

# **Contracting Equity Policy Analysis and Recommendation for the City of Philadelphia**

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## **Executive Summary**

Municipal contracting is the easiest way for cities to meet service and procurement needs while also funding and providing valuable experience to vendors from historically underrepresented communities in the market. Philadelphia is one of the many cities already committed to setting procurement goals to utilize their budgets by putting money directly into the hands of minority and women-owned businesses. My research process involved examining academic articles on this topic, reviewing the broader history and current policies for Philadelphia, then comparing those against other city practices detailed in local government-issued reports. The resulting analysis contains informed recommendations to improve contracting equity programs for the Office of Economic Opportunity (OEO) to address underlying issues of social and economic inequities. Findings from this research reveal that Philadelphia is ahead of the curve locally and nationally pertaining to contracting equity goals and outcomes. However, there are still opportunities for improvement in building upon existing successes, lowering barriers to entry for minority and women-owned vendors, and for additional research and alternative practices which can fortify current programs and preempt legal challenges.

## **Introduction**

*Why is Diversity, Equity, and Inclusion (DEI) important and, more specifically, why care about contracting equity?*

Since the civil rights movement, Americans have shown a commitment to addressing systemic inequities that can trace their histories back hundreds of years through Jim Crow and slavery. The United States has prospered from its melting pot population, illustrating the inherent value of diversity to stimulate innovation and creative solutions. By encouraging multicultural perspectives and approaches, DEI programs are an attempt to meet the legal and ethical obligation to provide equal rights and opportunities to all members of society, regardless of color or creed. The obvious starting point for any DEI effort is to first collect data to identify the magnitude of the issue. Then, follow-up action must be taken to try to rectify those inequities. In regards to contracting, “governments across the country are committed to investing in racial equity, but many are struggling to translate that commitment into tangible outcomes” and municipal procurement offers an opportunity to “increase investment in historically marginalized

communities and deliver services more equitably” ([Harvard, 2022](#)). Cities across the country conducting racial disparity studies have demonstrated that their contract vendors are not yet representative of their community demographics. This is an area still ripe for improvements which this research aims to explore specifically for the city of Philadelphia.

### **Problem Statement**

The problem at present is that even as Philadelphia collects more data and acts with a concerted effort to decrease racial disparities, women and minority representation and participation in city contracting opportunities still vastly under-represent the demographics of Philadelphia’s residents and neighbors.

**“MWDSBEs represented 30.5 percent of all firms located within the city but received only 15 percent of City contracts, for a Disparity Ratio of 0.49”** ([Econsult Solutions, Inc., 2022](#))

### **Methodology**

For this analysis, publicly-published policies and reports from the City of Philadelphia were reviewed to outline the current equity contracting framework and establish the subject context and background. Next, scholarly articles on DEI efforts and contracting equity best practices were reviewed to establish some general guidelines and goals for improvement in Philadelphia. After building this initial foundation in Philadelphia, neighboring counties in PA were analyzed. A city closer in relative size to Philadelphia was then compared; Pittsburgh, PA, another in-state city which makes conscious contracting decisions and has racial equality policies on the books. To broaden the comparison and bring in myriad examples of contemporary efforts, contracting equity plans were examined for four additional large US cities: New York, Los Angeles, Washington D.C., and Baltimore. Legal challenges have added another level of concern for contracting equity policies, so a brief exploration of recent legislation and supreme court decisions are included. Once comparison programs were analyzed, those approaches from academia and afar were applied to Philadelphia to make an informed policy recommendation.

### **Background**

Before diving into comparative examples for contracting equity policies outside Philadelphia, a brief background history of the origin of DEI efforts has first been outlined, followed by another brief history specific to Philadelphia and the current

regulations in effect. The contemporary contracting policies in place for OEO, including current participation benchmarks and achievements, will be detailed while also pointing out many of the already-known issues facing Philadelphia and other cities working to improve equity directly via procurement. Once this initial understanding of the current contracting equity framework is established both broadly and explicitly for Philadelphia, the stage will be set to compare efforts across cities and formulate proposed improvements for OEO policy.

## DEI History

On July 2, 1964, President Lyndon B. Johnson signed the Civil Rights Act, **making it illegal to discriminate based on race, color, religion, sex, or national origin in public facilities and accommodations**. The precedent was set, that individuals could now call out injustice and demand equal protections from the government when their rights were infringed upon. This legislation was a response to the racist segregation policies of the United States that beset the nation in the fallout of the civil war and the abolishment of American slavery. In an attempt to rectify some of the damage caused to communities of color in the past, the government decided that, **to uphold the equal protection clause from the Fourteenth Amendment, proactive action was necessary to evaluate historic and systemic inequity in order to implement new policies to lift up and support those most impacted and in need** ([Ellis, 2024](#)). In the wake of the civil rights movement new initiatives were developed, such as affirmative action, which the supreme court affirmed in 1978 as an appropriate way for universities to achieve diversity goals. Without this fundamental change in how the government looks at the law's impact on different demographic groups, we would never have advanced to the Americans with Disabilities Act (ADA) which further prohibited discrimination to the newly protected classes of differently abled people to receive public accommodations ([Society for Diversity, n.d.](#)).

By acknowledging that legal and public services are not administered equally, there is an opportunity to call out and remedy issues, making the system more fair and just for all. Even as recent federal court decisions have started to strip and limit some of these policies' ability to address issues of discrimination today, our society continues to grow more diverse and stratified as national demographics evolve with increased immigration. The issues called out by the civil rights movement over a half a century ago still exist today, and systemic inequity is still easily observable in our society by just looking at demographics in wealth, education, and incarceration. Because many people are still suffering due to persistent, well established and intrinsic inequities in our society, the mission of DEI programs and policies has not yet been achieved and thus much more work can be done. Contracting equity is not the first problem that needs to

be tackled regarding these social injustices but, as far as being a way for local governments to act and help their communities in need, it is a very practical and direct course of action that is completely within their purview. Equity policies in procurement are an opportunity for cities to *put money where their mouth is* in supporting DEI.

## OEO History

In Philadelphia, the first bill implemented to aid minority contractors passed in 1983, with City Council overriding then Mayor Green's veto. This law created the Minority Business Enterprise Council (MBEC), and set **"a goal of awarding 15 percent of all city contracts to minority-owned businesses and 10 percent to companies owned by women"**. Despite the Mayor's contention that the bill violated city, state, and federal law while the City Solicitor also proclaimed it was "indisputably illegal and unenforceable" ([New York Times, 1982](#)), this would be the foundation from which Philadelphia's current contracting equity policy is derived. This agency held for two and a half decades until Mayor Nutter superseded the MBEC by creating the Office of Economic Opportunity (OEO) with an [executive order](#) in 2008. All duties of the MBEC were transferred to OEO, which included recommending departmental and agency participation goals, improving the certification of Minority, Women, and Disabled Owned Business Enterprises (M/W/DSBEs), and managing data collection. OEO is still the city agency tasked with promoting diverse businesses for the city, but its purview and responsibilities have since expanded, most notably with Mayor Kenney's first executive order of 2021. [EO 01-21](#) reaffirms OEO and explicitly tasks the department with maintaining the M/W/DBSE registry, setting participation ranges, evaluating bids, reviewing compliance, providing training, and overseeing the annual disparity study required by the Philadelphia Home Rule Charter.

## OEO Policy

The mission of OEO is to promote **"the economic development of businesses beneficially owned and controlled by minority, women, and disabled persons through its registration program, contract review, monitoring activities, and ongoing interaction with City departments, quasi-public agencies, and the local marketplace"** ([Department of Commerce, 2022](#)). To simplify the understanding of what OEO does practically, their work can be considered in 4 main pillars: **Education & Outreach, Vendor Registry, Participation Ranges**, and the **Disparity Study**.

First and foremost, OEO is the primary government entity that provides training and assistance to outside vendors trying to work with Philadelphia as well as support departments that need to contract with M/W/DBSEs. Examples of success in this field

are the regular learning opportunities offered through in-person and virtual workshops and the **Mentor Protege Program**, which matches larger vendors with smaller M/W/DSBE to guide them through the contracting process so they are empowered with the knowledge moving forward to secure their own bids with the City.

At its most basic function, OEO is responsible for housing the databank of all certified M/W/DBSE businesses that participate in contracting with the City of Philadelphia. Certification is provided by external partner agencies who verify the M/W/DBSE status of vendors. Only those registered in the database are eligible to count towards the contract specific, departmental, and overall city participation goals. As of fiscal year 2021, over **2,500 certified M/W/DBSEs are registered**, providing a diverse array of services for city departments to utilize for their expansive contracting needs.

For this analysis, the policy most of interest to explore is OEO's directive to set departmental M/W/DBSE contract participation ranges, meaning what percentage of discretionary budget spending should be going directly to M/W/DBSEs. In their FY21 Annual Report, OEO boasts that citywide **M/W/DBSE utilization was 32.5%, equating to \$222 million** ([Department of Commerce, 2022](#)). Ever more ambitious, OEO has established the **FY24 participation goal at 35%**. OEO monitors contract performance, with each agency and individual contract having their own distinct participation goals. When a contract is found to be in non-compliance, enforcement is minimal, relying mostly on obligation and departmental devotion to make sure benchmarks are achieved and plans are actually followed through.

To guide their work, OEO oversees the City's annual **disparity study "to understand at a more industry granular level the availability of Minority-Owned Business Enterprises (MBEs) and Woman-Owned Business Enterprises (WBEs) (collectively "MWBEs), relative to the pool of all firms the City can do business with."** This report estimates the utilization of M/W/DBSEs in Philadelphia contracts relative to their availability. To justify the need for OEO to set race and gender specific goals, the Supreme Court requires through their 1989 Croson decision that remedies must be narrowly tailored with governments substantiating historic underutilization of M/W/DBSEs. OEO is responsible for requesting this disparity study from an independent firm, the findings which, in turn, are used to create participation benchmarks for the following fiscal year ([Econsult Solutions, Inc., 2022](#)).

### Known Issues in Contracting Equity

Looking through Philadelphia's disparity studies and reviewing academic literature on contracting equity, some common problems can already be identified. From this

research, four primary known challenges in implementing contracting equity policies were identified: **general difficulties with government procurement**, existing **historic disinvestment**, the evolving **legal landscape & moving goalposts** for achievement, and the need for **justified exemptions** to participation.

The largest barrier to getting M/W/DBSEs to win municipal contracts is **the complexity of navigating the government procurement process**. This is in addition to managing another level of reporting requirements for participation in a M/W/DBSE certified program. Finding opportunities to contract with the city is difficult for any business, but even more so for new and/or smaller M/W/DBSEs. Requirements to contract with the City of Philadelphia are long and litigious, with general provisions being overburdensome and often non-applicable to the specific service requested. Payments for services rendered to the city are almost always made as reimbursements, forcing contract vendors to carry expenses themselves until reporting is processed. Potential partners that can't afford payment delays are inevitably excluded. Within a single city, the needs for contracts of differing services, sizes, and departments are very nuanced, adding another level of difficulty for applicants. Cities are justified in requiring data and reporting from vendors to prove efficacy. However, it is essential not to ask more of vendors than is needed when tracking metrics from marginalized communities, especially when considering that these businesses are already expected to meet additional certification requirements ([Harvard, 2022](#)).

The purpose of contracting equity policies are to remedy historic disinvestment in communities of color, but the **long-term impacts of those past injustices** are still felt today. The groups we are trying to help need even more support to just get to the starting line, let alone play on a level playing field. Once a business has secured their first government contract, they are much more prepared to win future bids creating a sort of survivors bias, where those who know the rules and players are inevitably more successful. Since M/W/DBSEs have been excluded or underrepresented in the government contracting market already, even more effort must be made to reach out and target these vendors to bring them to the table ([Harvard, 2022](#)).

Not only are we living through a time of changing legal support for DEI programing generally, but since contracting equity efforts are an attempt to make procurement more representative of the population, **benchmarks for these policies must be constantly measured and updated** to both track success and maintain alignment with greater goals. Though contracting equity programs for cities are in full effect, the courts are clearly toying with the extent to which equity efforts acknowledging race and gender disparities may in themselves be deemed more harmful than good. Stagnation is impossible within the contracting equity policy space, as both the legal parameters and

measures of success are evolving constantly. Updates to improve research and evaluation will always be necessary to drive DEI efforts forward.

Lastly, there is the justified need to have exemptions to M/W/DBSE participation ranges when it comes to specific service needs. A non-profit organization can never be a registered M/W/DBSE, meaning none of their direct work could ever qualify to meet participation goals. Extremely specific services with high threshold requirements also face a challenge in meeting participation goals, making the **use of M/W/DBSE either impossible or detrimental to the provision of service**. Much of the work the city contracts for requires high levels of insurance coverage, certifications & accreditations, or bonded costs that cannot reasonably be met by the smaller and newer businesses targeted by contracting equity initiatives. This issue can be avoided in many circumstances by having participation goals and budget set aside, but that limits funding to only what will be provided to a sub-contractor for discretionary services. In this scenario, M/W/DBSE will continue to have difficulty becoming *prime* contractors for the city and need to continue to rely on secondhand funding ([Econsult Solutions, Inc., 2022](#)).

### **Comparative Analysis**

To make an informed recommendation for Philadelphia contracting equity policy improvements, not only must academic literature be reviewed to identify common problems and best practices, but other real world attempts made by similar local governments have been examined to **provide practical examples and glean alternative inspiration** that can be applied locally. In this comparative analysis, the four counties directly surrounding Philadelphia as well as five U.S. cities making similar efforts have been analyzed to paint a thorough and diverse picture of contracting equity policies in practice across the nation. For each comparison, a brief justification for their selection is provided, followed by a summary of their current contracting policies and programs, then an analysis of what can be learned and applied specifically to Philadelphia.

#### **Neighboring PA Counties: Unfair Comparison**

The closest comparison to be made for Philadelphia geographically would be its four neighboring counties in the state: Montgomery, Bucks, Delaware, and Chester. Each of these smaller counties have initiatives to promote diversity and encourage minority and women owned businesses, but **none have a similarly structured contracting equity policy** to Philadelphia. In Montgomery County, they have a Chief of DEI who is tasked with integrating county operations by promoting contracting community engagement

([Mont Co., n.d.](#)). The Bucks County Project and Diversity Officer oversees capital projects to meet county, state, and federal labor standards ([Bucks Co., n.d.](#)). Delaware County's DEI office supports workforce development, provides training, builds community relationships and ensures "equity is considered in all aspects of our operations" ([Del Co., n.d.](#)). Chester is the only Philadelphia surrounding county that does not have its own dedicated diversity office or officer in government ([Chester Co., n.d.](#)). In Chester, the Economic Development Council, a private community organization, is the entity that promotes women and minority owned businesses in the county ([CCEDC, n.d.](#)). Though close in proximity, these surrounding counties are much smaller in population and budget than Philadelphia, meaning **they are not in a position to use their resources and contracting dollars to directly promote M/W/DBSEs** like OEO, making for poor comparison in this analysis.

#### Pittsburgh, PA: Pennsylvania Parity

To make an in-state comparison there is only one other PA metropolitan area to examine, Pittsburgh. In 2004, Pittsburgh established their Equal Opportunity Review Commission (EORC). The EORC reviews contracts to ensure opportunities for historically disadvantaged minority groups and women, setting goals for contractor employment ([Pittsburgh Code Title One, 2004.](#)). Despite a smaller scale compared to Philadelphia, Pittsburgh's executive orders under Mayor William Peduto have aimed to increase workforce and contract goals, showcasing a growing emphasis on inclusion in procurement processes. Though less ambitious than Philadelphia's OEO goals, Pittsburgh was able to increase their M/WBE contract awards by 2.8 million (31% increase) from 2018 to 2019 by "**awarding more M/WBEs as prime contractors rather than subcontractors**" ([Pittsburgh, 2020](#)). The similar goals shared between Pittsburgh and Philadelphia illustrate how **both cities are on the same page in pursuing contracting equity policies, but Philadelphia is slightly ahead in setting and meeting those goals** due to not only a headstart in creating their first office 1983, but also because of the significant differences in population size and local demographics.

#### New York City, NY: Scale and Demographics Targeting

For the next comparison, naturally it makes sense to examine the largest city in the nation and a fellow northeast neighbor, New York City. New York City established their Mayor's Office of Minority and Women-Owned Business Enterprises (M/WBE) in 2016 "to increase contracting opportunities and participation among racial/ethnic and gender groups that have been historically underrepresented in City contracting." The three key goals for this program are "**award 30% of Local Law 1-eligible (LL1) contracts to**



**M/WBEs** by Fiscal Year 2021, award **\$25 billion citywide to M/WBEs** by the end of Fiscal Year 2025, and to certify **9,000 M/WBE vendor firms**" ([Equity NYC, n.d.](#)). While on track to meet the contract utilization goal and already exceeding the number of certified vendors, Mayor Adams issued a 2023 executive order to further address M/WBSE underutilization. The mayor also addressed a 'disparity-within-the disparity', where "over 70% of the value of M/WBE contracts in FY22 were awarded to firms owned by white women and Asian American men" ([NYC Comptroller, 2023](#)). This shows that even within the equity landscape, **data details and nuance matter when targeting outcome goals** to particular populations. In direct comparison to Philadelphia, NYC has a far bigger budget, but in terms of the percentage of contracting funds going towards women and minority owned businesses today, Philadelphia maintains a slight edge (30% v 35%).

### Los Angeles, CA: Enforcement and Adaptation

To add some west coast flavor to this comparison, the second largest city in the nation, Los Angeles California, was examined. Los Angeles' Business Inclusion Program (BIP), administered by the Bureau of Contract Administration, ensures outreach to minority-owned, woman-owned, small, emerging, disabled veteran-owned, and other business enterprises for public works contracts. With Mayor Villaraigosa's [Executive Directive 14](#) as its backbone, the program mandates subcontractor outreach to diverse firms and **imposes penalties(10%) for illegal substitutions** ([BAVN FaQ, n.d.](#)). Unlike Philadelphia which relies on incentives and participant buy-in, the LA example shows how a small but impactful enforcement mechanism can complement and reinforce contracting compliance. Another interesting anecdote from LA is how they used their response to COVID-19 to expand BIP, better serving and helping those most impacted and in need during the pandemic. The **influx of federal recovery funds was embraced as an opportunity to funnel money to minority and women owned businesses**, with LA doubling down and expanding their BIP program to directly support businesses in their community with more contracting opportunities and make sure services are reaching those who need it the most ([LA BCA, 2020](#)). LA serves as an example of a very strong commitment to contracting equity policy, embracing crisis to expand rather than retreat while also not shying away from using their enforcement stick when the complimentary carrot does not suffice.

### Washington D.C.: Small/Local Focus

The Nation's Capital, Washington D.C., is a smaller east coast neighbor with a very different political and governmental landscape from Philadelphia, providing a novel perspective in their approach to contracting equity. Washington D.C.'s Green Book

Small Business Enterprise (SBE) Opportunity Guide underscores a **local business focus rather than being an explicitly race or gender-based initiative**. The city's ninth iteration of the Green Book prioritizes small local businesses, aligning with Mayor Muriel Bowser's vision for an equity-driven economy. With a \$1.2 billion procurement goal for fiscal year 2024, Washington D.C. emphasizes inclusivity and economic recovery through its contracting processes ([DSLBD, 2023](#)). This policy centers local and small business while also encouraging and promoting disadvantaged minority and women-owned business enterprises with the outcome of achieving similar equity goals. Though D.C. chooses to prioritize local and small business over those owned by women and minorities, those small/local businesses tend to overlap with historically underserved communities, providing a viable (though less directly-targeted) alternative approach which could be adopted and implemented in Philadelphia, particularly if race/gender based initiatives become challenged.

### Baltimore MD: Legally Defensible Disparity Study

The final city comparison is another smaller northeast city, Baltimore, unique for their extremely thorough annual disparity study. The Mayor's Office of Small and Minority Business Advocacy & Development (SMBA&D) was established to increase small, local, and M/WBE entrepreneurship in Baltimore. Similar to Philadelphia OEO, SMBA&D maintains Baltimore's certified enterprise database, reviews city contracts for M/WBE participation goals, investigates potential violations, provides outreach/training, and maintains and reviews reporting statistics to track agencies progress ([SMBA&D., n.d.](#)). What makes Baltimore stand out when compared to Philadelphia is not any actual contracting policies or goals set in place for participation, but the **legal framing and thorough extent of their guiding annual disparity study**. Baltimore's disparity study provides clear legal justification for why their city needs to address underrepresentation of women and minority owned businesses in contracting decisions. **"The standard for measuring evidence of disparity in public contracting is set forth in the 1989 United States Supreme Court decision of City of Richmond v. J.A. Croson Co.1 ("Croson")... The Disparity Study applies this legal standard to the examination of the utilization of available minority and women owned business enterprises (MWBEs) on Baltimore County's (County) contracts"** ([Mason Tillman Associates, Ltd., 2021](#)). Philadelphia also performs their own disparity study annually. Increasing the rigor and expansiveness of that report can serve to better understand the local vendor landscape and in turn provide guidance to create more justifiable programs and defend them if needed.

### Legal Challenges

The crux of this policy analysis highlights positive examples of innovative approaches to improve contracting equity practice of Cities in the United States, but some attention must also be given to the recent **rising tide of legal challenges facing government DEI programs**, both at the State and Federal levels. Illustrating this issue are the recent signing of Alabama State Law as well as two recent Supreme Court decisions.

#### Alabama SB129: Divisive Concepts

On May 20, 2024, Alabama Governor Kay Ivey signed into law Senate Bill 129, colloquially known as the “Divisive Concepts” bill. The legislation schedule to take effect October 1, 2024 opens:

“Relating to diversity, equity, and inclusion; to prohibit certain public entities from maintaining diversity, equity, and inclusion offices and from sponsoring diversity, equity, and inclusion programs; to provide prohibitions on the promotion, endorsement, and affirmation of certain divisive concepts in certain public settings; with exceptions to provide that certain circumstances are not prohibited; to require public institutions of higher education to designate restrooms on the basis of biological sex; and to authorize certain penalties for violation.”

Supporters of this law believe that considerations of race, religion, color, sex, ethnicity, or national origin are inherently divisive and are harmful to both diversity and academic freedom ([Griesbach, 2024](#)). The likely outcome for Alabama will be a chilling effect on any discourse related to “divisive concepts,” hindering the ability of state universities and local governments to explore and promote culturally-based programs ([ACLU Alabama, 2024](#)). What does this mean for the fate of [Huntsville’s Office of Diversity, Equity, & Inclusion](#)? It’s hard to say, but we do already see **similar legislation in the PA House** which may create state level challenges for Philadelphia in the future. [Pennsylvania House Bill 2041](#), introduced by Representative Stephanie Scialabba in the 2024 session, aims to prohibit Critical Race Theory (CRT) and DEI training requirements for university students ([McDonald, 2024](#)). This is a far cry from banning local contracting equity programs, but does seem to serve as writing on the wall that central state legislators are starting to go after DEI in PA universities and municipalities, with Philadelphia being the biggest most obvious next target.

#### Supreme Court Students for Fair Admissions (SFFA) v. Harvard and SFFA v. UNC: Distinction in Law by Race or Color

In their 2023 decision, the U.S. Supreme court ruled that the race-conscious admissions policies of Harvard and the University of North Carolina (UNC) are unconstitutional

under the Equal Protection Clause of the Fourteenth Amendment and violated Title VI of the 1964 Civil Rights Act ([LDF, 2023](#)). Though this ruling is applied most directly to publicly funded universities and their affirmative action policies, a new precedent has been set counter to many earlier decisions regarding the scrutiny necessary when considering race or color in civic decision-making. Just as the **court struck down the use of race in college admissions**, a similar argument could be made in the future by a potential city vendor who felt they were not given fair consideration or opportunity due to local DEI policies.

### Supreme Court Muldrow v. St. Louis: Some Harm

This Title VII discrimination case set the new standard for challenging a job transfer, from causing “significant harm”, to now “some harm” ([Oyez](#)). This unanimous decision is seen to lower the bar for workers to make accusations of discrimination by employers. At face value this could be seen as an affirmation that policies derived today from the 1964 Civil Rights Act are still protected, but another door seems to have been opened, one that would “**cast this ruling as a danger to workplace DEI trainings and initiatives**” ([ACLU Missouri, 2024](#)). If a procurement decision was made using any elements of race or gender and an unsuccessful applicant feels they were caused “some harm” by the process, a legal challenge based on this precedent could now be potentially (though likely unsuccessfully) argued ([McGlauffin, 2024](#)).

### Limitations

The primary limitation of this project is that the research perspective is extremely **one-sided from the government view** of how to improve contracting equity, with the obvious **omission of any direct input from M/W/DBSEs** and those communities which are supposed to be helped by contracting equity efforts. Not only are their internal validity concerns relating to the reliance of governments self-reporting data, but clearly focusing on the government perspective only implies an inherent paternalistic view of how contracting equity policies can be a beacon of support for women and communities of color ([Harvard, 2022](#)). With more time, the most beneficial addition to this research would be to speak directly with potential M/W/DBSE vendors to hear their unique needs and perspective. Limiting the scope of this analysis allows for the following recommendations to be tailored to swifter more streamlined one-sided government actions.

Another internal validity concern is that this project has **not conducted any independent, primary research** on the topic of contracting equity, and instead **relies heavily on existing research**, most of which was conducted to bolster and improve

procurement equity efforts (not critique or question policies and practices). A plethora of recent research on contracting equity policies was invaluable to completing this capstone project, but all findings from this analysis are only made by standing on the shoulders of giants, consolidating others' work and effort to merely reinterpret existing strategies towards Philadelphia.

**Comparing two cities is inherently an external validity issue**, as it calls into question whether or not it is ever truly fair to juxtapose locales of different sizes, geography, and community composition. The unique makeup of Philadelphia may hamper the success of policies that work well for smaller or more homogenous cities. Though this is a concern, comparing Philadelphia's contracting equity policies to those of other cities is the best start when looking for inspiration and to evaluate how each city is performing relative to each other.

## **Recommendations**

It is important to acknowledge that both the **City of Philadelphia and OEO are ahead of the curve and leading the charge in advancing contracting equity policy domestically**. The programs and actions taken in Philadelphia mirror those of most large U.S. metropolitans that are committed to improving the diversity of the business they support with procurement dollars. Even when compared against more populous cities with bigger budgets, the goals set and met by OEO are proportionately at the top of the game.

The following recommendations are introduced generally, followed by more specific recommendations divided into categories of quicker/cheaper and slower/expensive.

### **General Recommendations**

Expanding on Philadelphia's existing successful initiatives, the first general recommendation is to continue on this same path and **build on what is already working**. OEO has a proven track record that includes internal reviews to ensure M/W/DBSE participation improves year after year. Next, **ask the least necessary from contractors and take on burdens internally when possible**. Maintaining the balance between reporting and contracting requirements while minimizing the administrative burden on vendors is a difficult dance so, OEO should provide direct assistance in meeting data needs by doing more and asking less. The last general recommendation is to **bolster research and explore alternative expansions**. Conducting new research to gain perspective from M/W/DBSEs directly and enlarging the scope of the annual disparity study are the most effective ways to generate data and evidence from which

future equity policy can be guided. Even if OEO succeeds in meeting M/W/DBSE goals, it would be prudent to investigate the potential shifting focus from race/gender to small/local as an alternative means of supporting underserved communities in the face of legal challenges.

### Specific Recommendations: Low-hanging Fruit

An easy change that would allow M/W/DBSEs more time to apply for opportunities is **expanding the Request for Proposal (RFP) window**. The current requisite 30-day posting period in theory allows enough time for applicants to form questions and prepare a draft before submission, but providing some additional time would certainly be beneficial to businesses, especially when first trying to bid on a city contract.

Another way to make things easier on business partners would be **simplifying contracting language** and shortening application materials as much as possible. Small vendors without legal and contracting experts on staff are not easily equipped to read and respond to page after page of city requirements, especially when many documents can be extraneous and inapplicable to the contract at hand. Anecdotally, Philadelphia has one of the most confounding processes with the lengthiest contracts around. If documents can be re-written in plain language and the process for paperwork simplified for applicants, less M/W/DBSE would be intimidated by the process ([Harvard, 2022](#)).

Increasing the number of M/W/DBSE receiving direct contracts as the primary vendor is a great way to stimulate future participation from those businesses. Getting one's foot in the door, in particular as the lead on a city contract, is the easiest way to create new opportunities for that business by making sure they can navigate procurement again. **Expanding on the existing Partner Protege Program and encouraging more partnerships** for M/W/DBSE helps those vendors get over the first and most difficult hurdle in working with the City: successfully getting that first contract.

The best way to figure out how to help M/W/DBSEs is to hear from them directly. OEO already conducts loads of proactive outreach, engagement, and advocacy with the M/W/DBSE community, but that doesn't mean more can't still be done. If M/W/DBSE are underrepresented in city contracts by default, it is obvious they need more support if participation increases are the goal. Traditional approaches reach traditional candidates, and those who have been historically missed need to be reached in new and innovative ways. If OEO can **maintain its current education and outreach efforts but complement them by approaching M/W/DBSE from additional avenues**, more opportunities will be opened to more M/W/DBSEs.

The last low-hanging recommendation is to **create smaller entry-level contract opportunities exclusively for M/W/DBSEs**. Rather than relying on primary contractors to follow through with their participation plans, why not remove and separately allocate those discretionary funds into smaller, separate contracts explicitly for M/W/DBSEs? This approach would remove some autonomy from departments and contractors to procure as they see fit, but it would be an opportunity to lift some M/W/DBSEs from subcontractors to primaries and guarantee participation goals are met ([Harvard, 2022](#)).

#### Specific Recommendations: Bigger Ticket

**Improving contractor payment speed** would decrease the reimbursement burden facing vendors. M/W/DBSEs that do not maintain enough cash to float a month's expenses are unable to financially make city contracts work. If smaller contracts were made with payment advances, many qualified vendors who are otherwise capable of providing service could bid. The payment system for the City is in place to protect taxpayer funds and make sure services are truly rendered before money is transferred. Increasing payment speed or even pre-paying for services could create one less concern for applicants.

Reducing contracting length is seemingly easier than **reducing reporting requirements for vendors**, but allowing businesses to focus on service provision rather than metrics would reduce administrative burden substantially for both vendors and OEO. Data collected regularly from vendors is crucial to ensure work is being performed accurately and adequately, but anything more than what is necessary/useful creates wasted effort and expense. By assessing current reporting metrics and requirements, then determining where reporting can either be less frequent or removed, there is the potential to clarify and focus what OEO is tracking to the most basic level, asking the least from vendors while still verifying work ([Harvard, 2022](#)).

A simple yet costly improvement suggestion is to **bolster the annual disparity study** for Philadelphia. A deeper dive into the city contracting landscape, the available M/W/DBSE market, as well as providing a more thorough legal justification are how Philadelphia truly commits to improving contracting equity in the long term. Understanding what the racial and gender contracting disparity really looks like is the first step to addressing the issue. The disparity studies performed in Philadelphia are not inadequate, but as with many of these recommendations, there is still room to go further and improve on what is already working for OEO. More research and data on this topic is valuable, especially when it isn't being harvested from active contractors doing work for the city.

Philadelphia already offers bid preferences to certified Local Business Entities (LBE), but that program pales in comparison to what OEO does for M/W/DBSEs. As legal questions and concerns grow regarding government decision-making based on race and gender, there is an opportunity to pursue more **focus on small and local businesses**, ones that are still highly representative of M/W/DBSEs. The annual disparity study is Philadelphia's first line of defense against any legal challenges to contracting equity policy, but if laws are passed or courts change course, the city may be required to think creatively about how to support underserved communities without talking about gender or race.

The last recommendation is likely the most painful one to implement, and that is **adding stronger enforcement mechanisms**, such as the 10% penalty used by LA. As far as I can tell, there is not a crisis of non-compliance when it comes to contracting participation ranges in Philadelphia and the current honors system of compliance is working, but if these policies are to be taken seriously they must be prepared to push back when violated. A slap on the wrist punishment for misallocating funds designated for M/W/DBSEs means perpetrators will have no fear. This sets the stage for when new policies start to push boundaries and OEO will have no recourse to recoup delinquent funds. Monitoring contracts is nice, but if nothing can be done when problems are observed, are these policies anything more than just strongly-worded recommendations or suggestions?

## **Conclusion**

If it can be agreed upon by local governments that DEI is a priority, then there is a requisite notion that action must be taken and efforts to support and expand DEI are necessary until the root issues of injustice are resolved. Philadelphia has been leading the state and is on par with other large US cities in pursuing equity, social, and economic justice through procurement policy, but the underlying roots of inequity remain, so the fight continues. Given the ever-changing legal landscape, Philadelphia needs to be prepared to defend their work/efforts and potentially shift focus away from race/gender towards local/small business to achieve a similar goal while avoiding legal challenges.

Government agencies must take proactive steps to lead by example and encourage innovation in supporting economic inclusion. While Philadelphia has made notable efforts, there is room for further improvement if economic equity is to be a true priority. Reducing reporting requirements, increasing financial support for M/W/DBSEs, and refining outreach efforts based on community feedback are key actions to consider. By improving strategies and committing to meaningful change, cities can build a stronger



foundation of evidence to drive continued progress in promoting minority and women entrepreneurship with their procurement budgets.

Opportunities for future research include comparative studies across more cities. In addition, conducting vendor surveys to gather valuable insights for program improvement and innovation from users would be of most benefit, as hearing from those being served is the most direct way to help M/W/DBSEs. Disparity studies used to justify contracting equity policies are critical to guiding efforts in an informed and legally defensible way, and as such are a prime area for investment when DEI is a priority. Standardizing metrics and prioritizing feasible initiatives can contribute to sustained progress in advancing economic equity and opportunity. This is especially true if cities are intent to compare and align best practices in contracting equity. There is a need to double down on what we know works while exploring new and innovative ways to tackle these social and economic injustices.

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