



STATE OF NEW YORK 2016 MWBE DISPARITY STUDY

POLICY REVIEW FINAL REPORT

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Development

VOLUME II



FOREWORD

The State of New York 2016 MWBE Disparity Study (Study) determined if a statistically significant disparity existed between the number of Minority and Woman-owned Business Enterprises (MWBE) that are ready, willing, and able to provide the goods and services that the State of New York (State) procures and the number of available market area MWBEs. The Study contains four volumes:

- I. Disparity Study
- II. Policy Review
- III. Personal Net Worth Review
- IV. Workforce Study

I. Disparity Study

Volume I of the Study analyzed the statistical significance of underutilized MWBEs at the prime contract and subcontract levels. The Disparity Study examined four industries: construction, construction-related services, non-construction related services, and commodities and other services. The prime contracts reviewed were awarded during the study period of April 1, 2010, to March 31, 2015. The prime contract and subcontract disparity findings are presented below by industry, ethnicity, and gender.

A. Prime Contract Disparity Findings

**Table 1: Construction Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction Contracts Valued \$50,000 to \$1,400,000	Construction Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Table 2: Construction-Related Services Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Contracts Valued \$50,000 to \$2,000,000	Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	No Disparity
Asian-Indian Subcontinent Americans	<i>Disparity</i>	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

Table 3: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015

Ethnicity/Gender	Non-Construction Related Services Contracts Valued \$50,000 to \$500,000	Non-Construction Related Services Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Table 4: Commodities and Other Services Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Commodities and Other Services Contracts Valued \$50,000 to \$275,000	Commodities and Other Services Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

B. Subcontract Disparity Findings

Prime contracts valued over \$250,000 were reviewed for the subcontracts awarded during the study period of April 1, 2010 to March 31, 2015. The disparity findings for construction, construction-related services, and non-construction related services subcontracts are presented below.

**Table 5: Subcontract Disparity Summary,
April 1, 2010, to March 31, 2015**

Ethnicity/ Gender	Construction	Construction-Related Services	Non-Construction Related Services
Black Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	----	----
Caucasian Females	<i>Underutilization</i>	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

C. Recommendations

Proposed race and gender-conscious remedies are presented in *Chapter 10: Recommendations and Remedies*. The recommendations are narrowly tailored to the ethnic and gender groups with a documented disparity. The race and gender-conscious remedies include: 1) bid discounts for construction and commodities and other services prime contracts; and 2) evaluation credits for construction-related and non-construction related prime contracts. Subcontract MWBE goals are recommended for the ethnic and gender



groups with a documented disparity. Race and gender-neutral recommendations are described in the *Volume II: Policy Review Report*.

II. Policy Review Report

Volume II: Policy Review Report, provides race and gender-neutral recommendations to mitigate the disparities in MWBE participation on State contracts as documented in the Disparity Study. The *Policy Review Report* assesses: 1) the legality of contract goals, set-asides, price preferences, and mentor-protégé programs; 2) the MWBE Program mandated by Article 15-A; 3) the State's procurement methods that could unintentionally create barriers for MWBE participation; and 4) best management practices implemented by other states.

III. Personal Net Worth Review

Volume III: Personal Net Worth Review, assesses the legal precedent for using personal net worth (PNW) as a criterion in the State's MWBE Program's certification requirements. The report reviews 1) the legislative history of PNW; 2) the precedent for application of PNW by state and municipal governments; and 3) a literature review analyzing the relationship between PNW, race, and access to capital.

The assessment revealed that PNW is a measure of credit worthiness and a determinant of access to capital for business growth and capacity building. However, the PNW certification criterion is excessive and requires the applicant to provide a disproportionate amount of information to demonstrate his or her net worth. The PNW criterion can limit the growth of a business, which would affect the business' ability to achieve financing and bonding resources needed to support the large contracts awarded by the State. The State's PNW criterion should be simplified and streamlined to lessen the burden on applicants who seek MWBE certification. Minimally, the life insurance, pension benefits, stock investments, and other personal property requirements should be removed from the PNW criterion.

IV. Workforce Study

Volume IV: Workforce Study, assesses the employment of minorities and Caucasian females on contracts awarded by the State from January 1, 2016 to December 31, 2016. The purpose of the *Workforce Study* is to 1) assess the level of minority and Caucasian female employment on State contracts; 2) determine the availability of minorities and Caucasian females by Equal Employment Opportunity (EEO) category, as recorded in the United States Census Bureau, *2012 American Community Survey*; and 3) compare the prime contractor and subcontractor incumbent workforce to the percent of available minority and Caucasian female workers in the State by EEO category.

A number of recommendations are offered to remedy the documented disparity, including minority and Caucasian female construction employment goals. Collaboration with



existing pre-apprentice programs to provide recruitment and training opportunities to retain minorities and Caucasian females in the construction trades is also recommended. Post-employment retention strategies are offered to assist the State's contractors in meeting the workforce policy objectives. The *Workforce Study* also includes enhanced monitoring and compliance standards to produce quarterly workforce utilization reports electronically and to assess penalties for non-compliant contractors.



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State of New York Policy Review Report

I. Introduction

This Policy Review Report was commissioned as a component of the 2016 Minority and Woman-owned Business Enterprise (MWBE) Disparity Study (Study). The objective of the Policy Review Report is to provide race and gender-neutral recommendations to remediate disparities in MWBE participation on State of New York (State) contracts. Disparity in the award of both prime contracts and subcontracts was documented in the Study. This review is intended to be instructive to both State practitioners and policymakers.

The Policy Review Report is presented in four sections: 1) an assessment of the legality of contract goals, set-asides, price preferences, and mentor-protégé programs to remediate documented disparity; 2) a review of the implementation of the MWBE Program mandated by New York State Executive Law Article 15-A (Article 15-A); 3) an evaluation of agency and authority procurement methods that could unintentionally create barriers for MWBE participation; and 4) a description of best management practices implemented by other states and large municipalities with MWBE programs. As appropriate, quotations from business owners' anecdotal accounts reported in *Chapter 9: Anecdotal Evidence Summary* of the Study are included in these recommendations.

II. Legal Predicate for Race and Gender-Conscious Remedies

An assessment of the legality of contract goals, set-asides, price preferences, and mentor-protégé programs was undertaken to determine their appropriateness to address the disparity findings documented in the Study. Three of these remedies are clearly race and gender conscious. Any race-conscious remedy must be guided by the principles set forth in the *City of Richmond v. J.A. Croson Co.* (*Croson*) and its progeny.¹ *Croson* established the appropriate factual predicate for race-based remedies in local and state public contracting. In *Croson*, the court declared that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny."² Governments may adopt race-conscious programs only as a remedy for identified discrimination, and the remedy must impose a minimal burden upon unprotected classes. A discussion of each remedy is presented below.



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

² *Id.* at 493.

A. Contract Goals

Goals can be set on prime contracts when supported by a finding of statistically significant underutilization of available MWBE subcontractors. A subcontract goal can be mandated by a government entity, provided a waiver provision is included in the solicitation. A waiver provision allows a bidder to submit documentation of the good faith efforts undertaken by the bidder to secure MWBE participation when the subcontract goal is not met. In order to be constitutionally valid, the goal must be narrowly tailored to the ethnic groups in each industry that had a documented disparity. A narrowly tailored goal is required to ensure that the preference does not extend further than necessary to remedy the effects of discrimination.³

B. Set-Asides

MWBE set-asides are race and gender-conscious remedies for which prime contracts are awarded exclusively to a minority or women business. The principles set forth in *Croson*⁴ and its progeny require that race-based remedial actions have a minimal impact on innocent third parties, particularly non-minorities.⁵ Contracts set-asides limit the possible respondents to a solicitation so that only MWBEs can compete for the contract opportunity. Consequently, MWBE set-asides are unconstitutional.

C. Price Preferences

There are two types of preferences that meet the strict scrutiny standard set forth in *Croson*, and both can be applied in the award of prime contracts when supported by a finding of statistically significant underutilization of available MWBEs. These preferences are bid discounts and incentive credits. Both types of price preferences can be used to remedy documented disparity at the prime contract level. Bid discounts can be used on low bid construction and commodities and services prime contracts, and evaluation points can be used on professional service contracts. However, to satisfy the strict scrutiny standard, the application of the preference must be narrowly tailored to the ethnic groups in each industry that had a documented disparity. As applied, the MWBE bid is discounted by certain percentage points when ranking the cost, and the lowest bidder still receives the contract award. Incentive credits are applied during the proposal evaluation process where an MWBE proposer is given a certain percentage of the total evaluation points.

D. Mentor-Protégé Programs

Mentor-protégé programs encourage large established businesses to mentor small or start-up businesses to grow their business to compete for public contracts. Mentor-protégé programs are race and gender-neutral. Therefore, there is no application of the strict scrutiny or narrowly tailored principle governing the implementation of these programs. These programs are governed by the

³ *Croson*, 488 U.S. at 469 (1989).

⁴ *Id* at 488 U.S. 469 (1989).

⁵ *Id.*



intermediate legal standard and do not require a finding of statistically significant underutilization to be implemented.

III. Enhancements to the MWBE Program Components of Article 15-A

Article 15-A sets forth the policies and procedures for the operation of the State’s MWBE Program. The core MWBE Program components that the Division of Minority and Women’s Business Development (DMWBE) is responsible for implementing are: 1) Managing MWBE certification, 2) maintaining a directory of certified MWBEs, 3) reviewing waiver provisions, 4) tracking MWBE utilization, 5) monitoring MWBE utilization, and 6) providing technical assistance. Although these initiatives increased the participation of MWBEs on the State’s contracts, the Study documented statistical disparities in the award of prime contract and subcontracts to MWBEs during the April 1, 2010 to March 31, 2016 study period. Thus, a number of enhancements are offered to expand these core services to help eliminate the documented statistical disparities in the award of both prime and subcontracts.

A. Streamline MWBE Certification Process

The certification process is intended to ensure that businesses that receive the benefits of the MWBE Program are owned, controlled, and operated by minority group members or Caucasian females. As mandated by Article 15-A, certification is conducted by the DMWBD. The certification process is both comprehensive and rigorous to ensure the integrity of the MWBE program. Given the ever-increasing demand for certification, the complexity of the application, and the rigorous standards applied to the application review process when feasible, the certification procedures should be stream-lined. In addition, the time to complete the certification review should be standardized. The anecdotal accounts of businesses, which are reported in *Chapter 9* of the Study, recount lengthy delays in the certification application review process. Delays in certifying can adversely affect MWBEs’ access to opportunities to compete for State contracts. The certification staff acknowledge that when there is a time lapse in reviewing applications, applicants may be asked to submit a current version of the documents included with the original application.

Since certification is required to participate in the MWBE program, recommendations are offered to reduce the barriers encountered in completing the certification application review and approval process. The proposed modifications are intended to expedite the certification review process and thereby increase the number of certified businesses available to meet the MWBE goals and bid on the State’s prime contracts.

1. Modify the Certification Application for New Businesses

A working definition should be established to classify a business as “new.” The definition should consider length of time the business has been in operation, annual revenue, and office location. The documentation required of a new business should be less extensive than the information a mature business must submit.



2. Review the Certification Application for Completeness Within 30 Days

There should be clear and specific standards for a certification analyst to determine when an application is complete and ready for processing. The guidance should be written and applied consistently for all applications. The application should be reviewed for completeness within 30 days of its submission. Notice should be sent to the applicant within the 30-day period, either requesting missing required information or confirming the application is complete. The certification review should be based on the required documents received with the application at the time it is certified as complete. Once the application is certified as complete, any additional documentation requested must be limited to explicating an issue arising from the review of the required documents. There should be no requests made to update the required information.

3. Authorize and Train the Entrepreneurial Assistance Program to Certify Certification Applications as Complete

The Entrepreneurial Assistance Program (EAP) offices are authorized to support the business formation and development of new and small businesses. For MWBEs, certification is an important resource to securing contract opportunities with the State. Therefore, the EAP staff should be trained and authorized to assist MWBEs, submitting a complete certification application. With training, the EAP staff could also be authorized to certify a new business when a certification application, submitted under the supervision of the EAP, is complete. The more complicated certification applications should be handled exclusively by DMWBD.

4. Provide Pre-Application Training Sessions

Training tools should be customized to explain the certification process and requirements. Common errors in the application review process should be identified and explained in the training material. Social media tools should be employed to simplify the dissemination of the message. A YouTube® video should be prepared and used as a tutorial to explain the certification process.

5. Establish a Hotline Number and Website to Receive Public Reports of Certification Fraud

Fraud enforcement is an effective deterrent to the submission of fraudulent certification applications. A hotline and website are portals that would allow the public to assist in identifying MWBEs certified with fraudulent applications. Both portals should allow for anonymous reporting but require some minimum information to guide the investigation. The facts supporting the suspicion that a certified MWBE is fraudulent should be solicited through a series of questions addressed to the informant when making the report. The information requested should be sufficient to initiate an investigation.



6. Establish Penalties for Submission of Fraudulent Applications

Penalties should be levied when a business secures certification based on a fraudulent application. The penalties should be administered uniformly. Findings that a certified business is fraudulent should also be published on Empire State Development's website.

7. Develop a Train-The-Trainer Program

Training is considered an effective means of ensuring that certification analyst can accurately determine a businesses' eligibility to participate in the MWBE Program. The State should develop a Train-the-Trainer program to provide continuing education for analysts who handle complex certifications. Formal and regular professional training can ensure analysts are uniform and consistent in the decisions made in the application review process. Training can better equip analysts to detect fraudulent activity, which is ever changing and often elusive. There are various methods for training, including the use of internal expertise on a peer-to-peer basis. There are also the resources that are offered by the United States Department of Transportation (USDOT). USDOT's various modal administrations conduct routine training in the region that can be attended by the analysts.

8. Revamp the Recertification Application Requirements and Required Documents

The certification application and required documents should be updated with consideration to new technology and business practices. The type and format for the required documents should be reassessed based on both new business practices and the length of time a business has been in operation. For example, cancelled checks for the initial investment in a business that is 20 years old may not be a feasible request.

a. MWBE Waiver Provisions

Prime contractors are allowed to request a waiver of the contract goals, in whole or in part. However, the prime contractors should be required to submit their waiver request and supporting documentation prior to the award of a contract. Meeting the goal or making a documented good faith effort should be a requirement to be awarded a prime contract. Information currently required to be submitted with the waiver request includes the following:

- Proof of publication of bid solicitations in a general circulation, trade association, or MWBE-focused publication to solicit MWBE bids to meet the goal
- Dates the solicitation was published
- Names of certified MWBEs that were solicited in writing for a bid
- Written proof of dates when the solicitation of the certified MWBEs was made, and supporting copies of the solicitations
- Copies of the responses to the solicitations received from certified MWBEs



- Description of any contract documents, plans, or specifications that were made available to certified MWBEs and the date and manner in which the documents were made available
- Terms of the negotiations with certified MWBEs to meet the MWBE goal

The current waiver provisions should be augmented to include the additional documentation listed below to ensure that prime contractors have taken reasonable steps to meet the MWBE goal:

- Attendance at pre-bid meeting
- Identification of discrete work items or packages that MWBEs may find economically feasible to perform
- Assistance in securing financing, bonding, insurance, or competitive supplier pricing

The evaluation of the waiver provisions should be quantified. A value should be assigned to each of the waiver provisions to quantify the waiver analysis. The maximum score should be 100 points. A prime contractor should achieve a minimum score of 80 points to demonstrate that a waiver should be granted. The submission should be evaluated and a decision rendered prior to issuing a notice to award. In addition, there should be due process procedures established to allow for an appeal of the denial of the waiver. The decision to grant a waiver should be published on Empire State Development's website.

B. Reporting MWBE Utilization

The MWBE goals for each project should be stipulated in the solicitation for all bids, proposals and statements of qualification. Prime contractors, in their response to a solicitation, should be required to list on a MWBE Utilization form all subcontractors, sub consultants, suppliers, and truckers, including non-MWBEs. The successful bidder or proposer should demonstrate that the MWBE goal was met or submit a waiver. The MWBE goal attainment review should include a determination that all certified MWBEs used to meet the contract goal are listed to perform a commercially useful function (CUF).

The purpose of the CUF requirement is to prevent prime contractors from using subcontractors as a "pass-through" or "front" to meet the subcontract goal. Participation that is artificial or incidental in order to meet a contract goal does not meet the commercially useful standard. The CUF requirement should apply to all procurement activity, including change orders and substitutions.

Minimally, a business performing a CUF is responsible for the following:

- The execution of a distinct element of the contract work
- Carrying out its obligation by actually performing, managing, or supervising the work and in the case of a supplier, warehousing its materials, supplies, and equipment
- Performing the percentage of the work that is normal business practice for its industry, service, and function



- Subcontracting a portion of the work that is greater than that expected by normal industry practices
- Maintaining a licensed business establishment

C. Tracking MWBE Utilization

State agencies and authorities create an MWBE Utilization Plan in B2Gnow, the State’s subcontract management system, and prime contractors are to enter the MWBE subcontractors. Prime contractors should be required to report both MWBE and non-MWBE subcontractors in the B2Gnow system.

Prime contractors are required to self-report MWBE subcontract data into the State's B2Gnow system online at <https://ny.newnycontracts.com/?GO=753&TID=4770041>. Non-MWBE subcontractors, subconsultants, suppliers, and truckers should also be captured in the B2Gnow system. The State’s substitution standards should be enforced throughout the life of the contract to ensure that the listed MWBE subcontractors are not removed or otherwise replaced without authorization.

D. Technical Assistance

Technical assistance and outreach resources are currently available for small, minority, and women-owned businesses to assist with business formation, financing, bonding, and certification assistance. The financing services include the Bridge to Success Loan Program that provides short-term bridge loans to MWBEs and a mentor program that provides guidance to build M/WBE capacity.

The State’s existing outreach initiatives should be enhanced to promote the MWBE Programs’ objectives and policy goals. The outreach campaign should communicate the goals and objectives of the Program to MWBEs. A well-planned and executed outreach campaign is essential to increasing MWBE participation. Therefore, a comprehensive outreach campaign should be initiated to promote the program enhancements implemented from the 2016 MWBE Disparity Study.

E. Implement Standard Training

To effectively achieve the objectives of Article 15-A delineated above, the implementation of the MWBE Program enhancements needs to be standardized. Collaboration from all agencies and authorities is essential if the disparities documented in State contracting with MWBEs is to be remediated. Collaboration derives from a uniform understanding and application of the MWBE Program. Staff training can be effective in standardizing program implementation. Specialized training should be provided to agency and authority managers, with a focus on MWBE Program oversight and interaction with the business community.

To supplement the uniform training program, an *MWBE Program Training Manual* should be developed to standardize the delivery of the MWBE Program requirements within the agencies and authorities. Such a manual could ensure that staff at all agencies and authorities have the



knowledge and skills to fulfill their MWBE Program duties. The requirements set forth in the manual should become standard operating procedure in each agency and authority. *The MWBE Program and Training Manual* would also provide staff with clear guidance on its responsibilities to track and report the participation of MWBEs. The MWBE Training Manual should be incorporated into a new employee orientation. The training should incorporate web-based components.

IV. Review of Procurement Methods

The review of the State's procurement code, as applied to the agencies and some authorities, identified a number of procurement methods which could potentially limit MWBEs' access to State contracts. Due to the variation in procurement procedures amongst the State's public authorities, the specific practices of the authorities are not delineated in this review. Each public authority is governed by a separate board of directors and budget process, and most have separate procurement procedures. Where applicable, these recommendations should be implemented by the authorities.

Components of the State's four primary procurement methods have been identified as having an adverse impact on MWBE utilization. The application of the four procurement methods depends upon the value and type of the purchase. Recommendations to mitigate the disparate impact of these methods on MWBEs access to State contracts are detailed below.

A. Preferred Source Program

Under the Preferred Source Program, State agencies must purchase certain commodities and services from the *List of Preferred Source Offerings* when a preferred source offers the product or services that meets the form, function, and utility needed by the agency. Certain non-profit businesses and the Department of Correctional Services have "preferred source" status under the law. The acquisition of commodities and services from preferred sources is exempt from competitive procurement requirements. All agencies, political subdivisions, and public benefit corporations are required to purchase approved products and services from preferred sources. Purchases from preferred sources take precedence over all other procurement methods.⁶

The list of Preferred Sources is developed by the Commissioner of General Services, in conjunction with the commissioners of correctional services, social services, mental health, and education. The Commissioner of General Services is charged with the responsibility of making the list available to agencies, public benefit corporations, political subdivisions, and other interested parties. If there is a preferred source, the State agency must first notify the Department of Correctional Services' Correction Industrial Program (Corcraft) of the solicitation. If the commodity is not available from Corcraft, the New York State Preferred Source Program for People Who are Blind (NYSPSP) or New York State Industries for the Disabled (NYSID) may be considered. Only if neither Corcraft, NYSPSP, nor NYSID provide the commodity being sought, may the agency use the competitive procurement method.



⁶ http://osc.state.ny.us/audits/allaudits/093016/14s77_1.htm

Commodities approved for the Preferred Source Program include:

- Classroom and educational furnishings, custom ordered products, film, still film and cameras, flags, institutional furniture, medical and institutional care items, office furniture, office and school supplies, personal care products, safety supplies and equipment, signage, tables, textiles, and apparel

Services approved for the Preferred Source Program include:

- Call center services (inbound and outbound), carpet cleaning, CD replication, data entry, data imaging services, electronic assembly, electronics recycling, fan cleaning, floor maintenance, food warehousing, storage and distribution service, foot messenger, furniture repair, furniture re-upholstery, furniture stripping and refinishing, garbage pickup, graffiti removal, grounds keeping and lawn maintenance, inventory control services, janitorial, kit assembly and maintenance, laundry service (industrial), mail collating, mail distributing, mail folding and inserting, mail inkjet labeling, mail packaging, mail presort, mailroom services (offsite and onsite), meal preparation and delivery, microfiche conversion, microfilm conversion, package and document pickup and delivery, photocopying, recycling, reproduction, secure document destruction, snow removal, temporary personnel, warehouse, transcription, vehicular messenger services, warehousing, storage and distribution (not food), window blind cleaning, and window cleaning

Several MWBE business owners in the anecdotal interviews expressed concern that the Preferred Source Program posed a significant barrier to their participation on State contracts. For example, a minority male owner of a janitorial service questioned why certain contracted services were reserved only for preferred vendors.

There is something in New York State called preferred sources, and the guidelines in the procurement policy state that all agencies must use preferred vendors. This procurement procedure should be changed ... By legislation, preferred sources are the prison, Industries for the Blind, and I think the disabled. These contracts are being taken from regular businesses and are being given to these preferred sources. For example, cleaning contracts used to be bid out. They took them from the bidding process and gave it to Industries for the Blind. With all due respect to Industries for the Blind, how could they come and clean a building? It doesn't make sense. And the gatekeepers for commodity and architect contracts have exclusive relationship with certain manufacturers, and they get millions of dollars in public contracts but they do not give opportunities to us.



A minority female owner of a non-construction related company reported that the State's preferred source program has prevented her from receiving State contracts:

The State has preferred vendors that keeps my firm from securing work in my field. I am tired of all these speeches and all these promises about what they are going to do for MWBEs, but nothing happens.

The stated objectives of the Preferred Source Program include promoting social benefits, such as increased resident employment, increased State income tax revenue, and provision of commodities and services at competitive prices. However, this program also limits free market competition. The results of the 2016 MWBE Disparity Study indicate that willing and able market area MWBEs that provide the types of approved preferred source commodities and services solicited by the State agencies and authorities are being denied the opportunity to contract with the State.

Corcraft alone operates in 14 facilities across the State, employing 2,100 inmates and 288 civilians. In 2014, Corcraft published annual profits of \$48 million.⁷ The Corcraft indentured laborer earns well below the fair market rate for skilled, semi-skilled, and unskilled labor at an average of \$0.42 per hour.⁸ All commodities manufactured in correctional facilities are sold at fair market value, which widens the State's profit margins for the commodities produced by the inmate labor force. This operating structure inflates the profitability of the Corcraft program, which unfairly advantages Corcraft as a for-profit business. Small business enterprises are unable to compete equitably, as they are bound by the Fair Labor Standards Act and other federal and state labor statutes. These laws establish minimum wages, basic mandated employee benefits, and protections for employees. In the absence of these requirements, Corcraft's operational costs are much less than any other enterprise. As applied, this Program reduces opportunities for business owners to participate in State contracts for the commodities and services approved under the Preferred Source Program. The Program should be assessed to remove the barriers to MWBEs that provide the commodities and services currently in the exclusive domain of the Preferred Source Program.

B. Office of General Services (OGS) Centralized Contracts

A centralized contract is a procurement for commodities or services let by the Office of General Services (OGS) and on behalf of more than one agency, political subdivision, public authority, public school, fire district, library, or other organization.⁹ OGS had more than 1,000 centralized contracts in place during the April 1, 2010 to March 31, 2015 study period.¹⁰ Once the centralized contract is executed, an agency or authority may issue a purchase order directly to the contractor without prior approval of the Office of the State Comptroller (OSC). Purchase orders made on these contracts include services and commodities that an MWBE could provide. Many are also low dollar transactions that would be ready opportunities for MWBEs. Nevertheless, these

⁷ *An Inside Look at Corcraft: DOCCS Division of Industries Press Release*, (February 4, 2014) (accessed http://www.doccs.ny.gov/DoccsNews/2014/Corcraft_Updated.pdf)

⁸ *Inmate Incentive Pay Plan*. They City of New York Department of Correction Directive. (Effective April 11, 2007)

⁹ STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

¹⁰ *Id.*



centralized contracts include both large and multi-year contracts. The terms of these multi-year contracts effectively establish long term relationships that constitute nearly insurmountable barriers to entry for new businesses on the occasions they are rebid.

The State should reserve multi-year OGS centralized contracts with not-to-exceed values of \$5 million or less for SBEs, including MWBEs. The overall MWBE goal should be applied to all OGS contracts with no restriction to the amount of the contract.

C. Discretionary or Competitive Bidding

Within the State bidding process, there are three types of competitive procurements: 1) Invitation for Bids, 2) Request for Proposals, and 3) Statement of Qualifications. Each competitive procurement type involves a subjective review that rates each respondent on responsiveness to the solicitation, best value to the State, highest qualified bidder or proposer, and fair and reasonable costs. At first glance, these competitive evaluation criteria are race and gender-neutral. However, as is the case with any evaluative process, there is potential for implicit bias to affect the outcomes of the evaluation. Implicit bias can have unintended effects on social behavior, including how the State's policies are administered.

Anecdotal accounts from MWBE business owners detailed how implicit bias affects their contracting with the State and the State's prime contractors. The State should consider instituting an implicit bias test to agency and authority procurement staff. The test will determine the presence, extent, and effect of implicit bias in the award of competitively bid contracts. Any implicit bias in the decision-making process can impact MWBEs' ability to contract with the State, even when the process is seemingly impartial.

There were numerous accounts in the Study from MWBEs describing their experience with bias in the bidding process. A minority male owner of a non-construction related business reported that MBEs are unfairly judged as incompetent:

On paper my team can match the qualifications of any other firm. We have nine degrees between four people. Our team includes a Ph.D., Masters in Computer Science and Business Administration. We have worked for white contractors and made them a lot of money. Now that we want to work as a prime contractor and bring some of the money back to our community, they say, "Well, you don't have the experience, you don't have this, and you don't have that." That's garbage! They need to find better criteria for how to measure and evaluate effectiveness of small businesses. Stop considering minorities as less than capable. The MBE status is not an inferior status. While on a project, I overheard a white guy say, "We have the FBI security team." And the other guy asked, "FBI?" He says, "Yeah, feeble, black, and incompetent." So, in many cases, that's what they think of minorities.



A minority male owner of a non-construction related business reported that MWBEs are oftentimes considered as incompetent. This business owner explained why he believes MWBEs are viewed negatively:

We are sort of dismissed as being an MWBE unable to do good work. It happens sometimes in joint ventures when we partner with majority firms. The majority firm does all the work, and we are just window dressing. We really want to do the real work, we want to learn. [A] Supreme Court Justice ... recently said that blacks should go to lower-tiered schools. This is a Supreme Court judge making a public statement on affirmative action [that] believes that blacks do better at lower-tiered schools that have lower expectations of them. So, it's not unreasonable to think that executives in America think the same way about minority businesses in general. They feel as though they are being compelled to use us. If there wasn't a mandate from the governor forcing agencies to use minority firms, they wouldn't consider using us at all. We need the political help because if you leave it to the agencies they're not going to hire a minority business.

D. Exceptions to the Competitive Bid Process

Sole source and single source procurements are two State-approved exceptions to the competitive bid process. These procurement methods should be modified to make the process more transparent. The MWBE requirements should also apply.

E. Recommendations to the Procurement Process

Recommendations to mitigate the disparate impact of these methods on MWBEs access to State contracts are detailed below.

1. Extend the MWBE Program Provisions to the Best Value Procurement Process

The best value procurement process should be standardized and require that MWBE prime contract and subcontract requirements are met. The best value procurement process, authorized by New York State Finance Law (Law) section 163, is a method of awarding contracts to an offeror that optimizes quality, cost, and efficiency among responsive and responsible offerors.¹¹ The Office of General Services (OGS) central procurement guidelines permits the best value procurement method to be conducted in three phases: an administrative review of prequalification criteria; a technical evaluation of non-cost elements; and a cost evaluation that compares the price proposed to the prices and costs of other competing proposals.¹² However, the nature, scope, and complexity



¹¹ NEW YORK STATE FINANCE LAW § 163 *et seq.*

¹² STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § V.(E) (2014).

of the minimum qualification and evaluation criteria vary widely because they are not explicit in either the State Law or OGS central procurement guidelines. Therefore, the subjectivity in the implementation of the best value procurement process could adversely affect the selection of a MWBE offerors.

Under the current OGS procurement standards, the minimum qualifications assessment and evaluation factors utilized in the assessment for determining a responsible and responsive offeror are optional components of the best value procurement evaluation process. To minimize the disparate impact of a subjective determination of a responsible and responsive offeror, the evaluation criteria should be published in the solicitation. The published criteria for a responsible and responsive offeror should include compliance with the MWBE requirements so that it is a minimal condition to be considered responsible and responsive offeror. The technical evaluation of non-cost elements should include the assignment of preference points to certified MWBE professional services contractors. During the cost evaluation, which compares the price proposed to the prices and costs of other competing proposals, the MWBE bid discount should be applied. These modifications to the best value procurement process should make the evaluation procedure more transparent and incorporate the MWBE Program provisions.

2. Modify the Pre-qualification Requirements for Certified MWBEs

There are requirements that bidders and proposers must meet to be pre-qualified to bid on the State's construction and non-construction related contracts demonstrate some redundancies when compared with the requirements in the MWBE certification form. MWBEs are therefore unduly burdened when submitting an application for both programs. The pre-qualification and MWBE certification requirements should be examined to assess the adverse impact of the redundant requirements on MWBEs that seek to participate on State construction and non-construction related contracts requiring pre-qualification.

a. Construction Pre-Qualification Requirements

The New York State Vendor Responsibility Questionnaire for Profit Construction requires prospective contractors to complete the questionnaire for construction projects. The 17-page questionnaire requires the contractor to provide standard business background information directly on the form in addition to submitting the following supplemental information:

- Copies of relevant trade license
- Data on persons with ownership interests
- Information on key personnel
- Bonding capacity executed by surety
- Disclosure of financial interests
- Description of current and pending contracts
- MWBE, DBE, or SBE status
- NAICS classifications
- Ten most recent construction contracts the business completed; if less than 10, include most recent subcontracts on projects



b. Non-construction Related Pre-qualification Requirements

The New York State Vendor Responsibility Questionnaire for Profit Non-construction requires prospective consultants to complete the questionnaire for non-construction related projects. The 10-page application requires the consultant to provide standard business background information directly on the form in addition to submitting the following supplemental information:

- Data on business partners
- Data on persons with ownership interests
- Disclosure of financial interests

c. Minority and Woman-owned Business Enterprise Program Requirements

Empire State Development requires prospective applicants to complete a *Minority and Woman-owned Business Enterprise Program Certification Application*. The on-line certification application requires the applicant to provide standard business background information directly on the application in addition to submitting the following supplemental information:

- Personal net worth affidavit
- Personal net worth worksheet
- Business license
- Business certificate
- NAICS classifications
- Current year financial statements including year-to-date balance sheet and profit and loss statement
- Most recent three years of federal and state tax returns including all statements, schedules, and amendments
- Most recent two years of federal and state personal tax returns including all statements, schedules, and amendments
- Proof of capitalization and investment
- Bank signature card or letter from the bank identifying persons authorized to conduct transactions
- Proof of United States citizenship
- Bonding capacity information
- Identification of major creditors
- Lines of credit
- Financial institutions at which business' accounts are maintained
- Vehicles and equipment/machinery owned and leased
- Proof of gender and minority status
- Employment agreements
- Lease agreements



- Vehicle agreements and equipment agreements
- Proof of business activity

d. Duplicate Pre-qualification and Certification Requirements

The comparison of the pre-qualification and certification requirements revealed that certified MWBEs are required to submit substantially more information than a business seeking pre-qualification for either a construction or construction-related contract. Both the pre-qualification questionnaires and the MWBE certification application require the applicant to provide the same supplemental documentation to verify the business’ financial solvency, ownership interest and structure, and work history. Table 1 below describes the duplicate documentation an MWBE is required to fulfil to be both certified and pre-qualified.

Table 1: Duplicate Pre-Qualification and MWBE Program Requirements

Non-Construction Pre-Qualification Requirements	Construction Pre-Qualification Requirements	MWBE Program Requirements
	Trade Licenses	Professional and Trade Licenses
Disclosure of Financial Interests	Disclosure of Financial Interests	Disclosure of Financial Interests
	Description of Current Contracts	Description of Current Contracts
Information on Current Key Person(s) at Business	Information on Key Personnel	Information on Key Personnel
	Bonding Capacity	Bonding Capacity
	NAICS Classifications	NAICS Classifications

The duplication in the requirements can impose a heavier burden on MWBEs than on non-MWBEs. The burden can serve as a deterrent for businesses seeking to be both pre-qualified and MWBE certified. Thus, the duplicate information outlined in Table 1 for the pre-qualification and certification requirements should be streamlined to reduce the time needed to complete the pre-qualification questionnaires and certification application. Simplified pre-qualification forms should be developed for certified MWBEs.



V. *Best Management Practices Review*

MWBE programs from 50 states and 30 large municipal governments were examined to inventory their race and gender-neutral components which might inform the State's MWBE Program and address the disparities documented in the Study. The best management practices derived from the review are offered to enhance the procurement practices and to increase the participation of MWBEs on the State's contracts. While some State agencies and authorities have implemented variations of the proposed best management practices, the enhancements adopted by the State should be uniformly implemented by all State agencies and authorities.

A. *Assess Damages for Not Achieving Contract Goals*

My certification is garbage because most of the time prime contractors are allowed to get waivers. So, the goals are not met.

Monetary damages should be uniformly assessed for noncompliance with the MWBE goals. The prime contractor should be required to document the attainment of the approved goals at the close of the contract. Monetary damages should be levied on the prime contractor who does not meet the contract goal. The damages should be equal to the goal shortfall and assessed during the project close-out phase and withheld from

the retainage.

B. *Unbundle Large Procurements into Smaller Contracts*

I think the State should unbundle some of their professional services projects to allow different companies to get involved. I think the focus should be on capability instead of capacity. If a company is capable to perform the work, that should be sufficient.

Large contracts should be unbundled into smaller projects. Unbundling contracts would bring more opportunities within the capacity of more businesses in the State. According to the United States Census, 88.37% of businesses in the State have fewer than 20 employees, and 87.66% have revenue below \$2.5 million. Given the size of the businesses in the State, unbundling would allow more contracts to be awarded to more businesses, therefore maximizing the use of the majority of businesses in the State. Increasing the number of bidders might also result in better pricing for the State.

In determining whether large procurements should be unbundled, the following criteria should be reviewed:

- Whether or not the project takes place in more than one location
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement division options
- Size of the task orders issued against the procurement



C. Provide Debriefing Sessions for Unsuccessful Bidders

I reached out to get a debriefing meeting as part of a learning experience. I wanted to know what I did wrong and how can I improve. I never even received a response.

Debriefing sessions should be routinely provided to unsuccessful bidders. This option should be published in each solicitation and included in the Notice of Intent to Award that is sent to unsuccessful bidders. In addition, all bid documents should be made available for review and an electronic copy provided upon a written request.

D. Enforce Subcontractor Substitution Standards

Standards for formal subcontractor substitution should be uniformly included in each solicitation and prime contract. The standards should require the prime contractor to provide a written request to substitute a listed subcontractor providing the reason for the substitution. Due process should be afforded the subcontractor who should be notified in writing of its prime contractor's request for substitution.

E. Institute a Payment Verification Program

I usually work as a prime consultant. But when we work as a subconsultant, we have to wait on the prime consultant to pay us. The prime consultants use our money to fund their projects before we get paid. I thought this was against the law in New York State. But still they get away with that.

To enhance the current prompt payment policy, payments made to subcontractors should be verified by the utilized subcontractors. The State may utilize its own electronic tracking system, such as Openbook or B2Gnow, to monitor compliance with the prompt payment policy and implement a payment verification program. These procedures would allow subcontractors to notify the State of late payments or non-payments in real time. In addition, each subcontractor listed as paid for the previous billing cycle should be contacted electronically to verify that payment was received. This verification procedure would eliminate reliance on self-reporting by the prime contractors.

If a subcontractor reports a discrepancy in the amount actually received from the prime contractor, the discrepancy should be resolved before any additional payments are made to the prime contractor. The simplest resolution is to have the prime contractor submit to the State with each invoice an image of the cancelled check written to the subcontractor to pay for the previous invoice. The payment verification program should be published on the State's website, in solicitation documents, and in contract documents. The prime contractors' compliance with the payment verification program should be a mandatory provision of the prime contract.



F. Implement a Dispute Resolution Process

Dispute resolution standards should be standardized and uniformly implemented to allow businesses to resolve issues relating to work performance after a contract award. A dispute resolution process should apply to disputes between prime contractors and the State, as well as between subcontractors and prime contractor. The dispute resolution process should include provisions for an ombudsperson. The ombudsperson can handle disputes, as needed, to achieve a timely and cost-effective resolution. A dispute resolution meeting should be mandatory in the event a dispute cannot be resolved by the ombudsperson within 20 working days.

The first step in the dispute resolution process would be the submission of an oral or written complaint by the aggrieved party to the ombudsperson. The ombudsperson would then aid the parties in resolving the dispute by investigating the claim and making initial contact with the State, prime contractor and, if relevant, the subcontractor. If the dispute is not resolved through these means within 20 working days, the ombudsperson will assist the aggrieved party in filing a request for a dispute resolution meeting. Any party that does not respond to requests by the ombudsperson will be placed on a suspension list until the matter is resolved. The suspension list should be monitored and approved by the DMWBD.

The meeting would be the second step in the resolution process. Neither party may involve legal representation during this initial informal process to avoid significant legal costs for both parties. If the parties are not able to reach a mutually agreed upon resolution through meeting, the dispute may proceed to formal mediation or arbitration. A dispute must be taken to formal mediation before it can proceed to arbitration.

Arbitration should be the final step to resolving a dispute. The decision reached by the arbitrator would be final and binding. The parties would be permitted to retain legal representation during the formal mediation and arbitration process.

G. Give Five-day Notice of Invoice Disputes

I wish they could enact laws to help subcontractors with late payments. Direct pay would be great.

Prime contractors should respond to disputed invoices within five days. Invoice disputes are a source of delayed invoice payments. While the State has informal means to resolve payment disputes, the resolution process should be formalized. Within five days of receiving a disputed invoice, the State should provide the contractor with an Invoice

Dispute Notification detailing all items in dispute. Undisputed invoice amounts should be paid within 15 days and disputed items should be resolved in a timely manner and thereafter paid promptly.

The prime contractor should have the same obligation to give notice to the subcontractor within five days of receiving a disputed invoice. The prime contractor should pay the subcontractor within five days of receiving payment from the State. The prime contractor should be penalized if the subcontractor is not paid in a timely manner.



H. Augment DMWBD Staff

The Division of Minority and Women’s Business Development should have the staff resources to ensure that the MWBE program objectives and administrative procedures are met, and that best management recommendations that the State adopts are uniformly implemented. The additional personnel hired to augment the DMWBD staff should have the requisite skills, knowledge, and ability to meet the objectives and responsibilities of the MWBE Program. And foremost, all professionals that augment the DMWBD staff should have documented interest in leveling the playing field to create parity for MWBEs in all facets of the State’s contracting.

The DMWBD Office’s staff should be augmented with an adequate number of experienced professionals capable of fulfilling DMWBD’s responsibilities to enhance and expand the MWBE Program. The professionals should have knowledge about procurement standards, the State’s contracting laws, codes, and affirmative action programs. They should also have work experience with the relevant industries. Computer and database knowledge and experience should be requisite skills for all new staff.

I. Enhance the Small Business Enterprise Program

Many of the jurisdictions examined in preparation of the Best Management Practices also implemented Small Business Enterprise programs. The New York Economic Development Law Section Article 4-B § 130 *et seq.* authorizes a Small Business Enterprise Participation Program (SBE Program) to support small business growth.¹³ The SBE Program is administered by the Division of Small Business. The Division’s power and duties are delineated in New York Economic Development Law, Article 4-B § 134. The definition of a small business is set forth in Executive Article 15-A. A small business has a significant business presence in the state, is independently owned and operated, not dominant in its field, and employs 100 persons or less.¹⁴ Although the SBE Program has no goals for small business participation, the Division provides training, conducts education programs, and offers bonding services.¹⁵ Given the fact that small businesses are the fastest growing segment of the business community, a robust SBE Program could stimulate the growth of this market segment. To maximize its effectiveness, the SBE Program should be updated to include goals. SBE goals are race-neutral and are therefore not subject to strict scrutiny. Implementation of SBE goals can be mandatory and do not require waiver provisions.

State law authorizes an extensive program of supportive services and tracking and monitoring procedures to support a robust SBE program. Detailed below are recommendations to enhance the SBE Program, as set forth in the law, and redefine the small business size standards defined in Article 15-A.

¹³ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 130 *et seq.*

¹⁴ 13 CFR part 121, Executive Article 15-A § 310(20); NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 131.



1. Economic Development Law Enhancements

To enhance the effectiveness of the Division of Small Business in supporting small business growth, the State should conduct an assessment of the needs of the small business community. The Division of Small Business currently provides resources to small businesses, such as mentorship programs, financial assistance programs, and access to capital programs.¹⁶ The programs that the Division of Small Business offers should be evaluated and modified to directly accommodate small business needs. Specifically, the State should conduct a programmatic assessment of the following Division of Small Businesses' statutory duties and obligation to:

- Receive complaints from small business owners and refer them to the appropriate federal, state, or local agency authorized by law for appropriate action¹⁷
- Conduct investigations and studies to analyze matters affecting the interests of small businesses¹⁸
- Initiate and encourage small business education programs, and coordinate with the Office of General Services to conduct outreach to promote these programs and to coordinate the functions of every state agency, department, or authority¹⁹
- Conduct surveys of all business incubators in the state to assess the need to nurture the growth and development of small businesses²⁰
- Provide assistance to small businesses in the state and facilitate access to programs serving small businesses to ensure that such businesses benefit from technical, managerial, financial, and general business assistance²¹

The State's assessment should profile the needs of the small business population. The training and education programs should be created based on the results of the assessment.

2. Redefine Small Business Size Standards

A small business, as set forth in Article 15-A, is defined as a business with 100 or fewer employees. Given the significant growth in the number of small businesses in the nation, the definition of a small business should be defined by the demographics of the State's business population.

The percentage of businesses with annual revenue under \$500,000 in the State is 45.26%, or 170,272 businesses, according to ReferenceUSA®, the leading provider in business and consumer research. Over 67.06% of the businesses in the State have gross receipts under \$1 million. The

¹⁶ Business Mentor New York provides State businesses access to mentors through a social networking platform. The Community Development Financial Assistance Program offers microloans for contracts valued less than \$25,000. The Entrepreneurial Assistance Program provides instruction, training, and technical assistance and support services to individuals who are interested in starting a small business, and to new small businesses.

¹⁷ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 134(2).

¹⁸ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 134(4).

¹⁹ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 134(8).

²⁰ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 134(10).

²¹ NEW YORK ECONOMIC DEVELOPMENT LAW, Art. 4-B § 134(11).



State’s small business population is not unique; it is comparable to that of the entire country. As illustrated in Table 2, 48.91% of the businesses in the United States have annual revenue of less than \$500,000, and 69.29% have annual revenue \$1 million and under. It is recommended that the small business size threshold be set at an annual revenue of \$1 million or less.

Table 2: Business Profile by Annual Revenue

Annual Revenue	United States		State of New York	
	Number of Businesses	Percent of Businesses	Number of Businesses	Percent of Businesses
Less than \$500,000	3,001,311	48.91%	170,272	45.26%
\$500,000-\$999,999	1,250,695	20.38%	82,031	21.80%
\$1,000,000-2,500,000	1,036,535	16.89%	68,975	18.33%
\$2,500,001-\$4,999,999	401,770	6.55%	26,793	7.12%
\$5,000,000-\$10,000,000	225,930	3.68%	14,371	3.82%
More than \$10,000,000	220,111	3.59%	13,793	3.67%
Total	6,136,352	100.00%	376,235	100.00%

Source: ReferenceUSA®

VI. Summary

The State currently employs a number of best management practices to increase contracting opportunities for MWBEs. This Policy Review Report provides additional race and gender-neutral recommendations, and enhancements to existing policies and procedures designed to remediate the disparities in MWBE participation on the State’s contracts, as documented in the 2016 MWBE Disparity Study. The race and gender-neutral recommendations set forth in this Chapter are intended as guidance in eliminating the documented disparity, and for enhancing opportunities for MWBEs to participate in State contracting. It is anticipated that these recommendations would be implemented in conjunction with the race and gender-conscious remedies proposed in *Chapter 10: Recommendations and Remedies* of the 2016 MWBE Disparity Study.





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