

REVIEW OF PROCUREMENT POLICIES & THE BUSINESS
DIVERSITY AND OUTREACH PROGRAM

Denver Public Schools
April 4, 2017



I. INTRODUCTION

Denver Public Schools (DPS) contracted with MGT Consulting Group to review its current procurement practices and its Business Diversity and Outreach Program (BDOP) to gain an understanding of the current program strengths and identify areas for improvement to increase minority, women, and/or small business participation.

This report is limited to the review of procurement for construction and construction-related bond contracts, and provides an overview of existing policies and practices, and qualitative analyses from area stakeholders business owners.

BACKGROUND

Denver Public Schools completed a comprehensive disparity study in 2015 that provided recommendations for procurement and BDOP improvements, as well as provided M/WBE aspirational goals. Since then, Denver Public Schools Board of Education has modified some of its procurement policies and implemented recommendations provided in the study. Denver Public Schools commissioned this report to address the business community's concerns that not enough progress has been made in certain areas and there are still barriers that limit M/WBE participation in contracting.

REVIEW TEAM

Mr. Reggie Smith, Executive-In-Charge.

Mr. Smith assisted the project by ensuring the team had the necessary staff and resources to address the deliverables set forth in the scope of work. Mr. Smith is the leader of MGT's disparity research and M/W/DBE program evaluation business unit. Mr. Smith was also the project director for the District's 2015 Disparity Study. He plays a key role in developing and refining MGT's methodology and quality standards for conducting disparity research studies. Mr. Smith has extensive knowledge in consulting, training, and public relations services to private and public sector agencies, particularly in local government. Mr. Smith also specializes in the management and direction of reengineering, operational assessments, organizational and performance reviews, and administrative technology projects for city, county, and state government agencies.

Ms. Vernetta Mitchell, Senior Consultant/Project Manager

Ms. Mitchell served as project manager for this engagement. Ms. Mitchell also lead the qualitative research and data collection for the District's 2015 Disparity Study. She has over 20 years experience in minority business program development, public and private sector M/W/SBE program administration, construction, and government procurement. She has successfully managed dozens of disparity studies

REPORT SECTIONS

1. Introduction
2. Review of Procurement Policies and Procedures
3. Qualitative Data Analysis
4. Selected M/WBE and SBE Practices
5. Policy and Program Recommendations
6. Appendix A – Methodology for Establishing Project Goals
7. Appendix B – Proposed Roles and Responsibilities of an M/WBE Advisory Committee

since joining MGT and has functional knowledge and expertise in project management, project scheduling, analytical reporting, facilitation, and public relations. Ms. Mitchell's experience in procurement, construction, and program administration has expanded her expertise in the development and management of qualitative data collection that has led to more efficient analyses and reporting of business participation.

Dr. Fred Seamon, Executive Vice President/Qualitative Researcher

Dr. Seamon conducted qualitative interviews with Denver area stakeholders. Dr. Seamon has over 30 years of consulting, research, and teaching experience. He has been conducting research related to access and equity since he was a graduate student. Dr. Seamon has been involved in over 100 of MGT's disparity studies. His disparity study areas of expertise includes qualitative research methods, community engagement, and outreach and policy analysis. He has extensive knowledge in analyzing the structure, operations, and processes of public sector organizations and nonprofit agencies and in conducting research studies related to access, equity, and disparities in education, business, and human services. His consulting experience also includes workforce development, organizational development, program evaluation, program auditing, and performance management in workforce development, developmental disabilities, and community philanthropy.

Mr. Brian Clarke, JD, Senior Consultant/Qualitative Researcher

Mr. Clarke conducted qualitative interviews with area business owners. Mr. Clarke is an accomplished professional well-versed in all aspects of compliance, corporate integrity and ethics, negotiation, contracts, and resolution, from inception to completion. He is effective in leading and directing with more than 12 years' experience in drafting and reviewing contracts, including, licensing agreements, NDAs, privacy policies, terms of service, commercial leases, sales contracts, and management agreements. Mr. Clarke is skilled in identifying potential areas of compliance vulnerability and risk, as well as, developing corrective action plans for resolution issues, and providing general guidance.

2. REVIEW OF PROCUREMENT POLICIES AND PROCEDURES

This section provides an overview of the procurement policies and procedures and their impact on minority and women business participation in the bond program. To conduct the review and to prepare this summary, a multi-pronged approach was used which included collecting and reviewing source documents and materials related to policies, procedures, and programs. In addition, MGT reviewed the policy and program related findings and recommendations in the 2015 disparity study and discussed with several DPS staff changes that were implemented following the study. The review included the following steps:

- ◆ Collection, review, and summarization of DPS's contracting and purchasing policies currently in use.
- ◆ Collection and review of policies, procedures, and other information and data pertaining to DPS's Business Diversity and Outreach Program.

- ◆ Interviews with DPS staff to determine how existing procurement policies have been implemented. Interviews were conducted with DPS management and staff regarding the application of policies, discretionary use of policies, exceptions to policies, and impact of policies on key users.
- ◆ Collection and review of public comments.
- ◆ Interviews with DPS staff regarding the effect and impact of DPS’s diversity inclusion programs.

The policy related documents and other information collected and reviewed are itemized in **Table 1**.

TABLE 1
DENVER PUBLIC SCHOOLS PROCUREMENT DOCUMENTS

INDEX	DESCRIPTION
DPS Documents	
1.	ACE Policy 11-2015, Equitable and Inclusion Contracting Policy)
2.	BOE MWBE Program Update – Sept. 2016 – Final
3.	Strategy Proposal v. 8_03_2016
4.	Board of Education Update Diverse Contracting, February 19, 2015
5.	Business Diversity Outreach, Communications & Partnership Strategy
6.	Equitable Contracting Board of Education Update 5_19_16
7.	Architect Agreement, Exhibit 2012 Bond Season_8_22_16_Diversity Version
8.	Architect Agreement_2012 Bond Season_03_11_2016
9.	Architect RFP Template8-26-15
10.	CMGC Agreement Exhibits_Diversity Version 3_2_16
11.	CMGC Agreement_3_2_16_KT
12.	CMGC template Diversity 8-26-15
13.	Construction Agreement Exhibits_2011 Bond Season_Federal Funding_20150306 EM2712T1
14.	Construction Agreement Exhibits_2015 Bond Season_NO Federal Funding Diversity Version 2 BS
15.	Construction Agreement_2011 Bond Season_2015_11_11_KT
16.	Contractor Signature Page KT 7_11_16
17.	Design Build Template 2-1-16
18.	Design-Build Agreement 8 22 16 KT
19.	Design-Build Agreement Exhibits_DIVERSITY VERSION_12_7_15_KT
20.	Exhibit B1 - Fee Matrix 8_23_16
21.	Fixed Price Design and Construction Agreement Exhibits_Diversity KT_8_22_16
22.	Fixed Price Design and Construction Agreement_Diversity_KT_4_12_2016
23.	Front End Docs Template Best Value 9-26-16
24.	General Conditions KT June 2016 (5)
25.	Outreach Session – Power of Personal Branding and Trade Show Success
26.	Outreach Session – How to Market your Business
27.	Outreach Session – Bond and Insurance Education
28.	Outreach Session – DPS Reverse Construction Trade Show
29.	Outreach Session – DPS Mixer
30.	Outreach Session – 2016 Annual Bus Tour
31.	Outreach Session – How to do Business with DPS

32.	Goals Committee Guidelines – Final
33.	Business Diversity Outreach Program 2020 Retreat

2015 DISPARITY STUDY

Prior to the release of the 2015 Disparity Study Report the Board of Education adopted the Equitable and Inclusive Contracting Policy in November 2014. Since then, DPS launched the Business Diversity and Outreach Program and implemented 4 of 6 recommendations outlined by MGT.¹

- ♦ *MGT Recommendation B: Subcontractor Project Goals* – DPS establishes project goals for subcontractors. Between 2014-2016, DPS has set MWBE goals on 126 projects.²
- ♦ *MGT Recommendation D: Aspirational M/WBE Goals* – In February 2015 the Board of Education adopted M/WBE aspirational goals of 24 percent for bond-funded construction related projects.
- ♦ *MGT Recommendation E: Data Management* – Denver Public Schools purchased B2GNow to collect data on its M/WBE subcontractor program.
- ♦ *MGT Recommendation H: Staffing* – Staff was hired to manage B2GNow and conduct M/WBE compliance. The District also recently hired a new Business Diversity and Outreach Program Director.

PROCUREMENT

To gain an understanding of the roles of DPS staff, MGT interviewed staff involved in the procurement process for the bond program which includes design build, construction management at risk, and best value consideration, and Business Diversity and Outreach Program. Representatives from the following departments participated in the interviews:

- ♦ Business Diversity and Outreach
- ♦ Program Management Office
- ♦ Chief of Staff
- ♦ Strategic Sourcing
- ♦ Office of Facility Planning
- ♦ Quality Assurance/Quality Control

¹ Disparity Study for Denver Public School, February 2015, Chapter 8: Findings and Recommendations.

² Board of Education Equity & Inclusion Program Presentation, May 19, 2016.

BID DOCUMENTS

MGT reviewed current language used in bid and proposal documents. The bid documents reviewed included diversity language for M/WBE inclusion. One aspect of the diversity language is the verification of good faith efforts which is reviewed at the end of a project if the prime did not meet the M/WBE goal. This process challenges the accountability of primes because commitments are harder to manage and the process does not allow for M/WBE participation adjustments during the course of the project. If firms cannot adequately justify their good faith efforts firms are suspended for up to six months from bidding. As a result of the good faith effort review a few firms were suspended from bidding. This application of the good faith review minimizes the ability of DPS to monitor M/WBE participation.

The DPS staff revamped the prequalification application and process to replace the previous version and to update its list of prequalified firms which DPS indicates is outdated. The current application applies to general contractors when the value of the contract exceeds \$50,000. The components include, but are not limited to:

- ◆ Quality of work in general.
- ◆ Financial stability: bonding capacity, insurance
- ◆ Resume of staff – ability to pass background checks
- ◆ Safety ratings
- ◆ Whether the firm has a diversity program
- ◆ Past experience with the District or similar agencies with similar scope/difficulties

In addition to these changes, the prequalification will be granted in three tiers: A) Contract amount over \$1M with strict restrictions, B) Contract amount under \$1M with lesser restrictions, and C) Contracts under \$1M with lesser restrictions and firms that have not worked with DPS. These prequalification tiers will be very beneficial for M/WBE firms seeking to be prequalified with DPS. In addition, firms have the ability to move up to a higher tier and firms cannot submit bids on project types where they are not prequalified, i.e. tier A cannot submit bids for tier C projects. This concept creates an opportunity for same size firms to compete among same size firms.

M/WBE GOALS COMMITTEE

In 2015, the DPS instituted a goals committee to advise and assist DPS with increasing the participation of M/WBEs on construction and construction-related services bond contracts. In doing so, the committee is responsible to establish M/WBE project goals. The goals committee is chaired by a DPS senior staff and members include construction, and architectural and engineering services firms. Initially, committee members were not restricted on submitting bids on projects where they participated in establishing goals. This policy recently changed and goals committee members are now asked not to bid on projects they set goals.

DPS staff interviews reported some M/WBE goals were set as high as 40 percent without supporting data such as firm availability, detailed scopes of work, or estimated project costs. DPS staff involvement in the goal setting process is limited to addressing questions regarding the scope of work, if needed.

BUSINESS DIVERSITY AND OUTREACH

Since 2014, Denver Public Schools took several steps to inform area business owners of the District's BDOP initiatives, networking sessions, and technical assistance. Sessions such as "How to do Business with Denver Public Schools" and a reverse trade show, to name a few were conducted in 2016. In November 2016, the District hired a new BDOP Director.

In December 2014, the District began using B2GNow to capture contract and subcontractor data on construction and construction-related professional services projects. At the present time, DPS does not maintain bidder data or non-M/WBE subcontractor data in B2GNow. Prime contract data is captured through an interface with the District's Lawson Financial system. Subcontractor data is entered by general contractors or primes once their subcontractor plan is approved by procurement services.

M/WBE Certification

Denver Public Schools does not certify M/WBE firms to participate in its program but accepts certifications from the City and County of Denver, Mountain Plains Minority Suppliers Development Council, U.S. Small Business Administration, State of Colorado -DBE Certification, and Regional Transportation District. The certification criteria such as number of employees, personal net worth consideration, location of firms vary among the third-party entities.

CONCLUSIONS

Denver Public Schools modified, and are continuing to modify, its processes to encourage increased participation of minority- and women-owned businesses in its procurement process. There are still procurement process, outreach, and M/WBE compliance modification that can increase contract opportunities for area M/WBE firms. Suggested recommendations are provided later in this report.

3. QUALITATIVE DATA ANALYSIS

MGT held a public forum on December 7, 2016 to receive comments from area businesses on their experience doing business or attempting to do business with DPS. Forty business owners attended the public forum and 16 firms gave comments regarding their experiences. In summary, professional services firms which included architectural and engineering firms, addressed the qualification criteria necessary to be considered responsive. According to these firms, "school experience" and "similar size projects" creates a barrier for firms. Participants suggested that similar experience performed in the private sector should be included in the qualification consideration. Additional comments suggested that DPS create a program or process to foster M/WBE subcontractors so they can become primes, a focus on increasing opportunities for M/WBE primes to be more competitive, and providing more lead time between advertising projects and the due date of the bids or proposals. In addition, comments reflected the following issues/concerns:

- ♦ The certifications accepted by DPS includes minority- and women-owned businesses that are large companies. It is difficult for smaller, yet qualified, M/WBE firms to compete.

- ◆ Create a program that gives M/WBE firms an opportunity to compete as primes.
- ◆ Hold primes accountable, even grade them, on their M/WBE participation – particularly with firms the primes have not worked with before.
- ◆ Current bid/proposal specifications are written so that one or two firms will win the bid. DPS needs to revise the specification to allow competition of all qualified.
- ◆ Open the M/WBE program to other industries of DPS procurement. Don't limit the program to the construction and construction-related industries.

In-depth Interviews were conducted with area businesses, both minority and non-minority firms that have bid or were awarded contracts with the Schools. Consistent themes from these interviews include:

- ◆ DPS staff need to be more diligent in growing M/WBE firms.
- ◆ Reevaluate the prequalification process. Too restrictive for firms with similar experience but not specifically DPS experience.
- ◆ Reevaluate certification criteria to exclude multi-million dollar M/WBE firms in the counting of project goals.
- ◆ Establish realistic M/WBE goals.
- ◆ Extend the advertising period for firms to review, prepare, and submit bids.
- ◆ Competing with large companies. Need smaller contracts for smaller firms to compete on.

In addition to the public forum, MGT contacted spoke with area stakeholders. Most of stakeholders interviewed were very familiar with DPS' processes and the Business Diversity and Outreach Program. This was particularly true of community-based organizations and/or membership based organizations that provide business assistance and business development geared toward strengthening the business capacity of the businesses served by the association or organization. In fact, in several instances stakeholders had very long term relationships with DPS and have been active participants in DPS committees focused on greater inclusion of minority and women-owned businesses. Among most stakeholders that have a working knowledge of DPS and /or working relationship with the Business Diversity and Outreach Program the opinions and perceptions ranged from "DPS is doing an outstanding job" to "DPS is heading in the right direction" to "there are some longstanding issues and barriers that need to be addressed to improve opportunities for minority and women businesses". While there may have been differences or variances based on certain issues and their resolution overall there was appreciation for DPS's willingness to involve and engage stakeholders in the process. Comments received from the business community and stakeholders agree that they would like to see a small business program.

4. SELECTED M/WBE AND SBE PRACTICES

This section of the report describes selected M/WBE and SBE practices administered by other school districts, as well as government municipalities. Given the unique nature of how schools procure goods

and services that impact education service delivery to students, identifying options for program practices that DPS can consider was important component of this review.

PORTSMOUTH PUBLIC SCHOOLS

Portsmouth Public Schools (PPS) first Procurement Disparity Report identified disparities in the utilization of minority and women businesses in its relevant market area. Immediately upon accepting the results of the report, PPS developed and implemented an M/WBE Program which operates within the Purchasing Department. The mission of the M/WBE Program is to adjust PPS' procurement practices to create fair and equitable opportunities for M/WBE firms to compete on all facets of PPS procurement to include school activity funds managed by each school.

SMALL PURCHASING

- Up to \$5,000 – maintenance and repair work which cost \$5,000 or less, the buyer can identify the good or service to be purchased and solicit a minimum of one (1) quote. Notification of M/WBE firms is not required; however, rotation of awards to multiple vendors including M/WBE firms is recommended. When a non-MWBE vendor is proposed, or utilized, Good Faith Effort (GFE) documentation is required.
- \$5,000 - \$15,000 – For goods, equipment, services, maintenance and repair work, construction, and professional services which cost more than \$5,000 and up to \$15,000, the buyer must utilize Virginia's e-procurement system (eVA) or obtain a minimum of three written quotes from three different vendors of which at least one must be an M/WBE firm. The Purchasing Agent may require advertising these requirements using eVA when the opportunity for M/WBE vendors is considered more favorable for a particular commodity. When a non-M/WBE vendor is proposed with 3 quotes, GFE documentation is required.
- Informal Solicitation (\$15,000 - \$100,000) – for goods, equipment, services, maintenance and repair work, construction, and non-professional services estimated to cost more than \$15,000 and up to \$100,000 (and professional services up to \$60,000), then specifications for the goods or services shall be prepared and forwarded to the Purchasing Office attached to a purchase order requisition. All informal solicitations will be advertised through the State's eProcurement System. Notification to available M/WBE firms is required. School Board approval is required for all contracts and contract renewals over \$50,000, including purchases from an existing cooperative contract.

FORMAL CONTRACTS AND PURCHASING

If the goods or non-professional services are estimated to cost more than \$100,000 (and professional services more than \$60,000), then Purchasing must comply with the Virginia Public Procurement Act and perform the necessary requirements to solicit competitive bids, quotes or proposals. All formal solicitations are advertised on the State's eProcurement System. School Board approval is required for all contracts and contract renewals over \$50,000, including purchases from an existing cooperative contract. Notification of available M/WBE firms is required.

VENDOR REGISTRATION AND CERTIFICATION

Portsmouth Public Schools does not certify M/WBE firms. PPS accepts certification from the Commonwealth of Virginia's Department of Minority Business Enterprises (DMBE), Women Business Enterprise Council (WBENC), and Carolina-Virginia Supplier Diversity Council (CVSDC). A list of available M/WBE firms can be located at <http://pps.k12.va.us/>.

M/WBE ADVISORY COMMITTEE

The School Board established an M/WBE Advisory Committee to assist with establishing annual and project specific goals and provide oversight of program compliance. The M/WBE Advisory Committee review data about M/WBE availability to perform the work requirements of a contract under consideration, and provide advice to the Purchasing Agent concerning M/WBE goal setting on those projects for which the Purchasing Agent has requested their assistance.

M/WBE Advisory Committee members are appointed by the School Board and consist of five to seven members. Portsmouth Public School staff assist the M/WBE Advisory Committee as requested. The M/WBE Advisory Committee, as a basis for establishing M/WBE goals, determine the present availability of all M/WBEs in the vendor database and make recommendations to the School Board for approval. In addition, the M/WBE Advisory Committee conduct inquiries, studies and hearings, and utilize information and assistance from individuals, contractors, entities or organizations including but not limited to the school principals and department directors, as necessary to establish recommended goals.

- Annual Aspirational Goals are approved by the School Board at the beginning of each fiscal year. Annual Aspirational Goals can be achieved through all types of procurement.
- Project Specific M/WBE Goals may be set for all Informal Solicitations and Formal Contracts and Purchases, except as provided otherwise in this Program.

GOOD FAITH EFFORTS

At the time of bid or proposal submission, firms are required to either meet the established project goal or demonstrate good faith efforts. Good faith effort compliance ranges in the types of demonstrated effort a bidder or proposer can make and each type of effort is weighted. A bidder or proposer must earn a total of fifty (50) points to satisfy GFE requirements. Examples of GFE credit include:

- ♦ Notification of Subcontracting Opportunities (10 pts)
- ♦ M/WBE Contact (10 pts)
- ♦ Breaking Down Work (15 pts):
- ♦ Working with M/WBE Assistance Organizations (10 pts)
- ♦ Joint Ventures (20 pts)
- ♦ M/WBE Participation on Non-PPS Contracts (15 pts)

CHARLOTTE-MECKLENBURG SCHOOLS (CMS)

Charlotte-Mecklenburg Schools procures Goods, Construction and Repair Services, and Other Services. The goal of CMS is to ensure that minority-owned, women-owned, and small business enterprises have a fair and reasonable opportunity to participate. Board of Education approved a policy which authorized the creation of an M/W/SBE Program.

Charlotte-Mecklenburg Schools administers M/WBE and Small Business Enterprise (SBE) programs. Small Business Enterprise firms are defined as a business enterprise owned, operated, and controlled by one (1) or more eligible owners who have 51% ownership, interest, holds the professional or contractor license necessary for operation and is 25% or less of the applicable size standards established by the Small Business Administration.

CERTIFICATION OF M/W/SBE

M/W/SBE are certified and classified as such by a variety of entities. CMS accept M/W/BE certification from any bona fide certifying entity, including certification from such entities as the City of Charlotte, State of North Carolina Historically Underutilized Business (HUB) Office³, Carolinas-Virginia Minority Supplier Development Council, National Minority Supplier Development Council, and the Women Business Enterprise National Council. CMS accept SBE certification from the City of Charlotte. Additionally, CMS staff may classify businesses that are not certified by the above entities if a business demonstrates that it meets the certifying entities' definition of an M/W/SBE. Classified M/W/SBE firms shall be tracked/reported separately from certified firms.

PURCHASING

Procurement Services is ultimately responsible for all procurement related-activities. However, school and administrative departments have the authority to purchase certain commodities and contracted services. Procurement greater than \$90,000 are advertised in local newspapers, on the North Carolina Interactive Purchasing System, E-Procurement, or through direct contact (i.e. phone, fax, or email). In addition, the MWSBE Office maintains a database of MWSBEs and other firms that have expressed an interest in doing business with the school system.

All formal construction-related bid opportunities are advertised and emailed to the entire M/W/SBE construction database. In addition, the M/W/SBE Office sends out a listing of the general contractors bidding on each formal project, contact information for each general contractor bidding, and a listing of available subcontracting opportunities. Follow-up emails regarding pre-bid meeting dates and bid due dates are also sent. In addition, bid notifications are sent to the following community partners for database distribution:

- ◆ Association of General Contractors
- ◆ Charlotte Housing Authority

³ The NC HUB certification includes "socially and economically disadvantaged" individuals.

- ◆ City of Charlotte
- ◆ Hispanic Contractors Association
- ◆ Metrolina Minority Contractors Association
- ◆ United Minority Contractors of NC
- ◆ University of North Carolina at Charlotte
- ◆ Carolinas-Virginia Minority Supplier Development Council

Prime contractors for Construction and Repair projects that must be formally bid are responsible for compliance with the good faith efforts requirements regarding use of M/WBE subcontractors as required by state law. Additionally, for Goods and Other Services, the M/W/SBE Office and the Purchasing Department may require other vendors to provide subcontractor information on a case-by-case basis

MONITORING AND REPORTING

The M/W/SBE Office monitors all contracts to determine whether contractors achieve the ranges of participation set forth on the M/W/SBE identification forms submitted by contractors. All written statements, affidavits or intentions made by the bidder become part of the agreement between the contractor and CMS. Failure to comply with any of these statements, affidavits or intentions or with the M/W/SBE program guidelines constitute a breach of contract. In determining whether a contractor has made good faith efforts, CMS evaluate all efforts made by the contractor and determine compliance regarding quantity, intensity, and results of these efforts.

Compliance coordinators conduct site visits of various construction-related projects, attend owner/architect/contractor meetings, review pay application/tax statements, attend pre-bid meetings, and serve as a vendor sourcing reference for the contracting community.

TRAINING AND TECHNICAL ASSISTANCE

The M/W/SBE Office routinely partners with other entities by aiding on a variety of topics targeted to increase capacity of minority, women and small business owners. The series of interactive workshops taught by experienced professionals allows participants to obtain real-life, hands-on experience in the areas of bidding, estimating, procurement, marketing and presentation skills development, understanding bid/contract documents, and contract negotiation/dispute resolution. We also offer “How to do Business” orientation sessions for new vendors. Staff meets quarterly with small business technical assistance providers to discuss current business development needs in the community, available venture capital funding, Small Business Assistance (SBA) loans, workforce development programs, and credit repair options for start-up firms.

RECORD KEEPING REQUIREMENTS

To track M/W/SBE good faith efforts and utilization the following records are kept:

- ◆ Vendor “Master Database” documenting vendors used by CMS and whether such vendors are M/W/SBE vendors. M/W/SBE Department Documentation confirming compliance with regulations.⁴
- ◆ Statistics on utilization of M/W/SBE firms by departments. The reports include information regarding the dollars spent (including p-card transactions), companies used, number of M/W/SBE firms solicited, number of successful M/W/SBE awards, the number of waivers requested by department and/or granted by the M/W/SBE Department. Such reports shall also include, as appropriate, explanations of extenuating or unique circumstances that may affect M/W/SBE participation for various categories or types of purchases.
- ◆ Data are collected and tracked by the various race/ethnic/gender classifications identified in the MGT Study and defined above in Section 2. Businesses that count towards the MBE or WBE goals can also count towards the SBE goals if they meet the required size standard criteria. M/W/SBE participation is monitored to evaluate the success of the remedial program. In addition, CMS will track M/W/SBE spending on p-card transactions.

ANNUAL GOALS

Aspirational goals for M/WBE utilization are summarized in the following chart⁵

2013 – 2014 GOALS

Category	MBE Goal	WBE Goal	SBE Goal	MWSBE Goal
Construction	10%	6%	5%	21%
Architecture, engineering and surveying	4%	7%	5%	16%
Contracted services (other than construction)	5%	4%	5%	14%
Goods	3%	3%	5%	11%

Source: Minority, Women, and Small Business Enterprise Program Executive Summary, August 26, 2014

⁴ 2 It is not expected that CMS staff will create cumulative reports summarizing all M/W/SBE efforts. The intent is that individual files for purchases greater than or equal to \$5,000 shall have evidence of CMS staff efforts to provide M/W/SBE opportunity such that cumulative data could be determined if necessary at a later date.

⁵ M/WBE goals are based upon reasonable estimates of relative M/WBE availability. Initial annual aspirational goals (for the remainder of the 2004-2005 fiscal year and the 2005-2006 fiscal year) for the percentage of procurements dollars paid to M/WBEs are based on recommendations of the MGT Study

CITY OF CHARLOTTE

While the City of Charlotte is not a school, its SBE Program has selected practices that align with Denver Public Schools objectives to establish an SBE Program. The approach of the City's SBE Program is to address the average size and capabilities of M/WBE firms in the area. The SBE criteria are as follows.

1. The qualifying person(s) must own 51% of the business enterprise.
2. Personal net worth cannot exceed \$750,000 (excludes business ownership, retirement accounts, and eligible equity in residential home)
3. Significant business presence in the Charlotte Combined Statistical Area (CSA)
4. Provide a commercially useful function to the City.
5. ¼ SBA size standard.
6. The business is headquartered or has an office in the Charlotte CSA.
7. Location of managerial or decision-making personnel.
8. Lease Agreement.
9. Post office box, mail drop, or message center.
10. Previous work or contracts performed in the Charlotte CSA; and
11. Percentage of income or revenue derived from Charlotte CSA.

SBE PROGRAM COMPONENTS

- A. Prime contracting – SBE aspirational goals are established for primes taking into account availability of SBEs in the relevant market area. The City has the flexibility to create target outreach and designate contracts to SBE primes.
- B. Subcontracting – for construction contracts \$300,000 and greater, the City can establish one or more goals consisting of 1) both SBE and MWBE, 2) a combined MWSBE, 3) only an MWBE, or 4) only SBE.
- C. Goal-Setting Methodology for Subcontracting - such methodology shall take into account contract size, reasonably known availability of subcontracting opportunities that SBEs and MWBEs can perform on each Contract, whether MWBE Goals for the project are legally warranted to remedy the effects of past discrimination and other factors as the Program Manager deems appropriate. Such methodology may also consider the use of an optional Goals Committee or consultation of the City's Business Advisory Committee.

5. POLICY AND PROGRAM RECOMMENDATIONS

Recommendations provided in this section are based upon the review of policies and procedures and BDOP objectives related to greater participation and inclusion in DPS contracting and procurement.

1. Goal Setting. The establishment of project specific goals must be conducted in a manner that align with M/WBE availability and the estimated value of a projects scope of work. Using these components to set project specific goals will develop realistic expectation of participation achievement and reduce undue hardship of prime vendors. To further increase M/WBE utilization the BDOP should expand goal setting beyond the bond program earmarked for construction and construction-related professional services.

The U.S. Department of Transportation has a tested goal setting process that the District should follow to calculate project specific goals. The first step is to obtain or develop a baseline goal for the “relative availability” of ready, willing and able M/WBE firms in the market area, compared to all firms. The second step involves “adjusting” the baseline goal to reflect specific additional factors, which must be considered in refining the goal. Detailed steps for goal setting is provided in **Appendix A, Methodology for Establishing Project Goals**.

2. **Goals Committee.** It is commendable that the District instituted a goals committee. MGT recommends structuring this committee to review and approve project specific goals calculated and established by District staff instead of setting goals. Adjusting the responsibilities of the goals committee should reduce or eliminate any current or potential conflicts of interest with firms that wish to bid or propose on projects where they are a part of establishing the goals.
3. **Data management.** The District purchased B2GNow to collect M/WBE data for its program review, evaluation, and compliance. The District should expand the use of B2GNow by collecting data that will assist with aspirational and project goal setting, program reporting, future disparity studies, and more. Recommendations include:
 - a. Expand B2GNow to capture all subcontracting dollars which includes non-M/WBE firms and suppliers. Expanding this data will assist in the calculation of project goals and reporting of project utilization.
 - b. Create an online vendor registration system to identify potential firms interested in doing business with the District. This registration would include M/WBE firms.
 - c. Maintain different levels of certification-types for vendors – SBE, EBE, 8A, M/WBE
4. **Establish a Small Business Program.** Small Business Programs are not subject to strict scrutiny defined by the courts. Many SBE Programs are established to allow more flexible procurement processes that are not restricted based on race and gender. Firm qualifications are usually structured to cater to the major or M/WBE firms. For example, many SBE Programs will have a personal net worth threshold and firm location requirement. MGT recommends Denver Public Schools establish a small business program that can facilitate increased M/WBE prime participation. The SBE Program should be carefully structure to address the capacity and size of firms in the program.
5. **Website.** The District should create or update their Business Outreach and Diversity Program website to provide up-to-date information. Elements of the website should include, but not limited to:
 - a. Program elements – BDOP plan documents, requirements for good faith efforts, goals committee’s roles and responsibilities.
 - b. Outreach – how to do business steps, upcoming outreach activities, strategic outreach and communication plan.
 - c. Procurement Forecasting – upcoming bid/proposal opportunities.
6. **Forecasting.** Forecasting will assist M/WBE and SBE firms prepare and begin developing relationships with primes when there is advanced knowledge of upcoming projects. The District

should post procurement forecasts three to five months prior to the bid or proposal due dates. The forecasts should be posted to the District’s website, shared with area trade associations, and emailed to the District’s vendor database. The forecast should include the following:

- a. Project Name
 - b. Estimated dollar value
 - c. Proposed due date
 - d. District’s Point of Contact
 - e. Estimated scope of work
7. Prime Contracting. The percentage of work that a Prime M/WBE self-performs shall count toward M/WBE goal. Some agencies will report all dollars and some only report dollars spent by MWBE prime and subs.
- a. If the M/WBE prime intends to self-perform the entire work, then 100 percent participation will be counted.
 - b. If the M/WBE self-performs a portion of the work and other portions are subcontracted, then the percentage of work the M/WBE prime performs is added to the percentage of work M/WBE subcontractors perform.
8. Acceptance of M/WBE Certifications. It is commendable that the District is utilizing resources already available in the market place to identify minority and women businesses. To increase the opportunity for qualified but smaller M/WBE firms, the District must identify third-party certifying entities that focus on size standard in addition to minority or woman ownership. For example, the City and County of Denver’s Emerging Business Enterprise (EBE) certification which has a revenue threshold and personal net worth cap can be required for subcontracting goals. Minority and women-owned primes with certifications from recognized third-party entities can be accounted toward the District’s aspirational goals.

IMPLEMENTATION PROPOSED TIMELINE

Recommendation	Priority (High, Medium, Low)	Implementation Timeline
Website	Low/Medium	4-6 weeks
SBE Program	Medium/High	3-5 months
Forecasting	High	4-6 weeks
Data Management	High	1-3 months
Goal Setting	Medium/High	2-3 months
Prime Contracting	Low	4-6 months

6. CONCLUSION

Denver Public Schools continues to modify its procurement and contracting processes to provide opportunities for MWBE firms to win construction and construction-related projects. DPS has also taken proactive steps to improve the Business Outreach and Diversity Program that is designed to assist and grow the capacity of MWBE firms and improve the economic impact to its market area and community.

APPENDIX A – METHODOLOGY FOR ESTABLISHING PROJECT GOALS

1. Obtain specifications and scopes of work for each project.
2. Obtain a project estimate from DPS Engineer or strategic sourcing, if applicable, and an estimate for potential subcontracting opportunities for each project, if any.
3. Identify available M/WBE subcontractors for B2GNow or DPS vendor database and determine an MWBE subcontracting goal, likewise.
4. The formula for determining goals for each scope of work (SOW), where there are subcontracting opportunities is: *Estimated cost of SOW/Estimated cost of total project x Number of M/WBE vendors for SOW/Total number of vendors for SOW. This formula provides the M/WBE subcontracting opportunity for the SOW or project goal.*

$$\frac{\$ \text{Estimate Scope A}}{\$ \text{Estimate Total project}} \times \frac{\# \text{M/WBE vendors for Scope A}}{\# \text{Total vendors for Scope A}} = \text{M/WBE or SBE Opportunity for Scope A}$$

5. Request review and approval from Office of Business Opportunity and the M/WBE Goals Committee.
6. Incorporate approved goals into the solicitation documents.

Annual Goals

1. The steps to establish Annual Aspirational Goals are provided in the 2015 Disparity Study, Appendix K.

APPENDIX B – PROPOSED ROLES AND RESPONSIBILITIES OF AN M/WBE ADVISORY COMMITTEE

1. Committee Members – members may consist of five to seven business owners and/or trade organizations representatives in construction, architecture and engineering, and professional services. Denver Public Schools staff shall serve as ad hoc members which could include purchasing staff, project managers, and/or departmental directors when their advice or expertise is necessary to inform the Committee.
2. Office of Business Opportunity (OBO) – shall be a non-voting member and advisor to the Committee. The OBO will coordinate and advise the Committee on DPS staff participation.
3. Committee Appointments – Committee members are appointment by members of the Denver Public Schools Board of Education.
4. Committee Terms – recommend two- and three-year staggered terms. Committee members should not serve more than two consecutive terms.
5. Voting – a majority vote is needed to approve recommended aspirational or project goals. Denver Public Schools staff are non-voting members.
6. Project Specific Goals – the M/WBE Advisory Committee shall:
 - a. Review recommendations from DPS staff on subcontracting opportunities; and approve or revise same;
 - b. Review availability estimates of firms in each subcontracting opportunity;
 - c. Participation goals are not and shall not be quotes
7. Steps to Recommending Goals – Denver Public Schools Staff shall:
 - a. Recommend goals for project exceeding \$300,000.
 - b. Identify potential subcontracting opportunities.
 - c. Determine engineer’s estimate for each identified subcontracting opportunities.
 - d. Identify M/WBE firms in each of the potential subcontracting opportunities.
 - e. Submit recommended goals to the Committee for revision or approval.
 - f. Incorporate approved goals into the bid/RFP documents.
8. Aspirational Goals – Denver Public Schools will recommend bi-annual aspirational goals. Goals are proposed based on the calculation of past M/WBE utilization and current availability.⁶
9. Meeting frequency – recommend meeting quarterly. Additional meetings may be needed.
10. Advisory Capacity – the M/WBE Advisory Committee may act in an advisory capacity on program development, program compliance, outreach, and other matters with the M/WBE Program.
11. Public Notice – committee meetings may be open to the public and publicly announced. At the discretion of the Chair, portions of the meetings may be closed to the public to receive advice from counsel or reports from counsel.
12. Public Participation – upon recognition by the Chair or his/her designee, member of the general public may address the committee.

⁶ 2015 Disparity Study, Appendix K