



*Market research · Policy analysis
Business strategy · Implementation*

100 Fillmore Street, 5th Floor
Denver CO 80206
303-385-8515

www.keenindependent.com

2018 CITY OF NEW ORLEANS DISPARITY STUDY Summary Report



Prepared for:

City of New Orleans
1300 Perdido Street
New Orleans LA 70112

Prepared by:

Keen Independent Research LLC
100 Fillmore Street, 5th Floor
Denver CO 80206

701 N. 1st Street
Phoenix AZ 85004

172 N. Washington Street
Wickenburg AZ 85390

In association with:

The Villavaso Group, New Orleans
Spears Group, New Orleans
Dr. Silas Lee & Associates, New Orleans
Lucas Díaz, New Orleans
Holland & Knight, Atlanta, Georgia
Abaci Research & Consulting, Bastrop, Texas

Summary Report

April 2018

CITY OF NEW ORLEANS 2018 DISPARITY STUDY SUMMARY REPORT

The 2018 City of New Orleans Disparity Study examines whether there is a level playing field for minority- and women-owned businesses in City contracts, and how the City can increase opportunities for small businesses, including minority- and women-owned companies. Keen Independent Research LLC (Keen Independent) completed the study for the City. This Summary Report and twelve appendices provide results. The ten key conclusions from the study are:

1. There was a strong need to conduct the 2018 City of New Orleans Disparity Study.
2. Because there is substantial availability of minority- and women-owned businesses in the New Orleans metropolitan area, one would expect high utilization of minority- and women-owned businesses (MBE/WBEs) in the marketplace and in City procurement.
 - ▶ 44 percent of local businesses available for City work are MBE/WBEs.
 - ▶ MBE/WBEs might be expected to receive 41 percent of City contract dollars if there were a level playing field for minority- and women-owned firms.
3. Analysis of the New Orleans marketplace suggests that there is not a level playing field for minority- and women-owned businesses.
 - ▶ There is evidence of disparities for people of color and women in entry and advancement, business ownership, access to capital and business success.
 - ▶ There are substantial disparities in the utilization of MBE/WBEs.
 - ▶ There is qualitative evidence of discrimination against minority and female business owners.
 - ▶ Without City action, there would be disparities in MBE/WBE utilization in City contracts.
4. To avoid being a passive participant in marketplace discrimination, there is a need for City efforts to assist minority- and women-owned companies in its procurement.

However, race-conscious programs are subject to legal challenge based on the equal protection clause in U.S. and state constitutions. Gender-conscious programs can be challenged as well.
5. The City currently operates a program that determines eligibility based on factors other than race or gender.
 - ▶ To achieve its overall goals for MBE/WBE participation, the City operates the State and Local Disadvantaged Business Enterprise (SLDBE) Program.
 - ▶ To be certified as an SLDBE, a firm must show that it is socially and economically disadvantaged. Determination of social disadvantage is not based solely on race, ethnicity or gender.
 - ▶ The City's current operation of the SLDBE Program is relatively new.

6. In recent years, overall MBE/WBE utilization on City contracts roughly matched what would be expected based on the availability analysis. This was due in part to some very large contracts going to a few MBE/WBEs.
7. Digging deeper, there were disparities in utilization in City contracts for some MBE/WBE groups for some types of work, including Asian American- and Hispanic American-owned firms, overall, and African American-owned construction firms.
8. On types of City contracts where the subcontracting goals program was not typically applied, there were substantial disparities between utilization and availability for each minority group and for white women-owned firms.
9. The City might consider adding stronger measures to its SLDBE Program, including programs focused on vendors, prime contractors and consultants.
 - ▶ The City should change the name of the program to the Socially Disadvantaged Business Enterprise Program (SDBE), the Historically Underutilized Business (HUB) Program, or other name.
 - ▶ As much as possible, there should be centralized, unified certification of firms eligible for other local programs using these same criteria.
 - ▶ The City should consider additional measures that specifically assist vendors, consultants, prime contractors and others directly bidding on procurements.
 - ▶ The City should further expand its outreach to groups that showed disparities in its contracts, especially Asian American- and Hispanic American-owned companies and African American-owned construction firms.
10. To maintain defensibility of the Program, the City will need to closely monitor its operation and results in the future, and make additional changes if needed.

These conclusions are further discussed below and in the twelve supporting appendices of the report.

1. There was a strong need to conduct the 2018 City of New Orleans Disparity Study.

For a number of years, community members have urged the City of New Orleans to commission an independent review of minority- and women-owned business participation in City contracts and in the broader New Orleans marketplace. Leveling the playing field for minority- and women-owned companies in the New Orleans marketplace is also a concern for other local public, private and not-for-profit organizations. Some initiatives will require coordination and support from these organizations as well.

The City funded such a study and requested competitive proposals to conduct that work. Keen Independent performed the disparity study with local subconsultants The Villavaso Group, Spears Group, Dr. Silas Lee & Associates and Lucas Díaz, and national subconsultants Holland & Knight and Abaci Research & Consulting.

Keen Independent went beyond City reports to compile raw data about MBE/WBE utilization and availability in City contracts. The study team also interviewed a cross-section of business owners, trade associations and other community members. Study results provide a tool for the City to:

- Further improve existing efforts that have a positive effect on utilization of minority- and women-owned firms in City procurement;
- Introduce new measures where there are gaps in City assistance or where existing programs are insufficient; and
- Retain a sound legal foundation for its programs.

The scope of the disparity study was City of New Orleans procurements from 2012 through 2016. Combined, Keen Independent examined more than \$1 billion worth of City contracts. The study team reviewed additional Office of Supplier Diversity utilization reports to City Council to determine DBE utilization on Restoration Tax Abatement projects.

The study did not include the New Orleans Aviation Board or the New Orleans Sewerage and Water Board (those two agencies were not study participants). In the public meetings held as part of this study, there were many comments indicating that these two boards as well as other organizations are expected to participate in efforts such as this disparity study, and that remedying the effects of discrimination should be a priority for the entire public and private sector in the New Orleans area.

It is important to note that the agencies for which DBE participation is monitored in the City's annual reports now includes the Aviation Board, the Sewerage and Water Board, the Redevelopment Authority and the Housing Authority, as well as organizations such as the Canal Street Development Corporation, French Market Corporation, Industrial Development Board, New Orleans Building Corporation and New Orleans Business Alliance.

In the public comments received as part of this study, there was a strong sense that these efforts by the City were relatively new and that it had not been a strong partner with the minority business community in past decades. Although those new efforts were appreciated, members of the historically underutilized business community remained cautious. There was also a sense that City procurement in past decades had not been open and transparent, and that "who you knew" was important in obtaining a government contract. Some members of the community said this was true of prime contractor-subcontractor relationships as well.

The City and other public agencies would benefit by regularly holding meetings with an outside review group, or creating a formal review body, to review procurement methods, examine when exceptions to the programs are made (including waivers), and share program results. Such a group would examine the accuracy and comprehensiveness of how utilization of minority- and women-owned businesses is tracked and the detailed results of those utilization analyses.

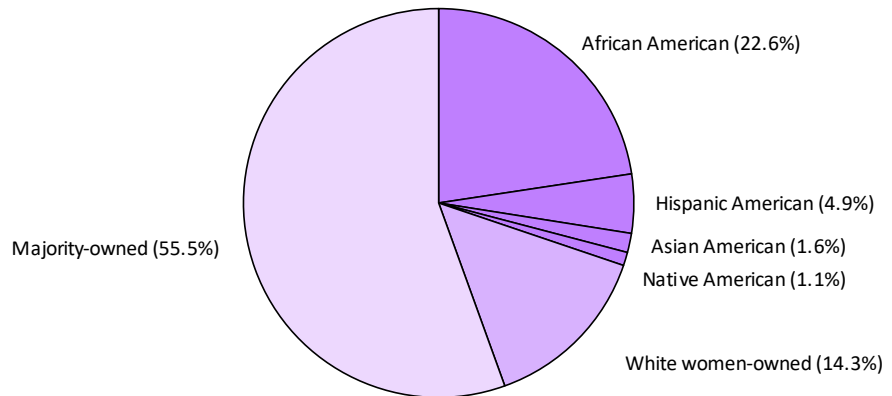
2. Because there is substantial availability of minority- and women-owned businesses in the New Orleans metropolitan area, one would expect high utilization of MBE/WBEs in the marketplace and in City procurement.

2-a. About 44 percent of local businesses available for City work are MBE/WBEs. Of the companies in the New Orleans metropolitan area available for City contracts, 44 percent are minority- or women-owned businesses. This indicates a very large MBE/WBE business community, which is consistent with other research.¹ The share of firms that are MBE/WBEs is similar to the Atlanta metropolitan area.²

Availability results come from Keen Independent’s 2017 survey of firms in the New Orleans metropolitan area. The survey contacted firms that (a) had previously expressed interest in City procurement, or (b) were identified by Dun & Bradstreet as performing types of work that were relevant to City contracts.³ (See Appendix A for definitions of terms used in this report.) Figure 1 shows that 30 percent of those companies are minority-owned and that 14 percent are white women-owned. Appendix D explains these results.

Figure 1.
Number of businesses in the New Orleans metropolitan area available for City procurement

Source:
Keen Independent 2017 availability survey.



¹ The federally-defined New Orleans-Metairie Metropolitan Statistical Area includes Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany parishes. U.S. Census data for the metropolitan area indicate that 30 percent of business owners in study industries were people of color and 16 percent were non-minority women.

² About 43 percent MBE/WBE based on Keen Independent’s 2015 disparity study for the City of Atlanta (Keen Independent Research, 2015 City of Atlanta Disparity Study, October 2015). Availability results include certified and non-certified firms.

³ The study team attempted to reach each firm on the combined list. Because there was no sampling of firms when preparing the list of firms to be contacted in the availability survey, this approach is sometimes called a “custom census.” The study team contacted companies via email and through telephone calls. Companies could also complete the survey through a link on the disparity study website (which allowed any firm to be surveyed). Through these methods, the study team successfully contacted more than 5,000 establishments in the metropolitan area. After screening firms for qualifications and interest in City procurement and other factors, there were 1,378 firms included in the availability analysis.

2-b. MBE/WBEs might be expected to receive 41 percent of City contract dollars if there were a level playing field for minority- and women-owned firms. The high benchmark for MBE/WBE utilization in City contract dollars is further evidence of the size of the local MBE/WBE business community in fields pertaining to City procurement.

The study team calculated this availability benchmark based on the relative availability of MBEs and WBEs for specific City contracts and subcontracts.⁴ If MBE/WBEs that were available for a contract had the same chance of successfully receiving it as majority-owned firms available for that contract, MBE/WBEs would have received about 41 percent of City contract dollars over those three years.

Figure 2 provides an example of an availability calculation for a representative City procurement. Once availability calculations were performed for each procurement, Keen Independent weighted the results by size of procurement and combined them. Appendix D explains these calculations in more detail.

Figure 3 shows the percentage of City contract dollars that might be expected to go to each MBE group and to WBEs for 2014 through 2016 based on this analysis. The results of the availability analysis in Figure 3 differ from Figure 1 because of differences in relative MBE/WBE availability for specific types of work and sizes of contracts.

Figure 3.
Percentage of City contract dollars that might be expected to go to MBE/WBEs based on availability analysis, 2014-2016

Source:
Keen Independent availability analysis using City contracts and subcontracts for 2014-2016 and 2017 availability survey data.

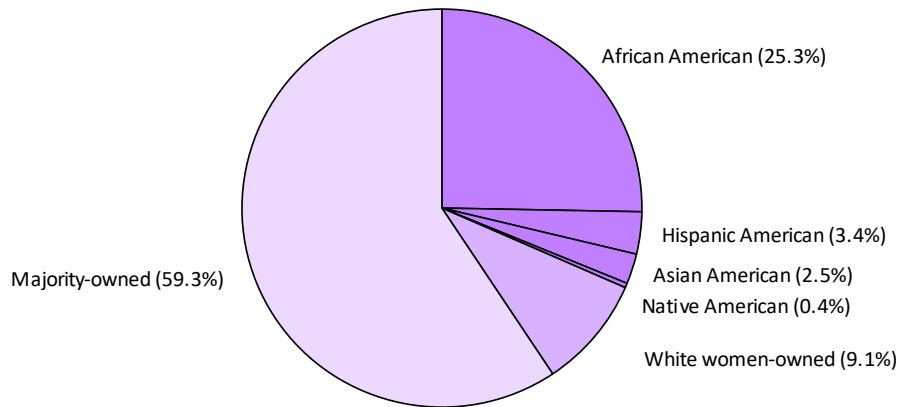


Figure 2.
Example of an availability calculation

One of the City contracts examined was for landscape maintenance (\$85,423). To determine the number of MBE/WBEs and majority-owned firms available for that contract, the study team identified businesses in the availability database that:

- Reported qualifications and interest in working on City contracts;
- Indicated that they performed landscape maintenance; and
- Reported bidding on work of similar or greater size in the past five years.

There were 30 businesses in the availability database that met those criteria. Of those businesses, 16 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 53 percent (i.e., 16/30 = 53%).

⁴ 1,260 City procurements, including subcontracts, from 2014 through 2016 that were included in the disparity study, as described in Appendix C.

3. Analysis of the New Orleans marketplace suggests that there is not a level playing field for minority- and women-owned businesses.

More than 92 percent of City of New Orleans procurement dollars examined in the study were made with firms with locations in the New Orleans metropolitan area marketplace (see Appendix D). Therefore, understanding conditions for minority- and women-owned firms in the New Orleans metropolitan area marketplace provides important context for the disparity study.

3-a. There is evidence of disparities for people of color and women in entry and advancement, business ownership, access to capital and business success in the New Orleans marketplace.

There is evidence that there would be more minority- and women-owned firms in the New Orleans construction, professional services, goods and other services industries but for the effects of past discrimination in employment and advancement in these industries and other factors affecting business formation. Data also indicate that, once companies are formed, there is not a level playing field for minority- and women-owned businesses in the New Orleans metropolitan area.

Entry and advancement as employees into the construction, professional services, goods and other services industries. Based on U.S. Census Bureau data, people of color are 44 percent of the New Orleans metropolitan area workforce. Nearly one-half (48%) of workers in the metropolitan area are women. However, minorities and women do not appear to have the same opportunities to enter certain industries as non-minorities and men. Examining the New Orleans construction industry as one example, evidence included the following.

- Relatively few African Americans working in construction (only 21% of employees were African Americans based on 2011-2015 U.S. Census data, compared with 31% of metro area workers overall).
- Large differences in employment opportunities for people of color between construction trades (for example, minorities were two-thirds of laborers but only one-third of workers in trades such as plumbing).
- Almost complete exclusion of women from certain trades (for example, there were no female electricians, plumbers, masons or roofers among the 291 workers in the Census Bureau sample data for the New Orleans metropolitan area for 2011–2015).
- Differences in opportunities for advancement of people of color and women in industries such as construction (for example, African Americans working in construction reached a manager level at one-half the rate of non-minorities, and Latinos reached a manager level at about one-quarter the rate of non-minorities).

Appendix E of this report provides detailed information about entry and advancement for workers in the New Orleans marketplace. Appendix I describes the data sources used.

Disparities in business ownership. There were disparities in the rates of business ownership for people of color and women working in the New Orleans construction, professional services, goods and other services industries. Further statistical modeling of business ownership rates showed that the following groups did not own businesses at the same rate as non-minorities and men with similar education, age and other characteristics:

- African Americans in the construction, goods and other services industries;
- Asian Americans in the professional services industry;
- Hispanic Americans in the construction industry; and
- Women in the construction and professional services industries.

Appendix F of this report presents Keen Independent’s analysis of business ownership data.

Disparities in access to capital. Keen Independent researched whether minorities and women have equal access to sources of capital to start and expand businesses (see Appendix G for more detail).

Wealth created through homeownership can be an important source of funds to start or expand a business. Keen Independent identified unequal access to home equity and home mortgages for people of color in the New Orleans metropolitan area. Key results include the following.

- Home equity is an important source of funds for business start-up and growth. Fewer African Americans and Hispanic Americans own homes compared with non-Hispanic whites. People of color who do own homes tend to have lower home values.
- High-income African Americans applying for conventional home mortgages in the New Orleans metropolitan area were more likely than high-income non-Hispanic whites to have their applications denied. And, among all African Americans receiving home loans, the share that was subprime loans was much higher than for other groups.

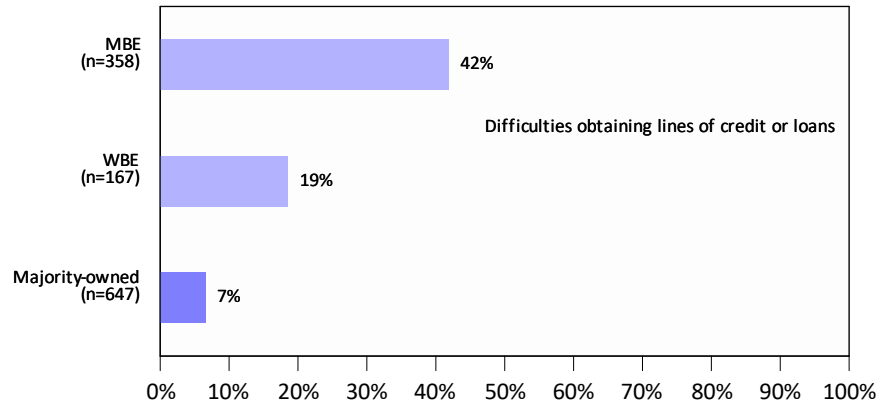
Any race- or gender-based barriers in the application or approval processes of business loans could also affect the formation and success of minority- and women-owned firms. The Federal Reserve Board’s Survey of Small Business Finances (SSBF) provides the most comprehensive national source of information on this issue. Data from 2003 are the most recent available from the SSBF.⁵ The study team examined data for the West South Central Region (where New Orleans is located). Results included the following:

- 17 percent of business loans for minority- and women-owned firms were denied compared with 2 percent for non-minority male-owned companies;
- Among firms that needed loans, MBE/WBEs were twice as likely as majority-owned firms to not apply for those loans due to fear of loan denial; and
- The loans that were approved for MBE/WBEs were one-quarter the size of loans for white male-owned businesses.

⁵ More recent national data are consistent with 2003 SSBF results, as discussed in Appendix G.

As part of the availability surveys conducted in summer 2017, Keen Independent asked questions related to potential barriers in the local marketplace. The first question was, “Has your company experienced any difficulties in obtaining lines of credit or loans?” As shown in Figure 4, 42 percent of minority-owned businesses indicated they had experienced such barriers compared with just 7 percent of majority-owned companies. (Note that “majority-owned” firms are those that are not minority- or women-owned.)

Figure 4.
Percent responding “Yes” to, “Has your company experienced any difficulties in obtaining lines of credit or loans?” for MBEs, WBEs and majority-owned firms qualified and interested in public sector work



Source:
2017 availability surveys.

Keen Independent also asked companies that had obtained or tried to obtain a bond for a project if they had difficulties obtaining that bond. MBEs (42%) and WBEs (21%) were much more likely than majority-owned firms (7%) to indicate they had experienced such difficulties.

Business failure rates. Keen Independent analyzed many different measures of the success of minority- and women-owned firms in the local marketplace. These data showed additional disparities for minority- and women-owned firms. For example, the business failure rate for MBEs was higher than non-minority-owned companies in Louisiana.

3-b. There are substantial disparities in the utilization of MBE/WBEs in the New Orleans marketplace.

Keen Independent analyzed different data sources indicating whether or not there were disparities in the utilization of MBE/WBEs in the construction, professional services, goods and other services industries in the New Orleans marketplace.

2011-2015 U.S. Bureau of the Census data for the New Orleans metropolitan area. Results based on U.S. Census data show disparities in earnings for:

- Minority-owned construction, professional services, goods and other services firms; and
- Women-owned professional services, goods and other services businesses. (Appendix H of the report examines these results in detail.)

2017 availability survey data for the New Orleans metropolitan area. Firm revenue data collected as part of the 2017 availability survey show disparities for:

- Minority-owned construction, professional services, goods and other services firms; and
- White women-owned professional services and goods businesses (see Appendix H).

2012-2016 utilization of MBEs and WBEs as general contractors on public and commercial construction projects in the New Orleans metropolitan area. Keen Independent analyzed Dodge Reports data for 2012-2016 to develop estimates of MBE/WBE participation as general contractors across commercial and public sector contracts (not including City contracts). Appendix C describes these data and Appendix L provides disparity results.

- MBE general contractors received only 2.6 percent of the contract dollars for public and commercial projects in the New Orleans metropolitan area, less than 14.5 percent that might be expected from the availability of minority-owned general contractors for this work. (Only 1 percent of these contract dollars went to African American-owned companies.)
- Utilization of WBEs as general contractors was 4.3 percent for these projects, less than the 5.5 percent that might be expected based on the relative availability of white women-owned firms for these contracts.

2012-2016 utilization of MBEs and WBEs as design firms on public and commercial construction projects in the New Orleans metropolitan area. Dodge Reports data also provided information on the architecture and engineering (A&E) firms used for public and commercial construction projects in the metropolitan area (but not the dollar value of those contracts). Based on these data:

- 6 percent of the design contracts for those projects went to MBEs, much less than the 20 percent that might be anticipated from the availability of MBEs for that A&E work.
- 4 percent of the design contracts went to WBEs, also a substantial disparity given the 13 percent availability of white women-owned firms for these contracts.

2012-2016 utilization of MBEs and WBEs as construction contractors on public and commercial construction projects requiring building permits within New Orleans city limits. Keen Independent also compiled names of contractors listed in the building permits for public and commercial construction projects within New Orleans city limits. (See Appendices C and L.)

- MBEs were listed as the contractor for 20 percent of those permits, less than the 34 percent that might be anticipated from the availability of MBEs for that work.
- WBEs were listed for 4 percent of those permits, also a substantial disparity given the 13 percent availability of white women-owned firms for those projects.

3-c. There is qualitative evidence of discrimination against minority and female business owners within the New Orleans marketplace.

In-depth interviews, input from telephone surveys, comments from public meetings and other qualitative information the study team collected indicated evidence of discrimination affecting minority and female business owners in the New Orleans metropolitan area marketplace. The study team obtained input from African American, Latino, Asian American, Native American, female and white male business owners and managers, trade association representatives and other individuals. About 500 people provided input. Appendix J reviews this information, which is summarized below.

Discrimination affecting the number of MBE/WBE companies in business. Some of the qualitative evidence indicates that there are fewer minority- and women-owned firms in business today in the New Orleans area than there would be in a discrimination-free environment.

- Interviewees reported exclusion of minorities in certain white male-dominated industries, and the perception that “skin color” gave non-minorities an advantage in these industries. Some interviewees said that minority and women business owners are not invited to “sit at the table.”
- A number of women brought up the challenge of “not being taken seriously” in “male-dominated fields.” “Being a female in a man’s world is a challenge.”

Difficulties obtaining financing and bonding. Access to capital was discussed by many interviewees.

- A large number of minority- and women-owned businesses interviewed reported access to financing as a “primary barrier” to starting and operating their businesses. Some said that financing was nonexistent for African Americans and other minority business owners. Being “a black business” became a “stigma,” according to one interviewee. An Asian American female business owner reported not having access to the capital needed to operate her firm.
- Many business owners reported self-financing their businesses with personal credit cards and other savings. One interviewee said that even “with contracts in hand,” minority businesses cannot secure line of credits or other financing.
- Many construction business owners interviewed reported difficulty securing bonding to compete in the New Orleans marketplace. For example, a focus group participant said that bonding was the deciding factor that limited minority-owned firms to subcontractor roles and prevented them from expanding into the prime contractor arena. A Native American business owner said that acquiring bonding was a key challenge for his firm.

If business size and personal net worth are affected by race or gender discrimination, such discrimination also impacts the ability to obtain business financing. This can have a self-reinforcing effect, as many interviewees noted the importance of capital and credit to pursue larger contracts.

Difficulties establishing business relationships. Existing relationships are important to receiving work opportunities according to many interviewees.

Interviewees frequently reported the following:

- Many minority and female business owners had comments such as “I’m not even sitting at the table.”
- “Favorites” in public sector contracts are difficult to dislodge.
- Many minority, female and white male interviewees reported the presence of a “good ol’ boy” network in New Orleans that negatively affects opportunities for minority- and women-owned firms. A Hispanic American business owner commented, “It is all about who you know.” When asked about any closed networks, a white female business owner said, “Absolutely ... they keep the money and the power in the same pocket.” One interviewee said, “There’s definitely a club there, they know each other ... deals are cut on the golf course.” Another comment was, “In Louisiana, blackballing is real. They’re calling the good ol’ boys to say, ‘Is he in or is he out?’”

Stereotyping and other negative treatment. There was some evidence that some prime contractors or customers held negative stereotypes concerning minority- and women-owned firms, and sometimes treated minority- and women-owned companies differently from other firms.

- Some interviewees reported that the stereotype is that MBE/WBEs and other small businesses “will not deliver.” Some interviewees said that they constantly had to “jump through hoops” because they were minority or female business owners.
- One business owner reported that primes had strategies to keep women and minority business owners “in their place.” Some interviews from certified MBE/WBE businesses reported experiences with “retaliation,” “bullying” and “blackballing” by primes.
- Another business owner reported a past instance of a federal agency revoking a contract he had, directly saying to him that they did not want a [black person] have the contract.
- Other interviewees reported hearing racial slurs and gender-based insults used against minority and female business owners.

Barriers affecting local small businesses in general. Some of the interviewees commented on disadvantages related to the size of their companies. For example:

- Lack of knowledge of business operations at start-up;
- Difficulties marketing and identifying contract opportunities;
- “Cumbersome” paperwork that often comes with public sector work;
- Large size and scope of public sector contracts and subcontracts that present a barrier to bidding;
- Public agencies that favor bidders and proposers they already know;
- The “catch-22” for many small businesses of needing experience to get work, but not being able to “get a foot in the door” to obtain that experience; and
- Slow payment or non-payment by owners or by prime contractors, which can be especially damaging to small companies.

Also, interviewees reported that after Hurricane Katrina, there was much more competition from large companies coming into New Orleans for work, which persists today.

Because minority- and women-owned firms are disproportionately small, MBE/WBEs may be more likely to experience difficulties facing any small business in the New Orleans marketplace.

3-d. Without City action, there would be disparities in MBE/WBE utilization in City contracts.

Based on the information in the disparity study, there is strong evidence that the playing field is not level for minority- and women-owned firms in the New Orleans metropolitan area marketplace. The results suggest that, without City initiatives such as the SLDBE Program, there would be disparities in MBE/WBE utilization in City contracts.

4. To avoid being a passive participant in marketplace discrimination, there is a need for City efforts to assist minority- and women-owned companies in its procurement.

However, race-conscious programs are subject to legal challenge based on the equal protection clause in U.S. and state constitutions. Gender-conscious programs can be challenged as well.

The City of New Orleans enters contracts with firms operating within the New Orleans metropolitan area marketplace. From the results of the marketplace analyses discussed above, it appears that there are disparities for minority- and women-owned firms absent actions to address those disadvantages.

Throughout the country, state and local governments have enacted minority- and women-owned business enterprise programs to ensure that they are not passive participants in private marketplace discrimination. Such programs can be subject to legal challenge.

In its *Croson* decision, the U.S. Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment.⁶ The U.S. Supreme Court applied the "strict scrutiny" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination and that any program adopted by a local or state government must be "narrowly tailored" to achieve the goal of remedying the identified discrimination.

Article I, Section 3 of the Louisiana Constitution provides that no law shall discriminate against a person because of race or sex.⁷ The Louisiana Constitution, according to the courts, provides greater equal protection rights than that of the United States Constitution.⁸ Therefore, any race- or gender-conscious programs enacted by state and local governments in Louisiana could also be challenged based on the Louisiana Constitution.

The law firm Holland & Knight LLP prepared a review of relevant legal standards and court cases (see Appendix B of this report).

⁶ 488 U.S. 469 (1989).

⁷ La. Const., Art. I, Sec. 3.

⁸ *La. Associated Gen. Contractors, Inc. v. State of Louisiana, et.al*, 669 So. 2d 1185 (La. 1996).

5. The City currently operates a program that determines eligibility based on factors other than race or gender.

The City has had a program to assist small businesses, including MBE/WBEs, for many years. It made substantial changes to its program in 2014, and the following discussion relates to the City's new State and Local Disadvantaged Business Enterprise (SLDBE) Program.

5-a. To achieve its overall goals for MBE/WBE participation, the City operates the SLDBE Program. The City sets contract goals for SLDBE firms on certain contracts, and makes other efforts to encourage participation of small businesses, including MBE/WBEs.

5-b. To be certified as an SLDBE, a firm must show that it is socially and economically disadvantaged. Determination of social disadvantage is not based solely on race, ethnicity or gender.

The City's SLDBE Program is open to white male-owned companies and minority- and women-owned businesses that are socially and economically disadvantaged.

- Unlike certification as a disadvantaged business enterprise under the Federal DBE Program, a minority or female business owner is not presumed to be socially disadvantaged due to his or her race, ethnicity or gender when considered for SLDBE certification;
- The City does not approve or deny SLDBE certification based just on race or gender;
- Some of the minority- and women-owned firms that have sought certification with the City have been denied because they did not show social disadvantage; and
- In 2017, 56 of 926 companies that were SLDBE-certified were owned by white men.

Definitions of economic disadvantage under the SLDBE Program are restrictive and consider firm revenue and the inability of business owners to accumulate substantial wealth. The City's process for reviewing economic disadvantage is very similar to the Federal DBE Program.

Currently, the City only offers provisional certification to companies certified as a DBE under the Louisiana Unified Certification Program (LA UCP).

5-c. The City's current operation of the SLDBE Program is relatively new. The Office of Supplier Diversity was established in 2012, but operating procedures were not written until 2014. The program was not fully implemented until 2014-2016. As a result, City data collection concerning participation of companies in its contracts and subcontracts was more complete in 2014 through 2016 than in the start of the study period for this disparity study (2012-2013).

In addition to setting goals and enforcing them since 2014, the City operates a number of its own neutral technical assistance programs and partners with others' programs. The City has also developed bonding and access to capital programs. It is unbundling contracts, attempting to reduce or waive bonding requirements and examining alternative surety methods.

In addition to the SLDBE Program, there are many programs that assist minority- and women-owned businesses and other small businesses in the New Orleans marketplace (see Appendix K).

6. In recent years, overall MBE/WBE utilization on City contracts roughly matched what would be expected based on the availability analysis.

There was no overall disparity between MBE/WBE utilization and availability.

MBE/WBEs received 47 percent of the City procurement dollars the study team examined for 2014 through 2016. This level of participation exceeded the 41 percent availability benchmark for MBE/WBE participation, as shown in Figure 5.

Figure 5.
MBE/WBE utilization and availability for City procurements, 2014–2016

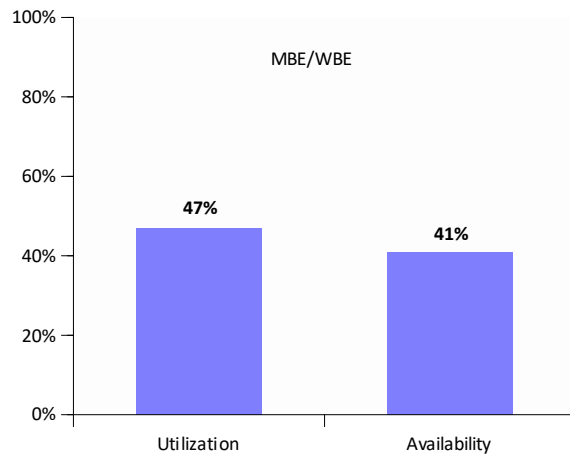
Note:

1,260 procurements examined.

Utilization based on City procurements above \$10,000; does not include those below \$10,000, which are typically made through purchase orders (but includes subcontracts regardless of size).

Source:

Keen Independent utilization and availability analyses for City procurements.



The 2014 through 2016 MBE/WBE utilization of 47 percent is considerably higher than what Keen Independent was able to measure from existing City data for 2012 through 2013 (29% MBE/WBE utilization). It is likely that the increase is due to the City’s full implementation of the new program and more comprehensive data for its contracts and subcontracts.

The MBE/WBE utilization percentages presented in the disparity study include participation of non-certified minority- and women-owned firms, which is one reason that the utilization results are higher than indicated in City reports (which only count participation of certified firms).

The overall results also reflect some very large contracts going to a few MBE/WBEs.

7. There were disparities in utilization in City contracts for some MBE/WBE groups for some types of work.

There were no disparities between the overall utilization and availability of African American-, Native American- and white women-owned firms for the City contracts examined for 2014 through 2016:

- Utilization of African American-owned firms on City contracts across industries (29%) exceeded what might be expected from the availability analysis (25%).
- Utilization of Native American-owned firms (0.5%) was in line with availability.
- Utilization of white women-owned firms across industries (14%) exceeded the availability benchmark for WBEs (9%).

This lack of overall disparity for groups such as African Americans was in part due to a few large contracts going to a single firm.

There were disparities for Asian American- and Hispanic American-owned businesses:

- Utilization of Asian American-owned firms (1%) was less than what might be expected from availability analysis (2%).
- The participation of Hispanic American-owned firms in City contracts (2%) was less than availability (3%).

Figure 6 shows overall utilization, availability and disparity results for individual MBE groups as well as white women-owned firms. As discussed in Appendix L, Keen Independent calculated a “disparity index” to gauge the size of the disparity. An index below 80 indicates that the disparity is “substantial,” according to guidance from the courts.

Figure 6.
Disparity analysis for City contracts, 2014-2016

	Utilization	Availability	Disparity index
African American-owned	29.00 %	25.29 %	115
Asian American-owned	1.00	2.45	41
Hispanic American-owned	2.30	3.43	67
Native American-owned	0.48	0.38	126
Unknown MBE	0.00		
Total MBE	32.78 %	31.55 %	104
WBE (white women-owned)	14.19	9.11	156
Total MBE/WBE	46.97 %	40.66 %	116

Note: Disparity index = 100 x Utilization/Availability.

Source: Keen Independent utilization and availability analyses for City procurements.

Keen Independent also separately examined MBE/WBE utilization and availability by industry (see Appendix L). For the City’s construction, professional services and other services procurements:

- There was a substantial disparity between the utilization (11%) and availability (27%) of African American-owned firms in construction. Among MBE/WBE groups, much of the construction work went to companies owned by white women (24% utilization).
- Utilization of Asian American-owned companies was below what might be expected from the availability for the other services contracts.
- There were substantial disparities in the utilization of Hispanic American-owned firms in each of the study industries.
- Utilization of Native American-owned companies was substantially below availability for other services industry contracts.
- White women-owned firms received only 3 percent of other services contract dollars, substantially below the 4 percent that might be expected based on availability.

8. On types of City contracts where the subcontract goals program was not applied, there were substantial disparities between utilization and availability for each minority group and for white women-owned firms.

The City's SLDBE Program primarily operates through setting contract goals on contracts with subcontract opportunities. As goods purchases typically do not involve subcontracts, this set of City procurements provides another test of whether there would be disparities in City contracts but for the SLDBE Program.

MBE/WBE utilization was 7 percent for goods contracts based on available data for procurements above \$10,000 for 2014-2016.⁹ This level of participation was substantially below what might be expected from the availability analysis for goods procurements (21%). There were disparities between utilization and availability for each MBE group and for WBEs for the City's goods purchases (see Appendix L).

9. The City might consider adding stronger measures to its SLDBE Program, including programs focused on vendors, prime contractors and consultants.

The Keen Independent study team provides the following recommendations for City consideration:

a. The City should change the name of the program to the Socially Disadvantaged Business Enterprise Program (SDBE), Historically Underutilized Business (HUB) Program, or similar name, and no longer refer to it as the State and Local Disadvantaged Business Enterprise Program. Or, the City might retain the acronym and rename the program "Small Local Disadvantaged Business Enterprise Program." The program should be revised based on the following:

- To show economic disadvantage, the City should require firms to meet the same eligibility requirements as for the Federal DBE Program, including rules concerning annual revenue, personal net worth and the ability of the owner to accumulate substantial wealth under Title 49 of the Code of Federal Regulations (CFR) Section 26.67.
- The City should restrict eligibility for the program to firms that have a location within the federally-defined New Orleans metropolitan area or that can document that they have been doing business within the local area.
- The City should discontinue reciprocity with LA UCP, and instead allow firms that have DBE certification to automatically meet the economic criteria for City certification. Those DBE-certified firms would also need to meet the requirements that they be (a) located within the metropolitan area or do business within the area, and (b) face social disadvantage as defined by the City.

⁹ Keen Independent included all information about goods procurements above \$10,000 obtained from the City, however, City data systems limited the amount of procurements provided to the study team. There were only 25 goods procurements examined for this time period.

b. As much as possible, there should be centralized, unified certification of firms eligible for other local programs using these same criteria.

- With this certification system, a firm that is certified for the City's program would be automatically eligible for other New Orleans metropolitan area programs for socially- and economically-disadvantaged firms.
- This would not affect operation or certification under the Federal DBE Program for U.S. Department of Transportation-funded contracts.

c. The City should consider additional measures that specifically assist vendors, consultants, prime contractors and others directly bidding on City procurements. These measures might include:

- Limited competition programs for small procurements (where there are at least three certified firms that might be expected to bid on the procurement). This program is similar to the SBE limited competition procurement method implemented at the New Orleans Regional Transit Authority for contracts up to \$1 million. The Airport also has authority for such a program.
- Further investment in access to capital and bonding programs to make more contracts up to \$10 million accessible to certified firms.
- New rules for construction contracts that allow subcontractors (as well as prime contractors) to bill in advance for mobilization.
- Accelerated payment of prime contractors and subcontractors on City construction contracts (and City-assisted contracts). The City might consider paying prime contractors within 20 days of receiving acceptable invoices, and requiring those primes to pay subcontractors within 7 days of receiving payment from the City. The Airport has successfully implemented these prompt payment requirements in its Terminal Expansion project. (Currently, the City follows state rules concerning prompt payment.)

d. The City should expand its outreach to groups that showed disparities, especially Asian American- and Hispanic American-owned companies and African American-owned construction firms.

- There are improvements in outreach and procurement methods that the City might consider to further open opportunities to small businesses, including MBE/WBEs.
- Especially among newer MBE/WBEs, there is continued need for outreach and education about how to learn about and bid on City procurement.

e. The City should also expand its tracking of certified firm participation and utilization of certified and non-certified minority- and women-owned firms in its contracts and subcontracts. It should carefully monitor the extent to which program benefits go to white male-owned firms that are certified under the program. Such tracking should pertain to all City procurement.

One of the issues brought up in public meetings was whether the same certified firms were repeatedly used to satisfy contract goals, which would limit the reach and positive impact of the program. The City should not only track overall dollars of participation, but also examine the number of firms participating in its contracts.

10. To maintain defensibility of the Program, the City will need to closely monitor its operation and results in the future, and make additional changes if needed.

The City will need to:

- Ensure that white male-owned firms that are socially and economically disadvantaged can continue to be certified for the program.
- Ensure that minority- and women-owned firms (and any other businesses) that are not socially and economically disadvantaged cannot be certified for the program. (For example, consider adding rules from the Federal DBE Program that deny certification for those with substantial wealth.)
- Monitor utilization to ensure that it is remedying the effects of discrimination for all groups in the future. The City is currently transitioning to an ERP procurement system that will consolidate information about its purchases. It will also include information about all subcontracts, starting in 2018. Keen Independent recommends monitoring utilization for all types of procurements, including items purchased off of cooperative contracts. This will provide the City a more complete picture of the utilization of certified firms and MBE/WBEs.

Public Participation in the Disparity Study

Keen Independent implemented an extensive public participation process and sought additional public input concerning the draft report. These activities included:

- Obtaining regular feedback from an external Oversight Committee that met with the study team about once per quarter throughout the project. The Oversight Committee included representatives of the local business community and community groups that had an interest in City contracting and programs, and small business development.
- Distribution of information to interested groups through press releases, email blasts and presentations.
- A study website that posted information about the City of New Orleans Disparity Study from the outset of the study.
- A telephone hotline and dedicated email address for anyone wishing to comment.
- Public meetings in October 2017 and in March 2018, after the release of the draft report, to obtain input from stakeholders and other interested groups.
- Through online and telephone surveys, opportunities for company owners and managers to provide information about their businesses and any perceived barriers in the marketplace (312 businesses provided comments).
- In-depth interviews and focus groups with 60 businesses, trade associations and others.

Keen Independent and the City sought public input regarding the study and draft Disparity Study report. The public was able to give feedback and provide written comments:

1. In person at two public meetings held in March 2018;
2. Through the study website;
3. Via email;
4. Through the telephone hotline; and
5. Through regular mail to Keen Independent Research.

Keen Independent reviewed information from the public meetings, telephone calls and written comments before preparing the final Disparity Study report (see the end of Appendix J). This information will aid the City in making decisions concerning continuation or enhancement of existing programs and implementation of new programs.