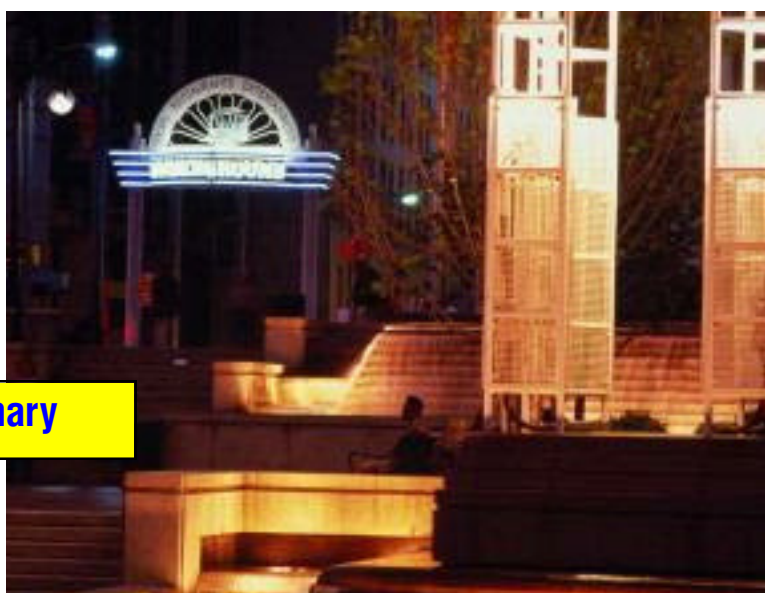




**City of Atlanta  
Disparity Study  
and Legal Analysis  
11 October 2006**

**The Executive Summary**



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# EXECUTIVE SUMMARY

## I. Summary of Findings

### A. Introduction

The South and Atlanta share a well documented history of segregation that made it virtually impossible for minority firms to do business with the City for over 100 years. Since the mid-1970s the City of Atlanta has taken deliberate action to ensure that opportunities are no longer restricted on the basis of race.

The City of Atlanta has worked to ensure that all businesses, regardless of the race, ethnicity or gender of their owners, have the opportunity to participate equally in the City's procurement of goods and services. The periodic review of governmental equal business opportunity programs is sound public policy. The study completed over the last year demonstrates that, although the City's program has achieved success, there is still work to be done. The study identifies areas in contracting by the City, with both prime and subcontractors, where disparities exist. In addition, in the private sector, disparities exist as well. The data provide the basis for a continuation of efforts to ensure a level playing field for all types of participants.

### ***The Legal Underpinnings***

As a result of the 1989 United States Supreme Court decision in City of Richmond v J. A. Croson Co., 488 U.S. 469, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989), it is appropriate for state and local jurisdictions to determine whether or not there is specific identified discrimination in their marketplace and in their contracting, and if so, determine what appropriate policies or measures should be considered by the jurisdiction to narrowly tailor a remedy relating to the

specific findings. This is the fourth disparity study conducted by the City of Atlanta in an effort to determine whether or not there is specific identified discrimination in the Atlanta marketplace and in City contracting which may or may not require some form of remediation. The analysis contained in this study shows that the City of Atlanta has been successful in providing opportunities for minority and female-owned businesses over the last five years. The utilization of minority and female businesses is substantial. When the City of Atlanta is compared to other governmental jurisdictions of comparable size within the Atlanta region<sup>1</sup>, the City of Atlanta's levels of participation are more robust than these other entities. Additionally, when the City of Atlanta's levels of participation are compared with census availability, the City of Atlanta's levels of participation are also substantial.

### ***The Disparity Study Findings***

These comparative findings notwithstanding, there remain areas in which the City of Atlanta's participation falls short of availability, when availability is calculated using the actual bidders on city projects. There are also findings included in this study which show disparities in the utilization of minority and female owned businesses on private sector construction projects. Further, this study observed disparities in self-employment earnings by race and gender, even when controlling for demographic and economic variables. Commercial lending discrimination was also specifically identified in the study as an area of concern in the Atlanta marketplace. Finally, the substantial disparity between the levels of utilization of minority and female owned businesses in City of Atlanta contracting compared to the very low levels of participation by such businesses in the private marketplace lead to the conclusion that without active engagement in ensuring that opportunities are open to all, the familiar patterns of discrimination will remain in place. Consequently, we are recommending narrowly tailored, specific

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<sup>1</sup> The Atlanta Region is defined as the geographical area consisting of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, and Walton counties.

programs to ensure that Atlanta remains a city where opportunity is as institutionalized as discrimination once was.

## **B. Methodology and Scope of Study**

### **1. Analysis of City of Atlanta Contracting**

The purpose of this report is to examine any existing disparity between the availability and utilization of minority and female businesses in the City of Atlanta's procurement process and in the Atlanta business market place. Findings were adopted by the Atlanta City Council in 2000 that African American, Hispanic and Female owned firms in the Atlanta region suffered economic disadvantage relative to white-owned firms as a result of discrimination by race, gender and ethnicity. A data assessment and collection was performed to develop a history of public sector contracting over the five-year period since the enactment of the present Equal Business Opportunity Program. Having determined the relevant geographic market and using the city's vendor list to determine actual bidders, the report compiled both utilization and availability estimates across a number of business categories in both the Atlanta twenty-county region and the ten-county region used by the City for certification purposes. These business categories include construction, construction related professional services, professional services, non-professional services and construction by dollar ranges. Separate examinations of contracting by Hartsfield Jackson Atlanta International Airport and by the Department of Watershed Management were conducted.

This analysis revealed certain disparities between the availability and utilization of designated Minority and Female Business Enterprise (MFBE) groups which resulted in some underutilization of firms relative to their availability. In other cases, certain minority and or female groups were shown to have no significant underutilization and, in some cases, either parity or overutilization. A statistical significance test was used for each category followed by the calculation of

disparity indices for each category. In some areas where there is no disparity in the utilization of minority and female business firms relative to their availability, the findings indicate that many years of successful equal business opportunity programs have acted to redress the disparities that minority and female firms face in the Atlanta business sector. The increase in minority and female utilization in the public sector in the City of Atlanta indicates the effectiveness of race-based and gender-based remedies which were employed over a number of years. The evidence also shows that minority and female firms still lag behind non-minority firms in several categories.

## 2. Analysis of Private Sector Data

The private sector findings are contained in Volume II of this study. The City of Atlanta has an interest in ensuring that it is not indirectly assisting firms which discriminate on the basis of race and/or gender and that it is not a passive participant in any discrimination in the private market place. A central question raised in the report is, how are minority and female firms utilized in the private sector in the absence of race and gender based numerical goals? A prior study in 2000 had found that minorities and women were significantly underutilized in the private sector. The purpose of the private sector analysis is to determine whether or not the City of Atlanta is a passive participant in identified private sector discrimination. Data were obtained from seven sources for the private sector analysis; U.S Census Survey Data; U.S Census Public Use Micro Sample; Reed Construction Data; Building Permit Data from the City of Atlanta; Dun and Bradstreet data, public contracting data from Cobb County and telephone surveys about business owner experiences with subcontracting on projects for Cobb and Gwinnett counties.

## C. Utilization, Disparity Findings, and Recommendations

### FINDING 1: City of Atlanta Utilization during the Study Period

- The City of Atlanta had substantial total utilization of minority and women owned firms across all categories during the five year study period.

#### CITY OF ATLANTA

MFBE TOTAL UTILIZATION IN CONSTRUCTION, CONSTRUCTION RELATED PROFESSIONAL SERVICES INCLUDING A/E, OTHER PROFESSIONAL SERVICES AND NON PROFESSIONAL SERVICES<sup>2</sup> (FORMAL CONTRACTS)

(JANUARY 1, 2001 TO JUNE 30, 2005)

(Dollars)

Fiscal Year	All Payments	MFBE	African American Males	African American Females	Asian American Males	Asian American Females	Hispanic American Males	Hispanic American Females
2001	385,215,917	128,007,261	110,306,391	2,228,224	2,023,756	181,380	1,766,901	6,211,471
2002	427,983,603	140,878,524	108,102,918	6,318,845	3,210,215	281,927	1,993,568	3,731,129
2003	432,671,223	157,011,282	118,051,508	6,336,398	6,732,456	200,183	3,138,895	2,630,615
2004	673,267,469	244,064,856	155,676,799	13,709,952	9,910,975	54,501	8,756,947	5,635,775
2005	312,250,835	150,115,470	92,061,453	17,887,996	4,891,687	13,279	4,091,584	1,792,966
<b>Study Period</b>	<b>2,231,389,047</b>	<b>820,077,394</b>	<b>584,199,069</b>	<b>46,481,414</b>	<b>26,769,089</b>	<b>731,270</b>	<b>19,747,895</b>	<b>20,001,956</b>

Fiscal Year	All Payments	Native American Males	Native American Females	White Females <sup>3</sup>	Unidentified Minorities
2001	385,215,917	30,400	0	4,958,479	300,261
2002	427,983,603	502,314	40,746	16,696,863	0
2003	432,671,223	734,279	4,808	19,182,140	0
2004	673,267,469	1,128,566	3,441	49,187,900	0
2005	312,250,835	377,919	34,655	28,941,904	22,028
<b>Study Period</b>	<b>2,231,389,047</b>	<b>2,773,478</b>	<b>83,649</b>	<b>118,967,285</b>	<b>322,289</b>

Source: Griffin & Strong, P.C.

<sup>2</sup> MFBE Total Utilization is a combination of all prime and subcontractor dollars paid to MFBEs.

<sup>3</sup> White Females, Females and Non-minority Females are interchangeable in this report.

**FINDING 2: Statistically Significant Disparities Continue to Exist in Some Areas of City of Atlanta Contracting**

After analyzing data on City of Atlanta contracting for the period from January 1, 2001 through June 30, 2005, limiting the pool of available firms to actual bidders, using actual payments as the measure of utilization, disaggregating the data annually by procurement category and by race, ethnicity, and gender, and after controlling for statistical significance, some disparities remained for various minority groups and women in certain procurement categories.

**FINDING 3: Disparities in Entry Into Self-Employment Exist Between Non-Minority Males and Minorities and Females**

- Minorities and women continue to show disparities in entry into self employment, after controlling for age, wealth, and other variables.
- In the construction category, non-minority males were twice as likely to be self employed as African Americans and Asian Americans.
- In the service category, non-minority males were three times as likely to be self employed as African Americans and Asian Americans, and almost four times as likely to be self employed as white women.

SELF-EMPLOYMENT “ODDS RATIOS” OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES  
AFTER CONTROLLING FOR  
SELECTED DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

Race/Ethnic Group	All Industries	Construction	Professional Services	Other Services	Goods & Supplies
<b>City of Atlanta CMSA</b>					
African American	<b>0.488</b>	<b>0.588</b>	<b>0.391</b>	0.775	<b>0.529</b>
Hispanic American	0.736	<b>0.460</b>	0.762	<b>0.719</b>	1.275
Asian American	0.978	<b>0.578</b>	<b>0.324</b>	<b>1.557</b>	<b>2.269</b>
Native American	0.761	1.180	0.401	0.995	0.212
Nonminority Women	<b>0.446</b>	<b>0.552</b>	<b>0.284</b>	0.967	<b>0.546</b>

Source: PUMS data from 2000 *Census of Population* and MGT of America, Inc., calculations using SPSS. Note: Bold indicates that the estimated “odds ratio” for the group was statistically significant. The A&E business industry was merged with construction because of the lack of sufficient data.

- More than half of the disparity in self employment income between non-minority males and African Americans was attributable to race.

- When minorities and women are self employed, they earn significantly less than non-minority males. Across all industries, after controlling for other factors, African Americans earned 30 percent less and white women earned 38 percent less than non-minority males from self employment.

**PERCENTAGE SELF-EMPLOYED/1999 EARNINGS BY  
RACE/GENDER/ETHNICITY CATEGORY FOR CITY OF ATLANTA CMSA**

<b>Race/Ethnic/Gender Category</b>	<b>Percent of the Population Self-Employed</b>	<b>1999 Sample Census n</b>	<b>Self- Employed 1999 Median Earnings</b>
	<u><b>City of Atlanta CMSA</b></u>	<u><b>City of Atlanta CMSA</b></u>	<u><b>City of Atlanta CMSA</b></u>
Nonminority Males	19.55%	16,511	\$46,950.00
African American	7.13%	10,499	\$32,600.00
Hispanic American	9.92%	2,147	\$29,400.00
Asian American	16.72%	1,322	\$36,000.00
Native American	12.78%	227	\$40,000.00
Nonminority Women	8.26%	11,610	\$31,200.00
	12.76%	42,316	\$40,000.00

Source: PUMS data from 2000 *Census of Population* and MGT of America, Inc., calculations using SPSS.

Note: **Bold** indicates that the estimated “odds ratio” for the group was statistically significant. The A&E business industry was merged with construction because of the lack of sufficient data.

#### **FINDING 4: Summary of Findings on Loan Denials from the National Survey of Small Business Finance**

- The higher rates of loan denials by African American firms reported in survey data was supported by econometric evidence.

- African American, Hispanic American, and female owned businesses reported loan denial rates of 47 percent, 39 percent, and 26 percent, respectively, in contrast to the rate of 21 percent for non-minority male owned firms after controlling for creditworthiness and other related variables.



**FINDING 5: Summary of Findings of MFBE Underutilization in the Private Marketplace**

•There is evidence that minority firms won less than 1 percent of private sector commercial subcontracts and less than 2 percent of private sector commercial prime contracts in the Atlanta Metropolitan Statistical Area (MSA), figures that were dramatically below their utilization by the City of Atlanta and below reasonable measures of business availability. Moreover, only a small fraction of women and minority subcontractors used on City projects were found to be used on private sector commercial projects.

**COMPARISON OF M/FBE UTILIZATION PERCENTAGE OF DOLLARS  
PRIVATE COMMERCIAL CONSTRUCTION  
WITH CITY OF ATLANTA  
JULY 1, 2001, THROUGH JUNE 30, 2005**

<b>BUSINESS CATEGORY/ DATA SOURCE</b>	<b>African American</b>	<b>Hispanic American</b>	<b>Asian American</b>	<b>Native American</b>	<b>Nonminority Women</b>	<b>M/FBE Firms</b>	<b>Non-M/FBE Firms</b>
<b>Prime Contractors</b>							
City of Atlanta Construction Prime Contractors	10.99%	0.56%	0.51%	0.00%	0.28%	12.35%	87.65%
Private Construction Prime Contractors (Building Permits)	1.39%	0.28%	0.18%	0.00%	3.32%	5.16%	94.84%
Private Construction Prime Contractors (Reed Construction)	0.00%	2.58%	0.00%	0.00%	0.56%	3.13%	96.87%
D&B Prime Contractors (Sales Volume)	2.71%	0.29%	0.16%	0.12%	0.54%	3.81%	96.19%
<b>Subcontractors</b>							
City of Atlanta Construction Subcontractors	25.60%	1.80%	0.63%	0.15%	9.62%	37.79%	62.18%
Private Construction Subcontractors (Building Permits)	0.87%	0.02%	0.00%	0.00%	0.80%	1.69%	98.31%
Private Construction Subcontractors (Reed Construction)	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available
D&B Subcontractors (Sales Volume)	2.28%	0.55%	0.24%	0.25%	0.61%	3.93%	96.07%

Source: Percentages previously shown in prior exhibits within the report.

•Substantial numbers of minorities reported experiencing discrimination as prime contractors and subcontractors in the private marketplace.

•There is evidence that lack of business capacity and experience is not a sufficient explanation for the low levels of utilization in the private sector. Low levels of utilization were found not only in subcontracting, but also on small contracts. Moreover, a private sector regression analysis, after controlling for the effects of variables related to company capacity, years in the business and education of the owner, determined that race and gender were significant factors in explaining the significantly lower earnings of minority and female firms.

### **FINDING 6: Statistical Inference of Discrimination**

The evidence in this study, taken as a whole, gives rise to an inference of continued discrimination and/or the continuing effect of past discrimination against minorities and women in business transactions in the Atlanta MSA. The evidence in this study leads us to conclude that the City of Atlanta has a strong basis in evidence to take measures to ensure that it is not a passive participant in a private scheme of discrimination against women and minorities as prime or subcontractors. The data taken as a whole provide a strong basis in evidence for the City to take proactive measures to prevent discrimination on the basis of race, ethnicity or gender against women and minority prime and subcontractors.

## **II. Conclusions and Recommendations**

### **A. Conclusion**

The evidence contained in this study leads Griffin & Strong, P.C. to conclude that minority and women-owned firms, despite the previous efforts of the City of Atlanta, continue to face discrimination in the private sector, and that there is a strong basis in evidence to conclude that minority and women-owned firms continue to suffer from both discrimination and the present effects of past discrimination. The evidence suggests that the City of Atlanta should utilize race neutral remedies to address the identified barriers faced by minority and women-owned businesses in the private marketplace in the Atlanta twenty-county region,

and, where appropriate, the City of Atlanta should take action to ensure that minority and women-owned firms are not discriminated against.

## **B. Recommendations**

**1. The City of Atlanta should develop a race neutral small business program, which will be open to all small businesses, without regard to the race, gender or ethnicity of the business owner.**

### **Rationale**

Generally, best contracting practices involve a range of strategies which include, among others, (1) expanding opportunities for competition; (2) increasing the pool of vendors by increasing opportunities to compete for contracts; (3) providing bonding, financial and technical assistance to small businesses to increase their ability to compete; (4) setting aside certain procurements for competition only among small businesses. A program which limits certain procurements to bidding only by small businesses will enhance their ability to compete.

**2. The City of Atlanta should consider limiting a newly created small business program to small businesses located in the twenty-county Atlanta Region.**

### **Rationale**

By focusing on businesses located in the Atlanta Region, the City can ensure that some of the beneficiaries of the City's procurement expenditures are local firms.

**3. The City of Atlanta's small business program should provide a full range of services to assist small businesses with City, State and Federal incentive programs that promote investment, encourage employment, relocation and retention and reduce operating costs.**

### **Rationale**

The City of Atlanta is relying increasingly on Tax Allocation Districts, Business Improvement Districts, Historically Underutilized Business Zones and other incentive programs. Small businesses in general need assistance in navigating the maze of Federal, State and local incentive programs.

**4. The City of Atlanta should terminate its current eligible bidder requirement, but should monitor whether the contractors doing business with the City are responsible. Determination of responsibility, by the Department of Procurement, should be based on financial, technical and legal responsibility determinations in addition to any evidence of discrimination in the contractor's business practices. Where the City's Department of Procurement determines that a City contractor is not responsible, it should deem the contractor ineligible for award of a City contract for a set period of time.**

### **Rationale**

Procurement best practices require that government make careful determinations of the responsibility of vendors in a range of categories before awarding public dollars to the vendor.

**5. The Office of Contract Compliance should be given responsibility for collecting data regarding all vendor relations, and communicating that information to the Department of Procurement.**

### **Rationale**

A division to monitor vendor relations and compliance will improve tracking of vendor performance and allow the City to take meaningful action against poorly performing vendors.

**6. The City of Atlanta should develop a range of capacity building tools to assist small businesses, including training and counseling. The City should regularly and carefully evaluate each capacity building tool.**

### **Rationale**

The evidence suggests that many small businesses need assistance in building the capacity to contract with the government.

**7. The City of Atlanta should implement an aggressive non-discrimination program which should have, at a minimum, the following elements:**

- a. A mandatory covenant of non-discrimination;
- b. Submission of documentation of procurement policies and practices utilized in the bid process for a City contract;
- c. Maintenance of evidence of compliance with the covenant of non-discrimination, which will include evidence regarding the bidder's process for procuring subcontractors and suppliers;
- d. A requirement that an offeror must consent to monitoring and interviews with selected officers and employees, and agree to provide specified records which afford the Office of Contract Compliance an opportunity to determine if the offeror has satisfied its covenant of non-discrimination.

### **Rationale**

The City of Atlanta must ensure that it is not a passive participant in a private scheme of discrimination.

**8. The City of Atlanta should retain the joint venture/ mentor protégé requirements.**

### **Rationale**

The evidence shows that MFBE participation on large contracts without the joint venture/mentor protégé requirement is substantially below availability and that race and gender are factors in this underutilization.

## **Closing Statement**

Because of the success of the City of Atlanta's program, a comprehensive race and gender neutral small business program will be very effective in assisting small businesses. It will also be necessary to have a modified non-discrimination and joint venture program to ensure the continued participation of MFBEs in City of Atlanta contracting and to make certain that the City of Atlanta does not contribute to the perpetuation of the identified private sector barriers.

Griffin & Strong, P.C.

October, 2006