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2017 ATLANTA PUBLIC SCHOOLS DISPARITY STUDY



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2017 ATLANTA PUBLIC SCHOOLS DISPARITY STUDY REPORT

Atlanta Public Schools (APS) seeks to provide opportunities for minority- and women-owned firms to participate in its contract opportunities. APS once had a Minority and Female Business Enterprise Program (M/FBE), but suspended it in the mid-2000s. Since that time, it has not had a formal program to encourage participation of minority- and women-owned businesses or small businesses.

The law firm Nelson Mullins Riley & Scarborough engaged Keen Independent Research LLC (Keen Independent) to conduct a disparity study that examines utilization and availability of minority- and women-owned business enterprises (MBEs and WBEs) on APS contracts. The study focuses on construction contracts, professional services contracts and other procurements, as well as related subcontracts. The scope of this study closely matches the types of procurements APS makes using special use, local sales tax (SPLOST).

This report outlines key results. Ten appendices provide supporting information. BBC Research & Consulting and Customer Research International (CRI) were part of the study team.

1. Organization of this Report

This summary report begins by introducing disparity studies and why they are conducted.

Keen Independent then examines the percentage of dollars on APS contracts that go to minority-owned firms (MBEs), white women-owned firms (WBEs), and firms that are not minority- or women-owned (“majority-owned firms”). The study team collected prime contract and subcontract data for APS construction and professional services contracts awarded from July 1, 2011 through June 30, 2016. Certain analyses disaggregate results for individual minority groups.

Keen Independent collected data about companies available to perform APS contracts through a telephone survey of thousands of firms performing school-related work in the Atlanta area construction, architecture and engineering, and information technology industries.

The disparity analysis compares the percentage of APS contract dollars going to minority- and women-owned firms with the level of participation that might be anticipated based on the relative availability of Atlanta area MBEs and WBEs.

The study also includes a broader analysis of marketplace conditions for minority- and women-owned firms within the Atlanta Metropolitan Area. This analysis presents quantitative and qualitative information, including results from Keen Independent’s telephone survey and in-depth interviews.

This summary report closes with a brief discussion of past APS MBE/WBE programs and future options for APS consideration.

2. Issues Surrounding MBE/WBE Outreach Programs and Small Business Programs

The past three decades have seen many legal challenges to minority and women business enterprise programs in the United States.

Minority Business Enterprise and Women Business Enterprise programs. Many state and local governments throughout the country adopted minority and women business programs for public contracting in the 1970s and 1980s. In 1985, APS began a program that included goals for overall MBE participation goals as well as project-specific goals that were to be attained through voluntary means.

In 1989, the U.S. Supreme Court established substantial limitations on the ability of state and local governments to have MBE programs or any other programs benefitting a group based on race. Legal restrictions also apply to gender-conscious programs.

The *Croson* decision. The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company*¹ held there are only certain limited permissible reasons for a local government to have a race-conscious program, and set specific conditions for such programs:

1. A state or local government must establish and thoroughly examine evidence to determine whether there is a compelling governmental interest in remedying specific past identified discrimination or its present effects; and
2. A state or local government must also ensure that any program adopted is *narrowly tailored* to achieve the goal of remedying the identified discrimination.

These two requirements must both be satisfied to meet the U.S. Supreme Court's *strict scrutiny* standard of review for race-conscious programs. Many state and local governments discontinued MBE programs after the *Croson* decision. Some entities then conducted disparity studies to determine if there was evidence supporting an MBE program that met this standard.

- **Compelling governmental interest.** Disparity studies examine whether there is a disparity between the utilization and availability of minority- and women-owned firms in a jurisdiction's contracts, which is key information in determining whether there is evidence that race or gender discrimination affects a jurisdiction's procurement. Because the U.S. Supreme Court held that a jurisdiction could take action if it had become a passive participant in a system of racial exclusion practiced by elements of the local construction industry, local marketplace conditions are also examined.
- **Narrow tailoring.** There are a number of factors used to determine whether a program is narrowly tailored, including consideration of whether workable "race-neutral measures," such as small business programs and outreach efforts, are sufficient or effective to remedy the identified discrimination.

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

Intermediate scrutiny for gender-based programs. Some federal courts of appeal, including the Eleventh Circuit, have held gender-conscious programs for women-owned businesses are subject to an intermediate scrutiny standard of legal review. This standard has similar elements as the strict scrutiny standard, but the intermediate scrutiny legal standard is different and more easily met.

Impact of the *Croson* decision. After the *Croson* decision in 1989, many jurisdictions suspended their MBE programs and some also conducted disparity studies to determine if such programs met the legal standards established in *Croson*.

Dr. Thomas D. Boston completed a disparity study for APS in 1991. APS implemented a new program in 1992 that included race- and gender-conscious measures for African American-, Asian American-, Hispanic American- and female-owned firms. APS indicated that it had found past and present patterns and practices of discrimination against minority- and women-owned businesses in general and for African American-, Hispanic- and women-owned businesses in APS contracts and subcontracts. It also determined that the 1985 Program had not increased MBE participation. The Board concluded that it had been a passive participant in the discrimination, and “through neglect has effectively failed or refused to eradicate said discrimination . . .”² APS operated a Minority and Female Business Enterprise (M/FBE) Program through the mid-2000s.³

Small business programs. Even if a targeted business program does not consider race or gender, it can still be subject to legal challenge. However, such programs are more easily defended by the enacting jurisdiction. The jurisdiction need only show that it has a “rational basis” for the program.

3. Utilization of Minority- and Women-owned Firms in APS-related Contracts

Keen Independent collected information about contracts and the race, ethnicity and gender ownership of those firms receiving work to determine the percentage of contract dollars going to minority-, women- and majority-owned firms for APS contracts (and subcontracts) during the study period.

a. Data collection and analysis. Keen Independent examined 568 APS-related prime contracts and subcontracts during the study period totaling approximately \$385 million. These contracts encompassed construction contracts, professional services contracts and other procurements (including architecture and engineering, environmental consulting, IT-related services and other goods and services procurements).

Of the 568 APS contracts, 75 were prime contracts directly awarded by APS between July 1, 2011 and June 30, 2016. For each prime contract, Keen Independent collected subcontractor information from hundreds of subcontractor utilization forms shared by the Facilities department. Each subcontractor utilization form provided information on the subcontractor’s role on each project as well as payments received during the study period. Keen Independent identified information for 493 subcontracts.

² APS, Resolution on the Adoption and Implementation of a Minority and Female Business Enterprise Program. May 19, 1992.

³ Based on the most recent APS utilization reports that APS was able to deliver to Keen Independent, which was from Q3 2005.

From this information, Keen Independent developed a utilization database, including information about the ownership of primes and subcontractors involved in APS contracts. The study team obtained ownership information through certification directories, phone calls to firms and other research. Utilization results combine certified and non-certified minority- and women-owned firms. (See Appendix B for more detail.)

b. Utilization of minority- and women-owned firms in APS contracts. Based on Keen Independent’s analysis, minority- and women-owned firms obtained 10.4 percent of total APS contract dollars. For each race, ethnic and gender group involved in APS work, Figure 1 shows:

- Total number of prime contracts and subcontracts awarded to the group (e.g., 22 total prime contracts and subcontracts to African American-owned firms);
- Combined dollars of prime contracts and subcontracts going to the group (e.g., \$11,432,000 total to African American-owned firms); and
- The percentage of combined contract dollars for the group (e.g., African American-owned firms received 2.9 percent of APS total contract dollars).

Figure 1.
MBE/WBE total share of APS construction and professional services contracts, July 2011-June 2016

	Number of contracts*	\$1,000s	Percent of dollars
MBE/WBE			
African American-owned	22	\$ 11,432	2.9 %
Asian American-owned	9	6,466	1.7
Hispanic American-owned	16	2,366	0.6
Native American-owned	2	1,026	0.3
Total MBE	49	\$ 21,290	5.5 %
WBE (white women-owned)	66	18,889	4.9
Total MBE/WBE	115	\$ 40,179	10.4 %
Majority-owned	453	345,210	89.6
Total	568	\$ 385,389	100.0 %

Note: *Number of prime contracts and subcontracts.

Dollars include prime contracts (retained amount) and subcontracts.

Numbers rounded to nearest tenth of 1 percent. Dollars and percentages may not add to totals due to rounding.

Source: Keen Independent analysis of APS contracts awarded.

African American-owned firms and white women-owned firms accounted for most of the utilization of MBE/WBEs on APS-awarded contracts. Appendix D provides detailed results for construction contracts (4.8% MBE and 5.2% WBE participation) and professional services contracts (11.4% MBE and 2.7% WBE participation).

The results for overall MBE/WBE participation for July 2011 through June 2016 for APS construction (10.0%) and professional services (14.1%) were considerably below what APS achieved when it had its M/FBE Program. APS reports on MBE/WBE utilization for 1999-2003 indicated:

- MBE/WBE utilization of 18 to 35 percent of APS construction contract dollars in each of these years; and
- In all but one year, MBE/WBE participation on professional services contracts between 24 and 34 percent.⁴

4. Availability and Disparity Analyses for APS-related Contracts

Utilization results must be compared with MBE/WBE availability benchmarks to determine whether or not there was a disparity in the utilization of MBEs and WBEs in APS contracts.

a. Headcount availability of minority-, women- and majority-owned firms for APS-related contracts. The study team reached out to each company in the Atlanta Metropolitan Area relevant to the types of work involved in APS construction, A&E and IT contracts. Keen Independent obtained a list of firms to contact from Dun & Bradstreet (D&B). Through telephone calls with firms on the D&B list, the study team successfully contacted 5,143 business establishments, of which 952 indicated qualifications and interest in APS work and provided information about their companies.

Figure 2 shows that 47 percent of firms available for APS work were minority- or women-owned. African American-owned firms accounted for 25 percent of available firms and white women-owned firms were about 10 percent of available firms.

Figure 2.
Total MBE/WBE availability – “headcount”

	Number of firms	Percent of firms
MBE/WBE		
African American-owned	242	25.4 %
Asian American-owned	69	7.2
Hispanic American-owned	35	3.7
Native American-owned	10	1.1
Total MBE	356	37.4 %
WBE (white women-owned)	95	10.0
Total MBE/WBE	451	47.4 %
Majority-owned	501	52.6
Total firms	952	100.0 %

Source: Keen Independent from 2017 APS Availability Survey.

⁴ APS Office of Contract Compliance, Atlanta Public Schools’ 1999-2003 Minority and Female Business Enterprise Program Expenditures, March 17, 2004.

The percentage “headcount” availability of MBE/WBEs in Figure 2 is similar to what Keen Independent identified in recent studies for two other local governments in the Atlanta Metropolitan Area: 43 percent for the City of Atlanta and 42 percent for Fulton County.⁵

b. Availability benchmarks. The study team calculated availability benchmarks based on the relative availability of MBEs and WBEs for specific contracts and subcontracts, with those results then aggregated for all APS construction, A&E and IT contracts.

- Keen Independent conducted individual availability analyses for each of the 568 APS contracts and subcontracts;
- Weighted availability results for each contract based on the size of those contracts; and
- Summed the weighted availability results.

This analysis provided benchmarks for the percentage of APS contract dollars one might expect to go to MBE/WBEs given the current availability of firms to perform specific types and sizes of those prime contracts and subcontracts. The availability analysis considered bid capacity of firms, only counting a company as available for sizes of contracts it had been awarded or had bid on in the local marketplace in the previous five years. (See Appendix C for additional information.)

As shown in Figure 3, one might expect 35.3 percent of APS contract dollars to go to minority- and women-owned firms based on their availability for all APS prime contracts and subcontracts examined in the study.

Figure 3.
Percentage of dollars that might be expected to go to MBE/WBEs based on availability analysis

	Availability benchmark
MBE/WBE	
African American-owned	27.8 %
Asian American-owned	2.0
Hispanic American-owned	1.3
Native American-owned	0.1
Total MBE	<u>31.2 %</u>
WBE (white women-owned)	4.1
Total MBE/WBE	<u>35.3 %</u>
Majority-owned	64.8
Total firms	<u>100.0 %</u>

Source: Keen Independent 2017 availability analysis.

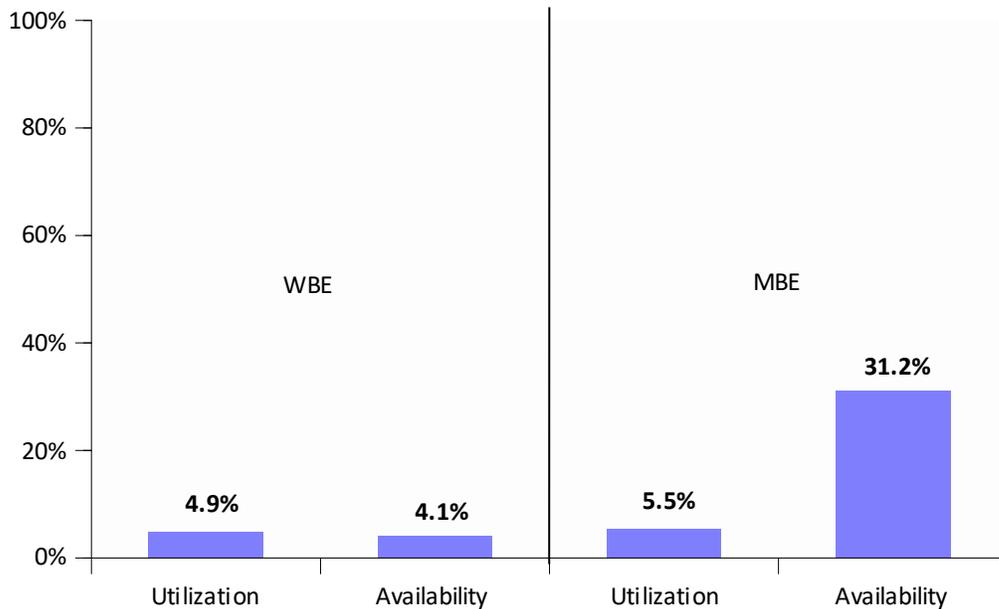
Additionally, Appendix C shows that the contract dollars expected to go to minority- and women-owned firms based on their availability differs for construction contracts and professional services and other procurements.

⁵ Keen Independent Research, *2015 City of Atlanta Disparity Study*, October 2015; Keen Independent Research, *2016 Fulton County Small Business Study*, April 2016.

c. Disparity analysis for MBEs and WBEs for APS contracts. Keen Independent’s disparity analysis compares the dollars of APS contracts going to an MBE/WBE group with what might be expected from the availability analysis. As shown in Figure 4:

- The 4.9 percent of contract dollars going to white women-owned firms exceeded what might be expected from the availability analysis for WBEs (4.1%).
- Utilization of minority-owned businesses on APS contracts (5.5%) was lower than what might be expected for MBEs based on the availability analysis (31.2%). There is a substantial disparity between the utilization and availability of minority-owned businesses on APS contracts.

Figure 4.
Percentage of APS-awarded contract dollars going to MBEs and WBEs compared with what might be expected from the availability analysis, July 2011-June 2016



Source: Keen Independent utilization and availability analyses for APS contracts

Among minority-owned firms, utilization of African American- and Hispanic American-owned firms on APS contracts was less than what might be expected based on the availability analysis for these companies. Asian Americans, Native Americans and white women-owned firms’ utilization exceeded the contract dollars expected based on these firms’ availability (see Appendix D).

Further analysis included in Appendix D showed that, on construction contracts, the utilization of African American-owned firms was less than what might be expected based on the group’s availability; other groups’ utilization exceeded the expected results. On professional services contracts and other procurements, contract dollars awarded to each group were below the expected amount based on the availability for these companies.

5. Conditions for Minorities and Women in the Local Marketplace

The study team examined information regarding local marketplace conditions for minorities and women, and minority- and women-owned firms. This analysis focused on construction and professional services (A&E and IT) industries.

Because more than 80 percent of APS-related contract dollars for these types of procurement went to firms with locations in the 29-county Atlanta Metropolitan Area, Keen Independent examined recent conditions within that area.

The study team examined U.S. Census Bureau and other data about the local marketplace, and analyzed the 952 local businesses that provided information about their availability for APS work. Data collected for these businesses included revenue, bid capacity, perceptions of barriers within the local marketplace, and race, ethnicity and gender ownership. Results are summarized below.

a. Certain minority groups and women are underrepresented as employees in the construction, A&E and IT industries. Any disparities in opportunities to enter and advance within these industries can affect the number and success of minority- and women-owned businesses in the Atlanta Metropolitan Area.

Analysis of U.S. Census data indicates evidence of limited entry of women and African Americans in the Atlanta area construction, A&E and IT industries, even after accounting for educational achievement. There were certain barriers for other minority groups as well. For the local construction industry, there was evidence that minorities and women do not have the same opportunities for advancement as non-minorities and men. Appendix E presents this information.⁶

b. There were disparities in business ownership in the Atlanta Metropolitan Area for minorities and women in many of the industries examined in the study. Disparities in business ownership rates may indicate that there is not a level playing field for minorities and women to start and sustain businesses. Any such disparities may also indicate that the current availability of MBEs and WBEs in the Atlanta Metropolitan Area might be higher but for effects of past discrimination.

Business ownership rates for African Americans, certain other minorities groups and women were lower than non-Hispanic whites in the Atlanta Metropolitan Area construction, A&E and IT industries. After statistically controlling for other factors, these disparities persisted for women working in these industries. Data were for 2010 through 2014. Appendix F provides detailed results.

c. There is evidence that minorities and women face certain disadvantages in accessing capital that is necessary to start, operate and expand businesses. Home equity and home mortgages are also an important source of capital to start and expand businesses. Focusing just on data that recently became available, there were disparities between minorities and non-minorities in the Atlanta Metropolitan Area in home ownership and receiving home mortgages.

⁶ These results are based on U.S. Bureau of the Census 2008 through 2012 American Community Survey data for the Atlanta Metropolitan Area, as discussed in Appendices E and J of this report.

These results indicate that certain minority groups do not have the same access to capital necessary for business formation and success as non-minorities in the Atlanta Metropolitan Area. Appendix G provides supporting analyses.

d. There is evidence that firms owned by minorities in Georgia are more likely to close than non-minority-owned firms. Disparities in the rates of business closure may indicate that the playing field is not level for those groups. A 2010 Small Business Administration study showed higher closure rates for African American-, Asian American- and Hispanic American-owned businesses in Georgia.⁷ (See Appendix H.)

e. Data show disparities in business revenue in the overall local marketplace. The study team analyzed several different datasets to compare business receipts and earnings for minority-, female- and majority-owned businesses in the Atlanta Metropolitan Area, as discussed in Appendix H. In general, average revenue of minority- and women-owned firms was lower than majority-owned firms in the construction, A&E and IT industries. These disparities were found even when limited to firms indicating qualifications and interest in APS work (data from the 2017 availability survey).

Most businesses in these industries in the Atlanta Metropolitan Area would qualify as “small businesses” under federal standards, but minority- and women-owned firms were somewhat more likely to be small businesses than majority-owned firms.

f. There were disparities in the utilization of minority- and women-owned firms in other school construction and design projects in the Atlanta area. Keen Independent examined participation of minority- and women-owned firms in non-APS school construction in the Atlanta Metropolitan Area from 2014 through 2016. The study team collected Dodge Reports data issued for school general contractors and design firms, and determined ownership for companies obtaining that work (237 projects in total).

Minority-owned general contractors accounted for 2 percent of the total contract value of these projects, substantially less than what might be expected from the availability analysis. Firms the study team identified as white women-owned obtained 0.3 percent of the construction contract dollars, again substantially below availability of those firms. There were also substantial disparities for MBE and WBE design firms as well. Appendix D presents these results.

g. Recent disparity studies for the City of Atlanta, Clayton County and for the Georgia Department of Transportation identified disparities for minority- and women-owned firms in certain public sector contracts. The City of Atlanta, Clayton County and the Georgia Department of Transportation (“GDOT”) completed disparity studies in recent years.⁸ These studies are instructive in general to the extent they may involve certain types of contracts and available firms

⁷ U.S. Bureau of Labor Statistics data for May 2015 indicate that the Atlanta Metropolitan Area comprises about 60 percent of the Georgia economy based on non-farm employment. <http://www.bls.gov/regions/southeast/georgia.htm#tab-1> Accessed October 11, 2015.

⁸ Keen Independent Research, *City of Atlanta 2015 Disparity Study*, October 2015.
Mason Tillman Associates, Ltd., *Clayton County Disparity Study*. October 5, 2011.
BBC Research & Consulting, *2012 Georgia Department of Transportation Disparity Study*. July 15, 2012.

similar to APS. The City of Atlanta and Clayton County are located within the same Atlanta Metropolitan Area marketplace, and GDOT contracting includes the Atlanta Metropolitan Area.

2015 City of Atlanta Disparity Study. Keen Independent conducted the City of Atlanta 2015 Disparity Study. The City's Equal Business Opportunity or Small Business Opportunity programs applied to most of the City's contract dollars over the July 2009 through December 2012 study period, and both programs appeared to be effective in creating procurement opportunities for MBE/WBEs. Examining contracts awarded outside those programs, however, Keen Independent identified substantial disparities between the utilization of minority- and women-owned firms and what might be expected based on the availability analysis.

Although data for the City's Small Business Enterprise (SBE) goals contracts program were limited during the study period, results suggested that the SBE contract goals program encouraged utilization of at least African American-owned firms and white women-owned businesses on City-funded contracts.

One-half of the SBEs certified as of 2015 were also certified as M/FBEs, slightly more than the share of small businesses in the availability database that were minority- and women-owned. Analysis of the minority- and women-owned firms receiving the most dollars of City-funded contracts showed that most would qualify as small businesses under the City's size standards for SBE certification. Such results suggested that greater use of SBE contract goals by the City of Atlanta could still include many of the MBE/WBEs that had been most successful in obtaining City work.

The study also identified evidence that there was not a level playing field for minorities and women, and minority- and women-owned firms, in the Atlanta Metropolitan Area marketplace. In particular, there were substantial disparities for each minority group and for white women-owned firms when examining the types of commercial and public sector construction work requiring City of Atlanta building permits (general contracting and electrical, plumbing and HVAC work). MBE/WBE programs typically did not apply to these contracts.

Further, analyzing Dodge Reports data for other public sector construction contracts within Atlanta city limits showed a substantial disparity for MBE/WBEs.

2011 Clayton County Disparity Study. Examining prime contracts under \$500,000 awarded in fiscal years 2004 to 2009, the Clayton County study indicated substantial disparities for:

- African American-, Hispanic American- and women-owned firms in County construction contracts;
- African American-, Asian American- and Hispanic American-owned firms in County professional services contracts; and
- African American-, Asian American- and women-owned firms in County goods and other services contracts.

There were disparities in the use of subcontractors on Clayton County contracts from FY 2004 to FY 2009 for:

- African American-, Asian American- and Hispanic American-owned firms on construction contracts; and
- African American-owned firms in professional services contracts.

Community meetings and in-depth interviews with local companies identified practices reported to negatively affect new and small companies as well as firms that were owned by minorities and women. The qualitative evidence from the Clayton County study included existence of a “good ol’ boy” network within the local marketplace that negatively affected minority- and women-owned firms. Some interviewees reported difficulty obtaining financing and bonding.

2012 Georgia Department of Transportation Disparity Study. The 2012 GDOT Disparity Study was directed by David Keen of Keen Independent Research, and included analyses relevant to the Atlanta area construction and engineering industries. That study identified substantial disparities in GDOT contracting for each minority group and for women-owned businesses when DBE contract goals did not apply.

- When examining GDOT state-funded contracts (no DBE contract goals applied), MBE/WBE utilization was 5.5 percent of contract dollars. There was about 22 cents of actual participation for every dollar that might be expected to go to minority- and women-owned firms from the availability analysis. There were substantial disparities in the utilization of each racial, ethnic and gender group included in the Federal DBE Program (firms owned by African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans, Native Americans and white women).
- For GDOT contracts where DBE contract goals applied, there were still substantial disparities in the utilization of African American-, Asian-Pacific American- and Subcontinent Asian American-owned firms.
- There were disparities overall for construction contracts and for engineering contracts.
- GDOT utilization of MBE/WBEs was lower in the Atlanta Metropolitan Area (8.2%) than the state as a whole (12.4%), even though overall MBE/WBE availability was similar. The overall disparity for MBE/WBEs for GDOT contracts was more severe in the Atlanta Metropolitan Area (disparity index of 37) than for the state (disparity index of 56). African American-owned businesses, for example, obtained just 2.6 percent of contract dollars on Atlanta Metropolitan Area projects, even with DBE contract goals in place for some of these contracts.

GDOT also collected public comments as part of the disparity study, including at a public meeting held in Atlanta. Some comments indicated that DBEs were not given opportunities to perform the work. Others suggested that barriers businesses faced in entering the market were based on pre-existing networks, or a culture of “good old boys.” Certain comments pertained to bonding, and how bonding worked as a barrier to MBEs and WBEs to do business with GDOT and certain prime contractors. One group indicated that DBE capacity may be affected by barriers that minority-owned

firms face when starting a business such as bank lending, bonding and packaging of contracts. Some comments directly pertained to GDOT, including allegations that GDOT has discriminated against small firms.

2016 Georgia Department of Transportation Disparity Study. GDOT updated its information with a 2016 disparity study conducted by Griffin & Strong.⁹ The 2016 study also compared utilization of minority- and women-owned firms with what might be anticipated based on relative availability for that work. Griffin & Strong's conclusions included the following:

- On prime contracts, all MBE groups and WBEs were underutilized as prime contractors, except for Subcontinent Asian American-owned firms for GDOT construction contracts.
- On subcontracts, there was underutilization of each MBE group and of WBEs for each industry examined.
- For state-funded contracts, for which no DBE contract goals applied, each MBE group and WBEs were underutilized in both prime contracts and subcontracts.
- There was evidence of racial and gender disparities in securing financing, public contracting and subcontracting opportunities in the Georgia marketplace.
- Information from meetings, focus groups, interviews, surveys and comments indicated barriers for minority- and women-owned firms. There was some perception of favoritism in the GDOT procurement process that worked to the disadvantage of minority- and women-owned firms, and a lack of buy-in to the DBE Program by majority-owned companies.

h. Quantitative analysis of perceived barriers in the local marketplace. Keen Independent asked respondents in the 2017 availability interviews whether they had experienced certain types of barriers to doing business. Results are for Atlanta Metropolitan Area construction, A&E and IT firms that indicated qualifications and interest in APS work.

- Minority-owned firms were much more likely than majority-owned firms to report difficulties obtaining lines of credit or loans and learning about bid opportunities. Relative to majority-owned firms, more MBEs indicated difficulties with insurance requirements and that the large size of projects presented a barrier to bidding. These patterns persisted across industries.
- A similar pattern was evident for WBEs. Additionally, WBEs that had attempted to obtain bonds were more likely than majority-owned firms to report difficulties obtaining bonds. Relatively more WBEs involved in A&E and IT work indicated difficulties being prequalified than majority-owned firms.

⁹ Griffin & Strong P.C., *2016 Georgia Department of Transportation Disparity Study*, August 2016.

i. Qualitative information about marketplace conditions for minority-, women- and majority-owned firms. As part of this study, Keen Independent completed 23 in-depth interviews with business owners and managers in the Atlanta Metropolitan Area and four in-depth interviews with trade association representatives. Keen Independent also obtained 324 responses to an open-ended question about marketplace barriers in the availability telephone survey. Appendix J provides a detailed analysis of these discussions. Key results include the following.

- Many business owners worked in the industry before launching a business. Some described specific barriers to industry entry and advancement in their fields. Any inequities in employment and advancement for minorities and women appear to affect the creation of minority- and women-owned firms in the Atlanta marketplace.
- Financing and capital were reported to be a key to business success for start-up and growth. Some firms reported that securing “financing” and “access to capital” were major barriers they faced. “Cash flow” was also a challenge at start-up and beyond, for some business owners.
- A number of minority and female business owners reported that it was difficult to find out about potential work early enough to compete for it. Some business owners and representatives reported that certain firms were earmarked for contracts or had “an inside track,” limiting bidding opportunities for others.
- Small business owners, including minority- and women-owned firms, said that primes and customers perceive them as “too risky” to choose for work.
- Most interviewees reported that the playing field in the Atlanta area “was not level.” Some minority and female business owners reported double standards, negative stereotypes and other discrimination that adversely affected minority- and women-owned firms. For example, several interviewees reported that minority and women business owners were expected to work harder than white male business owners. Several interviewees specifically reported unfavorable work environments for female business owners.
- Many interviewees reported that they were negatively affected by closed networks in the Atlanta area. Many specifically reported a “good ol’ boy” network in Atlanta that negatively affects minorities and women.
- Some interviewees commented on the lack of an MBE/WBE program at APS. One representative of a majority-owned contracting firm indicated that they utilize minority- and women-owned firms on contracts with other public agencies, but not for APS because the agency does not have a goals program.
- Interviewees reported difficulty identifying APS opportunities, understanding the bidding process and knowing what APS staff to contact with questions. Interviewees had recommendations for how to improve the APS procurement process, especially for making it easier to learn about and bid on APS work (including an improved procurement website). Others mentioned targeted outreach.

Appendix J further explores these results.

6. Conclusions

Based on quantitative and qualitative evidence in this report, it appears there is not a level playing field for minority- and women-owned firms in the Atlanta area marketplace. There is also underutilization of African American-owned firms on APS construction contracts and across MBE and WBE firms on APS A&E and IT contracts. The marketplace results and evidence of disparities for APS contracts are important as APS considers actions related to SPLOST-related contracts.

a. More outreach and education of potential bidders about APS procurement

processes. Many of the companies interviewed as part of this study indicated that they found it difficult to learn about APS contract opportunities. Keen Independent examined how APS procures construction, A&E and IT services as well as the role of construction management firms and other prime contractors in selecting firms for work on APS projects.

In general, APS publicly advertises contracts that it directly awards. APS procurements above \$25,000 require a formal solicitation, handled by the Procurement Services Department, for any type of goods or services.¹⁰ APS makes considerable efforts to ensure potential bidders can find out about its contracts. Requests for Qualifications (RFQs) and Request for Proposals (RFPs) are released for a minimum of 14 to 28 days to allow for sufficient time for vendors to prepare a response. All RFQs (and RFPs) are posted on the APS website as well as on the Georgia Procurement Registry. APS might directly inform vendors of a new RFP or RFQ through means including:

- Sending a notification to registered vendors about a new solicitation (RFI, Invitation to Bid, RFQ or RFP) posted under their industries of interest (or NIGP 3-digit code);
- Contacting firms that submitted a bid or proposal on a similar solicitation; and
- Holding a pre-bid or pre-proposal conference and collecting interested vendor information at that time.

As many of the business owners interviewed in this study were unfamiliar with this process, APS might do more to inform potential bidders as to how to identify opportunities. It might also expand its registered vendor list through further outreach and better explain processes on its website.

Figure 5 on page 17 summarizes elements included in the previous APS M/FBE Program, many of which pertain to outreach and assistance for MBE/WBEs and other small businesses. Based on the in-depth interviews with businesses conducted as part of this study, all of the race-neutral assistance identified in the previous M/FBE Program might still be valuable (see Appendix J). It does not appear that APS is currently involved in those activities.

¹⁰ Professional services contracts above \$50,000, construction contracts above \$200,000 and all other contracts above \$100,000 require Board approval prior to issuing a solicitation.

b. Reexamination of APS methods to select construction and A&E contractors. There was low participation of MBE/WBE construction and A&E firms as both prime contractors and subcontractors. Keen Independent first examines what APS might do to increase MBE/WBE participation in the contracts it directly awards.

APS operates over 100 sites (including schools and administrative buildings) that it is in the process of upgrading. As part of SPLOST and for the duration of our study period, APS issued Construction Management (or Design-Build) solicitations through RFQs. Through this process, APS identified a pool of construction managers qualified and available to do work for a set of sites. Each firm selected was later assigned specific construction sites to manage from start to finish (for all project phases, including the design, solicitation, award, permitting, construction, post-occupancy and warranty phases). Those contractors were then responsible for identifying and retaining specialty trade contractors to perform portions of the work.

There may be elements in APS' selection criteria that disadvantage small businesses, including minority- and women-owned firms, such as years of experience working on projects of a similar scope and size and bonding capacity. APS might review the qualifications criteria to ensure that they do not negatively affect minority- and women-owned firms.

The disparity analysis indicated very low utilization of African American-owned firms as either prime contractors or subcontractors. It appears that of five construction managers, only one was an African American-owned firm (receiving 10% of construction management dollars). Additionally, the contract data for our study period shows approximately 4 percent utilization of A&E MBE/WBEs hired by construction managers and 8 percent A&E MBE/WBE utilization for those firms directly procured by APS. Remedying these disparities might require other measures discussed under Part d below.

c. Further review of APS methods to procure IT services. APS typically uses an “umbrella” firm (or prime contractor) through which it will submit individual IT orders based on its needs. The umbrella firm then solicits bids from individual contractors to provide said services, and selects them for the work. APS procures some IT services directly.

Utilization for MBE/WBEs was near 27 percent for IT services procured directly by APS outside of the umbrella firm, representing a healthy participation. That number rose to 44 percent when taking into account payments made to the umbrella firm, an Asian American-owned business, mostly due to payments made through the “umbrella” firm mentioned above. The study team did not have access to the breakdown of individual contractors hired through the umbrella firm itself.

Going forward, APS may want to consider including language in the IT orders submitted to its umbrella firm to encourage applications by minorities and women and identify individual contractors hired through this procurement mechanism, in order to determine the ownership of those performing work on APS IT orders.

d. Re-establishing an M/FBE program for construction, A&E and IT contracts. APS might consider reinstating portions of its M/FBE Program, including setting an aspirational goal for overall participation of minority- and women-owned firms in its construction, A&E and IT contracts. All of the examples below are race- and gender-neutral measures:

- APS might encourage the construction management firms and other prime contractors it selects to promote participation of MBE/WBEs in that work. There is evidence that those firms do not include MBE/WBEs absent that encouragement.
- APS might conduct outreach efforts to encourage participation of MBE/WBEs as subcontractors in its contracts. This can include attending targeted supplier diversity events, emailing opportunities to potential MBE/WBEs identified in the City of Atlanta’s M/FBE and Georgia UCP DBE directories, organizing quarterly “doing business with APS” workshops, communicating opportunities through trade associations and co-hosting events with regional minority chambers or small business development centers.
- Expanding on past M/FBE Program efforts, APS could participate in meet and greets and business matchmaking events between large prime contractors and MBE/WBE subcontractors in the Atlanta marketplace.
- Renewed tracking of MBE/WBE participation will be critical for APS. Systems are particularly needed to monitor and track MBE/WBE participation in contracts awarded by its construction managers and umbrella IT firms. APS once had contract compliance staff monitor these efforts, and might consider re-building these functions.
- APS might consider developing an SBE contract goals program. APS would need to explore whether it could provide the resources required to operate a contract goals program.

Many of the neutral remedies mentioned above were independently recommended in the interviews with business owner and trade associations conducted in this study.

If APS determines that it cannot address disparities through neutral efforts alone, some of the race-conscious measures included in Figure 5 might be needed. Even though all of these measures were included as tools in its former M/FBE Program, APS would need to assess whether they are currently feasible given constraints on public procurement in Georgia and APS’ procurement code.

As noted at the beginning of this report, any race- or gender-conscious measures can be subject to legal challenge. Any such measures would need to be narrowly-tailored to address the evidence of discrimination identified in this study. For example, APS would need to limit participation in any race- or gender-conscious remedies to the racial, ethnic and gender groups of businesses for which it has identified evidence of discrimination (from this study and other sources).

Figure 5.
Race- and gender-conscious and neutral program measures in the previous APS M/FBE Program

Race- and gender- conscious measures	Neutral measures
<p>Requirements to solicit at least one M/FBE solicitation on small purchases (\$2,000 or less)</p> <p>Requirement for participation of an M/FBE as a joint venture partner on construction projects of \$10 million+</p> <p>M/FBE contract goals on construction projects and other contracts (compliance options included meeting the goal or showing good faith efforts to do so)</p> <p>Bid preferences of up to 15 percent for M/FBE bidders on APS commodities and services contracts</p> <p>Evaluation preferences of up to 5 “bonus” points for M/FBE prime consultants on professional services contracts of \$100,000 or less (on contracts for which there was availability of M/FBE proposers)</p> <p>For other professional services contracts, evaluation preferences of up to 5 bonus points for prime consultants that include M/FBEs as subconsultants</p>	<p>Rotation of bidder solicitations of \$2,000 or less</p> <p>Development of a single, unified list of all APS bidders, including M/FBE status</p> <p>Enforcement of APS prompt payment policies for small businesses, extension of those requirements to APS prime contractors regarding payment of their suppliers, subcontractors and subconsultants</p> <p>Elimination of excessive use of non-competitive procurement methods (such as sole source, multi-year, blanket and emergency purchases)</p> <p>Cooperation with other groups in providing counseling related to bonding, exploration of a small business bonding program, reduction of construction bids to a level that small businesses would have required bonding, and reducing other ways that bonding could negatively impact small businesses</p> <p>Help for small businesses in locating available financial resources in the Atlanta MSA, including acting as a clearinghouse for financial assistance programs</p> <p>Maintenance of special source lists of small businesses detailing the products and services they provide</p> <p>Inclusion of small businesses on APS solicitations</p> <p>Holding seminars and workshops on how to do business with APS</p> <p>Segmenting of large contracting opportunities into two or more smaller bids</p> <p>Development and distribution of information about APS procurement procedures to small businesses</p> <p>Management and technical assistance for small businesses in construction</p> <p>Elimination of unnecessarily restrictive contract specifications</p>

Any initiatives will require sufficient APS resources to be successful. For example, to implement an SBE contract goals program or any race-conscious program, APS would need to identify the certifications it will accept from other agencies, or consider creating and staffing its own certification process (which can be very resource-intensive).

APS would also need administrative processes and procedures to implement any measures such as an SBE or MBE/WBE contract goals program. One source would be its former M/FBE Program, as it appears that APS had comprehensive procedures to operate its program in place until the mid-2000s.