



Executive Summary

2023 Disparity Study

SANTA CLARA COUNTY, CA

Final Draft

4320 West Kennedy Blvd.

Tampa, Florida 33609

888.302.0899



Santa Clara County

2023 Disparity Study

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FINAL DRAFT



MGT of America Consulting, LLC
4320 West Kennedy Blvd.
Tampa, Florida 33609

Executive Summary

E-1. Introduction

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E.1	Introduction
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To further the County of Santa Clara (County) Board of Supervisors commitment to the advancement of equity, the County engaged MGT of America Consulting, LLC (MGT) to conduct the County's 2023 Disparity Study (Study). The overarching goals of the Study are to identify gaps between the County's utilization of diverse business enterprises in contracting activities relative to their availability in the marketplace and to help the County identify potential policy and program revisions to remedy the imbalance. As defined by Board of Supervisors Policy Manual Section 3.11 Diverse business enterprises (DIV-BE) include minority-, women-, LGBT-, and disabled veteran-owned business. The study overall identified disparities within various DIV-BE business ownership classifications and collectively for DIV-BE firms in the County's market area.

E-2. Study Scope

The Study assessed and identified gaps between vendor availability and utilization in the County's portfolio of acquired goods and services across the five-year study period between July 1, 2016, through June 30, 2021. The Study analyzed contract expenditures which were competitively procured during the five-year period. The Study excluded contracts that were exempt from competitive procurement requirements (including COVID-19 related purchases), awarded to non-profit or other governmental organizations, or were associated with affordable housing development pursuant to a loan or grant from the County. The Study examined whether disparity exists within the following procurement categories: a) Goods and Related Services; b) Professional Services; c) Public Works and Construction-Related Services; and d) Non-Professional Services.

The Study also identified the County's Relevant Geographic Market Area (defined below), summarized existing procurement policies, processes, technologies, and programs, and evaluated the degree to which they are practiced; their impact on firms doing business or attempting to do business with the County; identified whether there are disparities in private, un-remediated markets where the County does business; collected and analyzed qualitative data from businesses in the County's Relevant Geographic Market Area to determine if the firms experienced discrimination while doing business or attempting to do business in the marketplace in which the County does business; and, lastly, provide remedies to address any disparity found in the conduct of the Study.

The methodology and data parameters employed by MGT to conduct the Study are detailed in **Chapter 3, Market Area and Utilization Analyses** of the full report.

E-3. Disparity Results and Remedies

Disparity (*Chapters 4 and 5, Appendix C*)

In this Study disparity is defined as the difference between the County's utilization of diverse business enterprises in contracting activities relative to their availability in the County's geographic market area.

MGT's disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable. A disparity in utilization within the minority- and women-owned firms can be assessed concerning the utilization of unclassified firms. A disparity index is calculated by comparing the percentage of the County's contract spend with DIV-BEs to the relative percentage of DIV-BEs in the County's marketplace. In the table below, a disparity index of 100 means parity, or no disparity. A disparity index of less than 100 indicates underutilization, while a value of 80 or less indicates substantial disparity. Conversely, a disparity index greater than 100 indicates overutilization. In addition to using the disparity index, MGT used the t-test to determine if disparity index scores were statistically significant, meaning that they were less likely to be affected by chance (e.g., sampling error). In **Table E-1**, below, MGT determined disparity index scores for each diverse business enterprise by procurement category. Some categories showed substantial disparity and others showed substantial disparity and had statistically significant scores. The intent of incorporating the t-test into MGT's analyses was to increase the County's confidence and understanding of the findings. Areas with substantial disparity, but do not pass the t-test, should NOT be discounted.

Calculating Disparity Example:

If minority-owned businesses make up 30% of all businesses in the County's relevant geographic market area, but they receive 15% of the County's contract spend, the disparity index would reflect this gap as a numerical value of 50.

Analysis of broader discrimination in the marketplace, including private sector procurement, showed consistent underutilization of DIV-BE firms relative to their availability in the marketplace. In examining the County's expenditures, the Study showed that, overall, the County also underutilized DIV-BE firms relative to their availability in the marketplace. **According to MGT's Disparity Index, the County's utilization of all categories of DIV-BE firms for all procurement categories was 54.2, indicating substantial and statistically significant disparity.** Adopting a broad set of remedies could increase utilization of DIV-BE firms over time. However, reliance on the aggregated disparity index alone obscures crucial findings that can help the County redress these gaps more strategically. Disparity and utilization varied widely by demographic and contract category, as noted in **Table E-1** below. Findings demonstrate significant overutilization by most demographics within Goods and Related Services, but substantial and statistically significant underutilization of Women-owned and Native American-owned business enterprises. Conversely, Black/African American- and Native American-owned business enterprises were significantly overutilized in Nonprofessional Services relative to other DIV-BE demographics. Detailed disparity results by business category and 4-digit NAICS code are provided in **Appendix C, Detailed Utilization, Availability, and Disparity Analysis.**

TABLE E- 1 – DISPARITY INDICES AND DISPARITY IMPACT

RACE-ETHNICITY-GENDER	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	TOTAL
BLACK/AFRICAN AMERICAN	0.6	1.7*	562.6*	153.6	22.8
ASIAN AMERICAN	104.4	42.4	57.3	1740.7*	127.8
HISPANIC AMERICAN	8.8	17.0*	3.7*	1000.5*	19.0*
NATIVE AMERICAN	0.0*	0.6*	161.0	0.0	15.1
ALL MINORITY-OWNED BUSINESSES	65.3	22.5*	61.5*	1230.8*	73.8
NON-MINORITY WOMEN-OWNED BUSINESSES	29.0	49.9*	22.1*	45.0*	41.3*
TOTAL DIVERSE BUSINESS ENTERPRISES (DIV-BE)	47.1*	40.5*	38.0*	322.6*	54.2*
DISPARITY IMPACT	Underutilization Substantial Disparity	Underutilization Substantial Disparity	Underutilization Substantial Disparity	Overutilization	Underutilization Substantial Disparity
UNCLASSIFIED	121.1*	138.1*	123.6*	86.3*	117.7*

The findings of underutilization of diverse business enterprises compared to their availability in the marketplace allows for the County to identify processes to increase DIV-BE utilization across all contracting methods. The remedies are recommendations to increase outreach, engagement, and contracting opportunities with the County. Selected practices identified for the County’s consideration are excerpts from other California government agencies.

It should be noted that California Proposition 209 (Prop 209), passed by voters in 1996, presents a unique challenge to the analysis and remedies presented in this Study. Prop 209 amended Section 31 of Article 1 of the California Constitution (Section 31 of Article 1) to prohibit governmental institutions, including the County of Santa Clara, from considering race, sex, color, ethnicity, or national origin in the areas of public employment, public contracting, and public education. However, remedial activity by governmental agencies may still be allowed if those actions are not preferential in nature to certain classes. Additionally, Prop 209 does allow for race and gender-based remedies if an agency is required to do so in order to maintain or establish eligibility for any federal program if ineligibility would result in a loss of federal funds to the State.

Many state and local government agencies have race- and gender-neutral policies and practices that attempt to address marketplace discrimination and barriers faced by minority-owned businesses, woman-owned businesses, service-disabled veteran-owned businesses, and LBGT-owned businesses in their contracting. Race- and gender-neutral measures include methods designed to encourage the participation of all businesses—or all small businesses—in an organization’s contracting. Participation in such measures is not limited to minority- and women-owned businesses.

The following sections provide potential race- and gender-neutral measures to encourage the participation of small, minority-owned, woman-owned, service-disabled veteran-owned, and LBGT-owned businesses in government contracting and procurement within California. Such participation may be encouraged by

contracting with small and local businesses as prime contractors or subcontractors. The remedies identified below have worked well in certain localities, though some have not been as effective as others. Effectiveness can depend on a variety of factors. As such, it is difficult to determine whether a particular policy or practice is solely responsible for the success of a program.

Small Business Enterprise (SBE) Program *(Chapter 7)*

The County should consider establishing a Small Business Enterprise (SBE) program, including targeting specific contracts for competition among certified SBEs. The United States Small Business Administration Office of Advocacy estimated in its 2022 Small Business Profile that 27.3% of small businesses in the State of California are owned by racial minorities, while 43.1% of small businesses in California are owned by women.¹ Given this overlap of both small and diverse business enterprises, a formal SBE program can serve as a race- and gender-neutral mechanism to increase economic inclusion of diverse firms. Combining SBE programs with Local Business Enterprise (LBE) has also become common among agencies, as there is usually an overlap of the diverse firms participating in small business and local business programs administered by a public agency. Generally, smaller firms are located and work in the jurisdiction in which their business is based.

The County should consider one-fourth of the US Small Business Administration’s size standards to identify small businesses in its Relevant Geographic Market Area. Similar SBE and/or LBE programs are conducted in other California agencies as identified in **Chapter 7, Remedy Analysis and Recommendations**.

Adopt Aspirational SBE Goals *(Chapter 7)*

Aspirational goals and availability are outlined in **Table E-2**. The calculation of the proposed SBE goals was based on a similar goal-setting process that is established in 49 Code of Federal Regulations, Part 26, the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) regulations. There is often an overlap of SBE firms within the DIV-BE business classification. Therefore, SBE goals is appropriate to address disparities identified.

The proposed goals are based on a weighted average of DIV-BE utilization and availability. It is advised to establish aspirational objectives for small businesses to encompass the DIV-BE enterprises examined in the study. DIV-BE firms are included in the calculation of the SBE goals proposed below.

During the goal setting process, different weights may be utilized to establish reasonable and achievable goals. The objective is to factor in availability and utilization. These aspirational goals should not be applied rigidly to every individual procurement. Instead, SBE goals should be tailored to the project.

TABLE E-2.
PROPOSED SMALL BUSINESS ASPIRATIONAL GOALS

SMALL BUSINESS GOALS				
	PUBLIC WORKS AND CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES
RECOMMENDED	25%	5%	40%	10%

¹ United States Small Business Administration’s Office of Advocacy (2022, September 13). “2022 Small Business Profiles for the States, Territories, and Nation.” Accessed September 15, 2023. <https://advocacy.sba.gov/2022/08/31/2022-small-business-profiles-for-the-states-territories-and-nation/>

Procurement Forecasts *(Chapter 7)*

We recommend that the County develop and advertise a six-to-twelve-month procurement forecast of planned contracting opportunities in all industries, including anticipated capital improvement projects and informal procurements. A comprehensive and transparent site that provides information on upcoming bid opportunities is a race and gender-neutral measure that can assist all firms in accessing information regarding business opportunities.

Improve Data Collection *(Chapter 7)*

To measure the County's goal of ensuring diverse businesses have equitable opportunities to compete on County contracts and purchases, additional data must be collected. The data collection should require that all contracts (including construction, professional services, etc.) are entered into and monitored using one of the County's existing contract management systems. This will expand the County's ability to monitor small business utilization. The County should also require all vendors to submit subcontracting information that can be entered into an existing contracts management system. This contract management system should be utilized by all County departments. Further, the County should implement data systems and processes to monitor and track progress on key performance indicators and establish robust processes to collect and analyze small business utilization data by race, ethnicity, gender, LGBT, and disabled veteran classifications and to monitor aspirational goal attainment as detailed in **Chapter 7**.

Streamline Technologies *(Chapter 7)*

The County utilizes four primary technology solutions to conduct its procurement activities across the entire lifecycle: SAP, Ariba, PeriscopeS2G (formerly BidSync), and Veradigm Supply Chain Solutions (formerly known as PMM). The use of multiple systems where there is crossover of data collected is inefficient when reports of vendor utilization or outreach are needed. The County should assess the current technologies in use that can be integrated with the financial system for more accurate reporting of spend and diverse business utilization. The County should also consider a vendor registration system that can be integrated with the financial system when contracts to registered vendors are awarded, or purchases made.

Establish Business Relationships with Organizations *(Chapter 7)*

The County should develop a more formal and structured business relationship with organizations that promote diverse businesses for a more comprehensive and effective outreach and technical assistance effort. Prior to developing the more formal relationships, the County should develop a formal strategic plan to incorporate local support groups and organizations, such as minority chambers of commerce, technical assistance centers, and financial institutions, to support and augment development and growth of small, and minority-owned firms. The strategic plan should outline the goals and objectives for creating these strategic partnerships.

Adopt a Utilization Audit Clause for Contracts *(Chapter 7)*

The County should include a more robust audit clause in all County contracts that specifically asks for utilization data. The clause would also require companies contracted with the County to maintain contract files and data for a period of time and require companies to provide the County with any data or

information requested in the execution of the company's contract. Such an audit clause allows the County to collect any data needed in the performance of their duties such as subcontract reporting.

Execute a Strategic Implementation Plan *(Chapter 7)*

The strategic implementation plan located in **Appendix M** details goals and action items to implement remedies provided in **Chapter 7**. The Plan establishes a foundation for process and policy modifications that will increase utilization of diverse businesses through race- and gender-neutral initiatives. The Plan should be updated and managed in line with the County's objectives.

E-4. Key Findings and Results

Relevant Geographic Market Area *(Chapter 3, Appendix B)*

MGT identified the goods and services purchased by the County, as well as the regions from which they were purchased, to establish the County's Relevant Geographic Market Area. The Relevant Geographic Market Area defines the boundaries where firms are located in which the County spent 75 percent of the dollars within the scope of the Study. The market areas are defined by geographic units such as counties and states, based on the following considerations: 1) the use of standard geographic units in conducting equal employment opportunity and disparity studies; 2) geographic units are externally determined, so there are no subjective determinations, and 3) United States Census Bureau and other federal agencies routinely collect data by geographic unit.

The Relevant Geographic Market Area includes the following counties: Alameda, Contra Costa, Marin, Merced, Monterey, Napa, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Stanislaus ("Market Area"). **Appendix B, Detailed Market Area Analysis** details the exact localities utilized.

DIV-BE Utilization Analysis *(Chapter 3, Appendix C)*

Through analysis of the County's contracting data, MGT identified the County's spend with DIV-BEs during the five-year study period. The utilization analysis was defined by the total dollars spent with prime contractors (primes) and subcontractors by the business ownership and procurement categories. The total dollars spent for purchases within the scope of the Study totaled \$2,413,858,691. The DIV-BE utilization amounted to approximately \$364,800,000, or 15.12 percent of total payments analyzed.

LGBT and Disabled Veteran ownership are intersectional with race and gender ownership and may overlap. For example, a vendor may identify as minority- or woman-owned, while also identifying as LGBT-owned. The Study's utilization analysis includes LGBT- and Disabled Veteran-owned (DV-BE) firms both as part of the overall diverse business enterprise utilization by the specific race, ethnicity, or gender of their ownership and as a separate segment of the total County utilization. DV-BE utilization totaled 1.53 percent and LGBT-owned utilizations totaled 0.07 percent of the total payments analyzed.

Availability Estimates (Chapter 4, Appendix C)

With the Relevant Geographic Market Area now established, MGT estimated the population of DIV-BE vendors within that area who were also available to provide the County with the goods and services it procures. A reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the examination scope is an incumbent element in the determination of disparity. There is no single approach to deriving firm availability, and agencies have used various means to estimate pools of available vendors.

MGT calculates availability based on a “custom census” approach. This approach is the most accurate for calculating availability at its most granular level. An in-depth explanation of this approach is provided in **Chapter 4, Product Market, Availability, and Disparity Analyses**. Detailed availability results by business category and 4-digit NAICS code are provided in **Appendix C, Detailed Utilization, Availability, and Disparity Analyses**. The availability estimates for DIV-BE firms by procurement category are as follows:

- Public Works & Construction: 28.46%
- Professional Services: 39.08%
- Non-Professional Services: 27.63%
- Goods & Related Services: 5.81%

The overall DIV-BE availability estimate is 27.91%.

Qualitative Data Analysis (Chapter 6)

Qualitative data and anecdotal comments in **Chapter 6, Qualitative Data Analysis** detail the perceptions and opinions of individuals as they relate to discrimination in the County’s marketplace, both in doing business with the County and with other private sector entities in the County’s marketplace. The importance of these opinions depends on how much they are corroborated by other statements and the quantitative data compiled to substantiate these perceptions.

The collective qualitative and anecdotal activities gathered input through vendor surveys, in-depth interviews, and business engagement meetings, from 329 business owners or representatives in the Relevant Geographic Market Area regarding their experiences of how discrimination has affected their experiences working as subcontractors with the County or prime contractors on County projects, or on contracts in the private sector. **Chapter 6, Qualitative Data Analysis**, details the extensive efforts by MGT and the County to capture quantitative data from the business community. Common barriers to conducting business with the County cited by respondents include:

- Lack of knowledge on upcoming bids or proposals,
- Consistent practice of awarding contracts to larger firms while excluding smaller, local firms,
- Prequalification requirements,
- Short or limited time given to prepare bids or quotes,
- Restrictive contract specifications, and,
- Selection process or evaluation criteria.

Black/African Americans and Nonminority Women Survey respondent firms expressed that they experience discriminatory behavior more than other DIV-BEs more broadly in the County's marketplace. The complete question is in **Appendix F, Business Survey Instrument**. Discriminatory treatment in the private sector were reported highest by Black/African American firms, with an overall rate of 28 percent. For specific barriers within the private sector, DIV-BEs reported experiencing higher levels of each discriminatory treatment. Survey respondents had greater levels of disparate treatment in the private sector than with the County.

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