

## EXECUTIVE SUMMARY

### E.1 INTRODUCTION

#### E.1.1 PURPOSE OF DISPARITY STUDY

On May 11, 2016, the Miami-Dade County Public Schools, or M-DCPS, commissioned Miller<sup>3</sup> Consulting, Inc. (M<sup>3</sup> Consulting) to conduct a Phase 2 Disparity Study (the Study). The purpose of the study was to determine if there is evidence showing that ready, willing, and able M/WBEs are significantly underutilized in Goods & supplies, Services, and Maintenance and Maintenance-Related Services contracts issued by the School Board. The study covers July 1, 2012 to June 30, 2015.

#### E.1.2 OVERVIEW OF M-DCPS CURRENT RACE AND GENDER-CONSCIOUS AND RACE AND GENDER-NEUTRAL PROGRAMS

Board Policies 6320.02 and 6320.06 govern M-DCPS' Small/Micro and Minority/Women-owned Business Enterprise Programs. M-DCPS commenced its M/WBE program efforts in 1985. It conducted an analysis of contracting expenditures and economic and sociological studies in 1985 and 1990 that showed an existing disparity in contract awards to M/WBEs and the disparity was a result of past discriminatory practices. Based on the 1990 study, M-DCPS instituted race and gender-conscious initiatives in Construction, Construction Support Services, Professional Services, and Commodities and Services, along with race and gender-neutral initiatives.

On November 21, 2012, the Board determined a new study was needed. It repealed its Business Development and Assistance Program Policy, with the understanding that a new policy would be developed based on the new study findings. The Phase 1 Disparity Study and a subsequent Subcontractor Disparity Study, which addressed Construction and Construction-Related Professional Services, was completed and adopted by the Board in 2015.<sup>2</sup>

Based on the Phase 1 study findings, the Board concluded “there is a strong evidentiary basis establishing that the District has a compelling interest in remedying the on-going effects of discrimination that is occurring in the broader relevant market and adversely affects the District’s utilization of ready, willing and able minority and women-owned firms in the District Construction and Construction-related Contracts. The Board also concludes that it

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<sup>2</sup> Board Policy 6320.02, p. 1-2

needs to take action to avoid becoming a passive participant in private sector discrimination.”<sup>3</sup>

During the study period, M-DCPS administered three programs targeted to promote inclusion in M-DCPS procurement and contracting opportunities:

- Small/Micro Business Enterprise Program;
- Minority/Women Business Enterprise Program; and,
- Service Disabled Veteran Enterprise Program (currently titled the Veteran Business Enterprise Program).

M-DCPS also enforces the State of Florida’s Local Business Enterprise requirements.<sup>4</sup>

An overview of each program is provided below.

### **A. Small/Micro Business Enterprise Program**

The Small/Micro Business Enterprise Program (S/MBE Program) is a race and gender-neutral program designed to provide “greater S/MBE availability, capacity development and contract participation in Board contracts, to advance the Board’s compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and to promote equal opportunity for all segments of the contracting community to participate in Board contracts.”

### **B. Minority/Women Business Enterprise Program**

The Minority/Women Business Enterprise Program is a race and gender-conscious program designed to “enhance the bidding and selection opportunities for M/WBEs on certain contracts and to address findings in the 2014 Disparity Study and 2015 Subcontractor Disparity Study.”

### **C. Service Disabled Veteran Enterprise Program**

The Service Disabled Veteran Enterprise Program is a race and gender-neutral program designed to benefit service disabled veteran businesses. M-DCPS provides a vendor

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<sup>3</sup> Ibid. at 3.

<sup>4</sup> Procurement Management, Procurement Procedures at 136

preference of three percent of the total value of all prime contract/subcontract awards for each fiscal year to certified service disabled veteran businesses. When two identical prices are received from two or more vendors and all other factors are equal, priority will be given to the certified services-disabled veteran business enterprise per F.S. 295.187. The Superintendent is also authorized to develop and implement other affirmative procurement initiatives to increase SDVE participation in M-DCPS procurement processes.

### D. Other Vendor Preferences

**State Preference**—State law requires M-DCPS to award a preference to the lowest responsive and responsible vendor that has a principal place of business in the State of Florida.<sup>5</sup>

**Local Preference**—M-DCPS will also award a preference to the lowest responsive and responsible vendor that has a principal place of business in Miami-Dade County, Florida.<sup>6</sup> On Competitive Bids, if the local firm's price is within five percent of a non-local firm, a local firm will be provided the opportunity to submit a best and final bid equal to or lower than the amount of the low responsive, responsive bid from the non-local business. On Request for Proposals, the local vendor will be considered further if its price is within five percent of the non-local vendor.

**Businesses Implementing a Drug-Free Workplace**—M-DCPS will provide a preference to a business that certifies that it has implemented a drug-free work place program in accordance with the provisions of F.S. 287.087.

### E.1.3 CROSON AND 11<sup>TH</sup> CIRCUIT STANDARDS

In *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989), the U.S. Supreme Court established a two pronged test for any governmental entity seeking to redress discrimination through race-conscious means:

- The governmental entity must demonstrate that there is a compelling governmental interest that supports the utilization of race-conscious initiatives; and,
- Any initiative or program must be narrowly tailored to remedy identified discrimination.

The requirements of the test can be shown in a factual predicate, which is also known as a disparity study. The methodology, findings, conclusions and recommendations of this Phase 2 Disparity Study can be utilized by M-DCPS to determine whether it has a basis for utilizing

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<sup>5</sup> Board Policy 6320.05

<sup>6</sup> Ibid.

some form of a race and gender-conscious program consistent with the U.S. Supreme Court requirements of *Richmond v. Croson*.

Narrow tailoring is the crucial element in crafting appropriate *Croson* remedies. Courts, have struck down many M/WBE programs due to the failure of local jurisdictions to narrowly tailor their remedies. Once a factual predicate has been established, post-*Croson* case law presents several broad guidelines for crafting recommendations for M/WBE programs by a public entity, based on the factual predicate findings.

- Race and gender-conscious M/WBE programs should be instituted only after, or in conjunction with, race and gender-neutral programs.
- M/WBE programs should not be designed as permanent fixtures in a purchasing system without regard to eradicating bias in standard purchasing operations or in private sector contracting. Consequently, each M/WBE program should have a sunset provision, as well as provisions for regular review. Additionally, there is the implication that reform of purchasing systems should be undertaken.
- M/WBE programs should have graduation provisions for M/WBEs that have largely overcome the effects of discrimination and are no longer in need of a remedy.
- Rigid numerical quotas run a greater risk of being overturned by judicial review than flexible goals.
- Race and gender-conscious goals, if any, should be tied to M/WBEs availability and to addressing identified discrimination.
- M/WBE programs should limit their impact on the rights and operations of third parties.
- M/WBE programs should be limited in scope to only those group(s) and firms that suffer the on-going effects of past or present discrimination.

These measures are designed to address the underlying systemic factors that contributed to the disparity in contracting. Procurement adjustments are considered by the U.S. Supreme Court as race-neutral. The Court requires a public entity to employ race-neutral means to the degree available. While the statistical findings suggest that M-DCPS can continue to utilize race and gender-conscious goals, the courts may question if M-DCPS has aggressively worked to change its own practices, as well as prime vendor practices, to eliminate statistical disparities. A review of the *Croson's* Courts views on this issue is relevant here:

Many of the barriers to minority participation in the construction industry relied upon by the city to justify a racial classification appear to be race neutral. *If MBE's disproportionately lack capital or cannot meet bonding requirements, a race-neutral program of city financing for small firms would, a fortiori, lead to greater minority participation.* The principal opinion in *Fullilove* found that Congress had carefully examined and rejected race-neutral alternatives before enacting the MBE set-aside.<sup>7</sup>

Given the existence of an individualized procedure, the city's only interest in maintaining a quota system rather than investigating the need for remedial action in particular cases would seem to be simple administrative convenience. *But the interest in avoiding the bureaucratic effort necessary to tailor remedial relief to those who truly have suffered the effects of prior discrimination cannot justify a rigid line drawn on the basis of a suspect classification...*<sup>8</sup>

Even in the absence of evidence of discrimination, the city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding [488 U.S. 469, 510] procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect. *Many of the formal barriers to new entrants may be the product of bureaucratic inertia more than actual necessity, and may have a disproportionate effect on the opportunities open to new minority firms. Their elimination or modification would have little detrimental effect on the city's interests and would serve to increase the opportunities available to minority business without classifying individuals on the basis of race. The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks. Business as usual should not mean business pursuant to the unthinking exclusion of certain members of our society from its rewards.*<sup>9</sup>

**(Emphasis added.)**

The Eleventh Circuit summed it up in this manner:

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<sup>7</sup> 488 U.S. 469, 508 (1989)

<sup>8</sup> *Id.* at 509.

<sup>9</sup> *Id.* at 510-511.

“The first measure every government ought to undertake to eradicate discrimination is to clean its own house and to ensure that its own operations are run on a strictly race- and ethnicity-neutral basis...”<sup>10</sup>

The Eleventh Circuit found that the County had taken no steps to “inform, educate, discipline, or penalize” discriminatory misconduct by its own employees.<sup>11</sup> Nor had the County passed any local ordinances expressly prohibiting discrimination by local contractors, subcontractors, suppliers, bankers, or insurers. “Instead of turning to race- and ethnicity-conscious remedies as a last resort, the County has turned to them as a first resort.”<sup>12</sup>

## **E.2 MILLER<sup>3</sup> CONSULTING’S APPROACH AND METHODOLOGY**

M<sup>3</sup> Consulting’s exclusive disparity study methodology includes ten analyses which lead to overall conclusions and recommendations.

### **E.2.1 M<sup>3</sup> CONSULTING’S 10-PART DISPARITY STUDY METHODOLOGY**

M<sup>3</sup> Consulting employs a 10-part disparity study methodology that provides a complete factual predicate consistent with evolving case law and M-DCPS’ regulatory environment. The statistical analysis—relevant market, availability, utilization, disparity and capacity—comports with the requirements of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706 (1989), *Adarand Contractors, Inc. v. Federica Pena*, 515 U.S. 200, 115 S. Ct. 2097 (1995) and 11<sup>th</sup> Circuit progeny and determines if there are statistically significant disparities from which an inference of discrimination may be drawn. The remaining analysis reflected under the industry and market analysis assist in determining if organizational factors (active discrimination or exclusion) or private sector and marketplace factors (passive discrimination or exclusion) cause any disparity found. Together, these findings allow M-DCPS to determine if there is a compelling governmental interest in utilizing race and gender-conscious remedies for any statistically significant disparity. The combined analysis also leads to a set of customized recommendations that includes race and gender-neutral initiatives and narrowly tailored race and gender-conscious initiatives.

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<sup>10</sup> 122 F.2d 895, 929 (11<sup>th</sup> Cir. 1997)

<sup>11</sup> *Id.* at 929.

<sup>12</sup> *Id.*

## M-DCPS Disparity Study

Industry Analysis	Statistical Analysis	Market Analysis	Conclusions	Recommendations
<ul style="list-style-type: none"><li>• Legal Analysis</li><li>• Procurement and M/WBE Operational Analysis</li></ul>	<ul style="list-style-type: none"><li>• Relevant Market</li><li>• Availability Analysis</li><li>• Utilization Analysis</li><li>• Disparity Ratios</li><li>• Regression and Capacity Analysis</li></ul>	<ul style="list-style-type: none"><li>• Anecdotal and Survey Analysis</li><li>• Race-Gender-neutral Analysis</li><li>• Private Sector Analysis</li></ul>	<ul style="list-style-type: none"><li>• Finding of discrimination, passive or active, if any</li><li>• Identification of barriers to M/WBE participation</li></ul>	<ul style="list-style-type: none"><li>• Procurement and M/WBE programmatic initiatives</li><li>• Goal-setting</li><li>• Non-Discrimination initiatives</li><li>• Management and Technical Assistance</li></ul>

### Description of Disparity Study Components

1. **Legal Analysis** outlines the legal standards of *Richmond v. Croson*, *Adarand v. Peña* and their progeny, as well as around the country. Such a legal analysis provides critical insight to current judicial opinions relevant to both M/WBE program design and disparity study analysis.
2. **Procurement and DBE Program Operational Analyses** examines M-DCPS' contracting history to determine the impact of M-DCPS' policies, procedures and practices on M/WBEs' ability to do business with M-DCPS, along with the effectiveness of the M/WBE and S/MBE operations on increasing M/WBE participation.
3. **Relevant Market Analysis** determines the geographic boundaries within which M-DCPS performs the substantial part (about 70 percent) of its business activities. The identification of the bounds is also guided by legal criterion that M-DCPS must refine its efforts to impact M/WBE business activity to its market area.
4. **Availability Analysis** determines the available M/WBEs and Non-M/W/SBEs who are available to do business with M-DCPS within the determined relevant market.
5. **Utilization Analysis** quantitatively examines M-DCPS' contracting history and determines the number of contracts and levels of expenditures with M/WBEs.
6. **Disparity Analysis** determines the difference between the availability of M/WBEs and their utilization by M-DCPS and if any disparity is statistically significant.

7. **Capacity and Regression Analyses** examines differences in capacity of firms based on race and gender using established statistical methods and examines if race, gender and ethnicity still impact the participation decision once a set of variables that proxy capacity are controlled for.
8. **Anecdotal and Survey Analyses** determine the experiences of M/WBEs and Non-M/W/SBEs attempting to do business with M-DCPS and in the business community overall. Further, the survey provides information on business characteristics, such as owner qualifications, years in business, capacity, and credit market experiences.
9. **Race- and Gender-Neutral Analysis** determines the effectiveness of race and gender-neutral programs in increasing M/WBE participation in both public and private sector opportunities.
10. **Private Sector Analyses** determine M/WBE participation in private sector opportunities. Factors that impact business formation and self-employment are also analyzed in this analysis.

The methodology components that M<sup>3</sup> Consulting deploys reflect the continuing development of case law that has increased the level and sophistication of the statistical analysis necessary to comply with *Croson* and *Adarand* standards.

### E.2.2 STATISTICAL METHODOLOGY

The statistical methodology below discusses in more detail relevant market, availability, utilization, and disparity. It includes various definitions of availability and M<sup>3</sup> Consulting's "Ready, Willing and Able" (*RWAS<sup>M</sup>*) model. M<sup>3</sup> Consulting has adapted this model to the specific M-DCPS data sources available for this study. Also discussed are the types of utilization analysis that will be performed. The statistical methodology section concludes by defining the disparity ratio and significance tests, crucial for drawing conclusions regarding any disparity in M-DCPS' recent history of contracting with M/WBEs.

To conduct the analysis, M<sup>3</sup> Consulting collected Vendor, Bidder, Contract Award, Purchase Order and Payments data for years 2012/2013 – 2014/2015.

#### A. Relevant Market

The *Croson* statistical analysis begins with the identification of the relevant market. The relevant market establishes geographical limits to the calculation of M/WBE availability and utilization. Most courts and disparity study consultants characterize the relevant market as the geographical area encompassing most of a public entity's commercial activity. The *Croson*



Court required that an MBE program cover only those groups that have actually been affected by discrimination within the public entity's jurisdiction.<sup>13</sup>

Two methods of establishing the relevant market area have been used in disparity studies. The first utilizes vendor and contract awardee location of dollars expended by an entity in the relevant industry categories. In the second method, vendors and contractors from an entity's vendor or bidder list are surveyed to determine their location. The former is based on approaches implemented under the U.S. Justice Department guidelines for defining relevant geographic markets in antitrust and merger cases. M<sup>3</sup> Consulting has developed a method for determining an entity's relevant market by combining the above methods and using an entity's bidder lists, vendor lists, and awardee lists as the basic foundation for market definition.

By examining the locations of bidders, vendors, and winners of contract awards, M<sup>3</sup> Consulting seeks to determine the area containing a preponderance of commercial activity pertaining to an entity's contracting activity. While case law does not indicate a specific minimum percentage of vendors, bidders, or contract awardees that a relevant market must contain, M<sup>3</sup> Consulting has determined a reasonable threshold is somewhere around 70 percent, each, for bidders, vendors, and contract award winners. Further analysis may be necessary if there are "large" differences in the percentages of these three measures.

### **B. Availability Analysis**

The fundamental comparison to be made in disparity studies is between firms owned by minorities and/or women ("MBEs and WBEs") and other firms ("non-M/WBEs") *ready, willing and able* to perform a particular service (i.e., are "available"), and the number of such businesses actually being utilized by the locality or its prime contractors. This section presents a discussion of the availability estimates for M/WBEs who are *ready, willing and able* to perform work on contracts for M-DCPS.

Availability is the most problematic aspect of the statistical analysis of disparity. It is intrinsically difficult to estimate the number of businesses in the marketplace that are ready, willing and able to perform contracts for or provide services to a particular public entity. In addition to determining an accurate head count of firms, the concomitant issues of capacity, qualification, willingness, and ability complicate the production of accurate availability estimates.

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<sup>13</sup> Richmond v. Croson, at 725.

## 1. Miller<sup>3</sup> Consulting, Inc. Availability Model

M<sup>3</sup> Consulting employs two general approaches to measuring availability: the Ready, Willing and Able (RWA<sup>SM</sup>) Model and Marketplace Availability. In summary, the Availability measures can fall into the following categories:

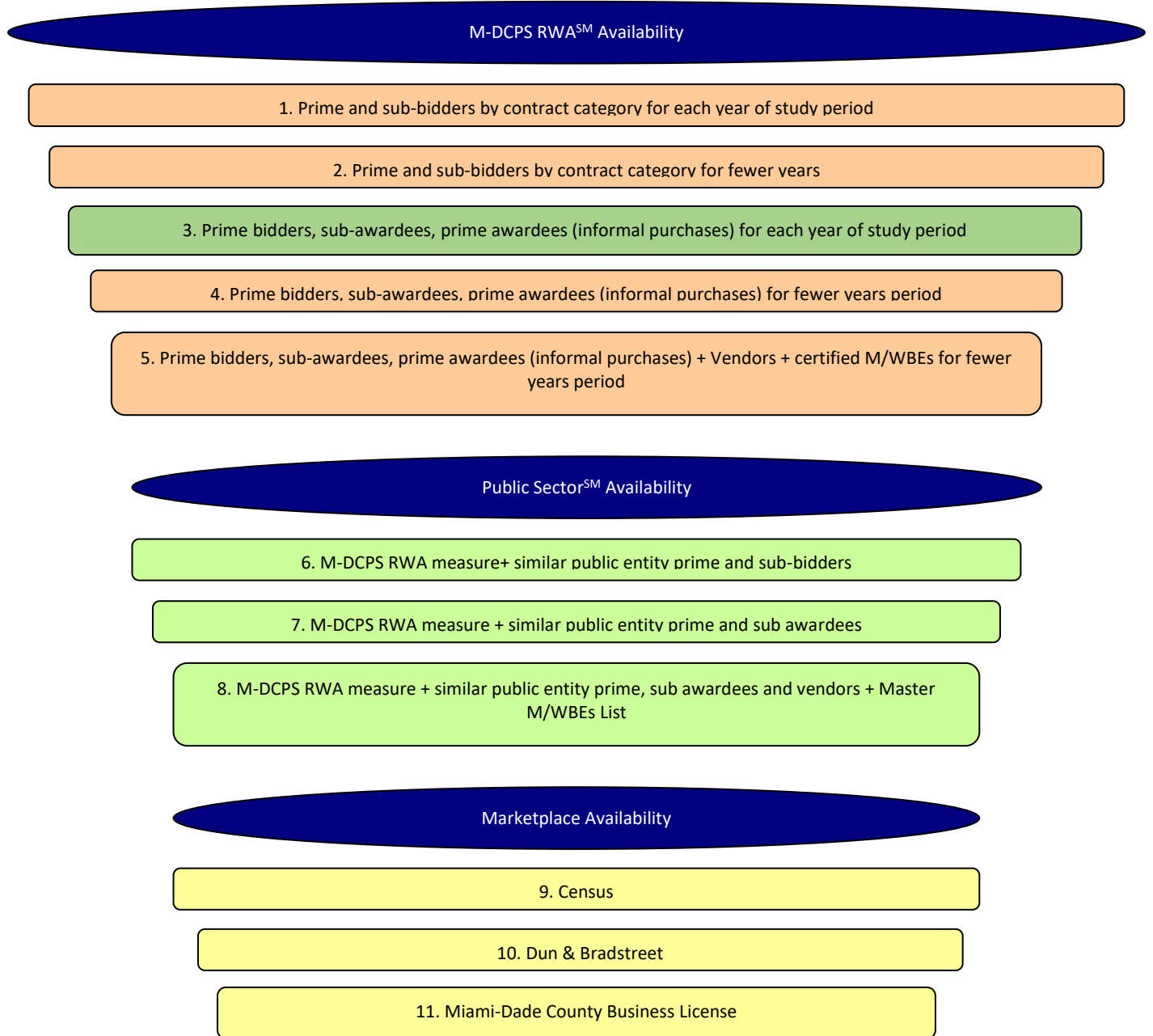
- **RWA<sup>SM</sup>**—Those firms who are ready, willing and able to do business with M-DCPS;
- **Public Sector Availability**—Those firms who are ready, willing and able to do business with similar public sector agencies within M-DCPS’ marketplace<sup>14</sup>; and,
- **Marketplace Availability**—All firms’ available in M-DCPS’ marketplace, as measured by Census, Dun & Bradstreet and Business License data.

The Availability matrix below in Figure E.1 outlines M<sup>3</sup> Consulting’s Availability Model. The matrix starts with the optimum availability measure of those firms “ready, willing and able” to do business with M-DCPS and cascades down to less optimum measures. Factors that determine which level of availability best suits M-DCPS’ environment include quality of available data, legal environment, and previous levels of inclusion of M/WBE in bidding and contracting activity.

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<sup>14</sup> This analysis requires inter-governmental cooperation between public entities providing bidder, vendor and awardee data, thus is not performed, unless such agreement is developed for individual agencies or a consortium of agencies conducted a consortium disparity study.

Figure E.1  
RWA<sup>SM</sup> Availability Model



Source: M<sup>3</sup> Consulting, Inc.

M<sup>3</sup> Consulting’s RWA<sup>SM</sup> Availability Model is further tailored to the robustness of M-DCPS’ specific databases available for analysis. RWA<sup>SM</sup> availability is defined at Level 2 for the years 2012/2013 – 2014/2015 period that includes prime and sub bidders, informal and non-competitive awardees and prime and sub awardees to comprise this availability pool.

Levels 1-3 are presented independently and cumulatively in Figure E.2, as three measures of RWA<sup>SM</sup> availability, with Level 2 being a combined pool of discrete available firms across these measures and Level 3 further including M-DCPS Vendors who may or may not have bid with M-DCPS.

<b>Figure E.2</b>	
<b>M-DCPS Specific RWA<sup>SM</sup> Availability Levels</b>	
<b>RWA<sup>SM</sup> Availability Level</b>	<b>RWA<sup>SM</sup> Availability Definition</b>
Level 1	M-DCPS Bidders and Sub-bidders
Level 2	M-DCPS Bidders and Sub-bidders + AP/PO Firms
Level 3	M-DCPS Bidders and Sub-bidders + AP/PO Firms + Vendors*

Source: M<sup>3</sup> Consulting; \* All firms certified by M-DCPS are included on the Vendors List

### C. Utilization Analysis

Utilization represents the contracting and subcontracting history of Non-M/W/SBEs and M/WBEs with M-DCPS. In developing the contract database to be used as the basis for determining utilization, there are three alternative measures of utilization that can be taken in each procurement category. These are:

1. The numbers of contracts awarded;
2. The dollar value of contracts received; and,
3. The raw numbers of firms receiving contracts.

The current report presents two of the three measures of utilization: the number of contracts awarded and the dollar value of the contract awards. Both dollars and counts are reported in order to determine if there are any outliers or large single contracts that cause utilization dollar values to be at reported levels. These were preferred over the third measure—the number of firms, which is less exact and more sensitive to errors in measurement.

For instance, if a single firm, owned by a Non-M/W/SBE, received 30 contracts for \$5 million, and ten African American-owned firms received one contract each worth \$100,000, measured

by the number of firms, African American-owned firms would appear to be over utilized, and Non-M/W/SBEs underutilized. Using the number of contracts and the dollar value of contracts awarded, the aforementioned result would reverse (depending on relative availability).

M<sup>3</sup> Consulting’s position with regard to percentage estimates of utilization, by the dollar value of contracts and number of contracts, is that discrimination would be more likely to affect the dollars awarded than the number of contracts awarded to M/WBEs or the number of M/WBEs utilized, particularly if there are stereotypical attitudes that M/WBEs cannot handle larger contracts, and the largest volume of contracts awarded are smaller contracts.

## D. Disparity Analysis

A straightforward approach to establishing statistical evidence of disparity between the availability of M/WBEs and the utilization of M/WBEs by M-DCPS is to compare the utilization *percentage* of M/WBEs with their availability *percentage* in the pool of total businesses in the relevant market area. M<sup>3</sup> Consulting’s specific approach, the “Disparity Ratio,” consists of a ratio of the percentage of dollars spent with M/WBEs (utilization), to the percentage of those businesses in the market (availability).

Disparity ratios are calculated by actual availability measures. The following definitions are utilized in the M<sup>3</sup> Consulting ratio:

A	=	Availability proportion or percentage
U	=	Utilization proportion or percentage
D	=	Disparity ratio
N <sub>w</sub>	=	Number of women-owned firms
N <sub>m</sub>	=	Number of minority-owned firms
N <sub>t</sub>	=	Total number of firms

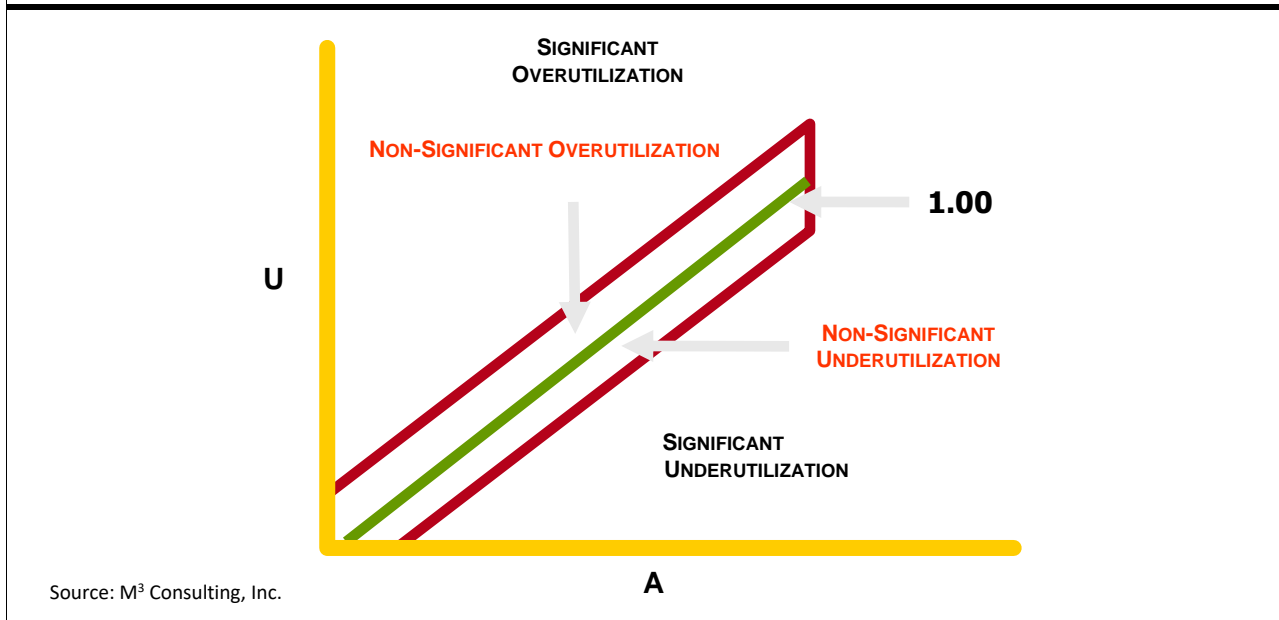
Availability (A) is calculated by dividing the number of minority and/or women-owned firms by the total number of firms. Utilization (U) is calculated by dividing total dollars expended with minority and women-owned firms by the total expenditures.

$$\begin{aligned} A_w &= N_w / N_t \\ A_m &= N_m / N_t \\ D &= U / A \end{aligned}$$

When D=1, there is no disparity, (*i.e.*, utilization equals availability). As D approaches zero, the implication is that utilization is disproportionately low compared to availability. As D

gets larger (and greater than one), utilization becomes disproportionately higher compared to availability. Statistical tests are used to determine if the difference between the actual value of D and 1 are statistically significant, (*i.e.*, if it can be stated with confidence that the difference in values is not due to chance (see Figure E.3).

**Figure E.3**  
**Disparity Ratio Indicating Areas of Significant and Non-Significant Disparity and Overutilization**



The statistical disparity ratio used in this study measures the difference between the proportion of available firms and the proportion of dollars those firms received. Therefore, as the proportion of contract dollars received becomes increasingly different than the proportion of available M/WBEs, an inference of discrimination can be made.

The concept of statistical significance as applied to disparity analysis is used to determine if the difference between the utilization and availability of M/WBEs could be attributed to chance. Significance testing often employs the t-distribution to measure the differences between the two proportions. The number of data points and the magnitude of the disparity affect the robustness of this test. The customary approach is to treat any variation greater than two standard deviations from what is expected as statistically significant.

A statistical significant outcome or result is one that is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone. P-value is a standard measure used to represent the level of statistical significance. It states the numerical probability that the stated relationship is due to chance alone. For example, a p-value of 0.05 or 5 percent indicates that the chance a given statistical difference is due purely to chance is 1 in 20.

## E.3 FINDINGS AND CONCLUSIONS

### E.3.1 SIGNIFICANT DISPARITY

Based on the statistical findings in the disparity chapter, the utilization of qualified firms as reflected by the percentage of contracts or purchase orders awarded, appears to be less inclusive than warranted, when compared to the availability of ready, willing and able firms (RWA<sup>SM</sup>). Thus, M<sup>3</sup> Consulting draws an inference of discrimination against the following race, ethnicity and gender groups:

<b>Table E.1. Inference of Discrimination Based on Findings of Statistically Significant Disparity By Race/Ethnicity/Gender By Procurement Type</b>			
	<b>Goods &amp; Supplies</b>	<b>Maintenance and Maintenance-Related Services</b>	<b>Services</b>
<b>African American</b>	<b>Under**</b>	<b>Under**</b>	<b>Under**</b>
<b>Asian American</b>	<b>Under**</b>	<b>Under**</b>	<b>Over*</b>
<b>Hispanic American</b>	<b>Over*</b>	<b>Over*</b>	<b>Over</b>
<b>WBE</b>	<b>Under**</b>	<b>Under**</b>	<b>Under**</b>

Source: M<sup>3</sup> Consulting; Based on Level 2 RWA<sup>SM</sup> Availability and PO Utilization

\*-Significant Overutilization

\*\* -Significant Underutilization

Note: All findings of statistically significant disparity also meet the 80 percent rule

**E.3.2 STATISTICAL FINDINGS IMPACTING STATISTICALLY SIGNIFICANT DISPARITY**

**A. Relevant Market**

Based on the data provided for this study, three relevant markets were defined:

- Tri-County Area—consists of the following three counties: Miami-Dade, Broward and Palm Beach Counties;
- State of Florida; and,
- Nationwide.

The relevant market for each procurement category is summarized in Table E.2. The relevant market for each category is calculated separately because the location of the commercial activity that M-DCPS conducts with its vendors may vary based on the different procurement category.

<b>Table E.2. Summary of Relevant Market Determination</b>			
	<b>Tri-County</b>	<b>State</b>	<b>Nationwide</b>
<b>Goods &amp; Supplies</b>			√
<b>Maintenance and Maintenance-Related Services</b>	√		
<b>Services</b>		√	

Source: M<sup>3</sup> Consulting; M-DCPS Contracts Data, SAP PO and AP data, M-DCPS Vendor data; P-Card data

**B. Availability Analysis**

Table E.3 below summarizes the availability estimates for M/WBEs within the relevant market for M-DCPS. It provides the estimates along with the source of the information. M<sup>3</sup> Consulting places emphasis on the availability estimates, based on bidders, sub bidders and awardees data at Level 2 of the RWA<sup>SM</sup> model<sup>15</sup>. The tables and the discussion are presented for the relevant markets by procurement type for all industries.

M<sup>3</sup> Consulting’s typically places credence on RWA<sup>SM</sup> estimates derived from bidders, sub bidders and awardees in that order of importance. In Table E.4, marketplace availability measures, based on Census SBO, are presented as a benchmark of minority and women-

<sup>15</sup> See Figure E.2 for Level 2, based on M-DCPS specific data. See also Figure E.1, Line 3.



owned firm availability and for M-DCPS to consider potentially available firms for outreach purposes.

For Goods & Supplies, MBE RWA<sup>SM</sup> availability percentage is about 8.75 percent, half of which is from Hispanic American-owned firms, followed by Non M-DCPS Certified MBEs and African American-owned firms. WBE availability in this industry at 2.90 percent available based on the RWA<sup>SM</sup> availability measure. The marketplace availability measure based in Goods & Supplies shows a higher presence of MBEs in the industry at 15.50 percent and a slightly higher presence of WBEs at 3.43 percent.

In Maintenance and Maintenance-Related industries, the availability of M/WBEs was at 34.52 percent based on RWA<sup>SM</sup> availability estimates. MBEs were at 29.93 percent with Hispanic American-owned firms leading this group at 18.37 percent. African American-owned firms and WBEs are at four percent and 4.30 percent respectively in the Tri-County marketplace. The Census availability measure shows a slightly lower representation in the marketplace of M/WBEs at 24.31 percent, with WBEs about the same as the RWA<sup>SM</sup> availability estimate at 4.48 percent. MBEs were lower than RWA<sup>SM</sup> at 24.31 percent.

For Services, M/WBEs availability based on RWA<sup>SM</sup> availability was 14.08 percent, lower in comparison to the marketplace availability at 20.05 percent. MBEs and WBEs were both evenly low in availability based on RWA<sup>SM</sup> availability estimates with Hispanic American-owned firms occupying the lead available MBE Service firms. Marketplace availability reflected similar results, except for Asian American-owned firms, who reflected almost 6 percent participation, compared to well less than 1 percent for RWA<sup>SM</sup>.

The presence of M/WBEs in M-DCPS procurement is higher in the marketplace overall. The marketplace however shows a greater number of M/WBEs that do not participate in the M-DCPS procurement process, although they may potentially be available to do business. If these potentially available firms meet the RWA<sup>SM</sup> availability criteria and may be encouraged to participate in M-DCPS contracting process remains to be explored.

# Executive Summary

**Table E.3.**  
**Summary Table - RWA<sup>SM</sup> Availability Percentage Participation**  
**Miami-Dade County Public Schools**  
**Relevant Market; 2012/2013 - 2014/2015**

Ethnicity	Goods & Supplies <sup>1</sup>		Maintenance and Maintenance-Related Services <sup>2</sup>		Services <sup>3</sup>		Total Firms <sup>1</sup>	
	#	%	#	%	#	%	#	%
<b>Non-M/W/SBE</b>	1,707	86.87	425	62.96	888	85.06	3,633	84.31
African American	20	1.02	27	4.00	21	2.01	73	1.69
Asian American	6	0.31	4	0.59	3	0.29	14	0.32
Hispanic American	96	4.89	124	18.37	51	4.89	271	6.29
Non M-DCPS Certified MBE	50	2.54	47	6.96	28	2.68	126	2.92
<b>Total MBE</b>	172	8.75	202	29.93	103	9.87	484	11.23
WBE	57	2.90	29	4.30	37	3.54	128	2.97
Non M-DCPS Certified M/WBE	4	0.20	2	0.30	7	0.67	13	0.30
<b>Total M/WBE</b>	233	11.86	233	34.52	147	14.08	625	14.50
SBE	23	1.17	17	2.52	7	0.67	47	1.09
<b>Total M/WBE</b>	256	13.03	250	37.04	154	14.75	672	15.60
<b>Service-Disabled</b>	2	0.10	-	0.00	2	0.19	4	0.09
<b>Total</b>	1,965	100.00	675	100.00	1,044	100.00	4,309	100.00

Source: M<sup>3</sup> Consulting; M-DCPS Contracts Data, SAP PO and AP data, M-DCPS Vendor data; \* Services include Professional and Non-Professional Services; Note: Total Firms is not refined to a relevant market, as such it does not represent a total of Goods & Supplies, Maintenance and Maintenance-Related Services and Services represented on the table, as these categories are limited to their Relevant Market.

<sup>1</sup>Nationwide

<sup>2</sup>Tri-County Area

<sup>3</sup>State of Florida

See Figure E.2 for Level 2, based on M-DCPS specific data. See also Figure E.1, Line 3.

**Table E.4.  
 Census SBO Summary Availability  
 Relevant Market, 2012**

	Goods & Supplies <sup>1</sup>		Maintenance and Maintenance-Related Services <sup>2</sup>		Services <sup>3</sup>		Total Firms <sup>1</sup>	
	#	%	#	%	#	%	#	%
<b>Non-M/WBE</b>	5,031,921	81.08	17,718	75.69	941,347	79.95	20,621,138	81.66
African American	36,109	0.58	342	1.46	22,509	1.91	315,519	1.25
Asian American	702,882	11.33	399	1.70	66,505	5.65	2,357,030	9.33
Hispanic American	122,555	1.97	3,456	14.76	70,733	6.01	551,136	2.18
Native American	15,219	0.25	54	0.23	2,609	0.22	75,186	0.30
Other MBE	84,976	1.37	392	1.67	18,501	1.57	362,142	1.43
<b>Total MBE</b>	961,741	15.50	4,643	19.83	180,857	15.36	3,661,013	14.50
WBE	212,680	3.43	1,048	4.48	55,168	4.69	969,286	3.84
<b>Total M/W/SBE</b>	1,174,421	18.92	5,691	24.31	236,025	20.05	4,630,299	18.34
<b>Total</b>	<b>6,206,342</b>	<b>24.58</b>	<b>23,409</b>	<b>100.00</b>	<b>1,177,372</b>	<b>100.00</b>	<b>25,251,437</b>	<b>100.00</b>

Source: 2012 Census SBO Data; M<sup>3</sup> Consulting; Note: Total Firms is not refined to a relevant market, as such it does not represent a total of Goods & Supplies, Maintenance and Maintenance-Related Services and Services represented on the table, as these categories are limited to their Relevant Market.

<sup>1</sup>Nationwide

<sup>2</sup>Miami-Ft. Lauderdale-West Palm Beach Metro Area

<sup>3</sup>State of Florida

The difference in Potential Availability (Marketplace) and Actual Availability (RWA<sup>SM</sup>) could reflect the impact on Actual Availability of “But-For Discrimination”, but it could also reflect the absence of outreach by M-DCPS to potentially available firms, as well. In other words, from the RWA<sup>SM</sup> estimates, bidders, sub-bidders, and awardees are presumed to be actually available, whereas the Census SBO includes firms that may not be actually available due to discrimination or other factors. Significantly more research and analysis is necessary to determine the reasons for differences in availability levels between RWA<sup>SM</sup> and Census SBO. Other than race- and gender-conscious goals, such factors influencing the difference between RWA<sup>SM</sup> Availability measures and Census SBO (and Business License and D&B Availability) figures could include, but not be limited to:

- Firms available in Census SBO, while falling into a North American Industry Classification System code utilized by M-DCPS, do not provide the specific goods and services required by M-DCPS;
- Firms within the Census SBO and D&B availability pool may not be interested in doing business with M-DCPS or in the public sector; and,
- M-DCPS may be viewed by the community as a more inclusive environment, than the private sector or other public entities.

As the Office of Economic Opportunity begins to conduct inclusive outreach to and surveying of firms on the D&B and Business License lists to determine their interest and ability to provide their services to M-DCPS and the willingness of unverified D&B and Business Licenses Minority/Women-business enterprises to become certified to be eligible for M-DCPS' race- and gender-conscious initiatives, more conclusive determinations can be made regarding the difference between RWA<sup>SM</sup> and marketplace availability figures.<sup>16</sup>

### C. Utilization Analysis

Table E.5 summarizes utilization of M/WBEs by the three utilization measures – Purchase Orders, Accounts Payables and Contract Awards. Overall, utilization of M/WBEs is highest in Maintenance and Maintenance-Related Services, as high as 68.31 percent if measured by POs, over 52 percent based on Payables and 45.5 percent based on Contract Awards. However, the majority of the M/WBE utilization is based on MBE utilization. WBE utilization never exceeds 6.2 percent based on any of the measures of utilization. While it appears that MBEs are utilized substantially in Maintenance and Maintenance-Related Services, this is a skewed picture as noted in the Table E.6 below, with most of the dollars going to Hispanic American-owned firms and Non M-DCPS Certified MBEs.

In Goods & Supplies' procurement by M-DCPS, M/WBE utilization ranged from 10.08 percent to 22.35 percent based on the different measures of utilization. Since Goods & Supplies are typically, long term blanket contracts, POs may best reflect utilization. Based on POs, the utilization of MBEs is at 21.12 percent and WBEs, 1.23 percent for the three-years study period, 2012/2013 - 2014/2015.

Procurement of Services by M-DCPS ranges from 7.23 percent to 11.78 percent for M/WBEs, with the greatest utilization reflected in POs. Since a number of Services contracts are informal, POs may reflect the utilization of M/WBEs most closely. Based on POs, 9.14 percent of MBEs are utilized and 2.64 percent of WBEs for the 2012/2013 - 2014/2015. However, as

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<sup>16</sup> Specific firm information is not available from Census SBO.

Table E.6 highlights, MBE utilization is largely skewed toward Hispanic American-owned firms and the aggregate number less accurately reflects utilization of all MBE groups.

<b>Table E.5. M/WBE Utilization in Percent of Dollars of Purchase Orders, Payments and Contract Awards Miami-Dade Public Schools Summary of M/WBE Utilization; 2012/2013 – 2014/2015 By Relevant Market</b>									
<b>Procurement Category</b>	<b>M/WBE Utilization Based on Purchase Orders</b>			<b>M/WBE Utilization Based on Accounts Payables</b>			<b>M/WBE Utilization Based on Contract Dollars</b>		
	<b>(in percent)</b>			<b>(in percent)</b>			<b>(in percent)</b>		
	<b>MBE</b>	<b>WBE</b>	<b>M/WBE<sup>4</sup></b>	<b>MBE</b>	<b>WBE</b>	<b>M/WBE<sup>4</sup></b>	<b>MBE</b>	<b>WBE</b>	<b>M/WBE<sup>4</sup></b>
<b>Goods &amp; Supplies<sup>1</sup></b>	21.12	1.23	22.35	8.90	1.19	10.08	8.88	2.29	11.17
<b>Maintenance and Maintenance- Related Services<sup>2</sup></b>	64.10	1.29	68.31	48.11	1.59	51.12	38.48	6.20	45.53
<b>Services<sup>3</sup></b>	9.14	2.64	11.78	6.46	2.17	8.63	5.92	0.08	7.23

Source: M<sup>3</sup> Consulting; M-DCPS Contracts Data, SAP PO and AP data, M-DCPS Vendor data; \* Services include Professional and Non-Professional Services

<sup>1</sup>Nationwide

<sup>2</sup>Tri-County Area

<sup>3</sup>State of Florida

<sup>4</sup>Includes Non M-DCPS Certified M/WBEs

Table E.6 reflects that, based on Purchase Orders, M/WBEs are utilized overall more in Maintenance and Maintenance-Related Services than in the other two procurement categories. However, as discussed above, the utilization of M/WBEs in Maintenance and Maintenance-Related Services largely includes procurement from Hispanic American-owned firms and Non M-DCPS Certified MBEs, whereas the rest of the race/ethnic/gender groups received less than three to five percent of the total POs. Hispanic American-owned firms receive 35.86 percent of the POs in this procurement category and Non M-DCPS Certified MBEs, 27.16 percent.

In the other two procurement categories, a similar pattern exists in the utilization of Hispanic American-owned firms and Non M-DCPS Certified MBEs, although the percentage utilization of M/WBEs in these procurement categories are much smaller in comparison. In

Goods & Services, other than Hispanic American-owned firms receiving 19.80 percentage of total payments for the three-year study period, the remainder of the M/WBE groups receive no more than 1.13 percent of the total. In Services, similarly, while Hispanic American-owned firms receive 5.04 percent of the total payments for 2012/2013 - 2014/2015, no MBE group receive more than 1.85 percent of the POs and WBEs received only 2.64 percent of the total purchase orders for the three-year period. African American-owned firms never exceed 1.15 percent and Asian American-owned firms, 1.1 percent of utilization as measured by POs in any procurement category.

**Table E.6.**  
**Summary Table – Utilization by Relevant Market**  
**Based on Purchase Orders**  
**Miami-Dade County Public Schools**  
**Relevant Market; 2012/2013 – 2014/2015**

Race/Ethnicity/Gender	Goods & Supplies <sup>1</sup>		Maintenance and Maintenance-Related Services <sup>2</sup>		Services <sup>3</sup>	
	\$	%	\$	%	\$	%
<b>Non-M/W/SBE</b>	420,601,662	77.15	9,758,349	26.74	195,666,712	88.07
African American	444,170	0.08	346,290	0.95	2,544,104	1.15
Asian American	589,478	0.11	45,378	0.12	2,447,646	1.10
Hispanic American	107,939,751	19.80	13,089,927	35.86	11,202,446	5.04
Non M-DCPS Certified MBE	6,185,789	1.13	9,914,711	27.16	4,117,539	1.85
<b>Total MBE</b>	115,159,190	21.12	23,396,306	64.10	20,311,735	9.14
WBE	6,712,992	1.23	470,694	1.29	5,860,790	2.64
Non M-DCPS Certified M/WBE	-	0.00	1,066,661	2.92	-	0.00
<b>Total M/WBE</b>	121,872,182	22.35	24,933,661	68.31	26,172,525	11.78
SBE	2,681,113	0.49	1,807,191	4.95	152,998	0.07
<b>Total M/W/SBE</b>	124,553,295	22.85	26,740,852	73.26	26,325,523	11.85
<b>Service-Disabled</b>	16,000	0.00	-	0.00	170,361	0.08
<b>Total</b>	545,170,957	100.00	36,499,202	100.00	222,162,595	100.00

Source: M<sup>3</sup> Consulting; M-DCPS Contracts Data, SAP PO and AP data, M-DCPS Vendor data; Services include Professional and Non-Professional Services

<sup>1</sup>Nationwide

<sup>2</sup>Tri-County Area

<sup>3</sup>State of Florida

## D. Disparity Analysis

Table E.7 summarizes the disparity ratios discussed in this chapter for each procurement categories at the race/ethnic/gender group level, for M-DCPS procurements for the period 2012/2013—2014/2015. Based on the foregoing analysis and the summary below, findings of

statistically significant disparity are made for the following groups in the following procurement categories:

- Goods & Supplies—African American-owned firms, Asian American-owned firms, and WBEs:
- Maintenance and Maintenance-Related Services—African American-owned firms, Asian American-owned firms, WBEs; and,
- Services—African American-owned firms and WBEs.

<b>Table E.7. Summary Disparity Ratios by Race, Ethnicity and Gender Utilization vs. <i>RWA</i><sup>SM</sup> Availability Level 2 Miami-Dade County Public Schools Relevant Market; 2012/2013 -- 2014/2015</b>						
Race/Ethnicity/Gender	Goods & Supplies (Purchase Orders)		Maintenance & Maintenance Related Services (Purchase Orders)		Services (Purchase Orders)	
	Ratio	Sign.	Ratio	Sign.	Ratio	Sign.
<b>Non-M/W/SBE</b>	0.89	S	0.42	S	1.04	S
African American	0.08	S	0.24	S	0.57	S
Asian American	0.36	S	0.20	S	3.83	S
Hispanic American	4.05	S	1.95	S	1.03	NS
Non M-DCPS Certified MBE	0.44	S	3.90	S	0.69	S
<b>Total MBE</b>	2.41	S	2.14	S	0.93	S
WBE	0.42	S	0.30	S	0.74	S
Non M-DCPS Certified M/WBE	0.00	S	9.86	S	0.00	S
<b>Total M/WBE</b>	1.88	S	1.98	S	0.84	S
SBE	0.42	S	1.97	S	0.10	S
<b>Total M/W/SBE</b>	1.75	S	1.98	S	0.80	S
<b>Service-Disabled</b>	0.00	S	0.00	S	0.42	S

Source: M-DCPS Contracts Data, SAP PO and AP data,; M<sup>3</sup> Consulting;  
 Ratio is Less than 1 –Statistically Significant Underutilization;  
 Significance is NS and Ratio is Greater than 1—Overutilized, but not Statistically Significant; Significance is NS and Disparity Ratio is Less than 1 – Underutilized,, but not Statistically Significant;  
 ND: Not Defined

## E. Capacity Issues

As disparities in procurement and contracting are often attributed to differences in capacity of Non-M/WBE and M/WBE firms, the capacity analysis sought to examine if there were any differences in capacity of firms based on race or gender that impact disparity outcomes and could hinder firms from being actually and potentially available to M-DCPS. The purpose of this analysis is to determine if there are any differences in the capacity of race, gender and ethnic groups and after accounting for any differences in the capacity of firms, if race and gender are contributing factors to any disparities found.

- Based on Census SBO data, Hispanic American- and Asian American-owned firms appear to have higher capacity among M/WBEs, but these are smaller in absolute size than Non-M/WBEs based on number of employees and revenues among the race, gender and ethnic groups in the MSA. If relative capacity (compared to Non-M/WBEs) was considered, the differences in capacities among M/WBEs and Non-M/WBEs is small in Maintenance and Maintenance-Related Services but is still high in Services and Goods & Supplies.
- Based on D&B, using number of employees, until the 500-employee range, there is little difference in capacity between the race, gender and ethnic groups; yet over 500 employees, there are few M/WBEs in the Tri-County MSA. Based on revenues however, the capacity differences among race, gender and ethnic groups diminish and MBEs, WBEs, M/WBEs and Non-M/WBEs are represented in all revenue ranges, including those over \$10 million.
- To analyze capacity of M/WBEs compared to Non-M/WBEs, M<sup>3</sup> Consulting conducted a survey of vendors that register to do business with M-DCPS and examined the differences in capacity by race, gender and ethnic groups. Some summary highlights from the survey are as follows:
  - On average, Female-owned firms are statistically significantly younger and do not have significantly lower start-up capital than their male counterparts. They are also smaller with regards to full-time employees, as well as gross receipts, than Male-owned firms.
  - MBEs and White female-owned firms are significantly younger, with fewer full-time employees and lower gross receipts than Non-M/WBEs and hence have lower capacity, based on the survey responses. However, there is not



sufficient evidence to show differences in initial levels of capital or number of contracts won by M/WBEs compared to Non-M/WBEs.

- Female-owned firms apply significantly fewer times for a loan than their male counterparts and get denied fewer times as well.
- The number of times that MBEs applied or were denied a loan/line of credit or for a bond is not significantly different than Non-M/WBEs.
- After accounting for variables that may impact revenues of firms, race, gender and ethnicity of the firm's owner does not seem to have any influence, except for African American-owned firms, wherein they seem to negatively influence revenues. Any variation in revenues of other race, gender and ethnic groups from similarly situated Non-M/WBEs was purely due to chance.
- Examining the factors that impact the self-employment decision, it is noted that comparing similarly situated individuals (in terms of economic and demographic variables), a White male is 2 times more likely to be self-employed as an African American, 1.2 times as likely as an Asian American, about 1.19 times as likely as any Other Race and only little over 0.7 times as likely as a Hispanic American to be self-employed in Florida. Also, Female-owned firms are a little over half as likely as Male-owned firms to be self-employed.
- Further examining the likelihood of self-employment based on race and gender characteristics, controlling for variables related to economic and demographic factors, while race and gender do have a significant impact on the probability of being self-employed, African Americans are significantly less likely to be self-employed in Florida. In professional services as well, White males are more inclined to be self-employed in Florida. In comparing similarly situated individuals within Professional services or Maintenance and Maintenance-Related Services, the greatest discrepancy is seen in African Americans as compared to White males with regards to self-employment than is seen in Asian Americans and Other races.
- Examining the factors that impact self-employment earnings, we note that all other variables kept constant, a self-employed Hispanic American will earn about \$282 more than a non-minority firm; an Asian American will earn about \$22 more and a male self-employed person will earn \$1,128 more than a self-employed female. As discussed above, with regards to self-employment decision, with earnings as well, a self-employed African American will earn about \$631 less than a similarly situated non-African-American firm. This

holds true in the Maintenance and Maintenance-Related Services as well as Professional Service industries with self-employment earnings for an African Americans lower by \$1,173 and \$1,347 respectively. In contrast, Hispanic Americans that are self-employed earn \$756 higher in professional services, but \$525 lower in Maintenance and Maintenance-Related industries.

- While capacity differences do not appear to be distinct in the size of the firms based on revenues or full-time employees across the board for all race and gender or ethnicities, the constraints in capacities are more notable in terms of revenues, employees and business formation and factors related to the self-employment decision and earnings for African American-owned firms, more so than in any other race, gender and ethnic groups wherein the results are mixed.

### **E.3.3 QUALITATIVE FINDINGS IMPACTING STATISTICALLY SIGNIFICANT DISPARITY**

#### **A. Procurement**

M-DCPS operates in a fairly centralized procurement environment for the procurement types under review for this study. However, on informal purchases below \$50,000, school sites continue to have significant purchasing authority. It is important to note that a decentralized procurement process is viewed in the context of the sufficiency of infrastructure support and organizational oversight to ensure transparency, accountability, efficiencies and above all, fairness and inclusiveness on an on-going basis on all purchases. Below are the Procurement, S/MBE and M/WBE Program policies, procedures and practices that may impact the ability of M/WBEs to participate in M-DCPS' procurement and contracting opportunities.

- There appears to be limited knowledge or responsibility for developing and implementing inclusive procurement strategies. Additionally, during the study period and for goods & supplies, services and maintenance & maintenance-related services, most staff members in OEO had limited procurement knowledge and some had limited knowledge of M/WBE program operations and supplier diversity.
- While M-DCPS has well-developed M/WBE and S/MBE Board policies, the implementation of these policies are hampered by the issues above. Furthermore, while OEO leadership was consistent during the study period, the constant changes in OEO leadership following the study period and during the course of the conduct of this disparity study has impacted the consistent development of implementation strategies and initiatives and OEO's ability to serve as advocate and ombudsman.

These issues impact M-DCPS' ability to be collaborative, responsive and inclusive within real-time procurement operations.

- M-DCPS' has not integrated M-DCPS S/MBE and M/WBE procedures into its Procurement Procedures for goods & supplies, services and maintenance & maintenance-related services. As such, the expectation and requirements of Procurement, School Principals and Administrators, User Departments and OEO has not been clearly established in a manner that allows M-DCPS to ensure a procurement process that is open, fair, transparent and inclusive in a manner that can be monitored and tracked beyond S/MBE and M/WBE participation statistics.
- M-DCPS primarily focuses on reporting procurement spend and goal attainment. OEO staff has not recently prepared an overall organizational and programmatic scorecard akin to its Inaugural Reports for 2013/2014 and 2014/2015. Furthermore, reporting does not identify overall and M/WBE spend by buyer, department and school sites. Therefore, because of this limited transparency, M-DCPS is less likely to identify and eliminate issues of favoritism and discrimination.
- Based on interviews, M-DCPS provides limited forecasting of upcoming opportunities at both the informal and formal level. Furthermore, informal procurements, similar to many public agencies, are not advertised using any source (paper, website, DemandStar). This incomplete forecasting and notification limits transparency as it relates to opportunities where M/WBEs have the capacity to perform; and, limits the time-period M/WBEs have to complete all requirements necessary to ensure that, once the solicitation is released, they are ready, willing and able to bid.
- Based on interviews, M-DCPS focuses primarily on outreach, not matchmaking. Outreach—while sometimes labeled as matchmaking—covers the vendor fairs which procurement staff attends and “How to Do Business” workshops provided.
- Like many public agencies, M-DCPS certification requirements can be very taxing for small businesses, especially considering the lack of reciprocity of certification requirements among public agencies in South Florida. While the goal is to certify bona fide M/WBEs, some certification requirements may create issues of unfair exclusion and discrimination and inconsistencies within the bid process. For example, all minority persons applying for certification are required to be citizens or lawful permanent residents. This requirement is not in place for Non-M/WBEs who are not citizens or lawful permanent residents who are obtaining business licenses, bidding and being awarded contracts by M-DCPS.

The execution and implementation of a public entity's community economic development objectives commences with the procurement process. Public entity achievement of its community economic development objectives through procurement begins with a public policy approach to procurement and community economic development, supported by project execution, as opposed to purely employing a cost, schedule, and project efficiency based approach.

M-DCPS has a guiding Mission Statement, a reasonable overall organizational structure and numerous reasonable policies and procedures in place. However, M-DCPS also has multiple areas in its policies, procedures and practices that may create barriers to the ability of M/WBEs to participate in M-DCPS' contracting and procurement opportunities. If these areas are not appropriately addressed, there is a risk of inherent, unintentional and/or intentional exclusionary and/or discriminatory practices in M-DCPS' procurement program.

### **B. Anecdotal**

The anecdotal data from twenty-four participants was gathered through a series of one-on-one in-depth interviews and two focus groups. Those interviewed included both minority and women business owners and management and technical assistance providers and advocates. The objective of the in-depth interviews was to capture the experiences, attitudes, issues, and perceptions of business owners seeking opportunities with M-DCPS, and with other public and private organizations in the Tri-County area, as well as M&TA providers supporting these firms.

The anecdotal testimony tended to reflect firms' perception of and concerns about the impact of unfair contracting practices and staff inexperience on the ability of S/MBEs and M/WBEs to do business with M-DCPS in a fair and open manner. Interviewees expressed concerns about the repeated use of the same firms, the negative impact of certification on their ability to obtain contracts, the lack of M-DCPS support in ensuring that prime contractors provide their subcontractors the same contract terms as M-DCPS provides to the prime contractors. Interviewees also provided comments on their perceptions of M-DCPS and prime contractor preferences to do business with firms with whom they have prior relationships within the marketplace, bid shopping of quotes, and the manner in which public agencies appear to defer to their prime contractors in South Florida.

Interviewees also discussed the impact of the lack of experience and business acumen of M-DCPS staff and its negative impact on the ability of S/MBEs and M/WBEs to do business with M-DCPS. A few also expressed concerns about the challenges in doing business with M-DCPS school sites.

African American-owned firms and M&TA leaders were most willing to participate and voice their concerns.

### C. Private Sector

The local demographics in the Miami-Ft. Lauderdale-Pompano Beach MSA is dominated by Hispanic Americans at almost 43 percent, followed by White Americans at about 33 percent and African Americans at about 20 percent. The civilian labor force mirrors the population.

It is expected that the differences in the availability of firms in the relevant market would be representative of these statistics. As such, it is important to study the degree to which the population is gaining education and experience that could lead to business formation.

Among all racial and ethnic groups, Hispanic Americans have the greatest employment presence in Construction in the Miami-Ft. Lauderdale-Pompano Beach MSA. They lag behind White Americans in Professional Services, while tracking White Americans fairly closely in Support Services. African American and Asian Americans reflect smaller employment numbers than Hispanic Americans and White Americans, with Asian Americans having a very small presence in all categories.

Both Miami-Dade County Business License data and D&B data suggests that M/WBEs are represented in smaller proportion in the marketplace, which includes both public sector and private sector, than they are with M-DCPS. These findings are buttressed by survey findings, which further suggests that most of the survey respondents tend to do business in the public sector. Even the few that reported having previously done business in the private sector appear to have moved toward the public sector.

We further compared the expectations of business formation discussed in Chapter 8: Capacity and Regression to actual business formation in Chapter 10: Private Sector. From data on business formation in Chapter 8, it appears that African American-owned firms are the most unlikely to be self-employed and if self-employed, likely to have lower earnings than similarly situated individuals with similar economic and demographic profiles. Most other race, gender and ethnic groups are likely to be self-employed. We did note that race and gender do have a significant impact on the probability of being self-employed in the State of Florida. As seen in Chapter 8, the likelihood of self-employment by M/WBEs (other than African Americans) is seen in Maintenance and Maintenance-Related Services, which perhaps explains why the Business License data indicates their higher presence in this procurement category. Consistently, M-DCPS data in Chapters 5 and 6 also indicates higher presence (availability) and utilization of M/WBEs in this procurement category. These findings also appear to be consistent with the civilian labor force data, which reflects higher levels of minority

employment in the Construction fields, which most closely correlates to Maintenance and Maintenance-Related Services.

African Americans lagged behind in employment across all categories. Asian Americans reflected their highest levels of employment in Professional Services, particularly Males in STEM professions, which would portend higher levels of business formation in these areas. Even so, their availability as reflected in both RWA<sup>SM</sup> availability and Business License Available are very low, which has led to their overutilization in the Services area, based on Disparity ratios.

### D. Race Neutral

M<sup>3</sup> Consulting reviewed over seventy Management, Financial and Technical Assistance providers, along with Chambers of Commerce and other networking organization, primarily in Miami-Dade County.

M<sup>3</sup> Consulting found that, while these organizations had some impact on improving S/MBEs and M/WBEs management skills, access to capital, and greater exposure to the larger business community, S/MBEs and M/WBEs still face difficulty in gaining access to public and private sector contracting opportunities. Additionally, while there have been some efforts to address capacity in the Tri-County Area, in general, the slow growth in increased capacity remain an issue. Hispanic American-owned firms may be the exception to this general rule for M/WBEs. While race and gender-neutral efforts may have contributed in some degree to increased capacity and participation in contract awards, race and gender-neutral programs alone have not been fully effective in increasing availability, capacity or utilization of S/MBEs and M/WBEs.

## E.4 RECOMMENDATIONS

In light of the findings discussed in the previous chapters and the conclusions above, M<sup>3</sup> Consulting is providing the following recommendations to M-DCPS. The recommendations contain both race and gender-neutral and race and gender-conscious elements. The recommendations are grouped under the following categories:

- *Crososn* Parameters for Recommendations
- Enhancements to Purchasing Procedures and Practices
- Identification of Race and gender-Conscious Goal Possibilities

These recommendations consist of a listing of pertinent options from which M-DCPS may select in narrow tailoring its efforts to the findings of this report. The options combine agency specific and best practices recommendations that are legally defensible in light of the factual findings of this study. M-DCPS should consider adoption of those recommendations that are considered most appropriate in terms of cost, resources, likely effectiveness, community acceptance and organizational feasibility.

### **E.4.2 ENHANCEMENTS TO PROCUREMENT AND S/MBE and M/WBEs PROCEDURES AND PRACTICES**

Below are recommendations to M-DCPS for organizational, cultural, structural and programmatic changes that will lead to transformative and sustainable change in M-DCPS' procurement operations and that will bring M-DCPS into regulatory compliance and alignment with best practices.

#### **A. Organizational Recommendations**

1. **Change inclusion focus from programmatic (*compliance* with S/MBE and M/WBE regulations) to organizational (*commitment* to inclusive procurement environment)**
  - a. Ensure leadership commitment and the articulation organization-wide of that commitment;
  - b. Address organizational and organizational culture issues impacting the effective implementation of M/WBE and S/MBE programmatic initiatives and procurement operations;
2. **Ensure an inclusive procurement environment which should incorporate the following elements:**
  - a. **Mission Driven**—The procurement and OEO objectives are tied directly to the overall vision, mission and goals of M-DCPS.
  - b. **Opportunity Driven**—OEO, along with Procurement Management Services, is driven by M-DCPS' opportunities—identifying them, understanding them, managing them, communicating them.
  - c. **Relationship Driven**—With the foundation that being opportunity driven provides, OEO and M-DCPS will be in the relationship development business. PMS and OEO will know its businesses that are capable of doing M-DCPS' work and ask the business community to share its goal of inclusive economic development.
  - d. **Data Driven**—Sound data and fully integrated systems will provide senior management with the information it needs to report on successfully meeting its

- objectives and maximizing economic development, equity, organizational performance, along with the other objectives established by the Superintendent.
3. **Provide Procurement and M/WBE training and development to all Procurement, School Site Staff, Departmental Staff and OEO Staff on Inclusive Procurement and M/WBE Program Operations:**
    - a. To ensure all persons engaged in procurement activity have the appropriate baseline of knowledge, skill and understanding of M-DCPS commitment to inclusive procurement; and,
    - b. To allow Chief Procurement Officer and OEO Director to train on higher level negotiating strategies and tactics in the various procurement categories and for particular types of goods and services that can be deployed.
  4. **Fully implement current S/MBE and M/WBE Programmatic Initiatives before making further programmatic adjustments.**
  5. **Develop Budgeting, Forecasting and Scheduling for each procurement category that includes:**
    - a. Type of possible opportunities at prime and subcontractor levels, as well as formal and informal levels;
    - b. Funding source; and,
    - c. Timeframe that opportunity may be available.
  6. **Ensure that Decision-Making within M-DCPS can be monitored, using an EEO Applicant Flow model equivalent**
    - a. Develop ability to track procurement spend in a manner that highlights decision-making points (selection, evaluations, contract changes) to ensure decisions by M-DCPS and its prime contractors/prime consultants are being made in a non-discriminatory manner. RWA<sup>SM</sup> and Disparity Analysis tracking and compliant reporting should include the following<sup>17</sup>:
      - i. Potential Availability from D&B Firms, Firms Receiving Building Permits and/or Business License, certified M/WBEs and S/MBEs, trade organization membership; on-line data bases
      - ii. Registered Vendors, Plan Holders, Pre-Qualified Vendors
      - iii. Bidders and Sub-bidders (inclusive of quotes)
      - iv. Awardees and Payees and Sub-awardees and Sub-payees

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<sup>17</sup> Note EEO standard: 29 CFR §1607.4.D. — “Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group’s representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.”



- v. Difference between prime and subcontracting opportunities; vendor performance
- vi. Contract terminations, for convenience and for cause; subcontractor substitutions

### **B. S/MBE and M/WBE Recommendations**

1. **Consider Breaking Down Hispanic-Owned Firms by Sub-ethnicity**
  - a. To determine if the experience of Cuban American-owned businesses is different from Other Hispanic American-owned business; and,
  - b. To utilize data to further narrowly tailor findings and conclusions.
2. **Monitor Contracts for Issue of Concentration to ensure that**
  - a. The same Non-M/W/SBEs, S/MBEs and M/WBEs are not securing a significant percentage of M-DCPS contracts; and,
  - b. The same S/MBEs and M/WBEs are not accounting for a significant percent of M-DCPS S/MBEs and M/WBEs participation.
3. **Promote S/MBE and M/WBE Participation at the Prime Contractor Level**
  - a. Identify prime-level procurement opportunities where a significant pool of S/MBEs and M/WBEs are available;
  - b. Establish prime-level participation targets to ensure that M-DCPS is focused on securing participation at the prime level, as well as subcontracting level;
  - c. Improve procurement forecasting to allow for inclusive planning, matchmaking and outreach;
  - d. Utilize race and gender-conscious initiatives, such as goals, evaluation factors, joint venture incentives, price preferences, targeted solicitation;
  - e. Increase the utilization of S/MBE set-asides and sheltered market opportunities, where S/MBE availability supports doing so;
  - f. Provide notice of small business opportunities (below \$50,000) and ensure that S/MBEs and M/WBEs are included in pool of firms being solicited;
  - g. Consistently review pool of S/MBEs and M/WBEs sub-bidders and subcontractors to determine those that have done a significant level of subcontracting with M-DCPS and/or other public agencies, thereby building a track record to support prime level awards;
  - h. Unbundle contracts into commercially viable units;
  - i. Optimize joint ventures, develop and encourage mentor/protégé program, recognize prime opportunities for distributors;

- j. Review and revise all technical specifications to exclude proprietary language that discourage S/MBEs and M/WBEs from bidding; and,
  - k. Develop evaluation mechanisms for measuring M-DCPS senior management commitment and staff's efforts toward S/MBE and M/WBE participation in M-DCPS contracting opportunities.
4. **Increase Success of Small Business Set-Asides and Sheltered Market Projects**
- a. Consistently establish S/MBE goals, small business set-asides, and sheltered market projects;
  - b. Forecast and publish annually list of anticipated small business purchases on website, based on current and historical purchases to minimize small business need to consistently check for upcoming bids;
  - c. Ensure that M-DCPS has strong relationships with MT&A providers who are in constant communication with S/MBEs and M/WBEs;
  - d. Provide notice of small business opportunities on its website and/or through DemandStar;
  - e. Allow for online submission of quotes and bids; and,
  - f. Work collaboratively with and provide incentive to (where allowable) prime vendors to refer small business capable of performing small prime contracting opportunities;
5. **Develop specific procedures for verifying, counting and tracking the participation of S/MBEs and M/WBEs in Joint Ventures, Mentor-Protégé, and Distributorships**
6. **Develop Effective Matchmaking and Outreach Programs**
- a. Coordinate matchmaking sessions with construction schedules and plans, forecast release and/or solicitation schedule. In many instances, matchmaking sessions follow pre-bid conferences. However, matchmaking sessions should ideally be utilized to identify available firms for particular projects in *planning stages*, when prime contractors are building their teams. While not called matching sessions, the federal government often allows vendors to provide qualification information in pre-bid research to determine the level of competitiveness it can expect once the bid is let.
  - b. Focus on specific commodity areas in the three procurement categories allowing vendors specializing in specific goods and services to have the opportunity to meet with buyers responsible for those commodities.
  - c. Buyers and contract specialists should have procurement projections such that they can discuss specific upcoming opportunities and the requirements and procurement mechanisms that will be utilized to procure the good or service. This

- specificity is the key factor that distinguishes matchmaking sessions from outreach and vendor fairs.
- d. Identify informal and formal opportunities during the matching session so that vendors can determine where they have the greatest likelihood of successfully marketing to M-DCPS.
  - e. M-DCPS' legal counsel should consider the legality of including responsiveness to matchmaking efforts as a factor of good-faith under M-DCPS' M/WBE initiatives.
  - f. Focus outreach efforts on expanding the total vendor and bidder pools to include potentially available firms from sources, such as other agency certified lists, business license data and Dun & Bradstreet (D&B) lists.

### **E.5 IDENTIFICATION OF RACE AND GENDER-CONSCIOUS GOAL POSSIBILITIES**

The actual setting of legally defensible M/WBE goals is a policy decision that requires action by M-DCPS. M-DCPS can establish overall M/WBE policy goals that then may be used by employees with buying authority. M-DCPS can then develop an action plan that specifies procedure, program and goal improvements that will be made and the timeline allocated for those tasks.

#### **E.5.1 Establishment of Race- and Gender-Conscious Goals**

The existence of established goals is an effective mechanism for establishing objectives for M-DCPS and in achieving the desired outcome, when effectively implemented. If operations are inflexible, it falls into a quota. The annual goal should be utilized by M-DCPS to periodically evaluate the effectiveness of its program and its project-specific efforts, as well as to gauge if it is appropriate to increase or decrease the mix of more aggressive remedies. In order to be legally defensible, the annual goal should be a *minimum achievable standard* for M/WBE inclusion and not a maximum barometer of exclusion.

In certain categories and for certain groups, race and gender-conscious means are supportable activities toward the achievement of established goals, based on the findings of statistically significant disparity. These categories are repeated here for convenience and include:

<b>Table E.8. Categories for Race/Ethnicity/Gender-Conscious and Race/Ethnicity/Gender-Neutral Means of Addressing Disparity By Procurement Type</b>		
	<b>Race and gender-Conscious</b>	<b>Race and gender-Neutral</b>
<b>Goods &amp; Supplies</b>	<ul style="list-style-type: none"> <li>• African American</li> <li>• Asian American</li> <li>• WBE</li> </ul>	<ul style="list-style-type: none"> <li>• Hispanic American</li> </ul>
<b>Maintenance and Maintenance-Related Services</b>	<ul style="list-style-type: none"> <li>• African American</li> <li>• Asian American</li> <li>• WBE</li> </ul>	<ul style="list-style-type: none"> <li>• Hispanic American</li> </ul>
<b>Services</b>	<ul style="list-style-type: none"> <li>• African American</li> <li>• WBE</li> </ul>	<ul style="list-style-type: none"> <li>• Asian American</li> <li>• Hispanic American</li> </ul>

Source: M<sup>3</sup> Consulting; Based on Level 2 RWA<sup>SM</sup> Availability and PO Utilization

As significant disparity is eliminated in the race and gender-conscious categories, the utilization of race and gender-neutral means in attaining the established goals should be increased. However, in all instances where race and gender-neutral means are utilized, if significant disparity re-emerges, then race and gender-conscious techniques can be utilized on a non-permanent basis to correct identified disparities.

While M-DCPS should utilize race and gender-neutral means to address participation of groups where there is no statistically significant disparity, that does not mean or condone passive or no outreach to these groups, as significant underutilization can emerge or re-emerge with lack of focus by M-DCPS to be inclusive.

**E.6 SUMMARY**

In summary, Miller<sup>3</sup> Consulting, Inc. found that M-DCPS purchasing activities suggest that M/WBEs continue to have some difficulties obtaining significant contracts with M-DCPS. In submitting specific findings within the Disparity Study for M-DCPS, M<sup>3</sup> Consulting formulated recommendations that allow M-DCPS to rely upon race and gender-conscious means when necessary to address ongoing hindrances to eliminate disparities, while also addressing M/WBE participation through race and gender-neutral efforts. Our economic and statistical utilization analyses could serve as part of the policy and procedure-making decisions needed to ensure enhanced and legally defensible M/WBE participation in M-DCPS' purchasing processes.