

Summary and Recommendations: Expanding Opportunities for State Contracting Through Enhanced Data Collection and Reporting

Small businesses are the backbone of Tennessee’s economy. Acknowledging that some business owners have been “impeded from normal entry into the economic mainstream,” the state of Tennessee has at various times in the last five decades adopted policies intended to “aid, counsel, and assist in every practical manner disadvantaged businesses in order to preserve free competition on equal terms with those businesses constituting the major part of the businesses community.” A 2009 study of disparities in state contracting for minority-owned and woman-owned businesses, for example, found that Tennessee had “a strong basis in evidence to take proactive measures to prevent discrimination based on race, ethnicity, or gender against women and minority prime contractors and subcontractors.” Currently, the Governor’s Office of Diversity Business Enterprise (Go-DBE)—established in 2003—serves as a central organization to coordinate the state’s efforts to assist small businesses and businesses owned by minorities, women, persons with disabilities, or service-disabled veterans, including efforts to increase the participation of these businesses in the state’s procurement and contracting processes. Go-DBE annually reports the amount of state procurement spending going to these five categories of businesses. The state has not updated the disparity analysis from the 2009 study in the decade since its publication.

The House of Representatives passed House Bill 1593 by Representative Miller in the 112th General Assembly (its companion bill, Senate Bill 1235 by Senator Gilmore, did not move out of committee), directing the Commission to study whether disparities exist in the issuance of state contracts to businesses owned and operated by African Americans; provide information on the effect of any such disparities on the African American business community, as well as the manner in which other states have addressed disparities; and report its findings no later than January 31, 2022, including any recommendations for reducing disparities if they are found (see appendix A). Additionally, in committee discussions of House Bill 1593, House Minority Leader Camper referred to the 2009 disparity study and asked whether any of its recommendations had been implemented. The Commission finds that most of the 2009 study’s recommendations have been implemented and makes new recommendations to improve data collection and reporting of disparity efforts across state agencies.

Tennessee’s 2009 disparity study found racial and gender disparities and made recommendations to address them.

The 2009 disparity study analyzed state contracts with African American-owned businesses, businesses owned by other minorities or women, and small businesses from fiscal year 2002-03 through 2006-07. For each group, ratios were calculated comparing that group’s utilization in state procurement to its availability to determine whether disparities existed in the awarding of state contracts. An example of how to calculate these ratios—known as disparity ratios—is found in figure 1. Ratios less than 1.0 suggest that a disparity exists.

Figure 1. Sample Disparity Ratio Calculation for Minority-Owned Businesses

Utilization Calculation:	
Procurement spending with minority-owned businesses	\$10,000
Procurement spending with non-minority-owned businesses	+ \$40,000
Total Procurement Spending	= \$50,000
$\$10,000 \div \$50,000 = 0.20$ or <u>20% minority-owned business utilization</u>	
Availability Calculation:	
Minority-owned businesses available to fulfill contract	10
Non-minority-owned businesses available to fulfill contract	+ 30
Total Firms Available	= 40
$10 \div 40 = 0.25$ or <u>25% minority-owned business availability</u>	
Disparity Ratio = Utilization ÷ Availability = 20% ÷ 25% = 0.80	

Source: TACIR staff example based on methodology used in Griffin and Strong 2009.

For African American-owned businesses, the 2009 study found that disparities existed in state contracts in each of five business categories—construction, architecture and engineering, professional services, other services, and goods and supplies (see table 1). The study also found that disparities existed for businesses owned by other minorities or women for at least some of the business categories (see appendix B). It concluded that for the five-year period analyzed, “the evidence . . . gives rise to an inference of discrimination [or] the continuing effects of past discrimination against minorities and women in business transactions in the state of Tennessee.”

**Table 1. 2009 Disparity Study:
Disparity Ratios for African American-Owned Businesses**

Business Category	% of State Procurement Spending (Utilization)	% of Businesses Available (Availability)	Disparity Ratio
Construction	0.22%	3.80%	0.06
Architecture / Engineering	0.70%	6.80%	0.10
Professional Services	0.08%	0.94%	0.09
Other Services	2.96%	7.09%	0.42
Goods and Supplies	0.40%	1.95%	0.21
TOTAL	0.40%	2.18%	0.18

Source: Griffin and Strong 2009.

The 2009 study offered 23 recommendations for the state to reduce contracting disparities with all minority groups and women. Sixteen of these recommendations were race- and gender-neutral and could be implemented without legislation; one was race- and gender-neutral but required legislative action; and another six were race- and gender-conscious measures that would have required legislative action. In the years that followed, the state implemented several of the recommendations to at least some degree. See table 3 at the end of this executive summary.

State procurement spending with African American-owned businesses has increased overall, but agency-level spending goals are often not being met.

TACIR staff could not update the analysis from the 2009 disparity study for this project. Data on state contracts is collected and maintained by the state’s Central Procurement Office (CPO) with the state’s overall procurement needs in mind and are not tailored to serve as a foundation for disparity studies. However, Go-DBE provided TACIR staff with procurement data that, along with other data included in Go-DBE’s annual reports, allows for some analysis and comparisons with the 2009 study.

Data provided by the CPO show that state procurement spending with African American-owned businesses has increased both in total amount and as a percentage of overall state procurement spending. From fiscal year 2015-16 through 2019-20, the state spent \$657 million with businesses that it certified as African American-owned, up from the \$28 million spent with African American-owned businesses—both certified and non-certified—from fiscal year 2002-03 through 2006-07 that was reported in the 2009 study.

The percentage of state procurement spending with African American-owned businesses also increased to 3.3% from 0.4%. These increases are likely greater than the data suggest because anecdotally there are some African American-owned businesses that have not sought certification that have been awarded state contracts. See table 2.

Table 2. State Procurement Spending with African American-Owned Businesses: Comparing Fiscal Years 2002-03 through 2006-07 to 2015-16 through 2019-20

Fiscal Year	Total State Procurement Spending*	Spending with African American Businesses**	
		Amount	% of Total
2002-03	\$ 1,508,884,276	\$ 5,768,861	0.4%
2003-04	1,087,186,369	1,752,001	0.2%
2004-05	1,132,667,386	3,240,583	0.3%
2005-06	1,463,787,509	11,529,199	0.8%
2006-07	1,725,705,113	5,727,194	0.3%
Total 2003-07	\$ 6,918,230,653	\$ 28,017,838	0.4%
2015-16	\$ 3,620,298,637	\$ 87,055,066	2.4%
2016-17	3,736,855,201	75,616,598	2.0%
2017-18	3,648,103,202	131,040,035	3.6%
2018-19	4,000,591,109	187,781,838	4.7%
2019-20	4,720,968,923	175,563,625	3.7%
Total 2016-20	\$19,726,817,072	\$ 657,057,162	3.3%

Source: TACIR staff analysis of data published in Griffin and Strong 2009 and annual reports published by Go-DBE, 2016-2020.

* Data from FY 2002-03 through FY 2006-07 (as published in Griffin and Strong 2009) includes spending with prime contractors only.

** FY 2002-03 through FY 2006-07 DBE spending captures only MBE/WBE; FY 2015-16 through FY 2019-20 DBE spending captures only businesses certified by Go-DBE, including small businesses.

Moreover, the state’s overall procurement spending with minority-owned businesses appears to exceed what would be expected based on the individual spending goals set annually for 30 of the state’s agencies—the state does not set goals specifically for African American-owned businesses or other racial minority groups. For the five fiscal years from 2015-16 through 2019-20, total state procurement spending with minority-owned businesses was nearly \$971 million, almost \$246 million greater than what would be anticipated based on these goals; the state also exceeded the total that would be anticipated for each of these fiscal years individually. Go-DBE coordinates with each of

these agencies to establish agency-level minority-owned business procurement goals annually, set as a percentage of each agency's total spending on procurement.

But only five of 30 state agencies met their goals for procurement spending with minority-owned businesses in at least three of the five fiscal years from 2015-16 through 2019-20. Only two of those five met their goals every year, and half of the 30 agencies did not meet their goal in any of the five years. It appears possible from the data that one or a handful of additional contracts being awarded to a minority-owned business could make a difference in whether the annual goals are being met. Data show that most of the state's procurement spending with minority-owned businesses comes from two agencies, the Department of Finance and Administration and TennCare. For state spending with African American-owned businesses in particular, spending is highly concentrated in a few business categories: medical transportation and staffing, for example, together accounted for more than 70% of all payments to African American vendors in fiscal years 2018-19 through 2020-21.

There are barriers to getting state contracts that affect all businesses, but some are more likely to affect African American-owned businesses.

Many new or small businesses may lack technical knowledge of business operations, such as accounting procedures, and may not have established relationships with networks of clients and other businesses that can support them. The importance of these factors is considered in most business development programs and incubators, which regularly offer support in these areas through technical training and networking introductions. Although lack of technical knowledge and support networks are a common barrier for many small businesses, African American business owners are often less likely to have family members who have owned and operated their own businesses, are less likely to have direct personal experience with operating a business, and may have fewer personal connections with existing businesses and supporting institutions—all of which may further hinder their ability to make successful bids for state contracts.

Access to capital can be an even greater barrier to small businesses seeking state contracts. Nationally, past research has shown that, compared to white-owned businesses, African American-owned businesses tend to start out with less wealth and are less likely to be approved for loans, and the loans they do receive are smaller on average. This can impede their ability to grow, to meet certain bonding or insurance requirements, or to make successful and competitive bids on larger projects.

Tennessee has resources and programs available to address barriers faced by small businesses, including those that are African American owned.

Many of the state resources and programs available to small businesses and African American-owned businesses alike in Tennessee focus on helping them build technical knowledge and capacity. For example, the Department of Economic and Community Development's Business Enterprise Resource Office (BERO), established in 1977, "serves as a voice for and advocate of economic inclusion; analyzes, disseminates, and promotes best practices and access to capital to service providers; and reports on the status of [disadvantaged businesses] statewide." BERO's website includes an interactive guide providing step-by-step information on starting a business in Tennessee, as well as information on state procurement and funding opportunities. BERO also responds to requests for business information and assistance from individuals and companies, and it participates in events supporting small business development. Similarly, the Tennessee Department of Transportation's Small Business Development Program works to increase the number of minority- and woman-owned businesses in the highway and bridge construction industry by providing technical assistance, resources, guidance, and any other information.

Go-DBE, as noted above, is charged with coordinating and directing executive branch efforts to increase participation by small businesses and businesses owned by minorities, women, persons with disabilities, or service-disabled veterans in the state's procurement and contracting processes. It does this through a combination of providing technical assistance and helping businesses register as vendors to participate in state procurements, as well as through its certification program for small and diverse businesses seeking contracts with state government agencies. Go-DBE maintains a list of certified businesses for each category that can be used by both public and private sector procurement officials to find small and diverse businesses to meet their procurement needs. Additionally, for state procurements, certification can be used as one of the tiebreakers when deciding between otherwise similar bids.

Tennessee also has a program to help small businesses overcome lack of access to capital, though it is currently being phased out. The Tennessee Department of Treasury's Small and Minority-Owned Business Assistance Program (SMOB) loaned money to lenders, such as banks, who then loaned the funds to businesses. The program was initially designed for telecommunications businesses before expanding to include more categories of businesses. Loans were not meant to be a pipeline to winning state contracts, though some borrowers did become state contractors. Most of the program's loans went to existing businesses such as retail and restaurants as well as businesses

looking to expand. SMOB is currently winding down its operations and is not making new loans.

Around the time that the 2009 disparity study was published, the General Assembly also allocated \$772,000 from the SMOB fund for a disparity study of contracts awarded by the University of Tennessee and Tennessee Board of Regents. In hearings on House Bill 1593, House Minority Leader Camper asked about the status of the funding. Representatives from the Tennessee Department of Treasury said that those funds have recently been reallocated to the Tennessee Board of Regents to fund a dedicated procurement diversity coordinator position.

Government authority to adopt race-conscious procurement policies is limited under state and federal law.

Tennessee's procurement policies at the time of the 2009 disparity study were race-neutral and remain so today. They operate under the adage that a rising tide raises all ships, so what is good for small businesses generally will also be good for businesses owned by African Americans. However, some stakeholders argue that existing barriers affecting African American-owned businesses cannot be fully overcome using a race neutral approach.

Some local governments and the state of Illinois have adopted limited race-conscious procurement policies to help African American-owned and other minority-owned businesses obtain government contracts, but federal courts have placed limits on the adoption of these policies. Policies that take race into account when awarding contracts are permissible only if narrow conditions are met. As described in a 2012 Tennessee Attorney General's opinion,

Any racial classification used in awarding public contracts is subject to strict scrutiny and will only be upheld if the state or local government can establish that it is narrowly tailored to promote a compelling governmental interest.

The US Supreme Court in *City of Richmond v. J.A. Croson Co.* (1989), a pivotal case related to racial preferences in contracting, held that

[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.

Importantly, the Court rejected the “claim that past societal discrimination alone can serve as the basis for rigid racial preferences.”

Based on the Court’s ruling in *Croson* and in subsequent decisions, government officials have used disparity studies to document racial disparities in contracting to demonstrate both the need for remedial action and that other non-discriminatory remedies would be insufficient. These studies have effectively become a necessary first step before implementing any race-conscious procurement policies. It is important to note that even with a comprehensive disparity study in place, the use of racial quotas—which establish a minimum amount or percentage of contracts set aside for businesses based on race—is not allowed under state or federal law.

Incremental improvements to the state’s race-neutral approach can be made.

Race-conscious procurement policies are not feasible at this time given that the data collected by the CPO cannot on its own support the type of analysis needed to demonstrate whether racial disparities exist in state contracting. **Should the state decide it wants to update the 2009 disparity study, it would benefit from exploring cost-effective ways to enhance procurement data collection to better compare state procurement spending with the availability of different categories of businesses—including but not limited to African American-owned businesses—and calculate disparity ratios.**

Even if a new disparity study found such racial disparities, stakeholders may well disagree whether to address them through race-conscious means. None of the six race- and gender-conscious policy recommendations included in the 2009 disparity study were adopted despite the study’s results likely providing the legal basis to enact them.

However, data provided by the CPO suggest it is worth looking at whether the state’s race-neutral approach can be improved. As discussed above, most state departments are not consistently meeting their aspirational goals for contracting with minority-owned businesses. Go-DBE hasn’t published data on whether departments were meeting their goals for minority-owned businesses since its 2013-14 annual report. Part of Go-DBE’s charge is to “assist state agencies and departments with establishing and striving to achieve their annual agency internal goals for the participation and the utilization of minority-owned, woman-owned, persons with disabilities, service-disabled veteran-owned and small business enterprises.” Annually publishing data on whether agencies are meeting their annual aspirational procurement goals for minority-owned businesses could help keep interested parties informed of agency progress at meeting goals, encourage efforts to identify areas where improvements are warranted, and potentially refine the goal setting process. For these reasons, **Go-DBE should publish in its annual**

report each state department's aspirational goals and achievements for businesses owned by minorities, women, persons with disabilities, and service-disabled veterans, as well as other small businesses. This information could also be published on the Go-DBE website; Go-DBE could discuss sharing this information with the staff of Transparent Tennessee, which serves as the executive branch's clearinghouse for making data more accessible.

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Table 3. Status of Recommendations from 2009 Disparity Study

No New Legislation Required		
Recommendation	Is Policy Race- and Gender-Conscious?*	Status
1. Continue the Current Programs	No	Implemented
2. Goals for MBE, WBE and SBEs Should be More Distinguishable to Meet the Narrow Tailoring Requirements of Federal Case Law	No	Not Implemented
3. Track the Attainment of Goals Through Award and Payment Data	No	Implemented
4. Diversity Business Enterprises Outreach	No	Partially Implemented
5. Promote MBE/WBE/SBEs within the Tennessee Marketplace and Coordination of Go-DBE Efforts	No	Implemented
6. Contract Sizing	No	Implemented
7. Promote MBE/WBE Collaboration	No	Implemented
8. Uniform Procedures for Department Solicitation of MBE/WBE/SBEs Bids	No	Implemented
9. Evaluate Inclusion of MBE/WBE/SBE Utilization in Performance Reviews of Employees with Procurement Authority	No	Not Implemented
10. Institute Annual Aspirational MBE/WBE Goals for Construction Industry in the Area of Sub-contracting	No	Not Implemented
11. Consider including MBE/WBE Goals in Economic Development Contracts and Measuring MBE/WBE Participation on Private Sector Projects Performed by State Prime Contractors	No	Not Implemented
12. Require All Contractors to Submit a List of All Sub-contractors Contacted in Preparation of Their Response to Bid and Proposal Packages	No	Partially Implemented
13. Procurement Officer Training Should be Reviewed, Evaluated, and Considered for Enhancement	No	Implemented

14. Consider Increasing Staff at Governor's Office of Diversity Business Enterprise	No	Not Implemented
15. Create a Mentor-Protégé Program	No	Not Implemented
16. Develop Additional Measures to Gauge the Effectiveness of the State's Efforts	No	Partially Implemented
New Legislation Required		
Recommendation	Is Policy Race- and Gender-Conscious?*	Status
1. Goals to be Set in Accordance with the Availability of Businesses in Each Business Category and Expand Availability Pool	Yes	Not Implemented
2. Consider Narrowly Tailored, Race- and Gender-Conscious Goals Modeled After Federal DBE Programs	Yes	Not Implemented
3. Declining Schedule for Race Conscious Remedies	Yes	Not Implemented
4. Mandatory Sub-contracting	Yes	Not Implemented
5. Adjust Current Legislation to clearly Define the Means for Tracking the Attainment of Agency Goals	Yes	Not Implemented
6. Consider Raising the Thresholds for SBE Qualifications	No	Implemented
7. General Services and the State Treasurer Should be Given Joint Responsibility for Developing a Comprehensive Program to Ensure Equal Access to Capital	Yes	Not Implemented

* Policies designated as race- and gender-conscious would likely require an up-to-date disparity study to be permissible under federal case law.

Source: TACIR staff analysis of recommendations included in Griffin and Strong 2009.

Analysis: Expanding Opportunities for State Contracting Through Enhanced Data Collection and Reporting

The House of Representatives passed House Bill 1593 by Representative Miller in the 112th General Assembly (its companion bill, Senate Bill 1235 by Senator Gilmore, did not move out of committee), directing the Commission to study whether disparities exist in the issuance of state contracts to businesses owned and operated by African Americans; provide information on the effect of any such disparities on the African American business community, as well as the manner in which other states have addressed disparities; and report its findings no later than January 31, 2022, including any recommendations for reducing disparities if they are found (see appendix A). Additionally, in committee discussions of House Bill 1593, House Minority Leader Camper referred to the 2009 disparity study and asked whether any of its recommendations had been implemented. She also questioned the status of \$772,000 allocated at the time for an additional disparity study for the University of Tennessee and Tennessee Board of Regents systems. In 2021, representatives from the Tennessee Department of Treasury said that those funds have recently been reallocated to the Tennessee Board of Regents to fund a dedicated procurement diversity coordinator position.¹

The Governor’s Office of Diversity Business Enterprise (Go-DBE) was created to coordinate the state’s efforts to assist small and diverse businesses.

The Governor’s Office of Diversity Business Enterprise (Go-DBE) serves as a central organization to coordinate the state’s efforts to assist small businesses and businesses owned by minorities, women, persons with disabilities, or service-disabled veterans, including efforts to increase the participation of these businesses in the state’s procurement and contracting processes. In 2003, Governor Phil Bredesen issued an executive order creating Go-DBE, which would assist diverse small businesses through “specific efforts to secure state contracting and procurement opportunities.” The order declared:

It is the unwavering policy of this state to expand economic opportunities, both inside and outside state government, for small businesses and businesses owned by minorities and women. A primary component of this

¹ Telephone interview with Jay Chavis, financial empowerment program manager, Tennessee Department of Treasury, June 3, 2021, and email from Jay Chavis, July 2, 2021.

effort will be to expand opportunities for these businesses to compete successfully for the state's expenditures for goods and services.²

One of the initiatives implemented by Go-DBE was the development of a certification program for small and diverse businesses seeking contracts with state government agencies. Certification is a process in which a governmental entity, like Go-DBE, verifies that a business is at least 51% owned and operated by a person meeting some category requirement. In Tennessee those include minority-owned, woman-owned, service-disabled veteran owned, persons with disabilities owned, or small business enterprises.³ The certifying agency investigates a business's application to determine that they are legitimate. Certification allows public and private procurement officials to find qualified diverse businesses to meet their needs.

In 2004, the Tennessee Small Business and Minority Owned Business Purchasing and Contracting Act became the Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act. The act added a category for woman-owned businesses and expanded coverage to all state agency "bids and proposals for equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services."⁴

Then, in September 2007, the State of Tennessee contracted with Griffin and Strong, P.C. to conduct a comprehensive disparity study, focused on purchasing by executive branch departments and agencies over the period beginning on July 1, 2002 and ending June 30, 2007 (state fiscal years 2003-2007). The results of this study were published in September 2009. "The evidence in this study," said the report, "gives rise to an inference of discrimination and/or the continuing effects of past discrimination against minorities and women in business transactions in the State of Tennessee," and that Tennessee "has a strong basis in evidence to take proactive measures to prevent discrimination based on race, ethnicity, or gender against women and minority prime contractors and subcontractors."⁵

See figure 2 for a timeline of important developments related to Tennessee's attempts to increase contracting with diverse businesses.

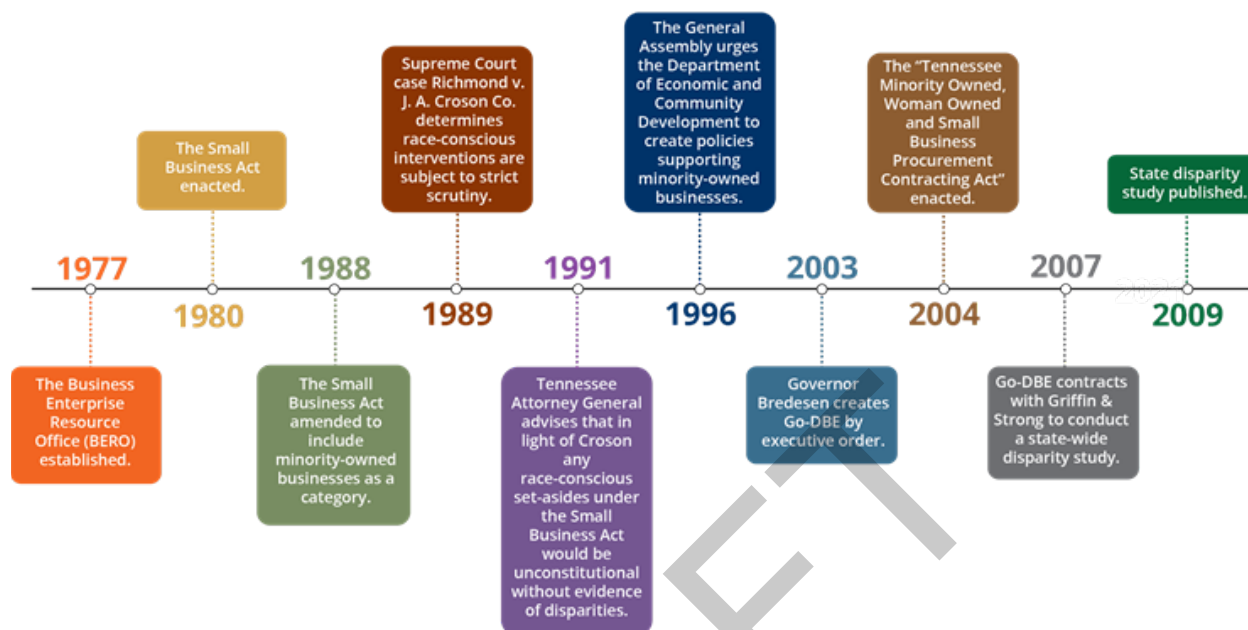
² Executive Order No. 14, December 8, 2003.

³ Tennessee Code Annotated, Section 12-3-1102.

⁴ Public Chapter 569, Acts of 2004.

⁵ Griffin and Strong 2009.

Figure 2. Important Developments in Attempts to Increase Contracting with Diverse Businesses



Source: TACIR summary of select State of Tennessee and federal laws and policies.

In 2010, Public Chapter 1098 created a Central Procurement Office (CPO), to be headed by a chief procurement officer. Originally set to take effect in 2011, Public Chapter 295, Acts of 2011, delayed the changes until April 1, 2012. P.C. 295 also added a category for "Service-disabled Veteran-owned Business." In 2013, Public Chapter 403 further consolidated procurement authority under the chief procurement officer and raised the number of employees a "small business" could have from 30 to 99. Public Chapter 485, Acts of 2017, added a category for "business[es] owned by persons with disabilities."

Tennessee's 2009 Disparity Study: Findings and Recommendations

Since the 1990s, the commonly accepted method of producing evidence of disparities has been to commission an independent disparity study, which usually means a government entity contracts with a private consulting firm to collate and analyze procurement data spanning several years, also utilizing various outside data sources. This process regularly takes one to two years. In general, the results of disparity studies are only valid for five to seven years.⁶ Many jurisdictions will therefore commission periodic disparity studies to update their data and reaffirm the legal basis for any race-conscious measures they

⁶ Griffin and Strong 2021; and Insight Center 2014.

may implement.⁷ Tennessee has not updated the disparity analysis from its 2009 study in the decade since the study's publication.

The established method for gauging disparities is to compare the amount of government spending with businesses owned by a given minority group (or what's known as a group's "utilization") against the percentage of the specific market that those businesses represent (known as "availability"). Utilization versus availability yields what is called a disparity ratio. A disparity ratio of one for a given group of vendors indicates that the amount of contract spending the group receives is exactly proportional to their presence in the market. A ratio greater than one suggests they receive more spending than might be expected, while a number below one indicates they receive less spending; a general rule-of-thumb is that a ratio less than 0.8 indicates a substantial disparity.⁸ Thus, the closer the ratio is to zero, the greater the disparity is for the group.⁹ Figure 1 gives a demonstration of these calculations.

Figure 1 (reposted). Sample Disparity Ratio Calculation for Minority-Owned Businesses

Utilization Calculation:	
Procurement spending with minority-owned businesses	\$10,000
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<hr/>	
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$10 \div 40 = 0.25$ or 25% minority-owned business availability	
Disparity Ratio = Utilization \div Availability = 20% \div 25% = 0.80	

Source: TACIR staff example based on methodology used in Griffin and Strong 2009.

⁷ Videoconference interview with Davita Taylor, vice-president for procurement and business diversity, Nashville International Airport, October 18, 2021.

⁸ Minority Business Development Agency 2016.

⁹ Griffin and Strong 2009.

The 2009 disparity study found disparities in contracting with African American-owned businesses.

The 2009 disparity study analyzed state contracts with African American-owned businesses, businesses owned by other minorities or women, and small businesses from fiscal year 2002-03 through 2006-07. For each group, ratios were calculated comparing that group’s utilization in state procurement to its availability to determine whether disparities existed in the awarding of state contracts.

Using this methodology, the 2009 disparity study examined the utilization and availability of different categories of firms, including those owned by African Americans, and did find substantial disparities. Table 1 below summarizes the disparity ratios found by the study for African American businesses over the five-year study period in each of the study’s purchasing categories.

**Table 1 (reposted). 2009 Disparity Study:
Disparity Ratios for African American-Owned Businesses**

Business Category	% of State Procurement Spending (Utilization)	% of Businesses Available (Availability)	Disparity Ratio
Construction	0.22%	3.80%	0.06
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For African American-owned businesses, the 2009 study found that disparities existed in state contracts in each of five business categories—construction, architecture and engineering, professional services, other services, and goods and supplies (see table 1). The study also found that disparities existed for businesses owned by other minorities or women for at least some of the business categories (see appendix B). It concluded that for the five-year period analyzed, “the evidence . . . gives rise to an inference of discrimination [or] the continuing effects of past discrimination against minorities and women in business transactions in the state of Tennessee.”¹⁰

¹⁰ Griffin and Strong 2009.

Many—but not all—of the recommendations from the 2009 disparity study have been incorporated into the state’s procurement policies.

The 2009 study offered 23 recommendations for the state to reduce contracting disparities with all minority groups and women. Sixteen of these recommendations were race- and gender-neutral and could be implemented without legislation; one was race- and gender-neutral but required legislative action; and another six were race- and gender-conscious measures that would have required legislative action. In the years that followed, the state implemented many of the recommendations to at least some degree. See table 3 at the end of the summary and recommendations section above.

Measures to address historical disparities in government contracting can be divided generally into two types: either race- and gender-conscious approaches or race- and gender-neutral measures. The former includes measures such as setting criteria in which certified vendors of certain minority groups are given additional consideration in the bidding process, but race-conscious measures require the support of a full disparity study to withstand strict scrutiny in court. Race-neutral measures, on the other hand, might consist of aspirational goals or outreach to make minority vendors more aware of contracting opportunities and do not require a disparity study.¹¹

Based on discussions with CPO and Go-DBE, TACIR staff found that the state has since implemented some of the race-neutral recommendations from the 2009 disparity study, including tracking spending goals with MBEs, reducing the size of contracts or breaking them into smaller parts so that smaller firms can more easily bid on them, and utilizing outreach programs such as public workshops to make minority-owned businesses more aware of contracting opportunities and procedures. Several others were partially implemented, such as developing additional measures to gauge the effectiveness of the state’s efforts.¹²

Of the seven recommendations that required further legislation to implement, one was to relax the criteria for becoming a small business enterprise (SBE), a formal designation defined in law and reserved for businesses whose number of employees and annual revenue fall below certain numeric thresholds. An amendment was passed in 2010 to raise the annual revenue limit from \$2 million to \$10 million,¹³ followed by another in

¹¹ Congressional Research Service 2010.

¹² Videoconference interviews with Go-DBE staff, June 28 and July 20, 2021, and TACIR staff analysis of current Tennessee statutes and procurement policies relevant to the recommendations presented in Griffin and Strong 2009.

¹³ Public Chapter 1135, Acts of 2010.

2013 to raise the maximum number of employees to 99,¹⁴ permitting more businesses to qualify as SBEs.

The other six recommendations that required new legislation were all race-and gender-conscious measures. None of these were implemented following the 2009 disparity study and could not be implemented at present without a new disparity study.

In addition, there were several recommendations that were neither race-conscious nor required new legislation yet were not implemented. These included the creation of a mentor-protégé program, in which a more experienced business or other partner mentors a certified small or diverse business to help build their capacity, as well as setting separate aspirational goals for distinct racial categories within minority business enterprises certified by Go-DBE.¹⁵

In short, the state has implemented many of the recommendations from the 2009 disparity study to at least some degree, at least where no new legislation was required. For most of those that were not implemented, on the other hand, legislative action and a new disparity study would now be required to authorize them.¹⁶ None of the six race-and gender-conscious policy recommendations included in the 2009 disparity study were adopted despite the study's results likely providing the legal basis to enact them.¹⁷ Even if a new disparity study found such racial disparities, stakeholders may well disagree whether to address them through race-conscious means.

Current data collection is inadequate for determining racial disparities.

The question of whether the disparities found in the 2009 study persist presents several challenges. TACIR staff could not update the analysis from the 2009 disparity study for this project. Data on state contracts is collected and maintained by the state's Central Procurement Office (CPO) with the state's overall procurement needs in mind and are not tailored to serve as a foundation for disparity studies.

Since the publication of the 2009 disparity study, Go-DBE has continued to certify new businesses and to track and report on spending with certified businesses in accordance with its statutory requirements, and this data does allow for partial comparisons with the 2009 disparity study's findings, showing progress in at least some categories of state

¹⁴ Public Chapter 403, Acts of 2013.

¹⁵ Griffin and Strong 2009.

¹⁶ Office of the Attorney General of the State of Tennessee, Opinion 91-01.

¹⁷ Griffin and Strong 2009.

contracting with minority-owned businesses. However, race-conscious procurement policies are not feasible at this time given that the data collected by CPO cannot on its own support the type of analysis needed to demonstrate whether racial disparities exist in state contracting.

Under current law, Go-DBE annually reports state spending with the five categories of certified businesses: “minority-owned businesses, woman-owned businesses, service-disabled veteran-owned businesses, businesses owned by persons with disabilities, and small businesses.”¹⁸ That being said, the agency does not set separate goals for the four individual minority groups for which it provides certification (African Americans, Hispanic Americans, Native Americans, and Asian Americans), nor does it report state spending by racial category—instead, Go-DBE considers totals of spending with all minority businesses. According to Go-DBE staff, this is to avoid “the appearance of any ‘favoritism’ with any specific racial group, as all four minority groups have been equally determined to be socially disadvantaged with the United States government.”¹⁹ Go-DBE staff also noted that their data tracking is based on Edison, the state’s main online system for procurement data—but not the only such system. CPO is only responsible for formal solicitations where the contract has an estimated value of \$50,000 or more,²⁰ and the Tennessee Board of Regents and six State Procurement Agencies (SPAs) have additional systems for contract solicitations and bidding outside of Edison.²¹ There is no single database that contains all of the state’s procurement data.

Without a full disparity study, it is not possible to say definitively whether disparities in state spending with African American-owned businesses still exist. Comparisons of the data over the years do show some increase in the share of procurement funds going to African American-owned businesses, although that increase is not evenly distributed across all agencies.

State spending with African American-owned businesses has increased overall.

Data provided by CPO show that state spending with African American-owned businesses has increased both in total amount and as a percentage of overall state

¹⁸ Tennessee Code Annotated, Section 12-3-1107.

¹⁹ Email from Richard Van Norman, professional services team lead, Governor’s Office of Diversity Business Enterprise, August 24, 2021.

²⁰ Tennessee Code Annotated, Section 12-3-503 allows the CPO to establish rules for informal procurements of less than \$50,000.

²¹ Email from Jessica Starling, director, Governor’s Office of Diversity Business Enterprise, November 15, 2021.

spending. From fiscal year 2015-16 through fiscal year 2019-20, the state spent \$657 million with businesses that it certified as African American-owned, approximately 3.3% of the total spent on state procurement during that period (see table 2). Businesses must apply to Go-DBE if they want to be certified. Anecdotally, there are some African American-owned businesses with state contracts that have not sought certification, so these figures likely represent the lower bound of state spending with African American-owned businesses.²² Regardless, these figures are greater than those reported in the 2009 study, which found the state spent \$28 million with African American-owned businesses—both certified and non-certified—from fiscal year 2002-03 through fiscal year 2006-07, approximately 0.5% of total state procurement.

**Table 2 (reposted). State Procurement Spending with African American-Owned Businesses:
Comparing Fiscal Years 2002-03 through 2006-07 to 2015-16 through 2019-20**

Fiscal Year	Total State Procurement Spending*	Spending with African American Businesses**	
		Amount	% of Total
2002-03	\$ 1,508,884,276	\$ 5,768,861	0.4%
2003-04	1,087,186,369	1,752,001	0.2%
2004-05	1,132,667,386	3,240,583	0.3%
2005-06	1,463,787,509	11,529,199	0.8%
2006-07	1,725,705,113	5,727,194	0.3%
Total 2003-07	\$ 6,918,230,653	\$ 28,017,838	0.4%
2015-16	\$ 3,620,298,637	\$ 87,055,066	2.4%
2016-17	3,736,855,201	75,616,598	2.0%
2017-18	3,648,103,202	131,040,035	3.6%
2018-19	4,000,591,109	187,781,838	4.7%
2019-20	4,720,968,923	175,563,625	3.7%
Total 2016-20	\$19,726,817,072	\$ 657,057,162	3.3%

Source: TACIR staff analysis of data published in Griffin and Strong 2009 and annual reports published by Go-DBE, 2016-2020.

* Data from FY 2002-03 through FY 2006-07 (as published in Griffin and Strong 2009) includes spending with prime contractors only.

** FY 2002-03 through FY 2006-07 DBE spending captures only MBE/WBE; FY 2015-16 through FY 2019-20 DBE spending captures only businesses certified by Go-DBE, including small businesses.

²² Videoconference interview with CPO and Go-DBE staff, June 28, 2021.

Despite an increased share of spending overall going to minority-owned businesses, individual agency-level spending goals are often not being met.

Moreover, the state’s overall spending with minority-owned businesses appears to exceed what would be expected based on the individual spending goals set annually for 30 of the state’s agencies—the state does not set goals specifically for African American-owned businesses or other racial minority groups. For the five fiscal years from 2015-16 through 2019-20, total state spending with minority-owned businesses was nearly \$971 million, almost \$246 million greater than what would be anticipated based on these goals; the state also exceeded the total that would be anticipated for each of these fiscal years individually.²³ Go-DBE coordinates with each of these agencies to establish agency-level minority-owned business procurement goals annually, set as a percentage of each agency’s total spending on procurement. Tennessee Code Annotated, Section 12-3-1106, requires that

[a]ll state agencies shall fully cooperate with the governor's office of diversity business enterprises and shall provide staff support and any other assistance upon request of the chief procurement officer. This cooperation specifically includes, but is not limited to, establishing and striving to achieve annual state agency level internal goals for minority-owned business, woman-owned business, service-disabled veteran-owned business, business owned by persons with disabilities, or small business contracting. In establishing and striving to achieve these annual goals, each agency shall work closely with the governor's office of diversity business enterprises. Each agency shall provide as requested to the governor's office of diversity business enterprises periodic reports on upcoming procurement and contract opportunities and on the level of participation by minority-owned business, woman-owned business, service-disabled veteran-owned business, business owned by persons with disabilities, or small business in that agency's procurements and contracts.

However, meeting these goals is not required. Tennessee Code Annotated, Section 12-3-1104, states that “Nothing in this part establishes any mandatory goal or quota with respect to minority-owned businesses, woman-owned businesses, service-disabled veteran-owned businesses, businesses owned by persons with disabilities, or small businesses.” With that in mind, data provided by Go-DBE shows that only five of 30 state agencies met their goals for spending with minority-owned businesses in at least three of the five fiscal years from 2015-16 through 2019-20. Only two of those five met their goals

²³ Data for agency goals and spending provided to TACIR staff by Go-DBE in email, October 26, 2021. Total state spending based on data published in Go-DBE annual reports.

every year, and half of the 30 agencies did not meet their goal in any of the five years. It appears possible from the data that one or a handful of additional contracts being awarded by a state agency to a minority-owned business could make a difference in whether the annual goals are being met. Data show that most of the state's spending with minority-owned businesses comes from two agencies, the Department of Finance and Administration and TennCare. For state spending with African American-owned businesses in particular, spending is highly concentrated in a few business categories: medical transportation and staffing combined accounted for more than 70% of all payments to African American vendors in fiscal years 2018-19 through 2020-21. See appendix C.

Before fiscal year 2013-14, Go-DBE included in their annual reports overall racial minority contracting goals and achievement by state department for the subcategories of businesses covered by the law at that time (but not broken down by individual racial minority). Since that time, Go-DBE annual reports have only included total small and disadvantaged business enterprise goals and level of success by state departments.²⁴

Data provided by the CPO suggest it is worth looking at whether the state's race-neutral approach can be improved. Part of Go-DBE's charge is to "assist state agencies and departments with establishing and striving to achieve their annual agency internal goals for the participation and the utilization of minority-owned, woman-owned, persons with disabilities, service-disabled veteran-owned and small business enterprises."²⁵ Annually publishing data on whether agencies are meeting their annual aspirational procurement goals for minority-owned businesses could help keep interested parties informed of agency progress at meeting goals, encourage efforts to identify areas where improvements are warranted, and potentially refine the goal-setting process.

Small businesses face barriers to compete for state contracts, and those barriers are greater for African American-owned businesses.

Small businesses are the "backbone of Tennessee's economy."²⁶ The state's 2009 disparity study reported that some small businesses believed their companies' size was a barrier to competing for government contracts. Anecdotally, these firms said they want to add employees but that "it does not make good economic sense to incur the expense unless

²⁴ See Go-DBE annual reports from fiscal year 2006-07 through 2019-20.

²⁵ Tennessee Code Annotated, Section 12-3-1106(b).

²⁶ Tennessee Department of Economic and Community Development "COVID-19 Small Business Resources."

the company has received the award.”²⁷ Small businesses also may not have the time and personnel it can take to prepare and submit formal bid responses and proposals. One business owner “cited an instance in which the bid documentation [for a state contract] was 800 pages and said responding to such bids would require a full time staff person to work on them.”²⁸ And according to a member of the state’s Advisory Council on State Procurement, the amount of time and money it takes to respond to solicitations for small contracts can be a deterrent for small businesses if they don’t believe their likelihood of winning the award is worth the effort.²⁹

Inability to win government contracts can be detrimental to small businesses, including those that are African American owned. Researchers have found that

access to contracting and procurement opportunities within the public sector represents a multibillion-dollar business for women and minority-owned businesses. Lack of access to these opportunities has dramatic implications for the overall health, well-being, and sustainability of these diverse enterprises.³⁰

Similarly, a 2020 Brookings Institute report found that

setting goals to increase the number of Black businesses that qualify for government and large corporate contracts can accelerate growth among Black firms. Governments and corporations can encourage growth and activity by adopting new procurement processes that facilitate inclusion.³¹

Proponents of directing more government contracts to minority-owned businesses have also argued that government contracts can help these businesses “overcome long-standing barriers” and “boost our economy.”³²

Small businesses also face challenges when it comes to raising capital to grow their companies. As one economist with the Congressional Research Service explained:

²⁷ Griffin and Strong 2009.

²⁸ Ibid.

²⁹ Videoconference interview with Jasmine Quattlebaum, director of purchasing, Nashville Music City Center, September 27, 2021.

³⁰ Murrell and Bangs 2019.

³¹ Perry and Romer 2020

³² Quick 2021.

Growing firms need resources, but many small firms may have a hard time obtaining loans because they are young and have little credit history. Lenders may also be reluctant to lend to small firms with innovative products because it might be difficult to collect enough reliable information to correctly estimate the risk for such products. If it's true that the lending process leaves worthy projects unfunded, some suggest that it would be good to fix this "market failure" with government programs aimed at improving small businesses' access to credit.³³

And, although the Congressional Research Service economist argues against a need for government intervention, another writes that "the market power held by lenders makes it much harder for small business ventures to acquire capital, which then hinders their ability to start and survive. Because the recent trend in financial markets is towards greater concentration, we might expect to see small businesses with greater difficulties accessing capital."³⁴ The 2009 study also found that several business owners "indicated that they viewed bonding as an obstacle to obtaining new business."³⁵

Beginning in the 1940s, "Federal programs for racial and ethnic minorities began developing at approximately the same time as those for small businesses, although there was initially no explicit overlap between them." The federal government recognized that small businesses and businesses owned by racial and ethnic minorities face similar problems, and it merged several programs to assist all of these businesses under the Small Business Administration (SBA) in 1978.³⁶

African American business owners often have less wealth and access to capital than some of their competitors.

African American business owners are often at a competitive disadvantage economically because of diminished capital and credit opportunities compared to others in the same or similar line of business.³⁷ Leveling the playing field invites more competition and leads to a healthier American economy; the federal Small Business Act states "that the opportunity for full participation in our free enterprise system by socially and

³³ Congressional Research Service 2020.

³⁴ de Rugy 2006.

³⁵ Griffin and Strong 2009.

³⁶ Congressional Research Service 2021.

³⁷ Code of Federal Regulations, Sections 124.103 and 104.

economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy.”³⁸

While small businesses in general need capital to grow, those owned by African Americans find it harder to obtain—even when accounting for other factors. A 2018 study published by the Federal Reserve Bank of Atlanta, which applied multivariate regressions to various types of firms, found “evidence for disparities in credit approval by the race or ethnicity of the business owner,” that “black-owned firms are less likely to receive approval for financing when compared with otherwise similar white-owned firms,” and that “black-owned firms feel discouraged from applying for financing at significantly higher rates.”³⁹ It also found that the loans African American-owned businesses do receive are smaller on average than those received by other similarly sized businesses.⁴⁰ De Rugy explains that “whenever a borrower’s demand for credit is turned down although this borrower is willing to pay all the price and non-price elements of the loan contract,” the market is “credit rationing.” As is the case for African American business owners, “rationing can occur when members of an identifiable group, such as members of a particular community or people of a particular race or gender, are more likely to be rejected for loans than members of another group.”⁴¹ Lack of access to capital can impede African American-owned businesses’ ability to grow, to meet certain bonding or insurance requirements, or to make successful and competitive bids on larger projects.⁴²

Research shows that racial and ethnic inequalities in personal wealth also translate into corresponding disparities in business creation and ownership.⁴³ In a 1994 study, the authors show that “a \$150,000 inheritance increases the probability that an individual will continue as a sole proprietor by 1.3 percentage points, and if the enterprise survives, its receipts will increase by almost 20 percent.”⁴⁴ Another study found that “differences in asset levels are the largest single factor that explains racial disparities in business creation

³⁸ President Richard Nixon, Executive Order 11625, October 13, 1971. U.S. Code Title 15, Section 631(f)(1)(A).

³⁹ Robb, de Zeeuw, and Barkley 2018.

⁴⁰ Ibid.

⁴¹ de Rugy 2006.

⁴² Fairlie and Robb 2010.

⁴³ Robb, de Zeeuw, and Barkley 2018.

⁴⁴ Holtz-Eakin, Douglas et al. 1994.

rates.”⁴⁵ Census Bureau data for businesses that ceased operations in 2012 (the last year this particular survey was conducted) showed that, among white business owners, 0.4% reported “operations ceased due to lack of business loans/credit,” with another 0.3% giving “lack of personal loans/credit” as the reason. For black or African American-owned businesses those numbers were 1.6% and 1.2% respectively. Put simply, black business owners were four times as likely to go out of business for credit reasons than white owners.

Intergenerational racial disparities create knowledge barriers for African American business development.

Many new or small businesses may lack technical knowledge of business operations, such as accounting procedures, and may not have established relationships with networks of clients and other businesses that can support them. The importance of these factors is considered in business development programs and incubators, which offer support in these areas through technical training and networking introductions.⁴⁶ Although lack of technical knowledge and support networks are a common barrier for many small businesses, African American business owners are often less likely to have family members who have owned and operated their own businesses, are less likely to have direct personal experience with operating a business, and may have fewer personal connections with existing businesses and supporting institutions—all of which may further hinder their ability to make successful bids for state contracts.⁴⁷ One stakeholder interviewed by TACIR staff said such intergenerational relationships with lenders can be a factor in whether a business gets financing and that his office tries to help build those relationships.⁴⁸ Analysis of Census Bureau data has shown that “businesses owned by entrepreneurs of color lag behind those owned by whites in terms of virtually all metrics of business size.”⁴⁹ Even for large businesses, there are very few examples of African American business leaders for younger generations to follow; just 19 African Americans have ever been CEO of a Fortune 500 company—1% of the 1,800 CEOs in the list’s history.⁵⁰ A 2017 report from the Aspen Institute recommends governments increase funding “for targeted business development assistance for growth-oriented minority-

⁴⁵ Fairlie 2006 (as cited by Robb, de Zeeuw, and Barkley 2018).

⁴⁶ Tennessee Department of Economic and Community Development 2021b.

⁴⁷ Fairlie and Robb 2007.

⁴⁸ Videoconference interview with Ken Moody, executive director, Memphis Office of Business Diversity and Compliance, October 18, 2021.

⁴⁹ Klein 2017.

⁵⁰ Wahba 2021.

owned firms,” emphasizing a need for programs “staffed or structured to provide services that are culturally competent or accessible to entrepreneurs who live in low-income communities.”⁵¹ One example of this happening in Tennessee was the September 2021 announcement that the Nashville Entrepreneur Center is expanding its Twende program statewide, “a virtual network that offers entrepreneurs of color access to a world-class curriculum, supportive community and individualized mentorship.”⁵²

Current state programs exist to help small and minority-owned businesses overcome these barriers.

There are many state programs and laws that can benefit small and minority-owned businesses, including African American-owned businesses. These include outreach efforts to enlist more small business entrepreneurs in state contracting bids; programs to bolster the technical capacities of Tennessee’s small businesses and make them more competitive; and modified procedures to streamline solicitation, bidding, and payment processes.⁵³

There are, for example, state programs targeted to new and small businesses, such as the Department of Economic and Community Development’s Business Enterprise Resource Office (BERO). The office, established in 1977, “serves as a voice for and advocate of economic inclusion; analyzes, disseminates, and promotes best practices and access to capital to service providers; and reports on the status of [disadvantaged businesses] statewide.” As part of that mission, BERO provides resources to assist entrepreneurs in starting a business, including an interactive online guide with step-by-step information, as well as information on state procurement and funding opportunities.⁵⁴ BERO also responds to requests for business information and assistance from individuals and companies, and it participates in events supporting small business development. Similarly, the Tennessee Department of Transportation’s Small Business Development Program works to increase the number of minority and female businesses in the highway and bridge construction industry by providing technical assistance, resources, guidance, and any other information.⁵⁵

⁵¹ Klein 2017.

⁵² “Nashville Entrepreneur Center Expands Programming for Entrepreneurs of Color Statewide” Press Release, September 22, 2021.

⁵³ Videoconference interview with CPO and Go-DBE staff, June 28, 2021.

⁵⁴ Tennessee Department of Economic and Community Development “About BERO.”

⁵⁵ Tennessee Department of Transportation “Small Business Development Program.”

Beyond such programs, the state has made some efforts to examine and, where possible, improve the procurement process. In 2011, for instance, the state created an Advisory Council on State Procurement which reviews and comments on “all procurement policies, standards, guidelines, and procedures established by the Chief Procurement Officer.”⁵⁶ In the same vein, Go-DBE has worked to improve its coordination with agencies across state government through designated business liaisons.⁵⁷ Go-DBE has also used “dedicated certified business software, State agency training and close communication with procurement staff . . . to determine the status of each State agency or department throughout the year.”⁵⁸

Go-DBE, as noted above, is charged with coordinating and directing executive branch efforts to increase participation by small businesses and businesses owned by minorities, women, persons with disabilities, or service-disabled veterans in the state’s procurement and contracting processes. It does this through a combination of providing technical assistance and helping businesses register as vendors to participate in state procurements, as well as through its certification program for small and diverse businesses seeking contracts with state government agencies. Go-DBE maintains a list of certified businesses for each category that can be used by both public and private sector procurement officials to find small and diverse businesses to meet their procurement needs. Additionally, for state procurements, certification can be used as one of the tiebreakers when deciding between otherwise similar bids.⁵⁹

According to the CPO, Go-DBE held 29 outreach events in 2020, mostly virtual due to the COVID-19 pandemic. The office now utilizes social media to reach a wide audience as well. Go-DBE needs help from local communities to promote their businesses to the state and has asked members of the General Assembly to recommend diverse businesses from their districts.⁶⁰

Tennessee also has a program to help small businesses overcome lack of access to capital, though it is currently being phased out. The Tennessee Department of Treasury’s Small and Minority-Owned Business Assistance Program (SMOB) loaned money to lenders, such as banks, who then loaned the funds to businesses. The program was initially designed for telecommunications businesses before expanding to include more

⁵⁶ Public Chapter 295, Acts of 2011.

⁵⁷ Tennessee Department of General Services “Go-DBE Agency Small Business Liaisons.”

⁵⁸ Governor’s Office of Diversity Business Enterprise 2020.

⁵⁹ Central Procurement Office 2021 Section 5.13.2: Tied Responses – Resolution.

⁶⁰ Videoconference interview with CPO and Go-DBE staff, June 28, 2021.

categories of businesses. Loans were not meant to be a pipeline to winning state contracts, though some borrowers did become state contractors. Most of the program's loans went to existing businesses such as retail and restaurants as well as businesses looking to expand. SMOB is currently winding down its operations and is not making new loans.⁶¹

Government authority to adopt race-conscious procurement policies is limited under state and federal law.

Tennessee's procurement policies at the time of the 2009 disparity study were race-neutral and remain so today.⁶² They operate under the adage that a rising tide raises all ships, so what is good for small businesses generally will also be good for businesses owned by African Americans. However, some stakeholders argue that existing barriers affecting African American-owned businesses cannot be fully overcome using a race neutral approach.⁶³

The ways in which disparities are measured, and the means by which governments can address them, have evolved over decades of policy experimentation and court rulings. In 1977, Tennessee created the Office of Business Enterprise within the Department of Economic and Community Development (today known as the Business Enterprise Resource Office, or BERO), acknowledging that some business owners were "impeded from normal entry into the economic mainstream because of past practices of discrimination based on race . . . [or] ethnic background" and that the state should "aid, counsel, and assist in every practical manner disadvantaged businesses in order to preserve free competition on equal terms with those businesses constituting the major part of the business community."⁶⁴ In 1988, the General Assembly amended the Tennessee Small Business Purchasing and Contracting Act of 1980 to require that, "whenever possible," state agencies must "actively solicit bids" not only from small businesses, but from businesses with minority owners, in order to purchase a "fair proportion of purchases" from such businesses.⁶⁵

However, beginning in 1989, a series of court rulings established precise standards for how disparities in government contracting may be measured and limited the ways in

⁶¹ Telephone interview with Jay Chavis, financial empowerment program manager, Tennessee Department of Treasury, June 3, 2021.

⁶² Griffin and Strong 2009.

⁶³ Nashville Minority Business Center 2018.

⁶⁴ Public Chapter 135, Acts of 1977. See Tennessee Code Annotated, Section 4-26-101 et seq.

⁶⁵ Public Chapter 818, Acts of 1988. See 1991 Tennessee Code Annotated, Section 12-3-804.

which government programs could address them. In *Richmond v. J.A. Croson Co.*, the United States Supreme Court held that a minority set-aside program of Richmond, Virginia, which gave preference to minority business enterprises in the awarding of municipal contracts, was unconstitutional under the Equal Protection Clause. The Court found that the city failed to identify both the need for remedial action and to show that other non-discriminatory remedies would be insufficient:

We, therefore, hold that the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race. To accept Richmond's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for "remedial relief" for every disadvantaged group. The dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs. [Citing *Regents of the University of California v. Bakke*]. Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classification. We think such a result would be contrary to both the letter and the spirit of a constitutional provision whose central command is equality.⁶⁶

This decision was further built upon in subsequent cases, including *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, *Engineering Contractors Association of South Florida v. Metropolitan Dade County*, and *Associated General Contractors of Ohio v. Drabik*.⁶⁷ Specific standards emerged from these cases for how disparities could be assessed and the kinds of statistical evidence required to demonstrate them. The term disparity thus acquired a definite meaning in legal contexts and refers to a statistical shortcoming between the number of qualified minority businesses available to provide goods and services to a particular government and the actual share of spending those businesses receive from that government. Such empirical evidence can then infer past discrimination.⁶⁸ According to the Court in *Croson*,

⁶⁶ *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁶⁷ *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (1993); *Engineering Contractors Association of South Florida v. Metropolitan Dade County*, 122 F.3d 895 (1997); *Associated General Contractors of Ohio v. Drabik*, 214 F.3d 730 (2000).

⁶⁸ Griffin and Strong 2009.

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.⁶⁹

In light of this legal history, Tennessee's Attorney General addressed race-based classifications in 2012 with the following analyses when answering the question "[m]ay the State or a local government constitutionally use race-based classifications in awarding public contracts?":

Any racial classification used in awarding public contracts is subject to strict scrutiny and will only be upheld if the state or local government can establish that it is narrowly tailored to promote a compelling governmental interest. Courts have found that remedying the effects of past intentional discrimination is a compelling governmental interest. . . .

The final question is whether the State or a local government may constitutionally use race-based classifications in awarding public contracts. These classifications implicate the equal protection provisions of the United States and Tennessee Constitutions. Race-based preferences in the award of public contracts, like "all racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny." Under this standard of review, racial classifications must be narrowly tailored to serve a compelling government interest. The United States Supreme Court has since reiterated this principle in different contexts. Remedying the effects of past intentional discrimination is a compelling interest.⁷⁰

Today, many local governments both in and outside of Tennessee operate programs designed to aid African American- and other minority-owned businesses. Primarily, these programs consist of race-neutral measures like outreach, mentor-protégé programs, technical training to improve business capacities, simplified bidding requirements, expanded access to loans, revised insurance and bonding standards, aspirational goals for use of minority subcontracting firms, and accelerated payment schedules.⁷¹ Many local governments, including Memphis and the Metropolitan Government of Nashville

⁶⁹ *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁷⁰ Office of the Attorney General of the State of Tennessee, Opinion No. 12-92.

⁷¹ Insight Center for Community Economic Development 2014.

and Davidson County—as well as others around the country—also conduct intermittent disparity studies that could authorize them to employ race-conscious measures.⁷²

At the state-level, race-neutral approaches are the norm, usually appearing in combination with generalized programs intended to assist small businesses. Incremental improvements to states’ race-neutral approaches can be made. No disparity study is required to improve data and reporting transparency, outreach, technical support, and training. Most states at a minimum recognize certifications for minority-owned or women-owned businesses, and many also have offices analogous to Go-DBE, with examples including Alabama’s Office of Minority Business Enterprise and South Carolina’s Division of Small and Minority Business Contracting and Certification. These offices largely serve to track certifications and assist other government agencies in their states to increase their balance of spending with diverse businesses. Some states do undertake further measures, however. Maryland, for instance, has a program that directs a percentage of state spending towards small businesses with the intention that minority-owned businesses should benefit in the process.⁷³ See appendix D for a table of state procurement agencies, including information about states with offices specifically charged with assisting small businesses, including minority businesses. Separately, because of their reliance on federal funding, state transportation agencies follow guidelines for the U.S. Department of Transportation’s Disadvantaged Business Enterprise (DBE) program, which requires a minimum of 10% of spending go to DBEs.⁷⁴

Based on the Court’s ruling in *Croson* and in subsequent decisions, government officials have used disparity studies to document racial disparities in contracting to demonstrate both the need for remedial action and that other non-discriminatory remedies would be insufficient. These studies have effectively become a necessary first step before implementing any race-conscious procurement policies. It is important to note that even with a comprehensive disparity study in place, the use of racial quotas—which establish a minimum amount or percentage of contracts set aside for businesses based on race—is not allowed under state or federal law.

Truly race-conscious programs at the state-level are less common than at the local level, though one example is the state of Illinois, which, following a disparity study in 2015, instituted a “sheltered market” (a kind of set-aside program) for minority-owned and other disadvantaged firms in its information technology (IT) procurement. As of 2020,

⁷² Griffin and Strong 2016 (Memphis); Griffin and Strong 2018 (Nashville).

⁷³ Governor's Office of Small, Minority and Women Business Affairs “Small Business Reserve (SBR) Program.”

⁷⁴ U.S. Department of Transportation “Disadvantaged Business Enterprise (DBE) Program.”

the state was planning to undertake another disparity study to update the state's data.⁷⁵ Should disparities be found, the state's Business Enterprise Program is authorized to establish other sheltered programs to provide targeted remedies for specific minority groups in given industries.⁷⁶

Like Tennessee, other states have also commissioned disparity studies, with Indiana, Virginia, and North Carolina all having produced disparity studies within the past several years. As in Tennessee's own 2009 study, these other states do show disparities in most categories, including for African American-owned businesses both on the whole and in particular industries. Virginia, for instance, showed a disparity ratio of 0.49 among African American-owned businesses, which counts as a significant level of disparity.⁷⁷ North Carolina's study reported an even more sizable disparity ratio of 0.04 for African American-owned businesses in the non-professional services category, with still lower figures in other industries.⁷⁸

Recent disparity studies from other states often make similar recommendations to address the disparities they find. Studies from Colorado, Virginia, and Washington, for example, all recommend making improvements to their outreach and technical assistance programs. Virginia's study suggests that the state "should consider various technical assistance, business development, mentor-protégé, and joint venture programs to help businesses build the capacity required to compete for relatively large Commonwealth and HEI contracts and procurements." Studies from Indiana, North Carolina, Virginia, and Washington all include recommendations for improved data collection. Washington's study goes as far as saying improved data collection and monitoring is "[p]erhaps the most critical recommendation" and that "[t]he ability to track M/WBE participation at the highly detailed level of 6-digit NAICS codes for prime vendors and all subcontractors (not just certified firms) is the foundation for any efforts to increase opportunities."⁷⁹

⁷⁵ Illinois Department of Central Management Services 2020.

⁷⁶ Illinois Department of Central Management Services 2021.

⁷⁷ BBC Research and Consulting 2020b.

⁷⁸ Griffin and Strong 2020.

⁷⁹ Keen Independent Research 2020 (Colorado); BBC Research and Consulting 2020a (Indiana); Griffin and Strong 2020 (North Carolina); BBC Research and Consulting 2020b (Virginia); Colette Holt and Associates 2019 (Washington).

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Appendix A: House Bill 1593 / Senate Bill 1235

SENATE BILL 1235
By Gilmore

HOUSE BILL 1593
By Miller

AN ACT to amend Tennessee Code Annotated, Title 12,
Chapter 4, Part 1, relative to state contracts with
businesses owned by African Americans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following as a new section:

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) shall conduct a study on disparities in the issuance or award of state contracts to businesses, companies, and firms owned and operated by African Americans. TACIR shall include in the study recommendations regarding the manner in which to reduce such disparities.

(b) The study should strive to provide information on the impact of such disparities on the African-American business community, and the manner in which other states and jurisdictions of the United States have addressed such disparities.

(c) All appropriate state departments and agencies shall provide assistance to TACIR upon request in connection with the study required under subsection (a).

(d) On or before January 31, 2022, TACIR shall report its findings and recommendations, including any proposed legislation, to the governor, members of the state and local government committee of the senate, and members of the state government committee of the house of representatives.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

HB1593

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Appendix B: Disparity Ratios by Race/Ethnic/Gender Group and Business Category, FY 2002-03 through 2006-07

African American			
Business Category	Percent Share of State Procurement Spending (Utilization)	Percent Share of Businesses Available (Availability)	Disparity Ratio Utilization Availability
Construction	0.22%	3.80%	0.06
Architecture / Engineering	0.70%	6.80%	0.10
Professional Services	0.08%	0.94%	0.09
Other Services	2.96%	7.09%	0.42
Goods and Supplies	0.40%	1.95%	0.21
TOTAL	0.40%	2.18%	0.19

Asian American			
Business Category	Percent Share of State Procurement Spending (Utilization)	Percent Share of Businesses Available (Availability)	Disparity Ratio Utilization Availability
Construction	0.00%	0.30%	0.00
Architecture / Engineering	6.15%	2.27%	2.71
Professional Services	0.39%	0.17%	2.29
Other Services	0.08%	0.42%	0.19
Goods and Supplies	0.32%	0.17%	1.88
TOTAL	0.36%	0.22%	1.63

Hispanic American			
Business Category	Percent Share of State Procurement Spending (Utilization)	Percent Share of Businesses Available (Availability)	Disparity Ratio Utilization Availability
Construction	0.13%	0.24%	0.54
Architecture / Engineering	0.00%	0.50%	0.00
Professional Services	0.53%	0.11%	4.82
Other Services	1.35%	0.46%	2.93
Goods and Supplies	0.00%	0.14%	0.00
TOTAL	0.35%	0.17%	2.06

Native American			
Business Category	Percent Share of State Procurement Spending (Utilization)	Percent Share of Businesses Available (Availability)	Disparity Ratio <u>Utilization</u> Availability
Construction	0.09%	0.33%	0.27
Architecture / Engineering	0.00%	0.25%	0.00
Professional Services	0.00%	0.05%	0.00
Other Services	0.05%	0.37%	0.14
Goods and Supplies	0.00%	0.09%	0.00
TOTAL	0.04%	0.12%	0.35

Non-Minority Women			
Business Category	Percent Share of State Procurement Spending (Utilization)	Percent Share of Businesses Available (Availability)	Disparity Ratio <u>Utilization</u> Availability
Construction	0.49%	3.98%	0.12
Architecture / Engineering	0.92%	4.53%	0.20
Professional Services	1.15%	1.05%	1.10
Other Services	1.42%	4.95%	0.29
Goods and Supplies	0.23%	1.51%	0.15
TOTAL	0.79%	1.85%	0.43

Source: TACIR staff compilation of Tables 6-10 and 16-20 from Griffin and Strong 2009.

Appendix C: State Procurement Spending with Certified African American-Owned Businesses by Business Category, FY 2018-19 through 2020-21

Business Category	FY 2019	FY 2020	FY 2021	Total
Transportation - Medical	\$ 95,481,273	\$ 77,112,059	\$ 52,939,098	\$225,532,430
Staffing	40,982,212	49,222,472	35,215,769	125,420,453
Information Technology Consulting	20,517,451	19,975,935	19,693,872	60,187,258
Information Technology	4,863,995	4,388,853	5,785,973	15,038,821
Business Consulting	3,877,081	3,753,764	2,090,090	9,720,935
Landscaping	2,596,848	2,819,058	3,933,060	9,348,966
Excavation	2,644,347	3,315,457	1,525,066	7,484,870
Information Technology Staffing	2,396,149	1,369,597	115,876	3,881,622
Architectural Design	996,986	2,199,013	673,058	3,869,057
Construction	1,146,695	1,131,045	1,034,957	3,312,697
Construction, Hauling	2,408,525	-	-	2,408,525
Insurance	875,730	863,147	664,596	2,403,473
Mechanical Contracting	-	1,947,002	-	1,947,002
Roofing	1,153,327	17,257	353,516	1,524,100
Vision	1,351,657	-	-	1,351,657
Security	895,937	379,714	14,280	1,289,931
HVAC	26,300	1,237,909	-	1,264,209
Food Service	685,744	310,404	210,461	1,206,609
Construction Services	129,930	744,345	270,715	1,144,990
Mental Health Services	285,507	342,932	454,706	1,083,145
Consulting Services	311,373	107,566	597,181	1,016,120
Human Resources	226,430	213,856	507,034	947,320
Facility Management	287,971	225,906	333,358	847,235
Office Furniture	426,550	273,817	38,166	738,533
Electrical	363,095	247,215	90,471	700,781
Transportation	273,457	140,785	116,229	530,471
Pharmaceuticals	212,557	180,752	122,720	516,029
Strategic Sourcing	232,517	-	231,173	463,690
Catering	162,269	175,870	125,363	463,502
Janitorial Services	108,287	152,626	168,883	429,796
Moving	283,941	72,317	45,931	402,189
Personnel Training	130,449	171,375	69,574	371,398
Janitorial	238,774	97,871	27,075	363,720
Construction Management	-	123,809	215,884	339,693
Legal Transcript	151,857	153,655	2,648	308,160
Concrete	-	202,578	101,723	304,301
Promotional	133,643	65,069	90,768	289,480

Business Category	FY 2019	FY 2020	FY 2021	Total
Printing	\$ 187,732	\$ 27,978	\$ 15,287	\$ 230,997
Ground Maintenance	110,544	58,096	60,915	229,555
Pharmacy Services	86,471	71,661	68,699	226,831
Manufacturing	46,212	99,743	72,034	217,989
Framing	66,010	50,496	71,197	187,703
Marketing	44,532	50,319	75,555	170,406
Educational Training	99	37,275	130,737	168,111
Janitorial Supplies	71,626	-	78,623	150,249
Painting	45,325	94,430	9,738	149,493
Training	60,775	30,395	43,250	134,420
Electrical Contractor	120,554	-	-	120,554
Industrial Supplies	14,801	5,864	89,684	110,349
Barber/Beauty Services	38,657	37,724	32,674	109,055
Public Relations	59,850	45,000	-	104,850
Industrial Services	-	-	19,338	19,338
Engineering Services	-	18,740	-	18,740
Telecom	-	4,256	6,087	10,343
Locksmith	10,054	-	-	10,054
Accounting	10,000	-	-	10,000
Legal Services	8,405	-	-	8,405
Medical Supplies	161	6,165	32	6,358
Office Supplies	-	4,058	-	4,058
Waste Disposal	900	1,125	735	2,760
Information Technology System Design/Development	2,195	-	-	2,195
Limousine Service	509	-	-	509
Chemicals	-	476	-	476
Lab Testing	-	69	-	69

Source: Data provided to TACIR staff by Go-DBE, email from Jessica Starling, October 28, 2021.

Appendix D. Procurement and Diversity Spending Resources by State

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	General Disparity Study	Statewide Disparity Study Available?	Disparity Study Sponsoring Agency	Procurement Code/Manual
Tennessee	Central Procurement Office	The response evaluation process (except ITBs) should be designed to award a contract on terms and conditions in the State's best interests and not necessarily to the respondent offering the lowest cost; An award will be made to the lowest responsive and responsible prospective respondent based on their adherence to the response requirements as defined in the event summary.	Governor's Office of Diversity Business Enterprise	Central Procurement Office	MBE, WBE, SBE, DSBE, SDVBE	Yes	Yes		PROCUREMENT PROCEDURES MANUAL OF (tn.gov)
Alabama	Division of Purchasing	The contract shall be awarded to the lowest responsive and responsible bidder, unless the Awarding Authority finds that all bids are unreasonable or that it is not to the interest of the Awarding Authority to accept any of the bids..."	Office of Minority Business Enterprise	Alabama Department of Economic and Community Affairs	MBE, WBE	No	No		Chapter 6 (alabama.gov)
Alaska	Office of Procurement and Property Management	the lowest responsive and responsive bidder with a bid that is not more than ten percent (10%) higher than the lowest bid of a nonresident, award the contract to that bidder.					DOT		
Arizona	Department of Administration Procurement	Best value takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, however, best value can be equated to low price.					DOT		
Arkansas	Office of State Procurement	the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids	Minority and Women Owned Business Enterprise	Arkansas Economic Development Council	MWOB, DBE, MBE, WBE	No			LawsRegs.pdf (ar-kansas.gov)
California	General Services, Procurement Division	The award is made to the lowest bidder meeting the minimum qualifications.	Minority Supplier Development Council, Southern California	California Department of General Services	MBE, WBE, VBE, DSBE, LGBT-BE	DOT	DOT		FISCAL Financial Information System for California Procurement Manual.pdf
Colorado	State Purchasing and Contracts Office	The Competitive Range consists of those Proposals determined to be most responsive to requirements and reasonably qualified to be selected for Award.	Minority Business Office	Office of Economic Development and International Trade	MBE, WBE, VBE	Yes	Yes	State of Colorado Department of Personnel & Administration	dpa_2020_disparity_study_final_report_0.pdf (colorado.gov) Microsoft Word - Procurement Manual-1006-Final.doc (colorado.gov)
Connecticut	Division of State Procurement	the award of each such contract, when made, will be made by it as soon as practicable to the lowest responsible and qualified bidder. As used in this section "lowest responsible and qualified bidder" means the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful perform the work.	SBE/MBE Municipal Certification Outreach Program	Department of Administrative Services	SBE, MBE	In Progress	In Progress	Connecticut Department of Administrative Services	BIDDING AND CONTRACTING REQUIREMENTS

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Delaware	Government Support Services, Contracting Unit	Award is determined by the lowest price from a responsible vendor.	Office of Supplier Diversity	Office of Management and Budget	WBE, MBE, VBE	In Progress		Delaware Division of Small Business	Contracting and Procurement (delaware.gov)
Florida	Division of State Purchasing	The contract shall be awarded by written notice to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals.	Office of Supplier Diversity	Department of Management Services	WBE, MBE, VBE	No*		* Studies available from Tampa and Miami-Dade County	Statutes & Constitution : View Statutes : Online Sunshine (state.fl.us)
Georgia	State Purchasing Division	Of those suppliers determined to be responsive and responsible, the best ranked supplier(s) will be selected in accordance with the terms of the solicitation. The methodology for determining the best ranked supplier(s) will vary based on the solicitation type as well as the specific language of the solicitation	Minority Business Enterprise Certification	GA Minority Supplier Diversity Development Council	MBE	DOT			Georgia Procurement Manual (ga.gov)
Hawaii	State Procurement Office	To encourage the procurement of products produced or manufactured within the state, the State of Hawaii seeks to award contracts to the lowest responsible and responsive bidders, with preference given to qualified and registered Hawaii products. In Request for Proposals this preference shall apply to price evaluation.				DOT			
Idaho	Division of Purchasing	For a category A bid, the political subdivision may only consider the amount bid, bidder compliance with administrative requirements of the bidding process, and whether the bidder holds the requisite license, and shall award the bid to the qualified bidder submitting the lowest responsive bid.	Uniform Certification/DBE Program	Idaho Department of Transportation	DBE, ACDBE	DOT			https://legislature.idaho.gov/statutesrules/idstat/TITLE67/T67CH28/SECT67-2805/
Illinois	Chief Procurement Office	The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except when a State purchasing officer determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award	Business Enterprise Program	Department of Central Management Services	MBE, WBE, DsdBE	Yes**	2015DisparityStudy.pdf (illinois.gov)		https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=532

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Indiana	Department of Administration Procurement Division	A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder	Division of Supplier Diversity	Indiana Department of Administration	MBE, WBE, IVOSB*	Yes	2020-State-of-Indiana-Disparity-Study-FINAL-PUBLIC.pdf	Indiana Department of Administration	2016-Purchasing-Guide-FINAL2.pdf (aimindiana.org)
Iowa	Central Procurement and Fleet Services	Award the procurement to the lowest responsible bidder for all RFQs and RFBs; the agency must provide justification for not awarding to the lowest bidder.	Targeted Small Business Program	Iowa Economic Development Agency	MBE, WBE, SDVE, DBE	No*		*Study available from City of Davenport	DAS GSE Procurement Manual (iowa.gov)
Kansas	Office of Procurement and Contracts	all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.	Office of Minority and Women Business Development	Kansas Department of Commerce	MBE, WBE, DBE	No			75-3740 (ksrevisor.org)
Kentucky	Office of Procurement Services	Make the award to the lowest responsive and responsible source; A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area.	Minority and Women Business Certification Program	Kentucky Finance and Administration Cabinet	MWBE	No			Microsoft Word - KY CDBG_Tab 08a_Chapter 4-11.1.12.doc
Louisiana	Office of State Procurement	The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids	State and Local DBE Certification Program	City of New Orleans' Office of Supplier Diversity	DBE	No*		*Study available from Procurement Code.pdf City of New Orleans (la.gov)	
Maine	Division of Procurement Services	Except as otherwise provided by law, competitively awarded orders, grants or contracts made by the Director of the Bureau of General Services or by any department or agency of the State must be awarded to the best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State	Uniform Certification/DBE Program	Maine Department of Transportation	DBE, ACDBE	No			Title 5, §1825-B: Bids, awards, contracts and grants (maine.gov)
Maryland	Department of General Services, State Procurement	contract is awarded to the responsible bidder submitting a responsive bid with the most favorable bid price; The most favorable bid is not necessarily the apparent lowest bid because other factors, e.g., preferences, responsiveness of the bid or bidder's responsibility, may affect the bid.	Small, Minority, & Disadvantaged Businesses	MDOT Office of Small & Minority Business Policy	DBE, ACDBE, MBE, SBE	DOT			Maryland Procurement Manual

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Massachusetts	Operational Services Department, Division of Capital Asset Management and Maintenance	You must award the contract within the time for award stated in the IFB to the qualified (that is, responsive and responsible) bidder that offers you the lowest price.	Supplier Diversity Program	Massachusetts Supplier Diversity Office	MBE, WBE, SDVOBE, VBE, DOBE, LGBTBE	Yes	NERA DCAMM Disparity Study FINAL 17 1722 (mass.gov)	Executive Office of Administration and Finance	The Chapter 30B Manual: Procuring Supplies, Services and Real Property, November 2016 (mass.gov)
Michigan	Department of Technology, Management and Budget	Low bid or best value - Price is one of the main evaluation criteria	Minority Business Enterprise Certification	Michigan Minority Supplier Development Council	MBE, WBE	No		State Contracting Procedures 201 (michigan.gov)	
Minnesota	Office of State Procurement	Awards based on competitive proposals must include an evaluation of price and other considerations, such as environmental considerations, quality, and vendor performance; Awards based on a low bid process must be made to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids	TG/ED/VO Small Business Procurement Program	Department of Administration, State Procurement	MBE, WBE	Yes	Keep Independent 2017 Minnesota Joint Disparity Study Phase 1 Report.pdf (mn.gov)	Minnesota Department of Administration	Minnesota Statutes 2020, Chapter 16C (mn.gov)
Mississippi	Contract Procurement Center	The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.	Minority Business Certification	Mississippi Development Authority	MBE, WBE, SBE	In Progress*		*Study from the Jackson Municipal Airport Authority	REVISED (ms.gov)
Missouri	Division of Purchasing	Contract awards will be made to the lowest and best bidder in accordance with the evaluation criteria published in the solicitation document.	Minority/Woman Business Certifications	Missouri Department of Equal Opportunity	MBE, WBE	Yes	II (mo.gov)	Missouri Department of Administration	prodcs\w\liso\vendor.man (mo.gov)
Montana	State Procurement Bureau	With an RFP, the State will make a written award of a contract to the Vendor whose proposal offers the best value for the State, considering price, technical capability, past Contractor performance, etc. as specified within the evaluation factors of the RFP	Uniform Certification/DBE Program	Montana Department of Transportation	DBE, ACDBE	DOT			State of Montana (mt.gov)
Nebraska	Department of Administration, Purchasing	The apparent low bidder/supplier may or may not be awarded the contract. Bid award shall be made to the lowest responsive and responsible bidder/supplier whose bid meets the requirements and criteria set forth in the RFP - Cost Only/ITB	Uniform Certification/DBE Program	Nebraska Department of Transportation	DBE, ACDBE	No			STATE OF NEBRASKA PROCUREMENT MANUAL

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Nevada	Department of Administration Purchasing Division	The chief of the using agency, the chief of the purchasing division or the committee, if a committee is established, shall award the contract based on the best interests of the state and is not required to accept the lowest-priced proposal; Every contract or order for goods must be awarded to the lowest responsible bidder.	Uniform Certification/DBE Program	Nevada Department of Transportation	DBE, ACDBE	DOT		Nevada Department of Transportation	1999 Statutes of Nevada, Pages 949-1110 (state.nv.us) https://www.leg.state.nv.us/NRS/NRS-333.html
New Hampshire	Procurement and Support Services	Bids are awarded to the qualified vendor offering the lowest delivered price meeting specifications, unless other criteria are specifically stated in the bid. To be considered "qualified," a vendor must be an authorized vendor to the State of New Hampshire, must meet all other qualification criteria set forth in the bid, and must offer to meet or exceed all specifications of the project	Uniform Certification/DBE Program	New Hampshire Department of Transportation	DBE, ACDBE	No			BGS - Bid Process (nh.gov)
New Jersey	Division of Purchase and Property	The Director may structure a procurement to award contract(s) to the bidder(s) submitting the lowest price proposal when it is determined that the best value is expected to result therefrom.	Minority/Woman Business Enterprise Certificate	New Jersey Business Action Center	M/WOB, DVOB, VOB, SBE	Yes**	Pennsylvania Diversity Study Commission Report	*New Jersey Department of the Treasury	N.J.A.C. 17:12-6.11 (state.nj.us)
New Mexico	State Purchasing Division	The objective of any procurement is to award the contract to the offeror who best meets the requirements at the lowest cost; The lowest responsive finalist offer becomes the lowest responsive offer for award of cost points.				No			RFPGUIDE99_Baseline.PDF (sd.gov)
New York	Office of General Services, Procurement	For commodities, award shall be made on the basis of lowest price among responsible and responsive offers (State Finance Law §163(3)(a)(ii)). In the case of services, the award must be based on "best value" (State Finance Law §163(4)(d)). For certain services procurements, best value can be equated to low price	WBE Certification Program	Division of Minority and Women Owned Business Development	MWBE	Yes*	Vol. I NYS Disparity Study	State of New York	NYS Procurement Guidelines

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
North Carolina	Department of Administration, Procurement	Unless expressly provided that the Best Value Trade-Off method will be used, a contract award will be based on the lowest and best bid(s) meeting specifications (most advantageous to the State); Award must be made to the responsive and responsible supplier, whose offer is determined in writing to be the most advantageous to the state, using all evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award must be made to the responsive and responsible vendor with the lowest price.	Historically Underutilized Programs (HUB)	Department of Administration	HUB	Yes	State-of-North-Carolina-Disparity-Study-Report-with-Appendices-201702SUBMITTED.pdf (nc.gov)	North Carolina Department of Administration	Procurement_Manual_5_8_2013_interactive.pdf (nc.gov)
North Dakota	Office of Management and Budget, Procurement	Except as otherwise provided in section 44-08-01, chapter 25-16.2, and this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria.	Uniform Certification/DBE Program			No			North Dakota Century Code 154c44.4 (nd.gov)
Ohio	Department of Administrative Services, Procurement	awards should be made to the lowest responsive and responsible bidder; if it is not possible or advantageous to award to the lowest responsive and responsible bidder, a supplier may be selected using a RFP or similar process and award to the Offeror whose proposal is determined to be the most advantageous to the State	Equal Opportunity Division	Department of Administrative Services	MBE, WBE, VBE, EDGE	DOT		Ohio Department of Transportation	PUR_ProcManual.pdf (ohio.gov)
Oklahoma	Office of Management and Enterprise Services, Central Purchasing	Acquisitions shall be awarded to the lowest and best, or best value, bidder at a specified time and place, which shall be open to the public; Bids for professional service contracts for an amount requiring submission of requisitions to the State Purchasing Director shall be evaluated by the State Purchasing Director and the state agency contracting for such service.				DOT			Oklahoma Central Purchasing Act 2013
Oregon	General Services, Procurement Services	A procuring agency must make its bid award to the lowest responsive and responsible bidder whose bid meets the ITB requirements and criteria. The results of the bid opening are limited to the apparent low bidder, which may or may not be awarded the contract.	Certification Office for Business Inclusion and Diversity	Business Oregon		DOT			State of Oregon: Oregon procurement manual - Competitive Sealed Bidding (ITB)

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Pennsylvania	Department of General Services, Bureau of Procurement	The award of contracts to the lowest responsible bidder generally provides for the most economical procurement of supplies and construction	Bureau of Diversity, Inclusion, & Small Business Opportunities	Department of General Services	MBE, WBE, SDVBE, DSBE, LGBTBE	Yes	Pennsylvania DGS Statewide Disparity Study	Pennsylvania Department of General Services	Title 62 - PROCUREMENT (state.pa.us)
Rhode Island	Division of Purchases	The primary method of assuring that procurements are to the advantage of the State of Rhode Island, shall be through the use of competitive bidding procedures as set forth herein. Contract awards shall be made to the lowest responsive and responsible bidder, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purposes for which required, terms of delivery and the best interests of the state.	Minority Business Enterprise Compliance Office	Office of Diversity, Equity, and Opportunity	MBE, WBE, DBE	In Progress	Purchasing Regulations.pdf (ri.gov)	Office of Diversity, Equity, and Opportunity	
South Carolina	State Fiscal Accountability Office Procurement Services	Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids.	Division of Small and Minority Business Contracting and Certification	Department of Administration	MBE, WBE	No			Code of Laws - Title 11 - Chapter 35 - South Carolina Consolidated Procurement Code (sc.statehouse.gov)
South Dakota	Office of Procurement Management	When using competitive sealed bids, awards are based on the lowest responsive and responsible bidder who can meet specifications and quality of the supplies or services required, and who can meet the conditions of the solicitation, December 14, 2020 13 including delivery requirements or completion of services.				No			Microsoft Word - Procurement Procedures Manual 14DEC2020.doc (sd.gov)
Texas	Comptroller's Statewide Procurement Division	Texas law requires that contract awards may only be made to responsive vendors providing best value to the state. The best value standard may vary depending on the procurement method; 56 therefore, public procurement personnel must ensure that the appropriate best value standard is used as the basis for contract award.57	Historically Underutilized Programs (HUB)	Statewide Procurement Division	HUB	DOT		Texas Department of Transportation	PCS Procurement and Contract Management Handbook (texas.gov)

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Utah	Division of Purchasing and General Services	The award is given to the lowest responsible and responsive bidder whose quote conforms in all material respects to the requirements and criteria set forth in the RFQ: The contract is awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the IFB				No			
Vermont	Office of Purchasing and Contracting	Commodities: awards are made in the best interest of the State with a number of factors considered. By statute, we are required to document whether Vermont vendors were given consideration: Construction: The contract shall be awarded to one of the three lowest responsible bidders; Services: Awards are issued in the best interest of the State.	Uniform Certification/DBE Program	Vermont Department of Transportation	DBE, ACDBE	No			Contracting with the State of Vermont
Virginia	Division of Purchases and Supply	Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the invitation to Bid, awards may be made to more than one bidder.	Small Business and Supplier Diversity Division	Department of Small Business and Supplier Diversity	DBE, SWaM, SDV	Yes	2020-Commonwealth-of-Virginia-Disparity-Study-Executive-Summary.pdf	Department of Small Business and Supplier Diversity	Virginia Public Procurement Act
Washington	Department of Enterprise Services, Contracting & Purchasing	Contract must be awarded to the lowest responsive Bidder; Responsibility means whether the Bidder has the apparent ability to successfully perform the contract. Factors used in determining responsibility include the Bidder's capability, skill, experience, and reputation	Washington State Certification	Office of Minority and Women's Business Enterprise	SBE, MBE, WBE, MWBE, SEDBE	Yes	State of Washington Disparity Study 2019	State of Washington	Washington-Purchasing-Manual.pdf
West Virginia	Purchasing Division	After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications: 5.3.1.4.1 Award to Other Than Low Bid: If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract must be written and retained for public record and inspection				No			WEST VIRGINIA PURCHASING DIVISION (state.wv.us)

State	State Purchasing or Procurement Office	Bid/Contract Award Criteria	State DBE Certification Agency/Program	Administered by:	Business Certification Classifications	Statewide Disparity Study Available?	General Disparity Study	Disparity Study Sponsoring Agency	Procurement Code/Manual
Wisconsin	State Bureau of Procurement	The award of a contract for a procurement is made to the lowest responsible bidder; if a certified minority business enterprise has submitted a qualified responsible bid that is no more than 5% higher than the apparent lowest responsible bid, or a competitive proposal that is no more than 5% lower than the proposal with the apparent high point score, the award may be made to the minority business enterprise.	State of Wisconsin Certification	State of Wisconsin	MBE, WBE, DVB	No*		*Studies available from City of Milwaukee and Madison major delegation process (state.wi.us)	
Wyoming	Department of Administration and Procurement Section	The bids shall be opened by the governing body and the contract or contracts shall be awarded to the bidder or bidders who in its opinion are the lowest and best responsible bidders. The governing body may reject any and all bids				No			Microsoft Word - WYOMING PROCUREMENT CODE.doc (scene7.com)

* Study available from a non-state agency

** Study in progress