE utilization varies considerably by industry, which explains some of the results shown in Figure V-28.

- Based on prime contract payments, non-MBE/WBE firms received well over half of the work in only three fields: business services, communications equipment and service, and “other” general services work. There was very little utilization of WBEs in communications and no measurable utilization of MBEs. MBEs received most of the other prime payments for business services contracts.
- One MBE got about one-half of the pipe cleaning and video work and the balance was split among four majority-owned firms. WBEs did not perform any of this work.
- MBEs received roughly double the work as WBEs in cleaning and restoration. Majority-owned firms got about one-half of this work.
- MBEs also received almost double the landscape services work as WBEs. Together minority- and women-owned firms obtained 75 percent of the prime payments in this field.
- Dump truck services work was split fairly evenly between MBEs and WBEs, with very few dollars going to majority-owned firms. Although trucking was one area in which minority business owners reported a large influx of front WBEs, BBC was unable to confirm this in our research.

- Inspection and testing largely went to WBEs, in part because one of the largest vendors is a subsidiary of a firm that is reported to be female-owned (apparently one of the largest female-owned firms in the country).
- A very large area of WBE utilization is also the field where WSSC spends the most money: waste management. Almost two-thirds of WSSC's spending in this area went to WBEs, which goes far to explain the overall high utilization of WBEs in general services. Utilization of MBEs was about the same as majority-owned firms.

One WBE firm, Recyc Systems, Inc., alone captures about one-quarter of total WSSC utilization in general services. If Recyc Systems were not WBE, utilization of WBEs in general services would be 11 percent, not 39 percent. As discussed further in this chapter's conclusions, BBC reviewed the disparities in utilization of MBEs in light of the payments to this one WBE vendor.

Figure IV-29.
WSSC utilization of MBE/WBE general services firms by field, 1999-2004



Source: BBC Research & Consulting.

Is there any qualitative evidence of discrimination against MBE/WBE general services firms on particular WSSC contracts? Even though there is no overall disparity between utilization and availability of MBE/WBEs in general services, particular practices or actions could still be discriminatory against particular minority or female business owners attempting to work with WSSC.

Breaking into WSSC is difficult, according to many business owners we interviewed. (BBC completed 16 in-depth telephone interviews in this industry.) Many business owners or managers reported that it was difficult to get their first contract with WSSC, and some have yet to succeed. Others have given up working with WSSC.

Several MBE/WBEs noted that WSSC's bid process was difficult.

- “WSSC has a very tedious paperwork process. Many times it is difficult for an MBE firm to spend so much time trying to get a contract.”
- One manager of a WBE firm said that she has repeatedly bid on WSSC work, with no success. She apparently does not get feedback from WSSC on why she lost the bid — “why we were rejected,” as she put it.
- Managers of another WBE firm said that they expected feedback from WSSC on their bid, but didn't get it. “WSSC should at least make an effort to give us reasons why we were not chosen and why we were not qualified for the award so we can refine our bid and present a better offer the next time.” These may be additional examples of a firm not fully understanding the low bid process in public sector procurement.
- A number of MBE/WBEs suggested that WSSC set up workshops or informal sessions to assist MBE/WBEs with the paperwork process.

A minority firm owner reported that he has stopped bidding with WSSC. “The MBE program is no good and the good old boys network gets all the projects.”

Another business owner said that she had won some work with WSSC and continued to provide services over about a 12-year period. However, when her WSSC contact retired, “WSSC dropped me like a bad habit.” She reported that she later found out that someone within the organization had a wife with a firm in her line of work. WSSC apparently dropped her firm to retain the employee's wife's firm. (BBC did not determine whether this allegation had merit.)

One person felt that there was racial discrimination in how contracts are awarded at WSSC. Several firms reported that new and smaller firms do not get an opportunity to work with WSSC, but old majority firms always get work. “They always favor the larger firms.”

Managers of a WBE firm said that WSSC took so long to get back to them on a bid they submitted that they lost other work in the mean time. They did not get the WSSC contract either.

Other MBE/WBE business owners believed that competing for work at WSSC was relatively straightforward and did not present any unique problems. “Breaking into WSSC work was not difficult.” Another business owner reported that they received a postcard notification of a job in their line of work, contacted WSSC procurement staff and received the project. BBC also interviewed owners or managers of several majority-owned firms, who did not report any particular disadvantages of working with WSSC. A few perceived that, if anything, WSSC was biased in favor of MBE/WBEs.

A number of firms noted WSSC's reputation as slow-paying client (“not paying for months”).

Impact of WSSC's MBE/WBE program on prime contractors. Nearly all of the MBE/WBE general services firms BBC interviewed indicated that WSSC's MBE/WBE program did not help them get work as primes. “We have to straight bid and compete with many other firms ...” summarizes the statements of many of the business people we interviewed.

Many of the owners or managers of MBE/WBE general services firms whom BBC interviewed urged WSSC to adopt a sheltered market program for minority- and women-owned firms. Some believed that it was difficult for them to win prime contracts because they were competing head-to-head with large companies and could not match the prices of large firms.

One possible impact of the MBE/WBE goals program on prime contractor utilization is to dissuade majority-owned firms from competing for contracts that have MBE/WBE subcontracting goals. However, MBE/WBE primes as well as majority-owned primes typically complied with the goals program, so it does not appear that there is an advantage to minority- or women-owned firms bidding as primes on general services contracts. As discussed later in this section, this advantage may be evident in one relatively narrow field.

Conclusions for WSSC general services prime contracts. MBE/WBE general services firms have achieved the highest utilization of any area of WSSC contracting and procurement, even though there appears to be no direct benefit from the MBE/WBE program for these firms. There are no overall disparities for MBE/WBEs in this area of procurement. WSSC should carefully monitor utilization of MBEs, but the need for a race-based program is not compelling at this time given the overall success of MBE/WBEs as a group. If WSSC were to enact a race-conscious program, it would have to restrict WBE participation in order to increase MBE participation. BBC does not believe that current conditions warrant such a step.

Even with the relatively high MBE/WBE utilization, the interviews BBC conducted with MBE/WBEs found that many barriers to MBE/WBE participation have not been removed. Further outreach to MBE/WBEs, or small firms in general, is still needed to encourage minority- and women-owned firms to bid on WSSC work.

WSSC should re-build its bidders list and encourage MBE/WBEs to complete bidders list applications. Procurement staff should be encouraged to seek bids from MBE/WBEs, and, importantly, attempt to provide feedback to new MBE/WBE bidders when they lose bids. If MBE/WBEs are losing solely because of price, they may not understand that this is the cause.

In addition, WSSC should monitor payment times on its procurements. Slow payment will have an adverse impact on MBE/WBEs, and discourage new firms from competing for WSSC work.

At least one anecdote from a BBC interview suggested that work was shifted to a firm because it was owned by a WSSC employee's wife. BBC did not verify that this occurred, but it provides a reminder of the importance of a strong ethics in procurement policy. WSSC must enforce this policy to maintain integrity in its procurement process.

Is There a Need for the WSSC MBE/WBE Subcontracting Program in General Services?

WSSC's current program. WSSC sometimes applies MBE/WBE subcontracting goals on larger general services contracts. WSSC has had a 28 percent goal for MBE/WBE utilization on general services contracts for many years.

MBE/WBE utilization among subcontractors involved in general services contracts. Most subcontracts on WSSC general services contracts go to MBE/WBEs. WSSC electronic data showed 29 general services contracts with subcontracting participation from July 1999 to March 2004. These contracts totaled \$33.7 million. Of that amount, \$15.2 million went to subcontractors. A total of 45 percent of the work was subcontracted out.

MBE/WBEs were listed for \$14.6 million out of the \$15.2 million in subcontracts examined. If the listed minority- and women-owned firms actually performed and were paid for this work, MBE/WBEs received 96 percent of total subcontract dollars for these contracts, as shown in Figure V-30. Even though this list of contracts and subcontractors may not be entirely complete, BBC had enough data to conclude that general services subcontracts almost exclusively go to MBE/WBEs.

In reviewing MBE/WBE utilization on the 29 contracts, there were none in which MBE/WBEs did not receive at least 10 percent of total contract dollars. The typical contract had 20 percent of the total going to MBE/WBE subcontractors.

Unlike construction, MBE/WBE primes gave a greater percentage of contract dollars to MBE/WBE subcontractors than found for majority primes. This was influenced by the subcontracting practices of the largest vendor, Recyc Systems, Inc., which subcontracted about one-half of its contracts to Duffield Hauling, Inc., another white women-owned firm. About \$10 million of the \$14.6 million going to MBE/WBE subcontractors went to Duffield Hauling. Even excluding this firm, however, most subcontracting dollars in general services were awarded to MBE/WBEs. About \$2.5 million of the subcontracting work went to African American-owned firms; Asian American- and Hispanic-owned firms received a total of about \$0.3 million. Other white women-owned firms were awarded about \$1.6 million in subcontracts.

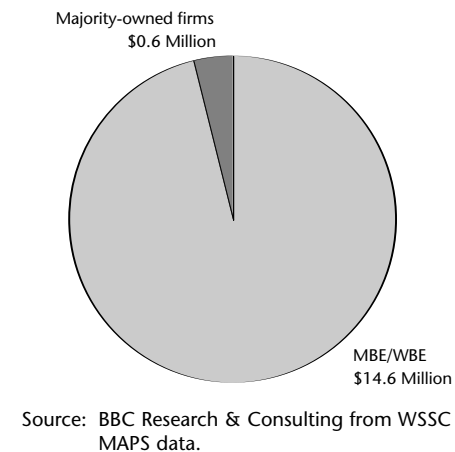
The firms BBC interviewed in this project had mostly negative things to say about WSSC's subcontracting program. For example, "The goals program seems to be a fraudulent way to bring goodwill," according to managers of a WBE firm. Nearly all reported that the program had not given them much assistance in obtaining WSSC work whether it be for prime contracts or subcontracts.

Some MBE/WBEs had problems working with the prime contractor on WSSC jobs. Several wanted WSSC to become involved in the prime-sub relationship, including the processing of subcontractor payments. A number of MBE/WBEs reported that WSSC did not adequately monitor actual use of MBE/WBEs after contract award. Several firm owners complained about white women-owned firms that they believed to be fronts. A suggested solution was to make a separate MBE goal for projects, else front WBE will get the work.

Many of the firms wanted a sheltered market program for prime contracts, not subcontracts.

Several majority contractors BBC interviewed in a highly specialized field complained that they often need to use a particular MBE as a subcontractor that also competes with them head-to-head on these same WSSC prime contracts. The high prices the MBE quotes them as a sub makes them less price-competitive when bids are opened. BBC confirmed that this minority-owned firm got much of the work in this field and directly competed with the majority firms we interviewed. This disadvantage for the majority-owned firms may be an unintended effect of the current goals program.

Figure V-30.
Proportion of WSSC general services subcontract dollars going to MBE/WBEs, 1999-2004



Recommendations

WSSC efforts to encourage MBE/WBE utilization in general services have been successful. It is opportune for WSSC to evaluate whether current MBE/WBE programs should be continued in this area, and if additional efforts are needed.

Prime contracts. WSSC should consider the following elements for its new Anti-Discrimination Program in Contracting and Procurement as it applies to general services prime contracts.

1. Although WSSC can apply its sheltered market program for small businesses in the general services area, this program has been slow to develop. BBC recommends that WSSC implement the same changes in eligibility for the program as suggested in Section IV for construction, and then begin implementing the program for general services contracts. Initial implementation could focus on the business services field. To be effective, the Procurement Group may need to break up larger contracts into smaller pieces that can be bid through the small business program.
2. WSSC should continue to conduct outreach to MBE/WBEs and other general services firms and offer training to firms on how to compete for WSSC prime contracts. Firms new to the bidding process should understand what paperwork is required, how bids are evaluated, how quickly procurement decisions will be made and what type of feedback they can expect. WSSC should share examples of past bids with potential bidders.
3. WSSC should review how quickly it pays general services contractors and attempt to implement a quick pay mechanism for small business sheltered market contracts as well as for small firms in general.
4. The Procurement Group should re-build its bidders list for general services firms and ensure that MBE/WBEs are among the firms contacted for procurement opportunities. WSSC may want to participate in a state-wide bidder registration system.
5. Procurement staff should seek new MBE/WBEs and other small businesses vendors for small procurements that need not be competitively bid.

Each of the above recommendations are race- and gender-neutral. WSSC should carefully monitor MBE/WBE utilization, including certified and non-certified firms.

Subcontracts. BBC concludes that the existing subcontracting goals program is no longer needed to increase overall MBE/WBE participation in general services. It is also not the most effective vehicle to open prime contract opportunities for minority- and women-owned firms that may still face barriers in competing for WSSC work. The current program has the primary effect of requiring the MBE/WBE primes that are winning the bulk of WSSC general services dollars to subcontract to other MBE/WBEs. Some of the firms getting these subcontracts are also winning WSSC prime contracts on their own.

BBC considered the many negative comments about the program from MBE/WBE general services firms in reaching these conclusions. Many of these firms were offering ways to fix the goals program that were, in fact, better achieved through a small business sheltered market program.

Unlike BBC's recommendations for professional services, which suggested occasional, highly targeted use of MBE/WBE goals, we suggest that none of these fields be subject to MBE/WBE goals. WSSC should still request that prime contractors report use of subcontractors and suppliers at time of bid or time of

award, including identification of race/ethnicity and gender ownership of the subcontractors. WSSC should carefully track future awards to MBE/WBE versus majority-owned subcontractors to see if discontinuing the program results in disparities in the use of MBE/WBE subs. WSSC should also monitor utilization by race/ethnicity and gender. The key metric to track is percentage of total **subcontract** dollars going to each group, which is different than the way WSSC currently measures utilization of subcontractors.

Summary

WSSC has achieved high utilization of MBEs and WBEs across most general services fields. As a whole, more general services contract dollars go to MBE/WBEs than majority-owned firms.

Even though there may be continued race and gender discrimination affecting minority- and women-owned general services firms that possibly puts these firms at a disadvantage when seeking WSSC work, WSSC should change its primary MBE/WBE program effort in this area — subcontracting goals — to now focus on a small business program to introduce new small businesses to WSSC procurement. Given the demographics of firms available for such work (over 50 percent MBE/WBE), a small business program may prove effective in maintaining the progress WSSC has made toward a procurement system open to minority- and women-owned firms.

WSSC should carefully monitor use of MBE and of WBE prime contractors and subcontractors. It may find in the future that stronger measures are needed, especially related to utilization of minority-owned general services firms.

SECTION VI.

WSSC Goods Contracts

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WSSC Goods Contracts

WSSC's goods purchases complete BBC's analysis of WSSC procurement. Goods purchases are typically made by the Procurement Group in the same way as general services purchases. Needed products are specified and put out to bid with the work usually going to the lowest bidder.

The Commission purchases a wide variety of goods ranging from industrial parts and equipment to the chemicals needed in treatment plant operation. Some of the goods purchases would be typical of any public agency — motor vehicles and computers — while others are quite specific to water and wastewater utilities. Most of the payments for goods go to firms with offices in the Washington-Baltimore area. In some cases, WSSC buys directly from the manufacturer, which is often located outside the local market.

BBC focused on the types of goods purchases that WSSC pays for by check or electronic payment, and only examined vendors receiving payments of \$5,000 or more. Even so, BBC counted 756 goods vendors doing business with the Commission from January 1999 through March 2004. More vendors would appear if BBC had examined WSSC purchases through its new procurement card system. Procurement cards are used to go to a local store or other vendor and pick up an item that is immediately needed by the Commission. Goods purchases made the traditional way averaged about \$25 million per year since 1999. Procurement card purchases totaled about \$3 million for FY 2004.

This chapter is organized in the same order as the other industry analyses. It begins by reviewing the questions important to understanding whether there is a level playing field for MBE/WBEs in WSSC goods procurement. We then discuss the specific fields involved in WSSC contracts, which allows us to focus on these areas when examining local marketplace conditions. The balance of this chapter examines how minority- and women-owned firms have fared when seeking WSSC goods purchases.

Similar to general services, WSSC applies an MBE/WBE subcontracting goals program to certain goods contracts. BBC assessed whether there was a need to continue this initiative, given the U.S. Supreme Court guidance on race- and gender-based programs. BBC's recommendations for a new Anti-Discrimination Program for this area of WSSC procurement is summarized in Figure VI-1 and reviewed in detail at the end of this chapter.

Figure VI-1. **Summary of recommendations**

Given MBE/WBEs' success in obtaining WSSC goods prime contracts, WSSC should consider the following changes to its policies and procedures for goods procurement:

- Apply the small business sheltered market program in goods, especially in fields such as computer equipment and auto/home/office supplies.
- Discontinue the current subcontracting goals program for goods contracts.
- Continue to conduct outreach to MBE/WBEs and train new bidders on procurement procedures.
- Review if vendor payment times can be improved.
- Re-build the bidders list for goods.
- Seek new vendors, especially smaller firms, for small purchases that need not be competitively bid.

Key Questions

Goods procurement at WSSC is similar to general services in that it is usually based on low bid. Also like general services, some goods vendors are also suppliers on WSSC construction contracts. Unlike general services, however, the firm usually does not have particular qualifications to do business with WSSC; it is the specific good that is being purchased that must meet WSSC specifications.

Subcontracting is rare in this industry according to BBC's interviews.

BBC examined the same questions for goods purchases as for general services:

- Where is the local industry on the path toward a non-discriminatory environment for women and minorities?
- Where is WSSC on this path?
- Are conditions in the industry and at WSSC such that minorities and women would have a level playing field absent any race- and gender-based programs? If not, should WSSC retain or expand measures to assist MBE/WBEs in goods procurement?

Based on the answers to these questions, BBC can identify needed changes in procurement procedures and other measures related to WSSC goods purchases.

WSSC Goods Purchases

WSSC purchases a large volume of very diverse types of goods.

Total dollars of goods purchases. BBC researched WSSC's use of goods vendors through the same procedures as other procurement areas. The results presented here are for firms receiving at least \$5,000 of payments from January 1999 through March 2004. Over 750 different vendors received this volume of payments, not including subcontracting. Payments totaled \$128 million. BBC identified goods services through the procedures listed in Figure VI-2.

Figure VI-2. Identification of WSSC payments for goods purchases

Because most goods purchases go through Procurement, BBC could often identify purchases as goods based on the description of the procurement in WSSC's electronic contract files. Other methods included:

- The primary Standard Industrial Classification (SIC) codes for firms doing WSSC work as provided by Dun & Bradstreet;
- Review of information on WSSC vendors' websites;
- Phone calls to WSSC vendors; and
- Review by WSSC staff.

Also note that computers and prepackaged software somewhat overlapped with IT consulting, discussed under professional services. Also, communications equipment and services are examined as a general services group. This type of procurement could also have been examined under goods purchases.

WSSC made a total of \$127.6 million in payments to goods firms from January 1999 through March 2004. Figure VI-3 shows the distribution by type of supplier. Electrical and industrial parts and equipment firms accounted for over one-third of WSSC goods payments. Chemicals and petroleum suppliers received 16 percent of payments, about the same amount as computer and prepackaged software suppliers.

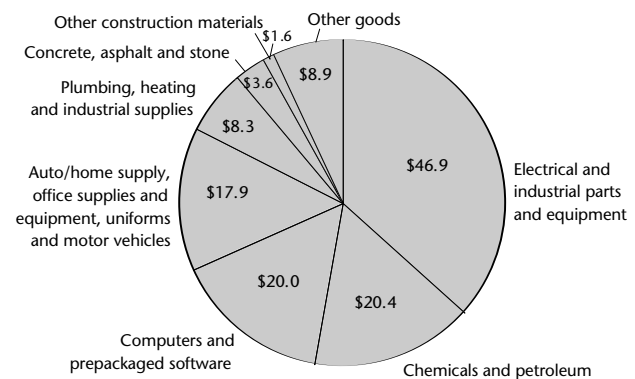
BBC examined three areas of goods purchases that are also involved as subcontractors or suppliers on WSSC construction projects: plumbing, heating and industrial supplies; concrete, asphalt and stone; and other construction materials such as hardware, lumber and metal supplies. One reason to examine construction suppliers in some detail was because of this overlap with construction subcontracting.

Figure VI-4, on the following page, presents a detailed breakdown on the specific industry specializations included in each grouping. Note that BBC classified a firm into a single category of goods purchase based on its primary area of sales, or the goods it primarily provides to WSSC. This was a necessary simplification; however, we know that the products sold by some firms span these categories.

BBC also researched use of subcontractors on WSSC goods contracts from 2002 to spring 2004. BBC was able to research eight subcontracts.

Location of firms involved in WSSC goods work. Although WSSC purchases from goods vendors from throughout the country, about three-quarters of goods payments go to firms with offices in the Washington-Baltimore area. BBC focused the analysis of market conditions for goods firms on the Washington-Baltimore marketplace.

Figure VI-3.
WSSC payments to goods firms,
Jan. 1999-Mar. 2004 (millions)



Source: BBC Research & Consulting from WSSC MAPS data.

Figure VI-4.
Grouping of WSSC goods payments

Group	Number of Vendors	Sub-Industry detail (4-digit SIC code)
Electrical and industrial parts and equipment	193	■ Totalizing fluid meters and counting devices ■ Measuring and controlling devices, nec ■ Industrial instruments for measurement, display and control of process variables ■ Relays and industrial controls ■ Instruments to measure electricity ■ Analytical instruments ■ Scales and balances, except laboratory ■ Electrical apparatus and equipment ■ Industrial machinery and equipment ■ Professional equipment and supplies, nec (A&E equip) ■ Electronic parts and equipment ■ Construction and mining (except petroleum) machinery and equipment ■ General industrial machinery and equipment, nec ■ Fabricated metal products, nec ■ Industrial valves ■ Valves and pipe fittings, nec ■ Fluid power valves and hose fittings
Chemicals and petroleum	57	■ Alkalies and chlorine ■ Petroleum and petroleum products wholesalers ■ Chemicals and allied products, nec ■ Industrial inorganic chemicals, nec ■ Chemical preparations, nec
Computers and prepackaged software ¹	89	■ Computers and computer peripheral equipment and software ■ Prepackaged software
Auto/home supply stores, office supplies, office equipment, uniforms, motor vehicles	81	■ Auto and home supply stores ■ Motor vehicle dealers ■ Stationary stores ■ Office equipment ■ Men's and boys' clothing and furnishings ■ Motor vehicle supplies and new parts ■ Stationary and office supplies ■ Office furniture ■ Printing and writing paper ■ Envelopes
Plumbing, heating and industrial supplies	38	■ Plumbing and heating equipment and supplies ■ Industrial supplies ■ Warm air heating and air-conditioning equipment and supplies
Concrete, asphalt and stone	12	■ Crushed and broken limestone ■ Asphalt paving mixtures and blocks ■ Brick, stone and related construction materials ■ Ready-mixed concrete
Other construction materials	27	■ Hardware ■ Lumber and other building materials dealers ■ Metals service centers and offices ■ Lumber, plywood, millwork and wood panels

Types of Goods Work at WSSC

As we did for other industries, BBC examined the firms receiving the most work in each of the seven subindustries identified in Figure VI-4.

Electrical and industrial parts and equipment. From January 1999 through March 2004, WSSC spent about \$47 million or 37 percent of total goods expenditures with firms supplying electrical and industrial parts and equipment.

BBC identified 193 firms providing electrical and industrial parts and equipment that received at least \$5,000 in payments from WSSC for 1999-2004. The six firms listed in Figure VI-5 received at least \$1 million in WSSC payments (as prime contractors) during this period. These six firms were paid a total of \$30.5 million, or about 65 percent of the \$47 million paid to all electrical and industrial parts and equipment firms during the study period. Figure VI-6 briefly describes each firm.

Figure VI-5.
Electrical and industrial parts and equipment firms receiving \$1.0 million or more in WSSC payments, Jan. 1999-Mar. 2004

Electrical and Industrial Parts and Equipment Firm	WSSC Prime Contract Payments (millions)
Business Promotion Consultants, Inc. (MBE)	\$18.8
Washington Cable Supply, Inc. (MBE)	6.0
Mueller Co.	2.3
Leopold Company, Inc.	1.3
Bingham and Taylor	1.1
L.B. Smith	1.0

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-6.
Background on electrical and industrial parts and equipment firms receiving at least \$1.0 million in WSSC payments, Jan. 1999-Mar. 2004

Business Promotion Consultants, Inc. Business Promotion Consultants, Inc. (BPC, Inc.) was founded in 1981 as an international consulting and exports trading company to provide procurement and related services and to supply commodities to national and international clients. The firm's products have ranged from medical supplies and educational materials through heavy grade industrial, transportation, and agricultural equipment and supplies. In 1990, BPC became a distributor of waterworks, utility and construction materials. Currently, this division supplies items ranging from small flaring tools to 96 inch diameter ductile iron pipe for customers in the U.S. and abroad. BPC, Inc. is an African-American-owned business based in Forestville, Maryland.

Washington Cable Supply, Inc. Founded in 1984 by Bill and Beverly Parker, Washington Cable Supply is one of the nation's leading providers of products and services to the telecommunications, utilities and construction markets. The firm's products range from electrical materials and hardware to construction and telecommunication through logistics, facility management and inventory management. Washington Cable Supply, Inc., is a women-owned and African American-owned business. The firm has headquarters in Lanham, Maryland and has a regional facility in Norcross, Georgia.

Mueller Co. Mueller Co. was founded in Decatur, Illinois in 1857 by Hieronymus Mueller, a German immigrant. Mueller Co. started as a handmade gun manufacturer and later turned the company's focus to iron and brass products for the distribution of potable water and gas. Today, Mueller Co. is an industry leader for the supply of meter systems, valves, tools, and machines necessary for water distribution systems. Mueller Co. operates through its corporate headquarters in Chicago, Illinois and ten plant locations throughout the U.S. The firm is employee-owned.

Leopold Company, Inc. F.B. Leopold Company, Inc., was established in 1924 in Zelienople, Pennsylvania. The firm is a leader in supplying filtration and clarification products for the water and wastewater treatment industry throughout the world. Leopold Company is privately-owned.

Bingham and Taylor Foundry. Bingham and Taylor Foundry started in the 1850s as a manufacturer of cast iron products from scrap iron. The firm manufactures both cast iron and plastic curb and valve boxes. Bingham and Taylor is a privately-owned firm based in Culpeper, Virginia.

L.B. Smith, Inc. L.B. Smith, Inc. dealerships provide new and used Volvo construction equipment to government and commercial customers in the U.S. East Coast. The firm has four offices in Florida, Virginia, Pennsylvania and New Jersey. The L.B. Smith dealerships are owned by Volvo Construction Equipment based in Ashville, North Carolina. Volvo Construction Equipment is a global firm founded in 1832 in Eskilstuna, Sweden. The publicly-held firm started its construction equipment business in the U.S. in 1977.

Chemicals and petroleum supply. In the study period, WSSC spent about \$20 million with 57 firms supplying chemicals and petroleum products. Six firms received at least \$0.7 million in WSSC payments (see Figure VI-7). These six firms were paid a total of \$11.8 million, or about 59 percent of the total spending on chemicals and petroleum. Figure VI-8 discusses each of these large vendors.

Figure VI-7.
Chemical and petroleum supply firms receiving \$0.7 million or more in WSSC payments, Jan. 1999-Mar. 2004

Chemical and Petroleum Supply Firms	WSSC Prime Contract Payments (millions)
Delta Chemical Corp. (WBE)	\$7.2
Kemwater North America Co.	1.5
Truman Arnold Companies	0.9
Eaglebrook, Inc.	0.8
Chloramone Company	0.7
Tricon Chemical Corp. (MBE)	0.7

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-8.
Background on chemical and petroleum supply firms receiving at least \$0.7 million in WSSC payments, Jan. 1999-Mar. 2004

Delta Chemical Corp. Delta Chemical Manufacturing Company was started in 1932 as a manufacturer of industrial and consumer grade chemical products. In 1976, the firm began manufacturing and distributing chemicals used for water purification and wastewater treatment. In 1982, the firm reorganized and became Delta Chemical Corporation. Delta Chemical Corporation is based in Baltimore, Maryland and has about 61 employees. The firm is women-owned.

Kemwater North America Co. Kemwater North America Company (previously known as Imperial West Chemical Company) is the largest manufacturer of industrial inorganic chemicals and related products used in water treatment in North America. Kemwater North America Co. is headquartered in Antioch, California and has multiple locations throughout the country. In 2000, Kemwater was acquired by Kemiron Companies, a Bartow, Florida-based U.S. subsidiary of the Finnish chemical company, Kemira. Kemira is a leading global supplier of coagulants for water treatment and provides solutions for municipal water treatment and the management of industrial wastewater and sludge treatment. The firm is publicly-held.

Truman Arnold Companies. Truman Arnold Companies (TAC) markets and distributes petroleum products to customers located in 48 states in the US. The company also operates convenience stores and provides trucking, real estate and construction services. TAC is a family-owned company founded in 1964 by Truman Arnold. The firm is based in Texarkana, Texas and employs 250 people. TAC's wholesale division is considered to be the largest independent wholesaler of major branded fuel in the U.S.

Eaglebrook, Inc. Eaglebrook supplies a full range of iron and aluminum coagulants to wastewater and potable water markets in North America. Eaglebrook is headquartered in Matteson, Illinois and has facilities in Schererville, Indiana; Euclid, Ohio; Pearlinton, Mississippi and Edgemoor, Delaware. The firm employs 500 people. Eaglebrook was acquired by Kemiron Companies, a Bartow, Florida-based U.S. subsidiary of Finnish chemical company, Kemira. Kemira is a leading global supplier of coagulants for water treatment and provides solutions for municipal water treatment and the management of industrial wastewater and sludge treatment. The firm is publicly-held.

Chloramone Company. Chloramone Company provides industrial chemicals for water and wastewater treatment markets in the U.S. The firm was established in 1966 and has 50 employees. The Delaware City, Delaware-based company is a division of Kuehner Chemicals Company based in Kearny, New Jersey. Kuehner Chemicals is a family-owned firm founded in 1919 by Peter Kuehner.

Tricon Chemical Corp. Tricon Chemical Corporation is one of the largest privately-held chemical companies in Washington, D.C. The firm manufactures and supplies industrial and water treatment chemicals. Tricon was founded in 1974 and employs 40 people in its Forestville, Maryland office. The firm is African American-owned.

Computer and prepackaged software.

During the 5-year study period, 89 firms supplying computer and prepackaged software products received at least \$5,000 in payments from WSSC. As shown in Figure VI-9, six firms received at least \$1 million in WSSC payments. In total, these six firms received \$10.5 million, or about one-half of the \$20 million paid to all computer and prepackaged software supply firms during the study period. See Figure VI-10 on the following for a brief introduction to each firm.

Figure VI-9.

Computer and prepackaged software supply firms receiving \$1.0 million or more in WSSC payments, Jan. 1999-Mar. 2004

Computer and Prepackaged Software Supply Firms	WSSC Prime Contract Payments (millions)
FASTech, Inc. (MBE)	\$2.3
International Business Machines Corporation	2.3
Oracle Corporation	2.0
Computer Associates International, Inc.	1.5
Aban Computers	1.3
ViON Corporation	1.1

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-10.

Background on computer and prepackaged software supply firms receiving at least \$1.0 million in WSSC payments, Jan. 1999-Mar. 2004

FASTech, Inc. Established in 1989, FASTech has been providing computer hardware and software to a variety of federal and state governments as well as to commercial clients throughout the eastern U.S. The firm is based in Beltsville, Maryland. FASTech, Inc., is an Asian-American-owned business and employs 13 people.

International Business Machines Corporation (IBM). IBM is the world's largest information technology company. The firm supplies desktops, laptops, monitors, handhelds, servers and data storage systems. Founded in 1911, the organization currently conducts business in over 170 countries and employs over 300,000 people. IBM corporate headquarters are in Armonk, New York. IBM is publicly-held.

Oracle Corporation. Oracle Corporation is an information technology firm founded in 1977 by Larry Ellison, Bob Miner and Ed Oates. The firm provides internet-enabled enterprise software across its entire product line throughout the world. The firm is headquartered in Redwood Shores, California and has two offices located in Washington, D.C. and Maryland. Oracle is a publicly-held firm.

Computer Associates International, Inc. Computer Associates International, Inc. (CA) is the world's largest management software company that delivers software and services across operations, security, storage, life-cycle and service management. Founded in 1976 by Charles B. Wang, CA is a global, multibillion-dollar company with headquarters in Islandia, New York. CA is a publicly-traded firm and has more than 15,000 employees throughout the world. CA has three regional offices in Maryland.

Aban Computers. Aban Computers is a Alexandria, Virginia-based IT firm that supplies computer hardware and software. BBC was unable to locate any other information on this firm.

ViON Corporation. ViON Corporation is a small closely-held firm founded in 1980 in Washington, D.C. by David Pappert and William Topercer. The firm specializes in providing and maintaining advanced computing and storage solutions to the federal government, various local and state governments, and large commercial organizations in the U.S.

Auto/home supply, office supply and equipment, uniforms and motor vehicles.

BBC grouped a diverse set of routine government purchases into one category that includes auto and home supply, office supply and equipment, uniforms and motor vehicles. WSSC spent about \$18 million with firms supplying these types of goods during the study period. There were 81 firms that met the \$5,000 payments threshold over five years to be examined in the utilization analysis.

Eight firms received at least \$0.7 million in WSSC payments from 1999 to March 2004. The eight firms listed in Figure VI-11 were paid a total of \$10 million, or a little more than half of the \$18 million paid to all of these types of vendors. Figure VI-12 introduces each firm.

Figure VI-11.
Auto/home/office supply, uniform and motor vehicle firms receiving \$0.7 million or more in SSC payments, Jan. 1999-Mar. 2004

Auto/Home/Office Supply, Uniform and Motor Vehicle Firms	WSSC Prime Contract Payments (millions)
Sport Chevrolet Co.	\$2.2
J. Price International Trucks, Inc.	1.5
Unitec Distribution Systems	1.4
Rudolph's Office Supplies (WBE)	1.2
Penn Pontiac-GMC Truck, Inc. (WBE)	1.2
Elliott/Wilson Capitol Trucks	1.2
Donald B. Rice Tire Co., Inc.	0.8
Ikon Office Solutions	0.7

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-12.
Background on auto/home/office supply, uniform and motor vehicle firms receiving at least \$0.7 million in WSSC payments, Jan. 1999-Mar. 2004

Sport Chevrolet Co. Sport Chevrolet Co. is an authorized Chevrolet dealership based in Silver Spring, Maryland. The dealership is privately-owned.

J. Price International Trucks, Inc. J. Price International Trucks is an international trucking company that offers new and used fleet and commercial trucks for sale and lease. The firm has offices in Hyattsville, Maryland; Gaithersburg, Maryland; and Lorton, Virginia. The firm was established in 1987 and is privately-owned.

Unitec Distribution Systems. Unitec Distribution Systems is an apparel distributor providing customized uniforms, work clothing, safety apparel and career apparel to commercial and government agencies throughout the U.S. The firm was established in 1927 as Suburban Uniform Company and is based in Westminster, Maryland. This privately-owned firm has over 40 employees.

Rudolph's Office Supplies. Rudolph's Office Supplies is a Baltimore, Maryland-based supplier of office, computer and printer supplies; and business interior and equipment needs. The firm does business with both public and commercial customers in the U.S. The firm was established in 1980 and is a women-owned firm.

Penn Pontiac-GMC Truck, Inc. Penn Pontiac-GMC Truck, Inc., is an authorized GMC and Pontiac light and medium-duty truck dealership based in Baltimore, Maryland. The dealership was established in 1975 and is women-owned.

Elliott/Wilson Capitol Trucks. Elliott/Wilson Capitol Trucks is the largest truck dealer on Maryland's Eastern Shore. The Landover, Maryland-based dealership provides sale and service facilities for commercial and light duty trucks and their parts. The firm is family-owned and has operated since 1940.

Donald B. Rice Tire Co., Inc. Donald B. Rice is a tire supply and service firm that serves retail, commercial and wholesale clients in the eastern U.S. The firm entered the tire sale and service business in 1929 in Frederick, Virginia. The family-owned business has five retail locations in Washington, D.C. and Maryland.

Ikon Office Solutions. Ikon Office Solutions, previously known as Alco Standard Corporation, provides document management goods and services such as copiers, printers, fax machines, scanners and other office supplies through independent distribution centers. The firm was founded in Ohio in 1952 and changed its name to Ikon Office Solutions in 1997. The company operates worldwide and employs approximately 7,000 people. Ikon headquarters are located in Malvern, Pennsylvania. The firm maintains offices in Baltimore and Landover, Maryland. Ikon Office Solutions is publicly-traded.

Plumbing, heating and industrial supplies.

In the 1999-2004 time period, WSSC spent about \$8 million with firms providing plumbing, heating and industrial supplies. (There is some overlap with the industrial parts supply category discussed previously.)

BBC identified 38 firms supplying plumbing, heating and industrial supplies that received at least \$5,000 in payments from WSSC during the study period. Four firms listed in Figure VI-13 received at least \$0.5 million in WSSC payments during this period. These four firms were paid a total of \$5.3 million, or about two-thirds paid to all plumbing, heating and industrial supply firms. Figure VI-14 provides a brief history of each firm

Figure VI-13.

Plumbing, heating and industrial supply firms receiving \$0.5 million or more in WSSC payments, Jan. 1999-Mar. 2004

Plumbing, Heating and Industrial Supply Firms	WSSC Prime Contract Payments (millions)
Hughes Supply, Inc.	\$2.6
Ferguson Enterprises, Inc.	1.2
Sherwood Logan & Associates, Inc.	0.9
Refrigeration Supply Co., Inc. (MBE)	0.6

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-14

Background on plumbing, heating and industrial supply firms receiving at least \$0.5 million in WSSC payments, Jan. 1999-Mar. 2004

Hughes Supply, Inc. Hughes Supply, Inc., founded in 1928, is one of nation's largest diversified wholesale distributors of construction, repair and maintenance-related products. Headquartered in Orlando, Florida, Hughes distributes over 350,000 products through 500 wholesale outlets located in 38 states. In addition to electric utilities, building materials and a wide variety of industrial products, Hughes' major product line includes water, sewer and water system products. The firm is privately-owned and employs more than 8,900 people nationwide. The firm provides water and sewer products and service facilities through five offices located in Washington, D.C.

Ferguson Enterprises, Inc. Ferguson Enterprises is a wholesale distributor of a wide array of plumbing and building products, industrial pipe, valves and fittings, heating and cooling equipment, waterworks products, and tool and safety products. The firm began as a service company for plumbing contractors in 1953 at locations in Washington, D.C., and Birmingham, Alabama. Ferguson Enterprises is now headquartered in Newport News, Virginia and has over 850 distribution locations throughout the United States. The firm employs approximately 15,000 people.

Sherwood Logan & Associates, Inc. Sherwood Logan & Associates provides water and wastewater treatment equipment and systems to public utility agencies in the eastern U.S. The firm has offices in Richmond, Virginia; Annapolis, Maryland and Leola, Pennsylvania. Sherwood Logan was founded in 1978 and employs approximately 30 employees. The firm is privately-owned.

Refrigeration Supply Co., Inc. Refrigeration Supply Company supplies plumbing and HVAC equipment, and pumps and valves for pipeline construction. The firm also provides training services for HVAC installation certifications. The firm was founded in 1934 and changed ownership in the mid-1980s. The firm is located in Washington, D.C. and employs 20 people. Refrigeration Supply Co. is Asian-American-owned and women-owned.

Concrete, asphalt and stone. From January 1999 through March 2004, WSSC spent about \$4 million with firms supplying concrete, asphalt and stone.

Twelve firms supplying concrete, asphalt and stone received 1999-2004 payments of at least \$5,000. The five firms shown in Figure VI-15 received at least \$0.2 million in WSSC payments (as prime contractors) during this period. These five firms were paid a total of \$3.2 million, or about 80 percent of what was paid to all concrete, asphalt and stone supply firms during the study period. One of these firms, Global Stone Chemstone Corp., could also have been classified with chemicals suppliers as it provides limestone for treatment plant operations. BBC's descriptions of these firms are provided in Figure VI-16.

Figure VI-15.

Concrete, asphalt and stone supply firms receiving \$0.2 million or more in WSSC payments, Jan. 1999-Mar. 2004

Concrete, Asphalt and Stone Supply Firms	WSSC Prime Contract Payments (millions)
Global Stone Chemstone Corp.	\$1.6
DC Materials	0.5
Parrott Materials Co.	0.5
National Paving & Contracting Co.	0.3
LaFarge Corp.	0.3

Note: Payments to prime contractors.

Source: BBC Research & Consulting from WSSC MAPS system.

Figure VI-16.

Background on concrete, asphalt and stone supply firms receiving at least \$0.2 million in WSSC payments, Jan. 1999-Mar. 2004

Global Stone Chemstone Corp. Global Stone Chemstone Corp. serves a wide variety of industrial, environmental and municipal markets by offering high calcium limestone, calcium lime and other construction aggregate products. Global Stone Chemstone was founded nearly 100 years ago as a limestone manufacturing company. The firm is a part of Global Stone Corporation that was acquired by Oglebay Norton Company in early 1998. Global Stone Chemstone is based in Strasburg, Virginia and is a publicly-held firm.

DC Materials. DC Materials is a partner-owned firm started in 1988. The firm primarily provides sand and concrete materials for construction and landscaping. In addition, the company provides waste hauling and disposal services to clients in the Washington, D.C. area. The corporate office of DC Materials is located in Hyattsville, Maryland and the firm has four distribution yards in Washington and Maryland. DC Materials has 40 employees.

Parrott Materials Co. Parrott Materials Co. provides concrete and paving materials to construction firms and public agencies. The firm began its operations in 1978 in Woodbine, Maryland. The firm has 20 employees and is a family-owned business.

National Paving & Contracting Co. National Paving & Contracting Co. provides asphalt and paving supplies for concrete work through several distributors throughout the U.S. The privately-owned firm was founded in 1929 and is located in Baltimore, Maryland. National Paving employs seven administrative and 25 field personnel.

LaFarge Corporation. LaFarge Corporation is the nation's largest diversified construction materials company and supplier of cement, crushed stone, sand, gravel and concrete for residential, commercial, instrumentation and public works construction. Headquartered outside of Washington, D.C., the firm employs more than 15,000 people at approximately 1,000 locations in North America. The firm was founded in 1983 and is publicly-traded.

Other construction materials. Other construction materials supply firms are those providing hardware, lumber and other wood products, and metal work. From January 1999 through March 2004, WSSC spent about \$1.6 million, or just 1 percent of total goods expenditures, with firms supplying other construction materials. BBC identified these supplies as a category of goods purchasing in order to be better able to examine suppliers on WSSC construction contracts. BBC identified 27 firms supplying other construction materials that received payments totaling at least \$5,000. Very few firms received a substantial amount of purchases.

Types and sizes of contracts. In addition to analyzing payments to goods firms, BBC studied 126 randomly-sample goods contracts from April 2002 to August 2004. The study team was able to research these purchases through hard copy files available in the Procurement Group.

As with the study team's analysis of other areas of procurement, not all of the files we sampled were available, nor was all of the desired information on each step of the procurement process available from the contract files. Nevertheless, this large dataset of goods purchases allows us to make conclusions from the information we did glean. The discussion below is based on the information reported in these files.

The good purchases collected by the study team ranged from a \$5,000 purchase order for beams to a \$7 million contract for water meters. Twenty-five of the 126 goods purchases examined exceeded \$100,000; however, WSSC makes many small purchases as well. Very few of the purchases BBC examined were over \$1 million.

Most goods purchases are competed. WSSC sometimes sends notices of the invitation to bid to hundreds of potential bidders. Above \$25,000, the Procurement Group typically sends notices of bids to every firm on the bidders list. Purchases expected to be \$50,000 or more are publicly advertised and also posted on the website. Between \$5,000 and \$25,000, a buyer just needs to get three quotes. Even on larger purchases, it is rare for more than four or five vendors to submit bids. BBC found one \$32,000 office furniture purchase for which 13 firms submitted bids, which was rare among the sampled procurements. (Purchases under \$5,000 do not need multiple quotes because the buyer can just select a vendor and make the purchase.)

About one-in-five goods purchases included in the sample of 126 procurements were sole-sourced:

- Because WSSC has standardized some of its equipment, it often needs to go to a local authorized dealer when it purchases parts. An example was the purchase of ACDelco parts for its fleet. WSSC also sole-sourced a Caterpillar lift truck from the sole authorized dealer in the local area.
- WSSC often returns to the vendors that provided original specialized equipment when it needs parts.
- Prepackaged software is often purchased on a sole-source basis. Similarly, the owners of the software are often the only ones to provide software maintenance.
- Sometimes the good is so specialized that only one manufacturer makes it.
- In other cases, the BBC study team would be able to note that the purchase was sole-sourced, but could find no explanation in the file.

The files reviewed for the sampled goods purchases suggest that WSSC's procurement of goods is typically competitive and similar to the practices of other public sector agencies.

Insights Into the Local Goods Industry

As with BBC's analysis of other local industries, BBC was able to draw some insights into the fields that make up what BBC has grouped into the local goods industry. The history of the firms performing the most WSSC work, the interviews BBC conducted with firms in the local region, and other analyses inform this assessment. Figure VI-17 summarizes the breadth of the research the study team conducted.

Many firms in this field are very old. Some of WSSC's largest suppliers have roots back to the 1800s. Many were formed prior to 1950.

Some suppliers are very large firms. A sizeable portion of the major supply firms are national or international companies with hundreds of supply locations and thousands of employees. Some suppliers are subsidiaries of even larger companies (Volvo is the parent company of one of WSSC's large suppliers). IBM is counted among the suppliers.

Some suppliers manufacture the product while others are wholesalers and distributors.

Many of the suppliers are the actual manufacturers of a product. At the other end of the spectrum are distributors that carry no inventory.

Many products have exclusive distributorships. An owner of a goods firm usually cannot carry any product he or she wishes. Exclusive distributorships restrict access to certain lines of goods.

Quality sales people are important. Even though clients are purchasing a product, not a service, a number of goods firm owners and managers BBC interviewed said that an effective, knowledgeable sales staff was very important to being a successful goods supplier.

Large goods firms obtain products at lower prices. As we heard in our interviews with business owners in other industries, many large firms can purchase products in bulk, and keep them in inventory if need be, which gives them a price advantage over smaller firms.

Working capital is needed for growth and success. Although capital requirements to start a goods firm may be lower than some industries, working capital is needed to grow.

Subcontracting is relatively rare in the private marketplace. There usually is no need to subcontract out any portion of a goods purchase. Very few of the goods firms BBC interviewed reported that they primarily worked as subcontractors.

MBE/WBE/DBE programs have been important to development of some MBE/WBE goods firms but not others. Only a few of the MBE/WBEs BBC interviewed reported that they had benefited from any public sector MBE/WBE programs.

Figure VI-17.

Research into the local goods industry

BBC attempted interviews with each current and past local area WSSC goods vendor that received at least \$30,000 in payments from January 1999 through March 2004, and a portion of vendors receiving smaller amounts. We successfully interviewed over 100 of these firms. BBC retained Customer Research International (CRI), a Texas-based telephone survey firm, to conduct telephone interviews with randomly-selected goods firms in the Washington-Baltimore marketplace. CRI reached 526 firms. In addition, BBC staff completed in-depth telephone interviews with 13 MBE/WBE and majority-owned goods firms. We supplemented this research by collecting Dun & Bradstreet information for WSSC consultants and subconsultants and by researching firms on the Internet.

Where is the Local Goods Industry on the Path Toward Equal Opportunities for Minorities and Women?

BBC examined qualitative and quantitative information that helped us explore where the local goods industry might be on the path toward equal opportunities for minorities and women.

Have women and minorities been able to start goods firms? BBC reviewed the availability of goods firms in the local marketplace as well as other data to answer this question.

Relative number of MBE/WBEs. MBE/WBEs comprise a smaller proportion of goods firms available for WSSC purchases compared with general services. Many of these companies are larger national or international firms and are less likely to be privately-owned. About one-quarter of the firms available for WSSC goods purchases are MBE/WBEs based on BBC's surveys of WSSC vendors and randomly-sampled firms in the local marketplace.

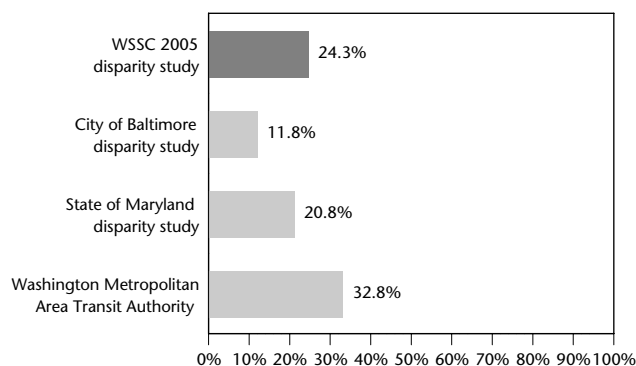
The relative number of MBE/WBE goods firms available for WSSC is higher than found in the City of Baltimore disparity study and similar to MBE/WBE availability in the State of Maryland study and the WMATA study. Figure VI-18 shows these availability estimates.

In the State of Maryland and WMATA studies, the largest group of MBE/WBE suppliers was white women-owned firms. BBC found this to be true in the new availability analysis for WSSC.

BBC also examined the relative number of MBE/WBEs on WSSC's electronic bidders list, which has been mostly used for goods and general services purchases. Counting only potential bidders that reported themselves as MBE, WBE or non-minority, 34 percent of the bidders list is comprised of minority- and women-owned firms. This confirms that a large share of available firms in goods and general services are minority- and women-owned.

WSSC also recently removed 6,000 vendors from its bidders list that had not recently bid on or received Commission purchases. It may be that a disproportionately large percentage of the vendors put on the inactive list were MBE/WBEs. (WSSC should be careful in the future not to "purge" firms from its bidders list because they had not received work.)

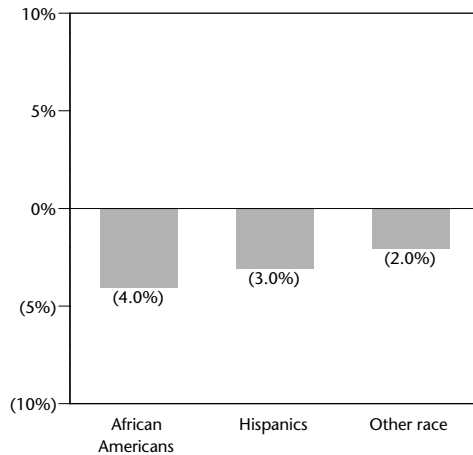
Figure VI-18.
MBE/WBEs availability to perform prime contract work for public agencies



Source: MGT of America, City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001; BBC Research & Consulting, WMATA Post-Croson Factual Predicate Study Update, 2000.

Rates of firm ownership. The statistical analysis of rates of business formation reported in previous chapters also considered rates of ownership of goods firms. In the 2001 disparity study for the State of Maryland, NERA examined self-employment rates of minorities compared with whites, and men versus women, from the U.S. Bureau of the Census Current Population Survey. Data are for Mid-Atlantic states for 1992 to 1999. After controlling for personal characteristics, African Americans, Hispanics and other minorities working in the goods industry were less likely to own

Figure VI-19.
Self-employment rates in the
commodities industry for African
Americans, Hispanics and other
minorities relative to non-minorities after
controlling for personal characteristics,
Mid-Atlantic states, 1992-1999



Note: All results are statistically significant at the 95 percent confidence level. Mid-Atlantic states include Maryland, Delaware, Virginia, Pennsylvania and the District of Columbia.

Source: NERA, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

businesses than whites with similar characteristics.

Figure VI-19 shows these results. There was little difference between the ownership rates of men and women in this industry.

MGT's analysis of self-employment rates for the goods sector using 2000 Census data for the Washington-Baltimore CMSA confirmed these findings for African Americans and Hispanics working in this field. In addition, non-minority women were significantly less likely to own goods firms than men. Asian Americans were more likely than non-minority men to own goods firms, after controlling for other factors. These findings are reported in MGT's 2005 study for WSSC.

Have MBE/WBE goods firms been successful?

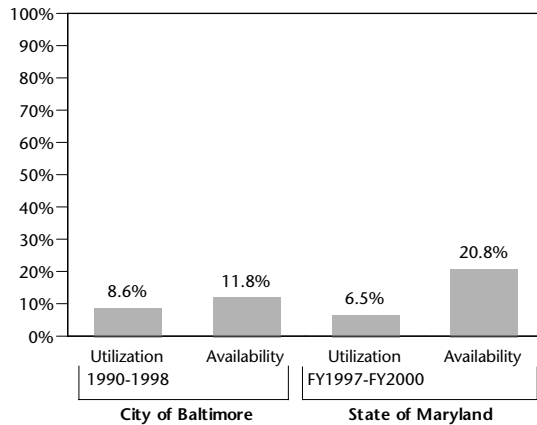
Several studies have examined relative success of MBE/WBE goods firms.

Findings from the 2005 MGT study. When MGT examined 1999 earnings of individuals who were self-employed in the Washington-Baltimore goods sector, they found statistically significant disparities in the earnings of African Americans, Hispanics, Asians and non-minority women.

Findings from 2004 surveys. BBC's surveys of local goods firms conducted in this study found that MBE/WBEs had lower revenues, on average, than majority-owned firms. After controlling for particular type of supplier and age group, BBC's analysis did not find statistically significant disparities between MBE/WBE and majority firm revenues.

Findings from 2000 WMATA study. As previously discussed, BBC performed a similar analysis of firm revenues in the 2000 study for the Washington Metropolitan Transit Authority. Disparities in revenues were found for MBE and for WBE goods firms but were not statistically significant, partly because of small sample sizes.

Figure VI-20.
City of Baltimore and State of Maryland
utilization of MBE/WBEs as prime contractors
on goods contracts compared with MBE/WBE
availability for prime contracts



Source: MGT of America, Inc., City of Baltimore Minority Business Enterprise Disparity Study, 2000; National Economic Research Associates, Utilization of Minority Business Enterprises by the State of Maryland, 2001.

MBE/WBE utilization by other public agencies.

Both the City of Baltimore and the State of Maryland disparity studies examined utilization of goods firms. About 9 percent of City of Baltimore goods spending went to MBE/WBEs, short of the 12 percent availability of MBE/WBEs to provide goods to the City (prime contracts). The disparity between MBE/WBE utilization and availability was larger for the State of Maryland: utilization of MBE/WBE goods firms was only 6.5 percent compared with 20.8 percent availability. Figure VI-20 presents these comparisons.

Do minority and female owners of goods firms have the same access to capital as white men?

Several owners and managers of goods firms said that adequate working capital was important for firm success.

The 2001 disparity study for the State of Maryland found barriers for minority-owned firms in access to capital markets. In particular, African American-

owned businesses had more difficulty obtaining credit than similarly situated white-owned firms. NERA found these disparities for the South Atlantic region, which includes Maryland, and for goods and general services firms in Maryland.

One-third of WBE and one-quarter of MBE goods firms surveyed by NERA reported that working capital constraints made it harder or impossible to obtain contracts.

Is there a level playing field for MBE/WBEs when competing for prime contracts? Many of the owners or managers of MBE/WBE goods firms reported that they did not think there was discrimination affecting their businesses.

- “I do not think that there is any discrimination against minority- or women-owned firms in the local market,” according to a female business owner. “If you are well-known and supply quality materials that satisfy the client’s needs, you are good to go.” She also added that the supplier needs to be reliable and have on-time delivery of products. An African American female business owner agreed that there was no race and gender discrimination in the local market for her type of firm.
- “Size of the firm is the only barrier to starting an IT supply firm. There is no racial discrimination in the IT supply business,” reported the manager of an MBE supply firm.
- “Generally, I would say there are not many barriers for a goods supply firm in the local market other than competition on size,” reported a representative of a WBE supply firm.

Some managers of majority-owned firms, however, pointed to ways that MBE/WBEs are at a disadvantage:

- “Companies that manufacture goods are generally not minority-owned. The reason is that most manufacturing companies have been around for a long time, [before the time that] it was really acceptable for a minority-owned business to do well.”
- “I think that there is rarely explicit racism or discrimination anymore ... some, obviously, but it is very rare. If discrimination against minorities does exist, it exists as a sort of institutionalized way of thinking.”

In addition, the owner of a well-established MBE supply firm said that it is difficult for minority-owned firms to get distributorships. He had tried to get a particular dealership and was not considered qualified even after working in the area for a long time. He did not dismiss the possibility that being a minority hurt his chances of getting this distributorship.

Bid process. A number of MBE/WBEs described the bid process at WSSC and other clients as difficult and time-consuming. These was seen as disadvantaging smaller firms, especially MBE/WBEs.

Price advantages for larger firms. Many minority and female business owners believed that larger firms have advantages over smaller goods firms.

- “Minorities cannot compete on low prices for goods. We usually get the products at a higher price than other firms, not because we are minorities, but because we do not and cannot keep large inventories.”
- A manager of an MBE supply firm reported that his small- to medium-sized firm could not compete with larger firms on price. “The lowest a firm can quote a product, the more opportunity a firm will have in winning the project.”

Delayed payments from clients can also present a disadvantage for small firms, especially MBE/WBEs, based on the business interviews.

Interviews with local MBE/WBE goods firms conducted in the WMATA disparity confirmed small suppliers’ difficulty competing with larger firms. These interviewees also pointed out that many customers, especially federal agencies, are bundling purchases, which makes it is even harder for small firms to compete.

Is there a level playing field for MBE/WBEs when competing for subcontracts?

Subcontracting is rare in the goods industry.

Is Discrimination Affecting MBE/WBEs When Competing for WSSC Work?

There is some evidence that MBE/WBEs do not face a level playing field in the local marketplace. Does this carry over into work for WSSC?

How much work are MBE/WBEs winning as prime consultants?

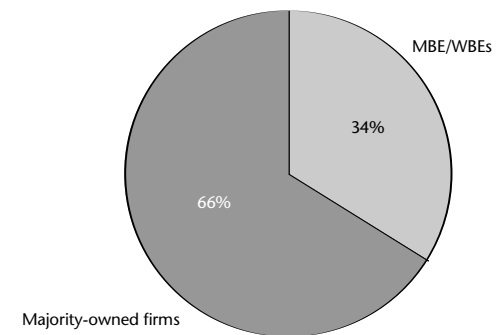
Of the 756 firms receiving at least \$5,000 in prime contract payments for WSSC goods purchases between January 1999 and March 2004, 82 were identified as MBE/WBEs. BBC determined MBE/WBE status through phone calls to firms, assessment of WSSC records, D&B data and WSSC staff review. Because BBC could not attempt to call all the 750+ past vendors (some vendors with smaller WSSC payments were not called), and WSSC records on MBE/WBE status may be less complete for this sector, it is likely that some of the firms coded as majority-owned could actually be MBE/WBEs.

BBC found that over one-third of WSSC's payments for goods purchases over the study period went to MBE/WBEs, a relatively high figure in BBC's experience with other public agencies. As mentioned previously in this section, the City of Baltimore and the State of Maryland spend less than 10 percent of their goods dollars with MBE/WBEs. As will be discussed in the balance of this section, several of the goods fields involved in WSSC purchasing have one or two MBE/WBE vendors that are relatively large and rank near the top among vendors receiving WSSC goods payments.

WSSC utilization of MBE/WBE goods firms probably increased over the 1990s, although direct comparison is not possible because the MGT disparity study utilization figures also include general services purchases.

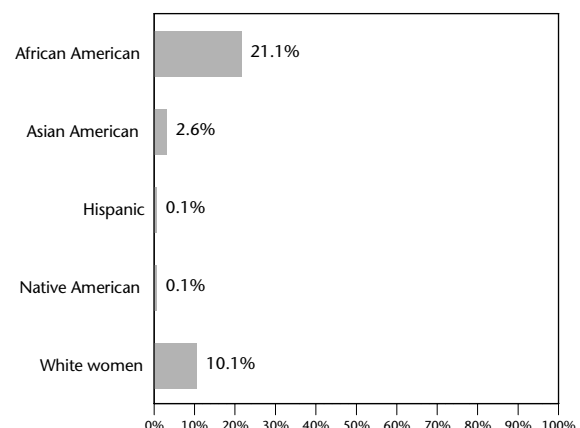
Utilization by race/ethnicity and gender. Unlike general services, far more WSSC goods purchases went to minority-owned firms than white women-owned firms. African American-owned firms received 21 percent of WSSC goods dollars while white women-owned firms received 10 percent. About 3 percent of WSSC goods spending went to Asian American-owned firms. One Hispanic-owned firm and three Native American-owned firms were also identified among the WSSC goods vendors. Figure VI-22 shows payments by race/ethnicity and gender ownership of goods firms.

Figure VI-21.
MBE/WBE utilization as prime contractors on WSSC goods purchases, 1999-2004



Source: BBC Research & Consulting from WSSC contract files.

Figure VI-22.
Prime contractor utilization on WSSC goods contracts by race/ethnicity and gender, 1988-2004



Source: BBC Research & Consulting from WSSC MAPS data.

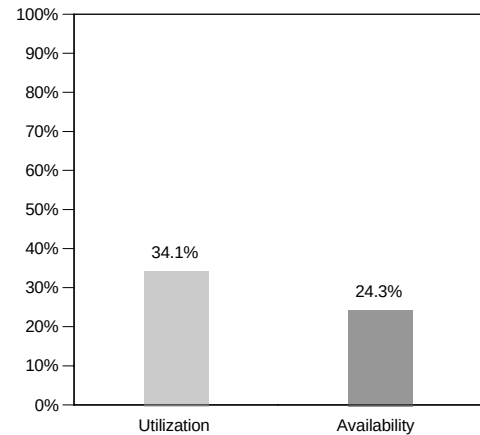
Are there disparities between WSSC utilization of MBE/WBEs and the availability of MBE/WBEs to supply goods to WSSC? Previously in this section, BBC reported that about one-quarter of local firms available to provide goods to WSSC were MBE/WBEs, based on BBC's surveys of WSSC vendors and randomly-sampled firms within the local marketplace. The 34 percent utilization of MBE/WBE goods firms is more than what would be anticipated from this level of availability, as shown in Figure VI-23.

BBC weighted the availability results to reflect the relative dollars spent on electrical and industrial parts and equipment, chemicals and petroleum, and the other five subindustries discussed previously in this section. Because firms supplying electrical and industrial parts and equipment accounted for 37 percent of WSSC goods spending, availability for this subindustry received the highest weight in BBC's availability calculations. After this weighting, BBC estimated that 24.3 percent of the firms available to directly sell goods to WSSC are minority- or women-owned.

BBC also used some of the survey results for plumbing and heating supplies; concrete, asphalt and stone; and other construction materials to prepare estimates of MBE/WBE availability among construction subcontractors and suppliers. The combined availability figure for construction subcontractors and suppliers is discussed in Section IV of this report.

For general services purchases, WSSC overall utilization of MBE/WBEs exceeded availability, but that was primarily due to high use of WBEs, not MBEs. Analysis of WSSC goods purchases found the opposite result: MBE utilization exceeded availability of MBE goods firms, and WBE utilization fell somewhat short of WBE availability.

Figure VI-23.
WSSC utilization of MBE/WBEs as prime contractors on goods contracts, 1999-2004, compared with MBE/WBE availability for prime contracts



Source: BBC Research & Consulting.

Figure VI-24.

WSSC utilization of MBE/WBEs as prime contractors on goods contracts, 1999-2004, compared with availability for prime contracts, by race and gender

	Utilization as Prime Contractors Millions	Percent	Availability for Prime Contract Work	Difference (utilization minus availability)	Disparity Ratio (utilization divided by availability)
MBE					
African American	\$27.0	21.1 %	4.7 %	16.4 %	4.49
Asian American	3.3	2.6	2.6	0.0	1.00
Hispanic	0.1	0.1	1.3	(1.2)	0.08
Native American	<u>0.1</u>	<u>0.1</u>	<u>0.0</u>	<u>0.1</u>	--
Total MBE	\$30.6	24.0 %	9.1 %	14.9 %	2.64
WBE	<u>12.9</u>	<u>10.1</u>	<u>15.2</u>	<u>(5.1)</u>	0.66
Total MBE/WBE	\$43.5	34.1 %	24.3 %	9.8 %	1.40
Majority-owned	<u>84.1</u>	<u>65.9</u>	<u>75.7</u>	<u>(9.8)</u>	0.87
Total	\$127.6	100.0 %	100.0 %		

Note: Rounding may affect subtotals; MBE availability includes MBEs for which specific race and ethnicity were unknown; Availability for Native American-owned firms was less than 0.1 percent.

Source: BBC Research & Consulting.

Figure VI-24 shows that utilization of African American-owned goods firms was well above availability of African American-owned goods firms. Utilization of Asian American- and Native American-owned firms was roughly in line with availability (there was availability of Native American-owned goods firms, but it did not round to 0.1 percent). Hispanic-owned firms received less goods utilization than expected based on availability. WBE utilization in goods, 10.1 percent, was below availability for goods purchases, 15.2 percent.

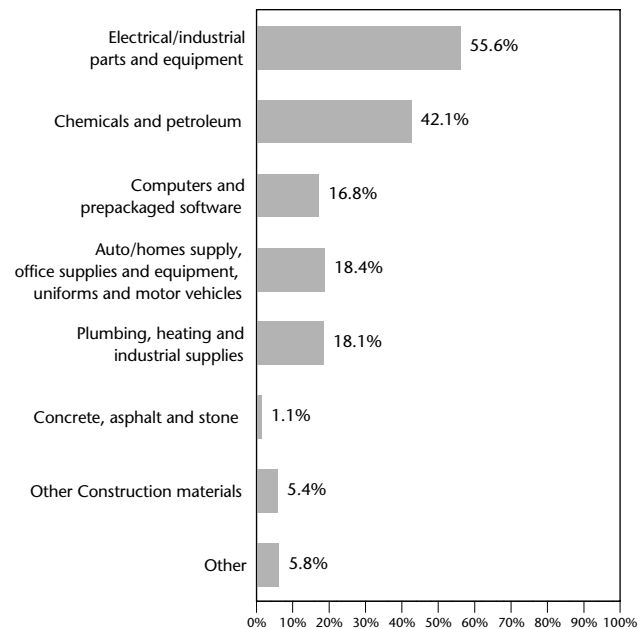
Does utilization vary by type of goods?

MBE/WBE utilization varies considerably by industry, as shown in Figure VI-25. In the two largest areas of goods spending — electrical and industrial parts and equipment, and chemicals and petroleum — about one-half of WSSC dollars go to MBE/WBEs. This is partly due to the two MBE/WBE goods vendors that received the most WSSC purchases: Business Promotion Consultants, an MBE (\$18.8 million), and Delta Chemical, a WBE (\$7.2 million). These two firms account for 60 percent of the total goods dollars going to MBE/WBEs.

Because of the concentration of WSSC spending with just two MBE/WBEs, BBC considered whether there would be substantial disparities between MBE/WBE utilization and availability if these two firms were excluded. There would not be substantive disparities: MBE/WBE utilization would be roughly in line with MBE/WBE availability.

Figure VI-25.

WSSC utilization of MBE/WBE goods firms by field, 1999-2004



Source: BBC Research & Consulting.

Is there any qualitative evidence of discrimination against MBE/WBE goods firms on particular WSSC contracts? Even though there is no overall disparity between utilization and availability of MBE/WBEs in goods, particular practices or actions could still be discriminatory against minority or female business owners attempting to work with WSSC.

Breaking into WSSC is difficult, according to many business owners we interviewed. Many business owners or managers reported that it was difficult to get their first contract with WSSC, and some have yet to succeed. Others have given up working with WSSC. Similar to the general services firms we interviewed, owners and managers of MBE/WBE goods firms often reported that WSSC's bid process was difficult.

- "WSSC has very lengthy paperwork and a very frustrating payment system."
- "The procurement process at WSSC is very complex."

A manager of an MBE supply firm told us, "There is no sense in bidding at WSSC because the lowest price principle eliminates us. Only when we have inside contact at WSSC, we can bid with some certainty."

"There are more minority firms that do not want to do business with WSSC than those that do," according to a manager of an MBE supply company.

Also similar to our general services interviews, WSSC has a reputation as a slow payer among many of the MBE/WBEs BBC interviewed. Some reported that they may discontinue doing business with WSSC as a result.

Impact of WSSC's MBE/WBE program on prime contractors. Very few of the MBE/WBE goods firms BBC interviewed said that WSSC's MBE/WBE program helped them get work as prime contractors.

- "There was no difference in getting opportunities at WSSC. We did not get any opportunities because we are a minority business." This business owner went on to say that she got her first opportunity at WSSC because of the specialized product she had to offer.
- "The minority goals program has not helped us in getting projects at all. If we were not recognized in the local area, WSSC would not have bought from us."

A manager of an MBE supply firm told BBC, "When the [MBE] firm works as a prime, they have to openly compete with other majority firms and their minority status does not help them at all." The interviewee complained about having to subcontract some WSSC work to a minority subcontractor. He did not understand how that helped WSSC meet its objectives. However, this manager did acknowledge that WSSC's subcontracting goals program had helped his firm break into WSSC work.

As with general services, MBE/WBE business owners' and managers' suggestions for improving WSSC's MBE program were very much in line with how WSSC's small business program would operate. Several MBE/WBEs requested a system for breaking into WSSC where small MBE/WBEs would compete on price against other small firms.

Several firms also requested that WSSC speed the payment process for small MBE/WBEs.

Conclusions for WSSC goods prime contracts. MBE/WBE goods firms achieved high utilization compared with MBE/WBE availability, even though there appears to be little or no direct benefit from the MBE/WBE program for these firms. There are no overall disparities for MBE/WBEs in this area of procurement. WSSC continue to monitor utilization of minority- and women-owned firms in this industry, but the need for a race- or gender-based program is not compelling at this time.

Similar to general services, interviews BBC conducted with MBE/WBEs found that many barriers to MBE/WBE participation have not been removed, even with the relatively high MBE/WBE utilization. Further outreach to MBE/WBEs, or small firms in general, is still needed to encourage minority- and women-owned firms to bid on WSSC work.

Other BBC recommendations are very similar to those for general services. WSSC should re-build its bidders list and encourage MBE/WBEs to complete bidders list applications. Procurement staff should be encouraged to seek bids from MBE/WBEs, and, importantly, attempt to provide feedback to new MBE/WBE bidders when they lose bids.

In addition, WSSC should monitor payment times on its procurements. Slow payment will have an adverse impact on MBE/WBEs and discourage new firms from competing for WSSC work.

Is There a Need for the WSSC MBE/WBE Subcontracting Program in Goods Purchases?

WSSC's current program. WSSC sometimes applies MBE/WBE subcontracting goals on larger goods contracts.

MBE/WBE utilization among subcontractors involved in goods contracts. Each of the eight subcontracts on the seven WSSC goods contracts that had significant subcontracting from July 2002 to April 2004 went to MBE/WBEs. This appears to be all of the goods contracts with significant subcontracting during this period. Subcontracting totaled \$5.1 million on these contracts, or 21 percent of total contract dollars for the seven contracts. MBE/WBE participation ranged from 20 percent to 24 percent.

As with general services, the goods firms BBC interviewed in this project had mostly negative things to say about WSSC's subcontracting program. Their specific complaints were very similar to those of general services firms:

- Relationships with prime contractor were poor;
- Prime contractors paid MBE/WBE subcontractors slowly, or not the full amount;
- Majority prime contractors will sometimes just list MBE/WBEs as subs and never use them on the contract; and
- WSSC did not do enough to monitor primes' treatment of MBE/WBE subcontractors.

Many of the firms wanted a sheltered market program to be able to compete for prime contracts, not subcontracts.

BBC interviewed several majority-owned supply businesses as well. Most of them were willing to describe how their firms complied with WSSC's MBE/WBE goals program in goods.

- “In order to satisfy their minority participation requirement, we have to bring on a distributor that is minority-owned. It winds up being just a handout to this company. The MBE doesn't actually do anything — literally the MBEs we have worked with don't have a showroom or inventory ... although we try to find legitimate businesses to work with. It's just a windfall for these businesses, and who knows what they actually do.” This manager went on to explain that they send WSSC the purchased goods and WSSC sends his firm back a check, and then they pay the minority distributor 8 percent of the check from WSSC. “If WSSC were to get rid of this program, it would cut their costs considerably. For a goods sales company, an MBE program is just a windfall. The company doesn't have to do anything, and that doesn't help anyone. It's not like construction contracts where you can bring on a subcontractor and have them actually do some of the work.”
- “We would up bidding on the [WSSC] project by bringing on a minority-owned delivery company. Now, that's a bit ridiculous, because we have plenty of trucks to do the delivering ourselves; it's what we do. We had to raise our price by 9 percent in order to cover the expenses of bringing on this minority firm ... So while their intent was good, I don't think that it was productive for WSSC to do it that way.”
- “We do not participate in a bid where there is a minority requirement. And when we do, we write to WSSC and ask for a waiver, which we get.”

Several representatives of majority-owned suppliers thought that MBE programs distort the market:

- “It seems to me as if many minority firms who compete for work are not genuine. The program is the reason for their existence ... I am not saying that the minority program is bad and should be uprooted. It is a good program, only if it is played well and monitored well.”
- “It seems like there are a lot of minority firms who exist only because of these programs.”
- “Most of the subcontracting work [at WSSC] goes to minority firms. These firms are usually headed by people who only have a desk and they sell a third firm's equipment.”
- “Many MBE firms exist just because of the government policies for minority participation. We believe that the environment should be made open and competitive for everyone without any requirements. This will enable the minority firms to deliver better and be more successful.”

Several representatives of majority-owned firms also suggested a small business program for small MBE/WBEs where they could compete against other small firms.

Recommendations

WSSC efforts to encourage MBE/WBE utilization in goods have been successful. It is opportune for WSSC to evaluate whether current MBE/WBE programs should be continued in this area, and if additional efforts are needed.

Prime contracts. BBC's recommendations for goods prime contracts are the same as for general services prime contracts.

1. Although WSSC can apply its sheltered market program for small businesses in the goods area, this program has been slow to develop. BBC recommends that WSSC implement the same changes in eligibility for the program as suggested in Section IV for construction, and then begin implementing the program for goods contracts. The computer equipment and auto/home/office supply and equipment fields would be ideal areas for initial implementation. To be effective, the Procurement Group may need to break up larger contracts into smaller pieces that can be bid through the small business program. It may also need to encourage certain manufacturers to extend distributorships to small wholesalers.
2. WSSC should continue to conduct outreach to MBE/WBE goods firms and offer training to firms on how to compete for WSSC prime contracts. Similar to general services, firms new to the bidding process should understand what paperwork is required, how bids are evaluated, how quickly procurement decisions will be made and what type of feedback they can expect. WSSC should share examples of past bids with potential bidders.
3. WSSC should review how quickly it pays suppliers, and attempt to implement a quick pay mechanism for small business sheltered market contracts.
4. The Procurement Group should re-build its bidders list for goods firms and ensure that MBE/WBEs are contacted for procurement opportunities. It may be that WSSC should partner with the State of Maryland and other local agencies on a state-wide bidder registration system.
5. Procurement staff should seek new MBE/WBE vendors, and new small businesses in general, for small procurements that need not be competitively bid.

Each of the above recommendations are race- and gender-neutral.

Subcontracts. BBC concludes that the existing subcontracting goals program is no longer needed to increase overall MBE/WBE participation in goods. It is also not the most effective vehicle to open prime contract opportunities for minority- and women-owned firms that may still face barriers in competing for WSSC work. Because it will be so rare, WSSC will not need to monitor subcontracting in this area.

BBC considered the many negative comments about the program from MBE/WBE goods firms in reaching these conclusions. Many of these firms were offering ways to fix the goals program that were, in fact, better achieved through a small business sheltered market program.

Summary

There are no overall disparities in WSSC's use of MBE/WBE goods firms, and WSSC's MBE/WBE utilization is high compared with other public agencies.

Even though there may be continued race and gender discrimination affecting minority- and women-owned goods firms, and possibly put these firms at a disadvantage when seeking WSSC work, WSSC should change its primary MBE/WBE program effort in this area — subcontracting goals — to now focus on a small business program that will introduce more small businesses to WSSC procurement. WSSC should carefully monitor use of MBE and of WBE prime contractors in the future.

SECTION VII.
Conclusions

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Conclusions

WSSC has operated MBE/WBE programs based on past evidence that discrimination directly or indirectly affected minority- and women-owned firms seeking WSSC procurement opportunities. A number of past disparity studies for WSSC have examined this issue and recommended race- and gender-based programs. This BBC disparity study takes a fresh look at whether these or other efforts are needed and, if so, whether they narrowly focus on the identified problems.

Although the immediate WSSC actions BBC recommends are largely race- and gender-neutral, there continues to be substantial evidence of discrimination in the local marketplace that can place minority- and women-owned firms at a disadvantage when competing for WSSC work. The Commission's success in opening goods and general services purchases to MBE/WBEs, for example, is partly attributable to its long-term efforts to break down barriers to procurement opportunities for MBE/WBEs.

If in the future WSSC finds that neutral programs are not sufficient to remedy the effects of discrimination, it may have a basis to apply additional race- and gender-based programs. BBC reaches this conclusion based, in part, on the following findings.

Key Findings

#1. Discrimination affected the marketplace and WSSC procurement in the past. A number of studies have documented the discrimination against minority and female business owners in the Washington-Baltimore marketplace in the past. Even people who have supported past lawsuits against WSSC to strike down its MBE/WBE programs told BBC in interviews that they agreed that discrimination once affected opportunities for minority- and women-owned firms.

#2. There is evidence of lasting effects of past discrimination in the local marketplace and in WSSC procurement. The opportunities for minority- and women-owned firms today in the local marketplace and in WSSC procurement are affected by past discrimination. For example, some of the white male-owned firms that were advantaged 20 or 30 years ago because of this discrimination are the entrenched firms in some fields today.

#3. There is contemporary evidence of discrimination against minority- and women-owned firms in the marketplace. Some practices in the marketplace have the effect of disadvantaging minority- and women-owned firms. BBC also found evidence of negative stereotypes against MBE/WBEs, or more blatant discriminatory acts, that affect MBE/WBE opportunities and competitiveness.

Discrimination against minority and female business owners when seeking credit is well-documented within the local market. Beyond what MBE/WBE business owners told us, several white male business owners and managers said that they perceived this to be a problem and sometimes had to help MBE/WBE firms to obtain credit. Credit is needed for a firm to be successful in each of the industries examined in this study, especially in construction.

#4. There is evidence that MBE/WBE opportunities in WSSC procurement are affected by discrimination in the marketplace. MBE/WBE firms may be at a disadvantage in certain types of WSSC procurement because of discrimination that makes them smaller and with less experience than

they would otherwise have. They also may be less able to compete on price or qualifications because of these effects. BBC received many reports from smaller MBE/WBEs that they were unable to compete against larger firms.

#5. There is evidence that some prime contractors doing business with WSSC discriminate against MBE/WBE subcontractors. There is anecdotal evidence, and perhaps some statistical evidence, that suggests that some prime contractors discriminate against minority- and women-owned subcontractors on WSSC projects and other public sector contracts.

Through Commission actions, or inaction, WSSC's contract dollars may have reinforced a discriminatory system, rewarding contractors that had discriminated or making it harder for the system to change for the better.

#6. Some of WSSC's actions may have a discriminatory effect. Certain WSSC policies and practices may have the effect of placing minority- and women-owned firms at a disadvantage when seeking WSSC work. There is also some evidence that the Commission is not immune from some of the negative stereotypes of MBE/WBEs that exist in the marketplace.

#7. In some areas of WSSC procurement, neutral programs, alone, may be adequate to address any effects of discrimination. Race- and gender-based subcontracting goals programs should be discontinued in goods and general services. WSSC should implement its small business sheltered market program in these areas once the program is revised. While there is evidence of discrimination affecting MBEs and WBEs in construction, at this time WSSC should focus on implementing a revised small business program for prime contracts and continue its voluntary subcontracting goals program. If neutral programs prove to be ineffective, and effects of discrimination persist, WSSC should consider implementing race- and gender-based programs.

#8. Criteria for small business certification should be revised. WSSC should attempt to change State legislation to allow it to restrict participation in the small business program based on revenues, not net income as is currently the case. WSSC should expand the eligibility for the program to firms located within the Washington-Baltimore marketplace.

#9. WSSC should continue to operate race- and gender-based programs related to A/E and possibly professional services contracts. WSSC's preference points for MBE/WBE prime consultants proposing on A/E contracts should be retained and strengthened. WSSC may consider awarding MBE/WBE preference points on certain professional services contracts.

WSSC should retain the ability to implement race- and gender-based programs across its other areas of contracting and procurement as well, to be implemented if neutral programs are insufficient to remedy any ongoing effects of discrimination.

Summary

The detailed recommendations presented in the previous chapters set a new course for WSSC efforts to open doors to Commission procurement for minority- and women-owned firms. As described for each procurement area, WSSC's focus over the coming years should be on prime contracts, not subcontracts. BBC is confident that, with clear direction from the Commissioners, WSSC can take the next steps to transform its MBE/WBE efforts and neutral programs to accomplish this next set of objectives.