

**Santa Clara County, CA**

*2023 Disparity Study*

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## **MGT Consulting Project Team**

MGT is a Tampa, Florida-based research and management consulting firm exclusively working with the public sector. Since 1990, MGT has conducted over 250 disparity and disparity-related studies. The team of experts who dedicated their time, attention, and expertise to this Study includes some of the most experienced and accomplished social science experts in the field of disparity studies:

### **Dr. Fred Seamon, Executive Vice President/Qualitative Researcher**

Dr. Seamon was responsible for ensuring the team had the necessary staff and resources to address the deliverables outlined in the scope of work. Dr. Seamon also conducted policy interviews with County officials and stakeholders.

### **Mr. Andres Bernal, Director/Project Manager/Disparity Study Methodology/Legal Research**

Mr. Bernal was responsible for developing, refining, and executing MGT's methodology and quality standards for the Study, and managing all daily disparity study tasks.

### **Ms. Kattrina Schmitzer, Project Coordinator**

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### **Ms. Vernetta Mitchell, Director/Qualitative Research/Subcontractor Manager**

Ms. Mitchell led the qualitative research effort for this Study and managed the subcontractor engagements.

### **Mr. Juan Osuna, Data Collection Manager**

Mr. Osuna led the data collection for this Study.

## **Subconsultants**

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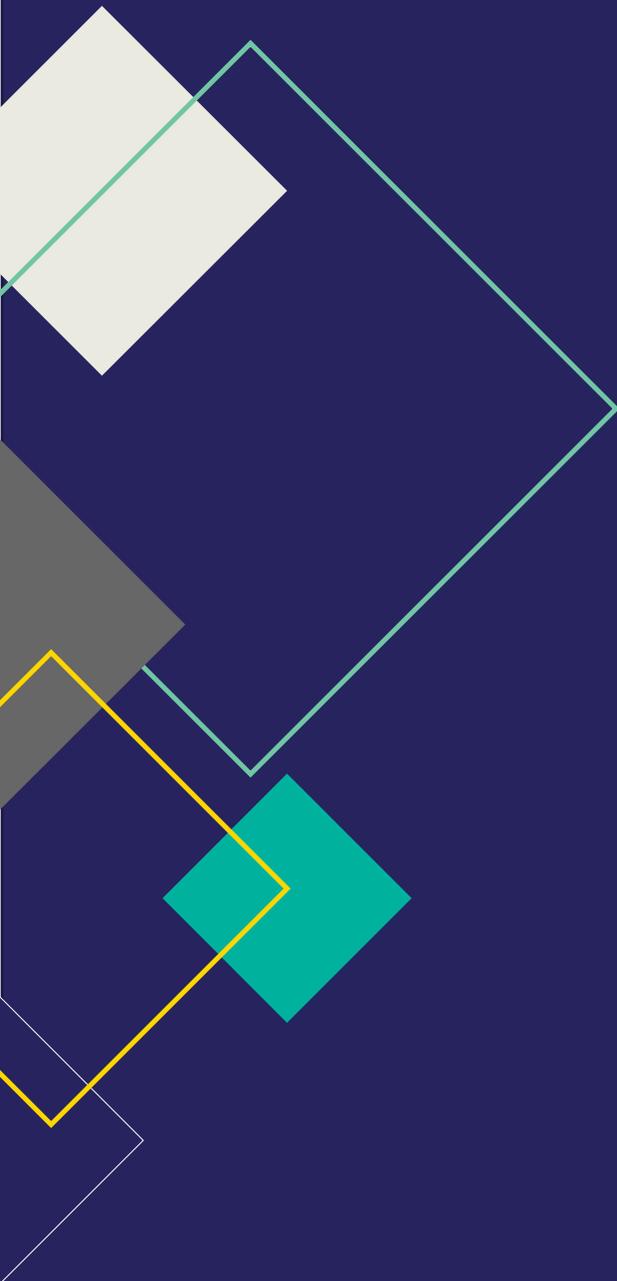
Donaldson Enterprise conducted in-depth interviews with business owners and professional organizations.

### **SkyBase7 (HUB, DBE, and WBE)**

SkyBase7 conducted additional custom census and vendor surveys.

## **Acknowledgements**

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# 1 Introduction

## 1.1 Introduction

The County of Santa Clara (County) retained MGT of America Consulting, LLC (MGT) to conduct the County’s 2023 Disparity Study. The overarching goal of the Disparity Study is to determine if there are disparities between the utilization of diverse business enterprises (DIV-BE) compared to the availability of such enterprises in the marketplace who are ready, willing, and able to perform work, and whether such disparities are consistent with the existence of discrimination. Further, the Study examines whether there is quantitative or qualitative evidence of discrimination in the private market where the County conducts business. Diverse business enterprises (DIV-BEs) comprise the business ownership classifications of minority-, women-, disabled veteran-owned, and LGBT-owned business enterprises.

Chapter Sections	
1.1	Introduction
1.2	Overview of Study
1.3	Report Organization
1.4	Glossary of Terms

In 1996, California Proposition 209 (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, or ethnicity, specifically in the areas of public employment, public contracting, and public education. However, Prop 209 does allow some remedial activity by governmental agencies 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.

The County of Santa Clara is the sixth most populous county in California, with a population of approximately 1.9 million people. The County contains 168 voting districts and 15 cities which together encompass approximately 1,300 square miles. The region includes a large concentration of electronics, information technology, research, and manufacturing firms. The County’s governmental structure includes a decentralized mix of approximately 50 agencies and departments.

The County’s Board of Supervisors maintains a Policy Manual that provides a comprehensive set of policies related to the procurement process for both centralized and decentralized procurement that County departments are required to follow in their procurement and contracting processes. This includes Board of Supervisor’s Policy Manual Section 3.11 – Policy on Outreach to Diverse Business Enterprises. The Board’s policy pertaining to the utilization of diverse business enterprises specifies that inclusive outreach activities be taken as necessary and as permitted by law to ensure that these enterprises are provided the opportunity to compete for and participate in all contracts issued by the County.

The objectives of this Study include:

- ◆ Determine whether the County, either in the past or present, engaged/engages in discriminatory practices, or passively operates in a discriminatory marketplace, in soliciting and awarding contracts to diverse business enterprises.
- ◆ Determine if disparity exists between the utilization of diverse businesses and their availability.

- ◆ As the County's first disparity study, establish a baseline of contract and utilization data to inform future endeavors to maximize inclusion and diversity in the County's procurements.

## 1.2 Overview of Study Approach

The methodology and approach for the County's Study were designed to answer the following guiding research questions:

1. What are the current policies and practices for procurement and the DIV-BE program? What elements are in place, being utilized, and effective in the current policies?
2. What do the County's contracting records show to be the utilization of firms?
3. What geographic and product markets make up the County's relevant market area?
4. What is the availability of firms in the County's relevant markets to perform on contracts?
5. Is there a disparity between the utilization of firms and their availability in the County's markets? If so, is this disparity statistically significant?
6. Is there disparity in the un-remediated market where there are no goals for contracting?
7. Is any disparity identified in the County's contracting attributable to factors other than discrimination?
8. What are the experiences of DIV-BE firms in working or attempting to work on public and private contracting opportunities?
9. What are the opinions and perceptions of firms regarding the County's procurement and program practices?
10. What actions can the County take in its procurement and program policies to help create a level playing field for all firms?

MGT examined the County's contract spend from July 1, 2016, through June 30, 2021 (FY2017 – FY2021) and statistical data in the following business categories:

- ◆ Public Works and Construction-Related Services;
- ◆ Non-Professional Services;
- ◆ Professional Services; and,
- ◆ Goods and Related Services.

The Study analyzed three areas to determine if there was evidence of business discrimination toward DIV-BEs in the County's market area. The first consisted of analyzing contracting opportunities in the above business categories to identify if statistical disparities existed. Additionally, data from the U.S. Census Bureau and other third-party sources were analyzed to determine the existence of business discrimination in the private sector. Finally, qualitative data was gathered and analyzed to determine the possible causes behind any disparities found and understand the 'vendors' contracting experiences in the market area.

The work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize the disparity study work plan.
- ◆ Review the County's current procurement policies, procedures, and practices.
- ◆ Determine the County's relevant geographic area and product markets.
- ◆ Conduct market area and utilization analyses
- ◆ Determine the availability of qualified firms.
- ◆ Analyze prime and subcontractor utilization and availability for disparity.
- ◆ Analyze disparities in the private sector.
- ◆ Collect and analyze qualitative data and information.
- ◆ Recommend remedies to address identified disparities.
- ◆ Prepare and present draft and final reports for the Study.

As with many agencies that conduct its first disparity study there are limitations to data availability. Santa Clara County's data limitations were the availability of subcontractor data relevant to calculating utilization, and contract or purchase descriptions necessary for assigning commodity codes that identify what was purchased during the study period. Extensive efforts by the County and MGT were made to correct gaps in the data.

## 1.3 Report Organization

In addition to this introductory chapter, this report consists of:

<b>CHAPTER 2</b>	<b>PROCUREMENT OVERVIEW</b> <b>Chapter 2</b> provides MGT’s assessment of the County’s procurement-related policies, procedures, and practices.
<b>CHAPTER 3</b>	<b>MARKET AREA AND UTILIZATION ANALYSES</b> <b>Chapter 3</b> presents the methodology used to determine the County’s relevant market area and the analyses of vendor utilization by the County for the procurement of Public Works and Construction-Related Services, Professional Services, Non-Professional Services, and Goods and Related Services procurement.
<b>CHAPTER 4</b>	<b>PRODUCT MARKET, AVAILABILITY, AND DISPARITY ANALYSES</b> <b>Chapter 4</b> presents the availability of DIV-BEs in the County’s geographic and product markets and the disparity between the availability and utilization of DIV-BEs by the County.
<b>CHAPTER 5</b>	<b>PRIVATE SECTOR ANALYSIS</b> <b>Chapter 5</b> analyzes the disparities present in the private sector and the effect on diverse businesses within the relevant geographic market area.
<b>CHAPTER 6</b>	<b>QUALITATIVE ANALYSIS AND PUBLIC ENGAGEMENT</b> <b>Chapter 6</b> analyzes qualitative/anecdotal data collected from a survey of business owners, one-on-one interviews, focus groups, and business engagement meetings to determine the effects of race, ethnicity, and gender on a firm’s ability to do business in the County’s marketplace.
<b>CHAPTER 7</b>	<b>REMEDY ANALYSIS AND RECOMMENDATIONS</b> <b>Chapter 7</b> summarizes the findings of the Study, aspirational goals methodology, implementation strategic plan, and provides remedies for documented disparities based on selected practices of peer programs.
<b>APPENDICES</b>	The appendices contain additional analyses and supporting documentation and data.

## 1.4 Glossary of Terms

This glossary contains definitions of common terms and acronyms used throughout the County’s 2023 Disparity Study. Additional information can be found in the various chapters of the report.

TERM	DEFINITION
Anecdotal	A personal account of experiences of firms doing business with or attempting to do business with the County.
Aspirational Goal	A predetermined, suggested, and nonbinding benchmark percentage of spending by an agency with a particular group over a period of time. The aspirational goal is typically an annual goal.

TERM	DEFINITION
Awards	Awards reflect anticipated dollar amounts a prime contractor or vendor is scheduled to receive upon completion of a contract.
Barrier	Something immaterial that impedes or separates.
Contract	County agreements, including payments and purchase orders, for the procurement of goods and services.
Custom Census	A custom census involves using Dun & Bradstreet as a source of business availability. A short survey is conducted on a random sample of firms supplied by Dun & Bradstreet, requesting specific information, i.e., ethnic and gender status, and verification of the North American Industry Classification System (NAICS) code.
DBE	An acronym for a Disadvantaged Business Enterprise. DBEs for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. <sup>1</sup> This certification is used specifically for qualifying projects which leverage United States Department of Transportation funding. It is separate and apart from the County’s Diverse Business Enterprises, as defined below.
Discriminatory	Making or showing an unjust or prejudicial distinction between different categories of people, especially on the grounds of ethnicity, sex, age, or disability
Disparate Treatment	Treatment of an individual that is less favorable than treatment of others for discriminatory reasons (as race, religion, national origin, sex, or disability).
Disparity Index / Disparity Ratio	The percentage of utilization is divided by the percentage of availability for a particular demographic group and multiplied by 100. Disparities were calculated for each of the business categories and by 2022 NAICS codes.
Disparity Study	A study that determines if there are any disparities between the utilization of diverse business enterprises (DIV-BEs) compared to the availability of DIV-BEs in the marketplace who are ready, willing, and able to perform work, and whether such disparities are consistent with the existence of discrimination, and whether there is quantitative or qualitative evidence of discrimination in the private markets in which the County conducts business.

<sup>1</sup> 49 CFR 26.5 “Disadvantaged business enterprise or DBE”.

TERM	DEFINITION
DIV-BE	An acronym for a diverse business enterprise. A DIV-BE is a business at least 51% owned and operated by one or more individuals who are Black/African American, Asian American, Hispanic American, Native American, Women, Disabled Veteran, and/or LGBT.
Expenditures	Expenditures are payments made by the County to Prime Contractors and payments made by Prime Contractors to Subcontractors.
Good Faith Efforts	Documented evidence of the Prime Contractor’s efforts to meet established project goals to contract with DIV-BE firms.
M/WBE	An acronym for a minority or women-owned business enterprise. A M/WBE is a business at least 51% owned and operated by one or more individuals who are Black/African American, Asian American, Hispanic American, Native American, or Women.
Master Utilization Database	A database that maintains firms who have conducted business with the County and were paid by the County for goods and/or services.
Master Vendor Database	A consolidation of multiple directories of utilized firms, registered vendors, and certification lists developed from various sources, including the County’s vendors available in the relevant geographic market area. This list was used to develop the pool of firms to participate in the qualitative data collection activities.
NAICS	The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
Prime Contractor	The contractor or vendor to whom the County issues a purchase order or contract.
Private Sector	The part of the economy that is not under direct government control.
Procurement Category	The type of service or good provided under a contract awarded. The categories analyzed are Public Works and Construction-Related Services, Non-Professional Services, Professional Services, and Goods & Related Services.
Project Goals	Also known as contract goals. Goals assigned to an individual project or contract, as opposed to aspirational goals established on overall agency spending.
Public Sector	The part of the economy that is controlled by the government.
PUMS	An acronym for Public Use Microdata Sample. PUMS contains records for a sample of housing units with information on the characteristics of each unit and

TERM	DEFINITION
	each person in it. PUMS files are available from the American Community Survey (ACS) and the Decennial Census.
Purchase Order	An acquisition contract issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services.
Qualitative	Qualitative data was collected through surveys, interviews, and public hearings.
Regression Analysis	A technique for modeling and analyzing several variables when the focus is on the relationship between a dependent variable and one or more independent variables. Regression analysis helps one understand how the typical value of the dependent variable changes when any one of the independent variables is varied. In contrast, the other independent variables are held constant. For this study, a multivariate regression analysis was used to examine the influence of an owner’s race and gender on gross revenues reported by firms participating in a survey of vendors administered during the study.
Relevant Geographic Market	Also called “Relevant Market Area” or “Market Area.” The geographical area in which firms awarded the majority of the County’s contract dollars are located. The Relevant Geographic Market is not the same as the County’s jurisdictional boundaries.
Responsible Bidder	A bidder that has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract. <sup>2</sup>
Product Market	The identification of NAICS codes that indicate the granular commodities and services that the County procures.
Single Source Exception to Competitive Procurement	The contracting or purchasing of goods or services, without bidding, from one source even if other vendors may provide the good or service sought. <sup>3</sup>
Sole Source Exception to Competitive Procurement	The contracting or purchasing of goods or services, without bidding, when performance or price competition for a product is not available; when a needed product is available from a specific source of supply; or when standardization or compatibility is the overriding consideration. <sup>4</sup>
Statistically Significant	The likelihood that a result or relationship is caused by something other than mere random chance. Statistical hypothesis testing is traditionally employed to

<sup>2</sup> Cal. Pub. Con. Code § 1103.

<sup>3</sup> Pursuant to the County of Santa Clara Board of Supervisors Policy Manual (“BOS Policy Manual”), Chapter 5

<sup>4</sup> *Id.*

TERM	DEFINITION
	determine whether a result is statistically significant. This provides a “p-value” representing the probability that random chance could explain the result.
Subcontractor	A vendor or contractor providing goods or services to a Prime Contractor under contract with the County.
Unclassified Firm	Identified as a firm that is not identified or certified as a DIV-BE or could not be determined as such.
Utilization	Examines the expenditures made to Prime Contractors and Subcontractors for each procurement category. The utilization data is presented as the dollars spent and the percentage of the total dollars by racial, ethnic, and gender classification.
Women-owned Business Enterprise	A business, sole proprietor, partnership, joint venture, or corporation, at least 51 percent owned and controlled by a woman or women. <sup>5</sup>

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<sup>5</sup> County of Santa Clara Board Policy 3.11

# 2 Procurement Overview

## 2.1 Introduction

Procurement and contracting are essential functions in meeting the needs of the County of Santa Clara and the public. Procurement policies, procedures, and practices significantly impact County departments and vendors who actively do business with the County, or attempt to do so. Hence, this chapter examines the County's existing procurement and contracting policies and procedures. In addition, this chapter reviews the technological systems used to conduct procurement and contracting procedures. The purpose of this chapter is to provide a summary of policies and procedures that will be used in conjunction with qualitative data from the vendor community to make recommendations for selected procurement and vendor engagement practices.

MGT's assessment of the County's procurement policies and procedures summarizes the County's procurement structure, environment, source selection policies, and efforts to facilitate diverse business participation in procurement. The assessment of policies and procedures in this chapter is intended to provide context for the analysis of utilization (**Chapter 3**), availability (**Chapter 4**), and remedies and selected practices (**Chapter 7**).

## 2.2 Methodology and Definitions

This section summarizes the steps taken to assess the County's procurement and contracting policies, procedures, and practices. MGT utilized a methodology refined throughout more than 250 previously conducted disparity studies. MGT's approach included collecting and reviewing source documents related to procurement and contracting for the overview of policies and preparation of this chapter. Procurement policies and practices were also reviewed and discussed with 49 staff members from the Behavioral Health Services Department, Department of Correction, Division of Equity and Social Justice, Facilities and Fleet Department, Finance Agency, Office of Countywide Contracting Management, Office of the County Executive, Parks and Recreation Department, Public Health Department, Probation Department, Procurement Department, Risk Management Department, Roads & Airports Department, County of Santa Clara Health System, Sheriff's Office, Social Services Agency, and Technology Services & Solutions Department to understand procurement operations and the procurement cycle. However, an overall assessment of the impact of these policies and procedures on the vendor community can only be made in conjunction with the statistical and qualitative evidence contained in **Chapters 3, 4, and 6** of this report. The assessment of policies and procedures included the following major steps:

- ◆ Collection, review, and summarization of procurement/contracting policies, procedures, applicable laws and regulations, and resources used by County personnel.<sup>6</sup>

<sup>6</sup> See Table A-1, (Appendix A).

Chapter Sections	
2.1	Introduction
2.2	Methodology and Definitions
2.3	Procurement Environment and Structure
2.4	Procurement Policies and Procedures
2.5	Procurement Assessment
2.6	Summary

- ◆ Collection and review of supplemental information and data pertinent to the policy review provided by Office of Countywide Contracting Management (OCCM) staff.
- ◆ Interviews and discussions with County personnel to document procurement roles and responsibilities in the County’s procurement process.
- ◆ Review and summarization of data and information gathered throughout the policy review to develop key findings and recommendations.

Key personnel representing contracting-related policy, program, and technology workstreams were selected to participate in policy discussions in April 2022, which continued until July 2022. The personnel were chosen due to their subject matter expertise regarding County contracting and procurement policies across a broad range of procurement categories, County inclusion initiatives, and vendor outreach activities. COVID-19 restrictions limited in-person meetings; therefore, all meetings were conducted virtually. The policy interviews and discussions aimed to understand the application of policies, discretionary use of guidelines, exceptions to written policies and procedures, and the impact of policies on both internal users and the vendor community. Preparation for policy interviews and discussions included reviewing source documents and information collected from publicly accessible County websites, pertinent documents received from OCCM, and preparing questions to be addressed. Interview questions focused on the interviewees’ roles and responsibilities throughout the procurement lifecycle, application of procurement policies and technology systems to execute procurement activities, impact on procurement procedures due to COVID-19, and feedback from the vendor community, if known. Overall, the interviews and discussions resulted in information, perceptions, and opinions regarding the County’s procurement and contracting, as well as the structure and environment in which procurement and contracting take place. As needed, follow-up contacts were made to seek clarification and obtain additional information.

MGT collected and reviewed a variety of source documents and information pertaining to the procurement assessment. Major source documents and other information collected and reviewed are itemized in **Table A-1 (Appendix A)**.

## 2.3 Procurement Environment and Structure

The County of Santa Clara and its agencies/departments must adhere to various laws, such as the Code of Federal Regulations (CFR), the California Public Contract Code, as well as California Government Code, California Code of Regulations, et al. Further, the County of Santa Clara Procurement Administrative Guidelines (“Administrative Guidelines”), first published on May 25, 2021, provide standardized procurement and contracting procedures for goods and related services, as well as professional services. According to the Office of Countywide Contracting Management (OCCM), the purpose of these guidelines is to:

- ◆ Promote the use of open and competitive processes to secure contracts with vendors that wish to do business with the County;
- ◆ Ensure fairness, transparency, inclusion, and equal access to business opportunities within the County;

- ◆ Promote the most cost-effective use of taxpayer dollars and County resources in its procurement and contracting processes;
- ◆ Promote local economic development and supplier diversity;
- ◆ Develop, promote, and support ethical business practices throughout the public procurement process;
- ◆ Increase social and environmental awareness and sustainability in the County;
- ◆ Ensure policies impacting contracts (e.g., living wage, wage theft, pay equity, etc.) as adopted by the Board are implemented accurately and consistently; and,
- ◆ Ensure compliance with applicable laws, regulations, and contractual obligations.<sup>7</sup>

It is important to note that the Administrative Guidelines do not detail procedures related to intra-agency agreements, public works and real estate contracts, and goods and services included in the County's "direct payment list."<sup>8</sup>

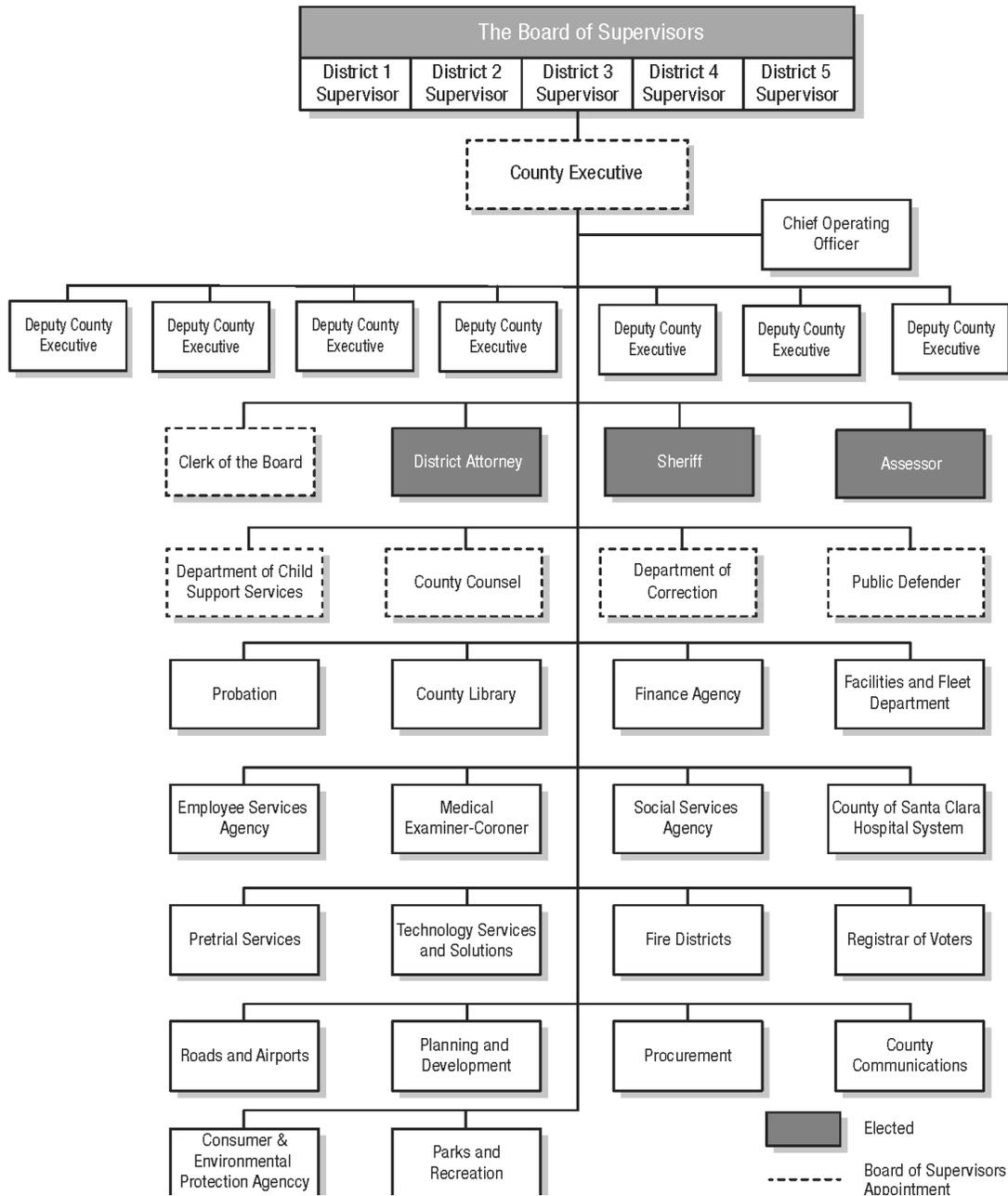
The County of Santa Clara is comprised of many agencies and departments to deliver services to the residents and visitors. **Exhibit 2-1** depicts the County's organizational structure. The organizational units shown in **Exhibit 2-1** purchase a variety of goods and services for internal use and to deliver essential services. To operate efficiently and effectively, the County requires collaboration and coordination between various departments. Within this context, the organization units shown in **Exhibit 2-1** frequently engage in the acquisition process at varying degrees of involvement. The degree to which departments are engaged with the Procurement Department is dependent upon the good or service being acquired and its anticipated dollar value.

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<sup>7</sup> County of Santa Clara Procurement Administrative Guidelines.

<sup>8</sup> County of Santa Clara Ordinance Code A15.17.

EXHIBIT 2-1. COUNTY OF SANTA CLARA ORGANIZATION CHART



Source: County of Santa Clara, FY 22-23 Adopted Budget.

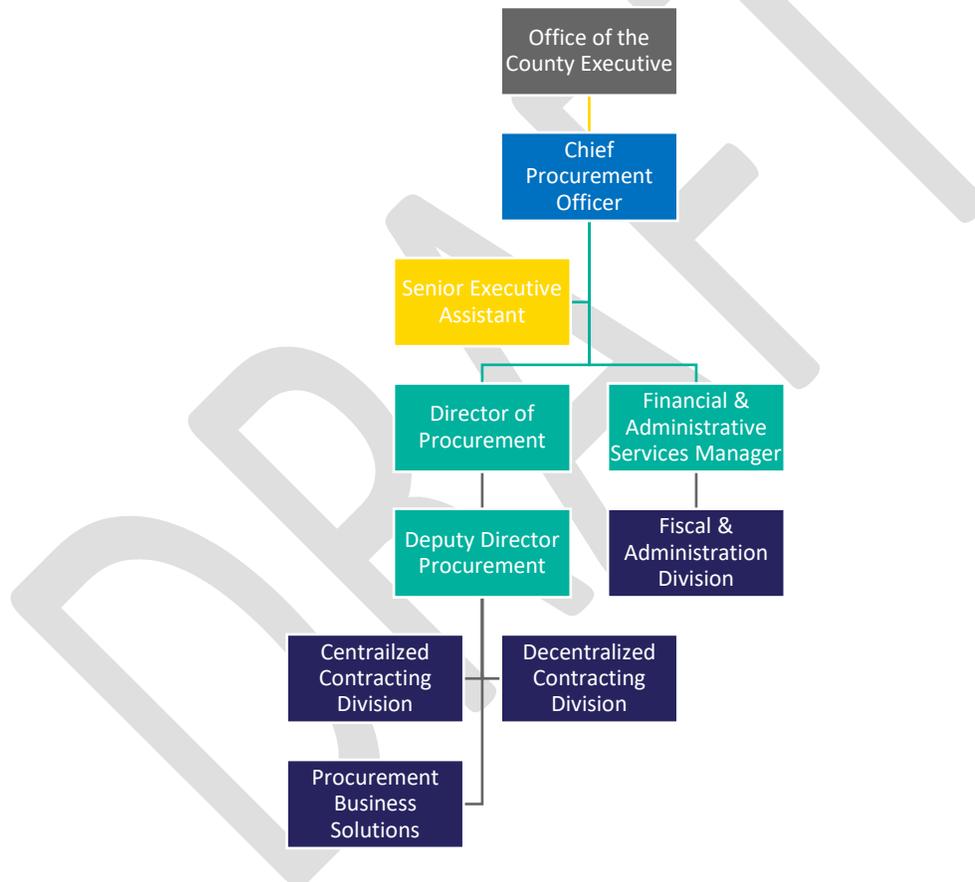
**Exhibit 2-2** shows the structure of the Procurement Department, whereas **Exhibit 2-3** displays the structure of the Office of Countywide Contracting Management (OCCM). On June 6, 2017, the Board of Supervisors adopted the job specification and classification to add the role of Chief Procurement Officer (CPO)<sup>9</sup>. This role reports to the County’s Chief Operating Officer and oversees both the Procurement

<sup>9</sup> County of Santa Clara BOS Meeting, June 6, 2017, Agenda Item #108

Department and OCCM. The CPO plays a vital role in transforming the County’s procurement and contracting function into a center-led operating model that is focused on:

- Strategic sourcing,
- Supplier and category relationship management,
- Contract management,
- Effective procurement,
- Community-based organization/supplier diversity management,
- Data analysis,
- Performance management.

EXHIBIT 2-2. PROCUREMENT ORGANIZATION CHART



Source: County of Santa Clara, Office of Countywide Contracting Management, November 18, 2022.

The Procurement Department supports the County in the acquisition of goods and services, and the administrative function of resulting contracts, OCCM staff support governance and organizational change related to Countywide procurement and contracting to ensure standardization throughout contracting processes. In the structure shown in **Exhibit 2-2**, staff roles include the Director of Procurement, Strategic Sourcing Officers, and Strategic Sourcing Managers, et al., who play a key role in coordinating and working with departments to purchase goods and services. Some of the procurement methods permitted within

the County are centralized while others are decentralized with varying involvement from the Procurement Department. The procurement process impacts nearly all County departments, from basic supplies to large-scale strategic purchases that shape County functions and services.

The Procurement Department has multiple divisions, as shown in **Exhibit 2-2**. The Centralized Contracting Division manages the procurement of commodities on contracts that are shared among multiple departments. For example, these procurements may be related to information technology, office technology, facilities, and medical patient care supply chain contracting activities. Some vendors and contracts solicited and managed by the Centralized Division are shared countywide or among multiple departments. Additionally, the Centralized Contracting Division is responsible for the management of the County's Purchasing Card (P-Card) program.<sup>10</sup>

The Decentralized Contracting Division supports departments for countywide contracting for the engagement of professional services where departments lead the procurement effort. The Decentralized Division's involvement primarily includes reviewing and approving service agreements led by agencies/departments. This division may also assist by leading departments in soliciting and negotiating contracts authorized by the delegation of the Board. The Centralized and Decentralized Contracting Divisions review competitive procurement exceptions and exemptions to ensure compliance with County rules governing these procurement methods.

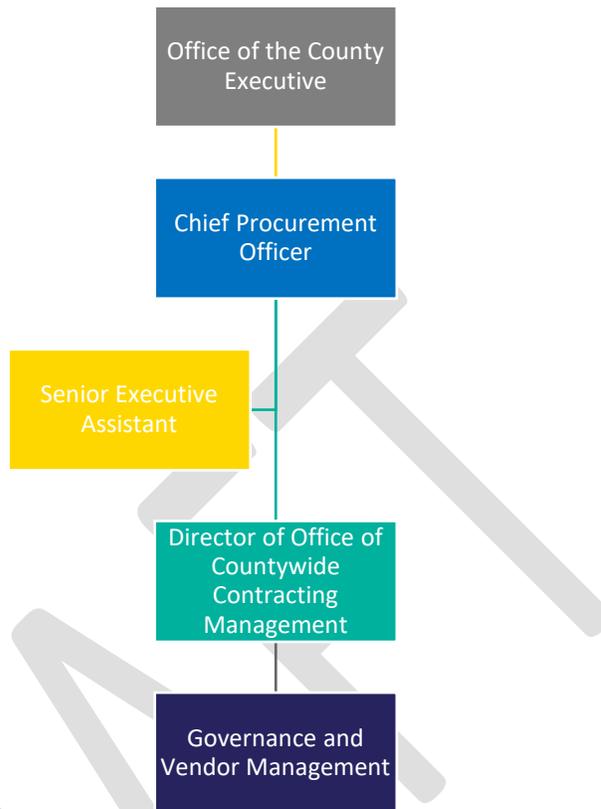
The Procurement Business Solutions Division manages and maintains enterprise software applications for the County, provides internal technology operations support to the Procurement Department, and manages and maintains the Procurement's intranet/internet sites. The division manages all procurement-related modules of the County's SAP financial system and the Ariba module of SAP, whereas the Controller-Treasurer Department manages the financial and budget models of the system. The Procurement Department's Fiscal and Administration division is responsible for the department's financial and human resource management, the Property Disposal Program, and the Procurement Department's emergency operations.

**Exhibit 2-3** displays the structure of the OCCM by which the Director of OCCM, Management Analysts, Policy Analysts, Contracting Compliance Manager, and Vendor Outreach Manager are responsible for administering the Countywide procurement policy and overall procurement and outreach strategy in collaboration with the CPO. Given the purpose and strategic function of OCCM, the Office is appropriately housed within the Office of the County Executive. Additional responsibilities of OCCM include providing procurement professional development and training, monitoring compliance for mandatory policy provisions in County contracts, and managing other organization-wide procurement and contract initiatives. The vendor outreach function of OCCM, which was previously housed within Procurement, leads outreach initiatives to the vendor community in conjunction with Procurement and County agencies/departments. The governance and compliance function of OCCM ensures that contracts comply with County rules and provide countywide training on procurement best practices. According to Board of Supervisors Policy Manual section 5.1, OCCM is also tasked with maintaining the County's Administrative Guidelines on procurement and contracting.

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<sup>10</sup> County of Santa Clara Procurement Department. "Contact Us," accessed September 8, 2022,, <https://procurement.sccgov.org/about-us/contact-us>.

EXHIBIT 2-3. OFFICE OF COUNTYWIDE CONTRACTING MANAGEMENT ORGANIZATION CHART



Source: County of Santa Clara, FY 23 Recommended Budget.

Over the course of the study period, the County has been engaged in a multi-year countywide procurement and contracting transformation. As with any large-scale change, there have been adjustments and procedural changes to achieve the desired procurement state. In several ways, the evolution and ongoing transition to a center-led purchasing model informed MGT’s assessment of the policies and procedures that follow.

## 2.4 Procurement Policies and Procedures

The review that follows is narrowly focused on major policies that significantly impact purchasing goods and services. Although MGT reviewed a variety of procurement-related documents and information listed in **Table 2-1**, the sections which follow are intended to provide a high-level summary of policies and procedures, and practices. It is not intended to provide a detailed discussion about the processes associated with each policy or specifics of how each policy is carried out. MGT’s assessment recognized that the County is currently transitioning from a hybrid procurement model to a center-led model. To conduct the assessment, MGT paid considerable attention to the County of Santa Clara Board Policy Manual and the Administrative Guidelines. Key sections of the Board Policy Manual that were reviewed in detail include the following:

- ◆ Section 3.11: Outreach to Diverse Business Enterprises

- ◆ Section 5.3: Contracting Authority
- ◆ Section 5.4: County Contracting Activities
- ◆ Section 5.5: General Contract Policies and Provisions
- ◆ Section 5.6: Procurement Process
- ◆ Section 5.7: Public Works Contracts
- ◆ Section 5.8: Architect-Engineers-Construction Project Management and Other Related Contracts
- ◆ Section 5.14: Contracting During an Emergency
- ◆ Section 5.15: Sustainable Purchasing

The above sections of the Board Policy Manual and Administrative Guidelines were used to identify current policies and procedures. From MGT's experience, policies can either inhibit or facilitate vendor participation depending on their execution. The review of these two documents also helped to shape the discussions with County staff about how policies are operationalized and the impact of such policies on both agencies/departments and the businesses seeking procurement and contracting opportunities with the County. Within this context, MGT also noted whether relevant state laws and regulations in **Appendix A, Table A-1** are appropriately referenced in County policies and procedures. MGT also sought to determine the extent to which the policies are referenced in the solicitations reviewed during this process.

Efficient and effective coordination and execution of the purchasing and acquisitions process is largely dependent upon knowledgeable staff, well-established policies, and effectively executed policies and procedures for advertisement, solicitation, vendor evaluation/selection, contract negotiation, and approval. Much of the overview that follows is based on the policy documents that were reviewed and discussions with staff about the acquisitions process and outreach to diverse businesses.

With a current operating budget of over \$10.9 billion,<sup>11</sup> procurement and contracting activities are essential for County operations and service delivery to the public by the entities shown in **Exhibit 2-1**. The Board, Procurement, OCCM, agencies/departments, and vendors all play a critical role in the County's procurement process. Based on discussions with County staff, it was apparent that ensuring policies are routinely followed is paramount to delivering products and services to the public. Federal, state, and County regulations and laws pertaining to the procurement process are embedded within the purchasing policies and source selection policies tend to be clearly defined.

The County leverages a variety of methods to acquire its goods and services. Firms interested in conducting business with the County would benefit from understanding how the County makes purchases. **Appendix A, Table A-2** provides an overview of the solicitation methods and evaluation/award criteria.

As part of its assessment, MGT reviewed sample solicitation documents, such as Invitations to Bid, Requests for Proposals, Requests for Qualifications, and sole source justifications. Solicitations are the starting point for advertised procurement opportunities with the County and are important in determining whether solicitation documents adhere to the policies and procedures reviewed by MGT. The

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<sup>11</sup> "Fiscal Year 2022-2023 Adopted Budget". Board of Supervisors Continued Budget Hearing, June 16, 2022, Agenda Item No..83a.

documentation review also included examining the accessibility of solicitations on the County’s websites and the forms required for submission. MGT made note of the Local Business Preference policy and nondiscrimination language included within applicable solicitations. Based on MGT’s review of the solicitation documents, the documents were uniformly organized and appropriately referenced governing laws and policies.

## 2.4.1 Source Selection Methods

Source selection is a fundamental purchasing activity that is performed to acquire essential goods and services needed by County agencies/departments. MGT’s discussions with County staff focused on primary source selection methods, related policies and practices, and how businesses are impacted. MGT also examined resources for businesses interested in doing business with the County. According to staff and the “Vendor Registration” section of the County’s website, the County utilizes Ariba and PeriscopeS2G (formerly BidSync) solicitation management systems.<sup>12</sup>

Competitive solicitations are a core principle of public sector procurement and is the County’s preferred method of procuring goods and services.<sup>13</sup> The requirement to conduct a competitive procurement applies to all purchases of goods or services except where a request for exemption or exception to competitive procurement is pre-approved in accordance with Board Policy.<sup>14</sup>

The procedure and type of solicitation methods in public works contracts are governed in detail by the California Public Contract Code. Generally, the County utilizes a Design-Bid-Build project delivery method, by which the County prepares plans and specifications to describe the desired construction services and result, advertises for bids, and awards the contract to the lowest responsive responsible bidder. The Public Contract Code also authorizes the County to also use the Design-Build and Construction Manager At-Risk project delivery methods, which are generally awarded on a best value basis.<sup>15</sup> The County also utilizes job order contracts (JOCs), which are indefinite scope and quantity contracts whereby individual job orders are issued and priced according to a pre-priced task catalog.<sup>16</sup>

### Competitive Sealed Bids

An Invitation to Bid (ITB) is a formal competitive solicitation method that is used in the procurement of clearly defined goods or services<sup>17</sup>. The ITB solicits competitive sealed bids from the marketplace and the award is made based on the lowest responsive and responsible bidder. Except for public works projects, any deviation from selecting the lowest responsive and responsible bidder is explained in the bid award documentation and submitted to the CPO or designee for review of responsiveness, responsibility, and all other factors prior to contract award. Deviations for capital projects must be approved by the Board of Supervisors. The specifications and/or requirements must be well-defined and included as part of the ITB.

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<sup>12</sup> County of Santa Clara Procurement Department,, “Vendor Registration and Account Maintenance,,” Vendor Resource Center, accessed Sep. 8, 2022. <https://procurement.sccgov.org/vendor-resource-center>.

<sup>13</sup> BOS Policy Manual § 5.6.2.

<sup>14</sup> *Id.* tat§ 5.6.5.1.

<sup>15</sup> *Id.* tat § 5.7.5.6.

<sup>16</sup> See, e.g., Cal. Pub. Con. Code § 20128.5.

<sup>17</sup> BOS Policy Manual § 5.6.3.

ITBs may be used for one-time acquisitions of goods, one-time acquisitions of services (except professional services), public works, or multi-term contracts for goods, and/or services.

### **Competitive Negotiated Procurement**

Competitively negotiated procurements<sup>18</sup> are solicited through a Request for Proposals (RFP) when determined by the Procurement Department or agency/department that a solution and qualifications are important criteria for selection beyond price. The process starts with the preparation of the scope of work by the agency/department in need. RFPs are also publicly advertised and pre-proposal conferences and/or site visits may be used depending on specifications and requirements.

### **Small Dollar Purchases**

The dollar threshold for small purchases is \$5,000 or less per transaction and may not exceed \$25,000 per vendor each fiscal year. However, a larger authority amount may be granted to a department head for the P-Card program. Small purchases may be made in the open market without advertisement or following competitive bid procedures using a Field Purchase Order (FPO)<sup>19</sup> or P-card<sup>20</sup>. According to the purchasing policy, P-card should be used as the first purchasing option, before consideration of the FPO. FPOs should also be awarded based on the lowest price, provided the quote is responsive and the vendor is responsible.

### **Sole and Single Source Procurements**

Section 5.6.5.1 of the BOS Policy Manual includes provisions for awarding a single or sole source procurement of products or services. A sole source procurement is a sourcing method used to procure a product or service without competition when it is determined that only one source for the required product or service can meet the defined requirements in a scope of work.<sup>21</sup> The requestor of a sole source procurement must demonstrate there is only one source for the required product or service. A sole source procurement may be awarded at any value.

In contrast, a single source procurement exists when multiple vendors may provide a good or service, however, a situation exists that makes the application of all requirements of competitive procurement impracticable to the County or public's interest.<sup>22</sup> The requestor must justify why a competitive procurement is not advantageous to the County or public interest. Single and sole source exceptions require Director of Procurement or designee approval.

### **Emergency Procurements**

An emergency is defined as a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."<sup>23</sup> Emergency purchases have no dollar threshold and may be made noncompetitively if warranted by the circumstances. A written determination must be provided for the basis of the emergency and the selected contractor. Provisions for emergency purchases are found in

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<sup>18</sup> *Id.*, at § 5.6.3

<sup>19</sup> Administrative Guidelines, § 8.3.1.2

<sup>20</sup> BOS Policy Manual, § 3.19.5

<sup>21</sup> *Id.* at § 5.6.5.1.

<sup>22</sup> *Id.*

<sup>23</sup> Cal. Pub. Con. Code § 1102.

Section A34-82 of the County Ordinance Code, as informed by the policies identified in BOS Policy Manual Section 5.14. During a locally declared emergency, authority is granted to the County’s purchasing agent to procure goods and services. Under the County Ordinance Code, the County Executive also has authority to order an emergency action.

## Architectural and Engineering Services

BOS Policy Manual Section 5.8 and Government Code section 4525 *et seq.* include provisions for the solicitation and contractual requirements for architect-engineers, construction project management, and related services contracts. All contracts for services covered in Section 5.8 that have a cumulative total value of more than \$300,000 per budget unit must be approved and signed by the Board of Supervisors unless otherwise delegated. If the value is \$300,000 or less per budget unit, the Director of Procurement has the authority to approve the selection and execute the Professional Service Agreement (PSA) or Professional Service Contract (PSC). Architects, engineers, and related services must be selected using a Qualification Based Selection (QBS) procedure. To be eligible for consideration, firms must demonstrate competence and meet the professional qualifications necessary for the satisfactory performance of the services required.<sup>24</sup>

### 2.4.2 Local Preference Policy

The County is authorized to give local businesses a 5% price preference on select Invitations to Bid and Request for Proposals as set forth in the BOS Policy Manual Section 5.6.5.2. A bidder or proposer has the option of qualifying for the preference if they meet the requirements as a “local business.”<sup>25</sup> The County defines a local business as a lawful business physically located within the County of Santa Clara that provides meaningful “production capability.”<sup>26</sup> Section 5.6.5.2 further defines “production capability” as “sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm’s or bidder’s ability to perform the proposed contract.”<sup>27</sup> A firm is unable to claim this preference through a subcontractor or business partner.<sup>28</sup>

The following solicitations are excluded from the Local Preference Policy:

- ◆ Public works contracts;
- ◆ When precluded by local, state, or federal law or regulation;
- ◆ Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy; or,
- ◆ Contracts exempt from solicitation requirements in accordance with Board policy, state law, and/or the County Ordinance Code.<sup>29</sup>

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<sup>24</sup> Cal. Pub. Con. Code § 4526.

<sup>25</sup> County Declaration Submittal Form

<sup>26</sup> BOS Policy Manual § 5.6.5.2

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

### 2.4.3 Sustainable Purchasing Policy

The County purchases goods and services that inherently have economic, social, and environmental impacts to the community. As such, the County recognizes its responsibility to the environment and the public to increase social and environmental awareness and sustainability through its purchasing practices. The Board adopted the Sustainable Purchasing Policy in December 2021. This policy provides provisions for County agencies, departments, personnel, and contractors (prime and subcontractors) when doing business on behalf of the County. The parties “shall consider and apply, to the extent practicable, environmental, economic, and social equity sustainability outcomes when identifying, soliciting, and evaluating products or services procured with County funds.”<sup>30</sup>

However, if exception purchases or funding sources preclude the County from adhering to this policy, the County will attempt to minimize any negative implications of the acquisition. The policy also establishes a Sustainable Purchasing Working Group that oversees the implementation of the Sustainable Procurement policy, training of staff, outreach to vendors, and revisions to sustainable purchasing guidelines. The Working Group currently includes people from Procurement, OCCM, Consumer and Environmental Protection Agency (CEPA), Office of Sustainability (OOS), and Facilities and Fleet. The Director of Sustainability may recommend to the Chief Procurement Officer purchasing standards that support the objectives of this policy for further consideration.

## 2.5 Procurement Assessment

Based upon MGT’s discussions with County staff, it was evident that the Board’s commitment to open and competitive processes, fairness, equal access to business opportunities, and cost-effective use of taxpayer dollars and County resources are embodied in the roles and responsibilities of the County’s agencies and departments, including the Procurement Department and OCCM. Particularly, efforts related to increasing public awareness of opportunities, ensuring agency/department compliance with competitive sourcing requirements, and building confidence in potential respondents to the County’s solicitations are a significant focus of OCCM. Staff advised of several initiatives, such as Vendor Outreach and Community-Based Organization (CBO) Outreach, the establishment of Equity in Contracting Steering Committee (ECSC), reassignment of the Disadvantaged Business Enterprise Liaison Officer (DBELO) role, and Internal Service Provider (ISP) workgroup and Countywide Contracting Workgroup (CCW) that have been created to align with and operationalize the stated commitments. The impact of firms’ abilities to conduct business with the County in light of these initiatives will be assessed in conjunction with the Study’s statistical and qualitative findings.

Based on policy discussions with key personnel, the Procurement Department is viewed as a professional and responsive team that has been in transition for the last five years through the countywide procurement and contracting transformation. The Department’s dedication to continuous improvement is evident as is its commitment to providing a better experience for all internal and external stakeholders involved in procurement processes.

The following summarizes key points and observations related to procurement policies, vendor outreach, the Disadvantaged Business Enterprise (DBE) Program, and procurement technologies based on policies

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<sup>30</sup> BOS Policy Manual, § 5.15.

discussions with key personnel. The vendor community assessment is intended to assess the vendor community's ability to participate in the County's procurement and contracting processes using current County documents and resources. Vendor input is critical for this assessment and is analyzed in **Chapter 6, Qualitative Data Analysis**, to aid in the development of recommendations and best practices.

## 2.5.1 Procurement Policies

The County of Santa Clara has a plethora of regulations, ordinances, and policies regarding procurement methods and contracting, including Chapter 5 of the BOS Policy Manual and Administrative Guidelines. The alignment of County Ordinances, BOS Policy Manual, and Administrative Guidelines is essential for countywide transformation and clarity of roles.

Staff who were interviewed were aware of and very knowledgeable about Chapter 5 of the BOS Policy Manual and the Administrative Guidelines. However, there are aspects of the policy that remain unclear. While the County has a Local Business Preference Policy, the policy is not widely used on agency/department procurements. Staff were unaware of how frequently vendors claim this preference and where to verify if a vendor meets the criteria. It was noted that OCCM undertakes a regular review process to update and revise the Administrative Guidelines. The review process includes soliciting input from County agencies and departments via the Countywide Contracting Workgroup (CCW). Overall, the Internal Service Provider workgroup and CCW workgroups are well received by County staff. The County has made many changes to procurement practices in the last few years that have made it difficult for agencies/departments to stay aware of what is current. However, staff advised that frequent meetings with procurement liaisons have been helpful in navigating revised procurements practices.

Based on the policy discussions conducted with Procurement and OCCM staff, procurement policies do not inhibit or constrain participation in the County's procurement. However, execution of the solicitation process can potentially create barriers and challenges for vendors related to procurement processing time. Procurement cycle time has been a challenge for specific procurement categories, such as IT-related procurement. Risk management and legal review were described as major factors that increase procurement cycle time. In fact, legal was described as "risk averse" by several staff who indicated that most of the procurement cycle time is taken up by this process. The risk aversion can make some procurements last over a year. Prior recommendations from the Management Audit of the County of Santa Clara Procurement Department included "implement[ing] a tracking and ticketing system to inform client departments and Procurement Department staff about pending tasks and responsibilities" and "implement[ing] a monitoring process that relies on a tracking system to identify troubled or delayed procurements."<sup>31</sup> A ticketing and monitoring system would aid Procurement staff in identifying potential bottlenecks in solicitation processes and provide the desired visibility to agencies/departments.

County staff desire to achieve cost-effective acquisitions and procurement efficiencies but noted challenges that impede this desire. COVID-19 illuminated the need for flexible procurement options and rapid turnaround for purchase approval. An additional opportunity exists to continue improving the usage of countywide contracts. At the time of the assessment, County staff advised that contract ownership and responsibilities are not clearly defined on countywide contracts. Specifically, noting a disconnect between

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<sup>31</sup> Board of Supervisors Management Audit Division,, "Management Audit of the County of Santa Clara Procurement Department,," Aug. 27, 2021, p. 27.

who has administrative oversight of a contract (Contract Manager) versus who is a subject matter expert (Project Manager) and should consult on contract specifications as needed. The Administrative Guidelines differentiate between Project Manager<sup>32</sup> and Contract Manager<sup>33</sup> roles; however, a need existed to define these roles in the context of countywide agreements. In Fall 2022, OCCM created a quick reference guide and training video to aid in defining these roles.

## 2.5.2 Vendor Engagement

The assessment of vendor outreach programs requires a two-prong approach: County efforts (internal) and vendor community reception (external). The information contained in this section assesses the internal component only. Information from vendors regarding doing business with the County or attempting to do so will be examined in the qualitative analysis contained in **Chapter 6**.

As an extension of the County nondiscrimination policy<sup>34</sup>, BOS Policy Manual section 3.11 provides guidance to the County on outreach to diverse business enterprises. Section 3.11 states that “focused outreach activities be taken as necessary and as permitted by law to ensure that [MBEs, WBEs, DVBEs, and LGTBEs] are provided the opportunity to compete for and participate in all contracts issued by the County for construction, services, and the purchase of supplies and equipment.” The crux of the policy is to ensure diverse business enterprises are aware of procurement and contracting opportunities as authorized by California Government Code section 7400(a)(1). The promotion of opportunities to diverse businesses increases the number of businesses that participate in the bidding process leading to more vigorous competition in the marketplace.<sup>35</sup> BOS Policy Manual section 3.11 outlines the following sample activities to reach diverse businesses:

- ◆ Solicitations distributed to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including MBE, WBE, DVBE, and LGTBE professional groups and associations, as appropriate.
- ◆ Advertising concerning local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications in languages other than English and those whose primary readership is a minority, women, disabled veteran, or LGBT-owned businesses.
- ◆ Outreach to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including MBE, WBE, DVBE, and LGTBE professional groups and associations, as appropriate.

### Vendor Outreach

Throughout the study period, Procurement’s (and now OCCM’s) Vendor Outreach staff implemented initiatives to engage a diverse array of vendors, facilitated registration in the County’s procurement

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<sup>32</sup>Administrative Guidelines 11.2.1

<sup>33</sup>Id. at § 11.2.2

<sup>34</sup> BOS Policy Manual § 3.8

<sup>35</sup> Cal. Gov. Code § 7400(a)(2).

systems, and hosted numerous educational workshops and outreach events for vendors throughout the County. The team held weekly Vendor Open Houses by which interested businesses had the opportunity to meet Vendor Outreach staff in-person and receive assistance registering on the County's procurement platforms. The team also co-hosted the Santa Clara County Small Business Summit of Entrepreneurship and Innovation, which is an annual event in which attendees participated in free workshops on business development and matchmaking sessions with County procurement staff.

Upon the onset of the COVID-19 pandemic, the Vendor Outreach team pivoted from in-person events to virtual webinars and enhanced electronic communications. OCCM sought to raise awareness of purchasing and contracting opportunities by distributing monthly procurement digests and quarterly newsletters; hosting stakeholder focus groups, Supplier Days, RFP development sessions, and enhancing the Vendor Resource Center. The objectives of these initiatives were to aid the County in engaging in open competitions and equip businesses with the tools needed to understand and respond to opportunities. In 2018, Procurement implemented strategies to increase vendor involvement in procurement opportunities through distributing frequent email notifications and opportunities to provide comments on solicitations. The Bi-Weekly Business Opportunities Digests highlighted upcoming opportunities and notified the vendor community of additional opportunities to engage in the procurement process outside of formal competitive procurements through the Advance Notice of Intent to Waive Competition. The Advance Notice allowed businesses to view draft scopes of work for non-competitive acquisitions. The vendor community showed initial interest by responding to the Advance Notices; however, vendor participation gradually diminished, making the bi-weekly digest and Advance Notices obsolete. As a result, Vendor Outreach transitioned to monthly Upcoming Business Opportunities mailers and quarterly Procurement Post.

The Procurement Post is a quarterly newsletter distributed to the County's registered vendors as a consolidated source of vendor news, including upcoming business opportunities, updates to participation rules and procedures, and upcoming outreach and training events. Various procurement contracting teams are highlighted each quarter to describe what the team procures, its goals, and any upcoming panel discussions with the team. The newsletter also showcases departments/agencies throughout the County and their procurement opportunities.

The Vendor Resource Center is housed on Procurement's website and includes content on "Introduction to Government Contracting" and "Best Practices for Responding to County-Issued RFPs." The latter content is geared toward human services agencies, which are key partners to the County. The County expends millions of dollars each year with Community-Based Organizations (CBOs) to provide relevant services to the public. The County values its partnership with CBOs and recognizes the importance in equipping the organizations with tools to overcome barriers with proposal preparation.

Since the inception of Vendor Outreach in 2018, Procurement increased its vendor base by over 50%. At the time of this assessment, the Procurement website and vendor communication updates are underway, including the Procurement Post. OCCM endeavors to increase the competition of County solicitations by creating a one-stop online resource that assists vendors in maximizing their visibility to the County through vendor registration and participating in opportunities with the County. The Vendor Outreach team continues to lead Countywide business engagement initiatives, and agency/department-led vendor outreach is a work in progress.

## Community-Based Organizations Outreach

During policy discussions, MGT spoke with key personnel from agencies who hold strategic partnerships with Community Based Organizations (CBOs), including Behavioral Health Services, Public Health, Probation, Social Services Agency, and the Office of the County Executive. CBOs are generally non-profit organizations operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest and use their net proceeds to maintain, improve, and/or expand their operations. CBOs have a long history of providing essential services to the public. The services provided by such organizations are solicited based on community needs, through existing services or Board-approved recommendations. Staff noted that “exceptions to competitive solicitations are common for CBOs due to specific community needs and expertise required for evidence-based services.” The County values its partnerships with CBOs and hosted Stakeholder Listening Sessions with CBO leaders to understand what barriers their organizations encounter while participating or attempting to participate in County opportunities. Common themes emerged from the sessions, such as:

- ◆ Inability to respond to RFPs, meet compliance reporting, or administrative demands due to staffing constraints;
- ◆ Difficulty navigating PeriscopeS2G platform;
- ◆ Lack of commodity code understanding to receive notification of opportunities; and,
- ◆ Insurance coverage requirements are misaligned to services.

County staff resonated with the above feedback received during the listening sessions and advised MGT during policy discussions that “the same vendors/CBOs are responding to solicitations” and “the County’s stance to reduce its risk often results in insurance coverage requirements that do not align to solicited services.” Through the listening sessions, County staff noted that a number of the same CBOs have been able to implement programs or increase funding for current services by going directly to members of the Board of Supervisors. This process can create legacy contracts, by which firms continue to receive contract renewals without formal solicitations, or single source justifications. Public procurement can be a powerful tool in encouraging the growth and development of small and local firms. Competitive procurements allow the County to benefit from competition among potential vendors in various ways. The benefits include potential cost-savings, more favorable contract terms, and greater innovation among qualified vendors that possess the expertise and creativity to deliver enhanced solutions to the County. A transparent procurement process can also facilitate inclusive procurement which maximizes economic, environmental, and social equity for Santa Clara County’s communities and the general public. Greater access to the County’s procurements helps address systemic disparities and builds economic vitality. Circumventing this process may exclude businesses who are attempting to achieve professional and economic success through doing business with the County. The County’s Community Based Initiative (CBI) began in June 2019 with the goal of promoting collaboration between the County, CBOs, and Health and Human Service providers, improving County contracting processes, and building partnerships that lead to quality service outcomes. Meetings are held on a biannual basis by which attendees engage in ongoing conversations, information sharing, and problem-solving to identify areas of opportunity. A frequent topic of discussion is contracting assistance including standardization and consistency in contracting requirements.

### 2.5.3 Disadvantaged Business Enterprise Program

In 1983, Congress enacted the Disadvantaged Business Enterprise (DBE) statutory provision [Surface Transportation Assistance Act of 1983 (STAA)]. The DBE provision of STAA requires the U.S. Department of Transportation (DOT) to ensure that at least 10% of the funds authorized for the highway, aviation, and transit federal financial assistance programs be expended with DBEs.<sup>36</sup> The 10% goal is an aspirational national goal provided bidders make a showing of good faith efforts to achieve the goal.<sup>37</sup> The DBE program was established to:

- ◆ Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- ◆ Help remove barriers to the participation of DBEs in DOT-assisted contracts; and,
- ◆ Assist the development of firms that can compete successfully in the marketplace outside of the DBE program.<sup>38</sup>

As a subrecipient of federal funds from DOT, through the California Department of Transportation (Caltrans), the County is required to administer a DBE program and/or establish DBE goals on certain projects.<sup>39</sup>

The purpose and goal of this Program is to provide firms with an equal opportunity to receive and participate in DOT-assisted contracts. To this aim the County developed the following objectives for its DBE program:

- ◆ To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- ◆ To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- ◆ To ensure that the DBE participation percentage is narrowly tailored, in accordance with applicable law.
- ◆ To ensure that only firms that fully meet 49 CFR 26 eligibility standards are permitted to participate as DBEs.
- ◆ To help remove barriers to the participation of DBEs in Federal-aid contracts.
- ◆ To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.<sup>40</sup>

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<sup>36</sup> STAA § 105(f); Note: The DBE Program was most recently reauthorized by MAP-21, Moving Ahead for Progress in the 21st Century Act (P.L. 112-141).

<sup>37</sup> 49 CFR 26.41(b) 26.47.

<sup>38</sup> Federal Highway Administration,, “Disadvantaged Business Enterprise (DBE) Program,,” Civil Rights | Federal Highway Administration, accessed September 8, 2022,, <https://www.fhwa.dot.gov/civilrights/programs/dbe/>.

<sup>39</sup> 49 CFR 26.21, 26.23.

<sup>40</sup> County of Santa Clara Procurement Department. “Disadvantaged Business Enterprise Program,a,” accessed Aug. 30, 2023,, <https://procurement.sccgov.org/doing-business-county/disadvantaged-business-enterprise-program>.

## Program Responsibilities

The Roads and Airports Department has been a subrecipient of funds from the Federal Highway Administration and Federal Aviation Administration on various projects including but not limited to, the Highway Bridge Program, Bridge Preventative Maintenance Program, One Bay Area Grant, and County of Santa Clara Airport Improvement Program.

The County plans to use race-neutral measures to meet the objectives of any DBE goals by:

- ◆ “Provid[ing] outreach to small businesses, DBEs, and community organizations to fully advise them of contracting opportunities.
- ◆ Provid[ing] small businesses and DBEs with technical assistance, training, and resources to assist in preparing bids, and obtaining bonding and insurance.
- ◆ Improv[ing] the contracting process by identifying opportunities to package smaller contracts for small businesses to compete more easily.
- ◆ Participat[ing] in pre-bid meetings, be available and supportive to small businesses and explain the County’s expectations, DBE goal, and federal requirements for the project.
- ◆ [Providing] a link on the County website that contains all contracting and procurement opportunities.”<sup>41</sup>

Information regarding the County’s DBE Program is available on the County’s Procurement website and includes certification resources, where to locate DBEs, and contains links to contracting and procurement opportunities through the Roads and Airports Department.<sup>42</sup>

### 2.5.4 Procurement Technologies

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 (formerly Pathways Materials Management (PMM)). Ariba and PeriscopeS2G were identified as the primary sourcing technologies although there are multiple systems utilized for certain operations and functions indirectly related to procurement activities. PMM is used exclusively by the County of Santa Clara Health System and facilitates transactions including, but not limited to, electronic/online ordering, electronic price updates, electronic invoicing, inventory management, and contract queries and validation. Along with PMM, Global Healthcare Exchange (GHX) further provides order confirmation as well as contract and non-contract spend information.

PeriscopeS2G is an e-procurement system that allows firms to search the County’s bids and bid documents, receive daily or on-demand alerts when a bid matches the firm’s online profile, and respond to business opportunities (formal solicitations) directly through the platform. This system has streamlined the receipt and distribution of proposals, reduced paper waste, and reduced vendor disputes related to late submissions. Although some aspects of bid management improved, staff noted several disadvantages of this system from ‘vendors’ experiences. PeriscopeS2G is used nationwide and has multiple pricing tiers

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<sup>41</sup> OCCM, “Exhibit 9-B: Local Agency DBE Annual Submittal Form – County of Santa Clara,,” Jan. 13, 2022,, p. 1.

<sup>42</sup> County of Santa Clara Procurement Department,, “County DBE Projects,” accessed Sep. 8, 2022,, <https://procurement.sccgov.org/county-dbe-projects>.

for users to gain access to public solicitations. The County's opportunities are free to view and respond to; however, the "upsell" from Periscope appears as a requirement for vendors to view County-specific opportunities. Vendors registered with a free license do not have access to features that make searching for procurement opportunities more efficient. For a business owner that does not have the resources to pay for a subscription or staff to navigate the system, this could have detrimental impacts. Technical support is also centralized within PeriscopeS2G; therefore, County staff are limited in providing technical assistance to their vendors in real-time. The complexity, counter-intuitiveness, and inefficiency of this platform deter firms from either initially registering or continuing to use the system. Ultimately, firms who do not overcome this barrier do not participate in County solicitations.

Ariba is the County's cloud-based procure-to-pay software solution that includes purchasing, contracting, and accounts payable functions. Departments use Ariba to issue requisitions for informal solicitations, Request for Quotations, and manage contracts for goods and related services, as well as select contracts for professional and nonprofessional services. As a result, firms interested in doing business with the County must also register in Ariba to access additional opportunities and receive payment for services rendered. Collectively, these two systems serve as the entry point to the County's solicitations. Failure to register for both systems substantially limits a firm's exposure to the full array of County opportunities. Additional information regarding vendors' perceptions of these systems is analyzed in the qualitative analysis in **Chapter 6**.

From County staff's perspective, the dual system also creates inefficiencies for those searching for firms to solicit for informal procurements or to distribute mass communications to vendors. PeriscopeS2G does not provide the County access to the contact or demographic information of firms registered through their platform. Staff are limited to interfacing with vendors strictly through commodity codes associated with the vendors' profiles and the County's specific solicitation need. Commodity code selection is subjective and limited as staff and vendors may have varying perspectives of how to classify the goods or services sold or acquired, thereby inadvertently preventing firms from receiving notifications. As a result of these drawbacks, the County is unable to effectively manage data mining and analytics.

SAP serves as the primary financial transaction system and official system of record for all payments by the County, however, departments have autonomously implemented their own contract management solutions. Without a streamlined technology solution, the delay in collecting and analyzing contracting data from multiple systems will continue to be a contributing factor toward meeting year-end budget deadlines and an influx in retroactive contracts.

Staff noted additional inefficiencies associated with having multiple procurement systems:

- ◆ At the time of the discussions, departments were implementing cost of business increases across numerous contracts. Staff advised that they lacked data to aid in their decision-making and did not have the appropriate tools to monitor agreements for forecasting and audits.
- ◆ Identifying economies of scale within existing contracts is difficult. The procurement intranet site has a listing of contracts; however, staff must contact departments directly to inquire about active contracts. There currently is not a technological solution to make this process more efficient.

- ◆ The method of tracking projects varies by role and the multiple systems further complicate contract administration. For example, “fiscal teams track projects by funding source, whereas program managers track according to contract” which delays decision-making and increases the potential of inaccurate information.
- ◆ An overall perception is that Ariba is designed to purchase goods and not track services for countywide usage, including grants.
- ◆ Meeting the State of California’s Hospital Diversity Reporting requirement has been difficult without the proper infrastructure in place to collect this information.

The County’s goal is to centralize contract data, reduce the presence of unplanned expired contracts, reduce the costs and complications of maintaining disparate and redundant technology solutions, and leverage County resources to streamline contracting activities throughout the organization. At the time of this assessment, the County is undergoing a multi-phased implementation of Ariba, which will be built to accommodate the County’s complete portfolio of contracts. The prevailing sentiment among staff appears to favor improving procurement technologies and staff remain optimistic that current technologies may position the County to achieve this goal for contract management.

## 2.6 Summary

MGT reviewed procurement policies, processes, and technologies, and the degree to which they are practiced or used. MGT held discussions with County staff involved with contracting, procurement, and program administration to understand what may impede procurement and contracting processes and doing business with diverse businesses. Understanding the structure and environment in which procurement and contracting occurs is also important for assessing the operational impact of procurement policies on County agencies/departments and vendors actively doing business with the County or those seeking to do so. MGT noted that the County has detailed policies and procedures that govern all aspects of procurement. The policy source documents provide ample guidance to agency/department end users. The Vendor Resource Center also provides guidance to vendors seeking procurement opportunities. MGT’s policy review did not uncover any inherent or built-in policy barriers that intentionally restrain or constrain vendors from participating in procurement opportunities. However, the way in which some policies are operationalized can preclude both staff and vendors from participating in a transformative procurement culture.

The following points summarize MGT’s assessment of the County’s procurement environment from the perspective of staff who are involved in contracting, procurement, and program administration. The overall assessment of the impact of these policies and procedures on the vendor community can only be made in conjunction with the statistical and qualitative evidence contained in **Chapters 3, 4, and 6** of this report and will be used collectively to make recommendations and identify selected practices.

- ◆ An assessment of the efficacy and opportunity to enhance County procurement-related policies and programs identified that the County’s Local Preference Policy is not well known to the vendor community. Staff were either unaware how many vendors claim this preference or indicated there were very few. County staff do not have the tools to identify firms that may qualify for this preference for targeted outreach prior to bid submission.

- ◆ An assessment of the County's procurement technologies identified that current systems impede the County's ability to effectively process procurement transactions and efficiently analyze data. Vendors may be constrained or restrained from participating in procurement opportunities due to the complexity of the sourcing platforms. The County can achieve its goal to further realize cost-savings, eliminate redundancies, improve on-demand analytics, and expand its vendor base by implementing a streamlined technology solution.
- ◆ An assessment of the efficacy and opportunity to enhance County procurement vendor outreach programs found that County-hosted events, whether virtual or in person, generally have good attendance. OCCM and Procurement have engaged in various initiatives to solicit feedback from County staff and the vendor community, such as CBO surveys, committees, and workgroups. These initiatives have provided a solid foundation for the County to operationalize its efforts in providing an equitable and inclusive purchasing program. The impact of these initiatives will be further assessed in the statistical and qualitative sections of the report **Chapters 3, 4, and 6**.

OCCM and the Procurement Department operate with a growth mindset and desire for continuous improvement. To realize the Board's commitment to open and competitive procurement processes that are fair and provide equal access to business opportunities, a holistic approach to business inclusion is necessary. All County agencies/departments play a role in promoting the County as an organization committed to business inclusion. Advancing participation of diverse businesses will require ongoing training on business inclusion measures and continuously encouraging diverse business participation in all County procurement and contracting. Encouraging participation in this context is based on strengthening relationships and outreach with the diverse vendor community and providing staff with tools necessary to track diverse business participation through the entire procurement cycle to identify bottlenecks. The extent to which vendors are available in the County's marketplace and potential reasons for lack of participation are analyzed in the availability and qualitative analyses discussed in **Chapters 4 and 6**.

# 3 Market Area and Utilization Analyses

## 3.1 Introduction

This chapter presents the results of MGT’s market area and utilization analyses of firms used on the County of Santa Clara (County) procurements during July 1, 2016, through June 30, 2021 (FY2017 – FY2021). The specific procurement categories analyzed were Public Works and Construction-Related Services, Professional Services, Non-Professional Services, and Goods and Related Services.

Chapter Sections	
3.1	Introduction
3.2	Data Collection and Management
3.3	Market Area Analysis
3.4	Utilization Analysis

The market area is essential to establishing the universe of available vendors and spending that will be considered to identify any disparate treatment of assorted classifications of firms. Utilization data are central to defining this market area. Utilization data are first presented as a means of identifying the market area for consideration and then are examined within that market area to assess various levels of contracting activity as the first step in the quantitative determination of disparity. Community-Based Organizations that are not-for profit are not included in this Study because they do not include an owner of the organization like businesses such as corporations, limited liability corporations, etc. that may be classified by race or gender.

Additionally, a disparity study requires the definition of a market area to ensure that a relevant pool of vendors is considered in assessments regarding which firms have been utilized compared to how many firms were available. If these boundaries are stretched too far, the universe of vendors becomes diluted by firms with no interest or history in working with the County. Thus, their demographics and experiences have little relevance to actual contracting activity or policy. On the other hand, a boundary set too narrowly risks the opposite, i.e., excluding a high proportion of firms who have contracted with or bid for work with the County. It may also skew the prospective analyses of disparity.

## 3.2 Data Collection and Management

MGT staff compiled and reconciled electronic data provided by the County to develop a master set of prime and subcontractor contract data into a Master Utilization Database to support the needs of the Study. MGT and the County assessed the spend data to identify transactions which were in scope with the objectives of the study. MGT utilized the County’s contract spend data as the source of prime contractor data, and that was combined with the subcontractor data collected via a survey of the prime contractors. MGT merged the subcontractor data with the prime data to create the Master Utilization Database. A standard contract ID across both data sets was used to link the subcontractor data to its appropriate prime contract.

MGT began the data-collecting process by submitting a detailed data query to the County. The data query asked for descriptive information regarding prime- and subcontractor-level contracting data. Based on the data query and the subsequent data provided, MGT assessed the prime and subcontractor records using payment data to determine its use in the Study. The prime contract survey also included an attempt to gather subcontract data. After creating the master database of prime contracts, MGT identified Public Works and Construction-Related Services contracts because they were likely to have subcontracting

opportunities. MGT selected a sample of contracts for which would be targeted for subcontractor collection. MGT sampled the largest contracts and randomly sampled the smaller projects. This sample accounted for more than 80% of the County procurement dollars in the specific categories selected. MGT then provided each prime contractor firm, identified with a letter from the County, a list of contracts the prime contractor was awarded during the study period, and a link to electronically enter subcontract data. MGT contacted the prime contractor firms until the data had been collected or determined with the County that MGT would not obtain the information from that firm. After multiple attempts by MGT and the County, most of the prime contractors were nonresponsive to the request to provide their subcontractor spending data. The next effort to collect subcontract spending data was directly from subcontractors who likely worked on County Public Works and Construction-Related Services contracts. MGT exported prime and available subcontractor data from the California Department of Industrial Relations online portal.<sup>43</sup> This online portal contained in part subcontractors listed by the prime contractor. However, the amount paid, and business ownership classification of the subcontractors were not provided. Therefore, MGT contacted the subcontractors directly requesting the missing information. Subcontractors, also, were not responsive to requests for missing subcontract information. Subcontract data successfully collected were appended to the master utilization file.

MGT organized and prepared the Master Utilization Database by ensuring firm variables such as name and address, assigning missing race and gender information, assigning missing primary North American Industry Classification System (NAICS) codes, filling in missing address information, and ensuring all paid dollar amounts were accurate (project, prime contract, and subcontracting levels) and consistent. MGT then proceeded to conduct the utilization analysis. NAICS codes are used by government agencies to identify a business's primary type of work. The assignment of the NAICS codes align with the product market analysis, availability, and disparity analyses discussed in **Chapter 4**.

Final data preparation for the master database for analysis consisted of the following:

- ◆ Creating or cleaning variable names and data definitions
- ◆ Updating incorrect or missing addresses, race/gender, and certification information based on all the vendor databases collected. The complete list of data source files is provided in **Appendix J**. Lists that provided some detail on business ownership classifications included:
  - State of California Service-Disabled Veteran-Owned Small Business (SDVOSB) Certification List
  - CalProcure Vendor List
  - California Department of Transportation Disadvantaged Business Enterprise Program Vendor List
  - San Francisco Local Business Enterprise (LBE), Public Utilities Commission (PUC), and Non-Profit Entity (NPE) Certification List
  - Small Business Administration Dynamic Small Business Search (DSBS) Self-identification List

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<sup>43</sup> Compliance Monitoring Unit - Public Works Contract Award." California Department of Industrial Relations. Accessed June 27, 2023. <https://www.dir.ca.gov/pwc100ext/ExternalLookup.aspx>

- California Public Utilities Commission Supplier Clearinghouse Database
- ◆ Assigning commodity codes and types of work descriptions
- ◆ Identifying the location of firms by county and state
- ◆ Ensuring field values are consistent regarding firm name, contact information, race/gender, industry code
- ◆ Removing or reconciling duplicate records
- ◆ Indicating records to be excluded such as payments to other governments, employee reimbursements, utility payments, and other assorted expenditures that are often discovered in contracting and procurement data. A list of transactions excluded are listed in **Appendix K**
- ◆ Conducting additional research on firms not located within the local area to determine whether there is an office in the local area so that firms in the potential geographic area are accurately recorded because a firm's remittance address, as opposed to the local office, is often presented in the vendor-related data obtained

### 3.2.1 Procurement Categories and Exclusions

MGT analyzed the procurement categories by the County, encompassing four sectors: Public Works & Construction-Related Services, Professional Services, Non-Professional Services, and Goods & Related Services. These procurement categories are defined as:

- ◆ Public Works and Construction-Related Services: Services provided, but not limited to, construction, renovation, rehabilitation, repair, alteration, architectural, engineering, environmental, land surveying, and construction project management.
- ◆ Professional Services: Services that require the provider to possess specialized skills, including holding advanced degrees and exercise of independent judgment such as, but not limited to, physicians, consulting services, information technology and communications consulting, fiscal consulting, human services, and medical services.
- ◆ Non-Professional Services: Non-technical or non-consultant services such as, but not limited to, laundry services, landscaping, printing services, maintenance and repair, and laboratory services.
- ◆ Goods and Services: All purchases of physical items, including but not limited to equipment, materials, and software.

The following types of transactions were excluded from the analysis:

- ◆ Transactions associated with non-procurement activities, for example:
  - Administrative items such as utility payments, leases for real estate, or insurance
  - Salary and fringe benefits, training, parking, or conference fees
  - Direct payments authorized by County Ordinance Code section A15-17
  - Field purchase orders and P-Card transactions
  - COVID-related expenditures

- ◆ Transactions associated with nonprofit organizations and governmental agencies

### 3.3 Market Area Analysis

#### 3.3.1 Methodology

In determining a relevant market area, MGT follows a general rule of 75 percent of agency spending with deference to historic programmatic considerations to prescribe an appropriate geographic boundary. Notably the National Cooperative Highway Research Program (“NCHRP”) Report recommends this approach for determining the relevant geographic market area which encompasses at least 75 percent of contract and subcontract dollars being spent by the governmental entity, regardless of the jurisdictional boundaries of the governmental entity.<sup>44</sup>

To establish the appropriate geographic boundaries for the Study, the “relevant” market area was isolated according to the 75 percent standard. These 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) U.S. Census and other federal agencies routinely collect data by geographic unit. The following presents the methodology used to determine the relevant market area.

- ◆ **Relevant Market Area.** Once the overall market area was established, the relevant market area was determined by examining the geographic areas where most County purchases are procured. Based on the market area analysis results conducted for each business category, the recommended relevant market area is the 15 counties within the County of Santa Clara Market Area (“Relevant Market Area”).

County of Santa Clara Relevant Market Area	
ALAMEDA COUNTY, CA	SAN JOAQUIN COUNTY, CA
CONTRA COSTA COUNTY, CA	SAN MATEO COUNTY, CA
MARIN COUNTY, CA	SANTA CLARA COUNTY, CA
MERCED COUNTY, CA	SANTA CRUZ COUNTY, CA
MONTEREY COUNTY, CA	SOLANO COUNTY, CA
NAPA COUNTY, CA	SONOMA COUNTY, CA
SAN BENITO COUNTY, CA	STANISLAUS COUNTY, CA
SAN FRANCISCO COUNTY, CA	

The dollars paid were summarized by County according to the location of each firm and by the services they provided to the County: Public Works and Construction-Related Services, Professional Services, Non-Professional Services, and Goods and Related Services. Corresponding market area analyses showing the dollars paid by the County within each procurement category are presented in **Appendix B, Detailed Market Area Analysis**.

#### 3.3.2 Analysis and Identification of Relevant Market Area

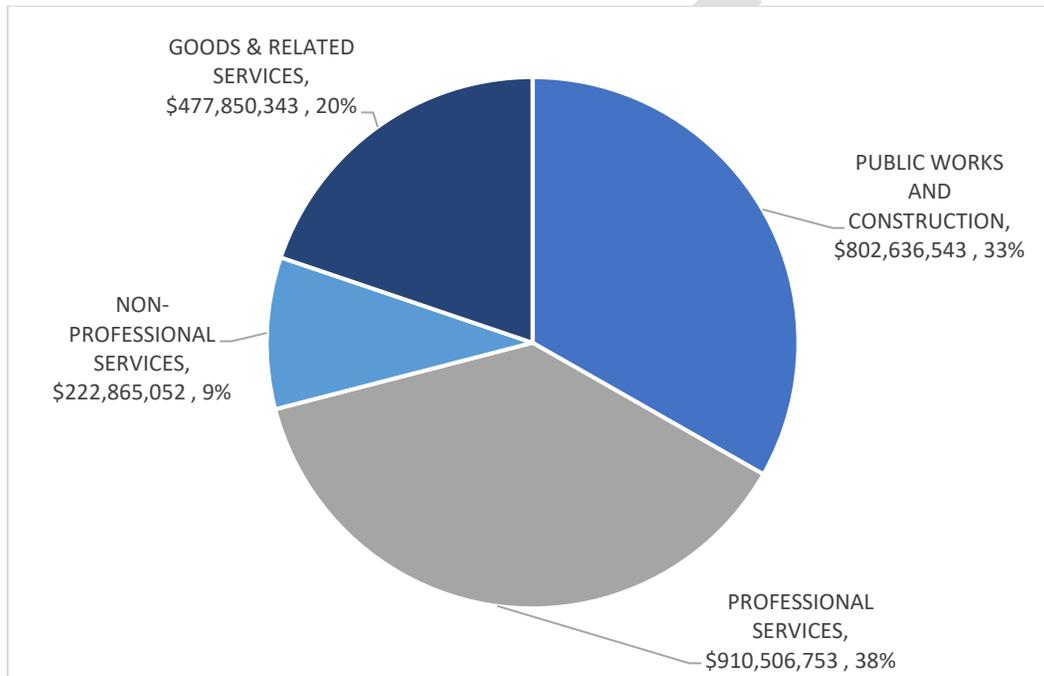
An overall market area was first established to account for all relevant payments made by the County to prime contractors, and from prime contractors to subcontractors. More specific regions were analyzed to

<sup>44</sup> Wainwright and Holt (2010), *Guidelines For Conducting A Disparity And Availability Study For The Federal DBE Program* (2010) (“NCHRP Report”), p. 29.

arrive at a relevant market area to support the Study's goals. This report presents detailed information supporting this market area analysis in **Appendix B, Detailed Market Area Analysis**.

**Figure 3-1** shows that \$2.413 billion were paid to firms and the percentage of dollars paid for in-scope spend with the procurement category within the overall market area between July 1, 2016, and June 30, 2021 of payments that were included in the utilization.

FIGURE 3-1. SUMMARY OF DOLLARS,  
TOTAL CONTRACTS (PAID) BY PROCUREMENT CATEGORY,  
OVERALL MARKET AREA



Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

Narrowing the geographic scope, **Table 3-1** shows that firms located within the Relevant Market Area accounted for 64.06 percent of payments across all procurement categories. When broken down by procurement categories, firms located within the Relevant Market Area accounted for:

TABLE 3-1. RELEVANT MARKET AREA ANALYSIS,  
DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY,  
COUNTY OF SANTA CLARA MARKET AREA

<b>PUBLIC WORKS AND CONSTRUCTION</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	<b>\$679,180,587.26</b>	<b>84.62%</b>
Outside MARKET AREA	\$123,455,956.21	15.38%
<b>PUBLIC WORKS &amp; CONSTRUCTION, TOTAL</b>	<b>\$802,636,543.47</b>	<b>100.00%</b>
<b>PROFESSIONAL SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	<b>\$544,555,205.15</b>	<b>59.81%</b>
Outside MARKET AREA	\$365,951,547.53	40.19%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$910,506,752.68</b>	<b>100.00%</b>
<b>NON-PROFESSIONAL SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	<b>\$81,183,695.27</b>	<b>36.43%</b>
Outside MARKET AREA	\$141,681,356.63	63.57%
<b>NON-PROFESSIONAL SERVICES, TOTAL</b>	<b>\$222,865,051.91</b>	<b>100.00%</b>
<b>GOODS &amp; RELATED SERVICES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	<b>\$241,331,702.91</b>	<b>50.50%</b>
Outside MARKET AREA	\$236,518,640.47	49.50%
<b>GOODS &amp; RELATED SERVICES, TOTAL</b>	<b>\$477,850,343.38</b>	<b>100.00%</b>
<b>ALL BUSINESS CATEGORIES</b>	<b>Amount</b>	<b>Percent</b>
<i>Inside MARKET AREA</i>	\$1,546,251,190.60	64.06%
Outside MARKET AREA	\$867,607,500.84	35.94%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$2,413,858,691.44</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

Corresponding market area analyses showing the dollars paid by the County for each procurement category are presented in **Appendix B, Detailed Market Area Analysis**.

### 3.3.3 Market Area Conclusions

The payments to vendors within the County's Relevant Market Area is 64.06 percent. This falls short of the targeted 75 percent standard discussed earlier. By adding the next four counties with the highest spending that are not in the Market Area (Los Angeles County, California; Cook County, Illinois; San Diego County, California; and Orange County, California), 75 percent can be reached. However, based on the geographic location of those counties, it is not reasonable to administer a program to the companies in those locations.

TABLE 3-2. MARKET AREA ANALYSIS,  
DISTRIBUTION OF DOLLARS BY COUNTY,  
COUNTY OF SANTA CLARA MARKET AREA

COUNTY, STATE	AMOUNT PAID	PERCENT	CUMULATIVE PERCENTAGE
SANTA CLARA COUNTY, CA	\$ 985,117,852.48	40.81%	40.81%
ALAMEDA COUNTY, CA	\$ 200,292,744.20	8.30%	49.11%
SAN FRANCISCO COUNTY, CA	\$ 122,168,050.54	5.06%	54.17%
SANTA CRUZ COUNTY, CA	\$ 60,704,268.86	2.51%	56.68%
SAN MATEO COUNTY, CA	\$ 50,275,637.06	2.08%	58.77%
CONTRA COSTA COUNTY, CA	\$ 48,152,059.28	1.99%	60.76%
STANISLAUS COUNTY, CA	\$ 28,284,980.70	1.17%	61.93%
MARIN COUNTY, CA	\$ 21,821,258.25	0.90%	62.84%
SONOMA COUNTY, CA	\$ 13,309,237.15	0.55%	63.39%
MONTEREY COUNTY, CA	\$ 6,968,925.33	0.29%	63.68%
SAN JOAQUIN COUNTY, CA	\$ 6,615,996.16	0.27%	63.95%
MERCED COUNTY, CA	\$ 1,103,904.20	0.05%	64.00%
NAPA COUNTY, CA	\$ 803,449.09	0.03%	64.03%
SOLANO COUNTY, CA	\$ 593,109.55	0.02%	64.06%
SAN BENITO COUNTY, CA	\$ 39,717.75	0.00%	64.06%
LOS ANGELES COUNTY, CA	\$ 79,435,167.73	3.29%	67.35%
COOK COUNTY, IL	\$ 76,532,308.21	3.17%	70.52%
STARK COUNTY, OH	\$ 49,244,857.72	2.04%	72.56%
FULTON COUNTY, GA	\$ 43,262,345.40	1.79%	74.35%

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

### 3.4 Utilization Analysis

The utilization analysis presents a summary of payments within the scope of the Study and an initial assessment of the effectiveness of initiatives in promoting the inclusion of DIV-BEs in the County's contracting and procurement activities.

The utilization analysis is based on payments made to both primes and subcontractors. Analysis of the payment data is broken down by the procurement categories of Public Works and Construction-Related Services, Professional Services, Non-Professional Services, and Goods and Related Services and encompasses payments between July 1, 2016, through June 30, 2021.

#### 3.4.1 Classification of Firms

According to the definitions provided below, firms included in the utilization analysis have been assigned to business owner classifications.

- ◆ **DIV-BE Firms.** In this study, businesses classified as minority- and women-owned firms (DIV-BE) are at least 51 percent owned and controlled by members of one of five groups: Black/African Americans, Asian Americans, Hispanic Americans, Native Americans, or

nonminority women. These groups were defined according to the United States (U.S.) Census Bureau as follows:

- **Black/African Americans:** U.S. citizens or lawfully admitted permanent residents having an origin in any of the black racial groups.
  - **Asian Americans:** U.S. citizens or lawfully admitted permanent residents from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
  - **Hispanic Americans:** U.S. citizens or lawfully admitted permanent residents who are Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins, regardless of race.
  - **Native Americans:** U.S. citizens or lawfully admitted permanent residents who originate from North 'America's original peoples and maintain cultural identification through tribal affiliation or community recognition.
  - **Nonminority Women:** U.S. citizens or lawfully admitted permanent residents of non-Hispanic white women. Minority women were included in their respective minority categories.
  - Minority women- and male-owned firms were classified and assigned to their corresponding minority groups. For example, a Hispanic American woman- or Hispanic American male-owned firm was assigned to the Hispanic American minority group.
- ♦ **Disabled Veteran Owned Firms (DV-BE).** means a business at least 51% owned, managed, and controlled by one or more individuals who are a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, "Old Scouts," the Special Philippine Scouts, and "New Scouts," who has at least a 10-percent service-connected disability and domiciled in the State of California.<sup>45</sup>
  - ♦ **LGBT Owned Firms.** Businesses classified as LGBT-owned firms are at least 51 percent owned and controlled by members who identify as lesbian, gay, bisexual, or transgender.
  - ♦ **Unclassified Firms.** Firms identified as nonminority male or majority-owned or non-DIV-BE firms. After a thorough review of available vendor databases containing race, ethnicity, gender, LGBT, and disabled veteran information, if there was no indication of business ownership, these firms were also classified as unclassified firms.

### 3.4.2 Overall Utilization

**Table 3-3** shows the DIV-BE utilization amounted to 15.12 percent of total payments. Corresponding detailed analyses showing the utilization of firms by business ownership classification are presented in **Appendix C, Detailed Utilization, Availability, and Disparity Analyses.**

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<sup>45</sup> Cal. Mil & Vet Code § 999.

TABLE 3-3.  
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	ALL PROCUREMENT CATEGORIES	
	Dollars (\$)	Percent (%)
Black/African Americans	\$6,667,743.75	0.28%
Asian American	\$171,654,445.96	7.11%
Hispanic Americans	\$15,688,633.16	0.65%
Native Americans	\$3,106,966.37	0.13%
<b>Total MBE Firms</b>	<b>\$197,117,789.25</b>	<b>8.17%</b>
<b>Non-Minority Women</b>	<b>\$167,748,837.44</b>	<b>6.95%</b>
<b>Total DIV-BE Firms</b>	<b>\$364,866,626.69</b>	<b>15.12%</b>
Unclassified Firms	\$2,048,992,064.75	84.88%
<b>TOTAL</b>	<b>\$2,413,858,691.44</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

The data collection and preparations included identifying firms that were identified as disabled veteran- and LGBT-owned firms. Data sources that identify these business ownership classifications were limited because they are not maintained as broadly as minority and women data sources. **Table 3-4** shows the utilization of DV-BE and LGBT firms. Being that there is an overlap of the race, ethnicity, and gender classifications, utilization is shown at the total DV-BE and LGBT classification and not by race, ethnicity, or gender.

TABLE 3-4.  
UTILIZATION ANALYSIS BY DV-BE AND LGBT FIRMS,  
BY BUSINESS CATEGORY

BUSINESS OWNERSHIP CLASSIFICATION	ALL	PUBLIC WORKS AND CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES
DV-BE	\$36,882,732.14	\$33,300,702.18	\$157,403.70	\$3,051,211.87	\$373,414.39
LGBT	\$1,688,882.35	\$95,270.00	\$25,000.00	\$0.00	\$1,568,612.35
<b>TOTAL (DV-BE/LGBT)</b>	<b>\$38,571,614.49</b>	<b>\$33,395,972.18</b>	<b>\$182,403.70</b>	<b>\$3,051,211.87</b>	<b>\$1,942,026.74</b>
BUSINESS OWNERSHIP CLASSIFICATION	ALL	PUBLIC WORKS AND CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES
	(%)	(%)	(%)	(%)	(%)
DV-BE	1.53%	1.38%	0.01%	0.13%	0.02%
LGBT	0.07%	0.00%	0.00%	0.00%	0.06%

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021

### 3.4.3 Utilization by Procurement Category

The next series of tables shows the summary results of MGT’s utilization analysis of each procurement category. Corresponding detailed analyses showing the utilization of firms by business ownership classification for each procurement category are presented in **Appendix C, Detailed Utilization, Availability, and Disparity Analyses**.

Beginning with an examination of **Public Works and Construction-Related Services**, **Table 3-5** shows the utilization of DIV-BE firms was 13.41 percent. Asian American firms represent the largest DIV-BE classification with 8.66 percent. Comparing DIV-BEs together, Asian American and Non-Minority Women firms are the two largest classifications. Otherwise, utilization for specific classifications was:

TABLE 3-5.  
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
**PUBLIC WORKS & CONSTRUCTION-RELATED SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	Public Works & Construction-Related Services	
	Dollars (\$)	Percent (%)
Black/African Americans	\$60,000.00	0.01%
Asian American	\$69,474,842.38	8.66%
Hispanic Americans	\$3,336,733.78	0.42%
Native Americans	\$1,525,872.44	0.19%
<b>Total MBE Firms</b>	<b>\$74,397,448.60</b>	<b>9.27%</b>
Non-Minority Women	\$33,216,182.31	4.14%
<b>Total DIV-BE Firms</b>	<b>\$107,613,630.91</b>	<b>13.41%</b>
Unclassified Firms	\$695,022,912.56	86.59%
<b>TOTAL</b>	<b>\$802,636,543.47</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County’s data collected between July 1, 2016, through June 30, 2021.

**Table 3-6** shows the utilization of DIV-BE firms was 15.84 percent in **Professional Services**. Non-Minority Women firms represent the largest category across all DIV-BEs with 12.83 percent. Individually the DIV-BE utilization was:

TABLE 3-6.  
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
**PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	Professional Services	
	Dollars (\$)	Percent (%)
Black/African Americans	\$310,715.16	0.03%
Asian American	\$20,898,333.66	2.30%
Hispanic Americans	\$6,065,126.89	0.67%
Native Americans	\$110,706.75	0.01%
<b>Total MBE Firms</b>	<b>\$27,384,882.46</b>	<b>3.01%</b>
Non-Minority Women	\$116,850,197.01	12.83%
<b>Total DIV-BE Firms</b>	<b>\$144,235,079.47</b>	<b>15.84%</b>
Unclassified Firms	\$766,271,673.21	84.16%
<b>TOTAL</b>	<b>\$910,506,752.68</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

Table 3-7 shows the utilization of DIV-BE firms was 10.51 percent in **Non-Professional Services**. Asian American firms represent the largest DIV-BE classification with 3.67 percent. Individually, the DIV-BE utilization was:

TABLE 3-7.  
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
**NON-PROFESSIONAL SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	Non-Professional Services	
	Dollars (\$)	Percent (%)
Black/African Americans	\$5,331,449.08	2.39%
Asian American	\$8,185,776.04	3.67%
Hispanic Americans	\$321,737.12	0.14%
Native Americans	\$1,470,387.18	0.66%
<b>Total MBE Firms</b>	<b>\$15,309,349.42</b>	<b>6.87%</b>
Non-Minority Women	\$8,109,074.24	3.64%
<b>Total DIV-BE Firms</b>	<b>\$23,418,423.66</b>	<b>10.51%</b>
Unclassified Firms	\$199,446,628.24	89.49%
<b>TOTAL</b>	<b>\$222,865,051.91</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

**Table 3-8** shows the utilization of DIV-BE firms was 18.75 percent in **Goods and Related Services**. Asian American firms represent the largest DIV-BE classification with 15.30 percent. Individually, the DIV-BE utilization was:

TABLE 3-8.  
UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION,  
**GOODS & RELATED SERVICES**

BUSINESS OWNERSHIP CLASSIFICATION	Goods & Related Services	
	Dollars (\$)	Percent (%)
Black/African Americans	\$965,579.51	0.20%
Asian American	\$73,095,493.88	15.30%
Hispanic Americans	\$5,965,035.37	1.25%
Native Americans	\$0.00	0.00%
<b>Total MBE Firms</b>	<b>\$80,026,108.77</b>	<b>16.75%</b>
Non-Minority Women	\$9,573,383.88	2.00%
<b>Total DIV-BE Firms</b>	<b>\$89,599,492.65</b>	<b>18.75%</b>
Unclassified Firms	\$388,250,850.74	81.25%
<b>TOTAL</b>	<b>\$477,850,343.38</b>	<b>100.00%</b>

Source: Master Utilization Database based on the County's data collected between July 1, 2016, through June 30, 2021.

### 3.4.4 Utilization Conclusions

The utilization analysis shows that DIV-BE firms are utilized at significantly lower rates than their non-DIV-BE counterparts. Overall, 15.12 percent of the County's payments were spent with DIV-BE firms, while 84.88 percent was spent with non-DIV-BE firms. While DIV-BE utilization is low, understanding the proportion of firms willing and able to provide services to the County is critical in any determination of disparity. Availability and resulting disparity ratios are presented in **Chapter 4**, which follows, to provide more definitive conclusions in this respect.

# 4 Product Market, Availability, and Disparity Analyses

## 4.1 Introduction

This chapter presents the results of MGT’s analyses regarding the **product market, availability, and disparity**. The product market analysis illustrates the amount spent on the specific category of good and/or service. Availability measures the numbers and proportions of vendors willing and able to work with an agency. At the same time, the disparity is an observed statistically significant difference between the utilization of diverse business enterprises (as discussed in **Chapter 3**) relative to their respective availability. Consistent with previous chapters, this analysis focuses on procurements in the categories of Public Works and Construction-Related Services, Non-Professional Services, Professional Services, and Goods & Related Services sectors between July 1, 2016, through June 30, 2021 (FY2017 – FY2021).

Chapter Sections	
4.1	Introduction
4.2	Analysis and Identification of Product Market
4.3	Availability Estimations
4.4	Disparity Analyses and Significance Testing
4.5	Conclusion

## 4.2 Analysis and Identification of Product Market

Based on the major categories and description of work on each contract, MGT assigned NAICS codes to each of the payments for both prime contractors and subcontractors.<sup>46</sup> MGT assigned both NAICS code industry groups (4-digit level) and NAICS industries (6-digit level). **Table 4-1** through **Table 4-4** show the payments and their associated weights for Public Works & Construction-Related Services, Professional Services, Non-Professional Services, and Goods & Related Services. **Appendix D, Detailed Product Market Analysis** shows the NAICS industries (6-digit level) for the four procurement categories.

Overall, the County procurements occur in 413 unique NAICS industry groups.<sup>47</sup> In Public Works and Construction-Related Services, County procurements occur in 68 NAICS industry groups. In Professional Services, County procurements occur in 97 NAICS industry groups. In Non-Professional Services, the County procurements occur in 109 NAICS industry groups. In Goods and Related Services, County procurements occur in 177 NAICS industry groups.

**Table 4-1** shows that for Public Works and Construction-Related Services, 96.29 percent of the payments were distributed among 10 industry groups, with most of the payments occurring in one industry group (236220-Commercial and Institutional Building Construction).

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<sup>46</sup> [3.2 Data Collection and Management](#)

<sup>47</sup> NAICS codes are repeated in multiple categories.

TABLE 4-1. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
PUBLIC WORKS & CONSTRUCTION-RELATED SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	MGT NET SPEND	PERCENT
236220	Commercial and Institutional Building Construction	\$482,438,674.92	60.11%
541310	Architectural Services	\$79,782,961.18	9.94%
541330	Engineering Services	\$70,731,578.19	8.81%
237310	Highway, Street, and Bridge Construction	\$38,025,587.81	4.74%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$31,438,353.39	3.92%
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$20,703,065.00	2.58%
238990	All Other Specialty Trade Contractors	\$20,105,073.32	2.50%
236118	Residential Remodelers	\$10,922,764.69	1.36%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$9,394,745.52	1.17%
238290	Other Building Equipment Contractors	\$9,296,143.50	1.16%

Source: Master Utilization Database.

For Professional Services, **Table 4-2** shows 76.72 percent of the payments are distributed among 10 industry groups, with a majority of the payments occurring in one industry group (621498- All Other Outpatient Care Centers).

TABLE 4-2. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
PROFESSIONAL SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	MGT NET SPEND	PERCENT
621498	All Other Outpatient Care Centers	\$141,675,309.42	15.56%
541519	Other Computer Related Services	\$125,101,396.72	13.74%
622210	Psychiatric and Substance Abuse Hospitals	\$121,286,780.39	13.32%
541690	Other Scientific and Technical Consulting Services	\$64,587,356.21	7.09%
621112	Offices of Physicians, Mental Health Specialists	\$50,472,580.29	5.54%
621111	Offices of Physicians (except Mental Health Specialists)	\$43,508,495.36	4.78%
623110	Nursing Care Facilities (Skilled Nursing Facilities)	\$41,617,191.69	4.57%
541611	Administrative Management and General Management Consulting Services	\$41,078,807.33	4.51%
541512	Computer Systems Design Services	\$38,880,332.12	4.27%
541511	Custom Computer Programming Services	\$30,320,373.02	3.33%

Source: Master Utilization Database.

**Table 4-3** shows that for Non-Professional Services, 74.78 percent of the payments are distributed among 10 industry groups, with a majority of the payments occurring in one industry group (517919- All Other Telecommunications).

TABLE 4-3. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
NON-PROFESSIONAL SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	MGT NET SPEND	PERCENT
517919	All Other Telecommunications	\$37,134,628.41	16.66%
561320	Temporary Help Services	\$35,771,108.97	16.05%
561311	Employment Placement Agencies	\$25,779,110.82	11.57%
511210	Software Publishers	\$17,021,975.73	7.64%
518210	Data Processing, Hosting, and Related Services	\$14,005,382.05	6.28%
561612	Security Guards and Patrol Services	\$10,682,095.15	4.79%
561621	Security Systems Services (except Locksmiths)	\$9,454,922.20	4.24%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$6,413,499.51	2.88%
562112	Hazardous Waste Collection	\$5,324,602.95	2.39%
562111	Solid Waste Collection	\$5,075,583.46	2.28%

Source: Master Utilization Database.

For Goods & Related-Services, **Table 4-4** shows 70.45 percent of the payments are distributed among 10 industry groups, with a majority of the payments occurring in one industry group (423430- Computer and Computer Peripheral Equipment and Software Merchant Wholesalers).

TABLE 4-4. PRODUCT MARKET,  
DISTRIBUTION OF DOLLARS BY NAICS CODE,  
GOODS & RELATED SERVICES

NAICS CODE	NAICS CODE DESCRIPTION	MGT NET SPEND	PERCENT
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	\$166,385,365.56	34.82%
334111	Electronic Computer Manufacturing	\$38,617,625.91	8.08%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	\$29,085,709.80	6.09%
423210	Furniture Merchant Wholesalers	\$27,402,956.75	5.73%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$15,023,621.55	3.14%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$14,522,002.64	3.04%
337127	Institutional Furniture Manufacturing	\$14,288,311.38	2.99%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$11,018,972.93	2.31%
212321	Construction Sand and Gravel Mining	\$10,291,758.02	2.15%
424120	Stationery and Office Supplies Merchant Wholesalers	\$10,011,901.57	2.10%

Source: Master Utilization Database.

## 4.3 Availability Estimations

The sections that follow are descriptions of the approach and methodology used by MGT to estimate availability, followed by the data collection and estimation process results. LGBT and DVBE availability are not analyzed separately. Their business ownership classifications are incorporated in the M/WBE or unclassified categories.

### 4.3.1 Availability Methodology

Availability is whether a firm is *willing and able* to work with the agency in question as a method of constructing the universe of firms that might be considered in that agency's procurement activities.

- ♦ **Willing** is reasonably presumed via the vendors' active pursuit of registration to work with any public (government) agency or a registration in Dun & Bradstreet with a NAICS code utilized by the public sector entity.
- ♦ **Able**, or capability to perform work (capacity), is more loosely defined due to two obscuring factors: (1) the scalable nature of firms that may reasonably add capacity to handle jobs beyond previous performance, and (2) the inherent concern that discrimination may have influenced the historic or existing scale of operation of the firms within the market.

In disparity studies, terms such as capacity or ability are not well defined statistically. The question always remains: "What qualifies a vendor to have the capacity to do work for a public entity?" Is a firm qualified based on its annual firm revenues, employment size, bonding limits, or the number of contracts bid or awarded? Does capable or able mean that they possess some sort of business license, certain years of training, specific work experience, or the number of contracts they can perform at a given time? Further, what combination of these business attributes accurately reflects capacity? Where could a researcher reliably gather this data? For argument's sake, even if the researcher can overcome these statistical limitations, there remains the issue of these factors being influenced by discrimination towards DIV-BE firms. A core reason for having a supplier diversity program is to remedy past or current discrimination in the relevant business market. A statistical method for estimating availability should not improperly limit the availability measure by incorporating factors that are themselves impacted by discrimination, such as firm age, annual individual firm revenues, bonding limits, or the number of employees. Limiting the availability pool by factors that are themselves influenced by discrimination risks negating the remedial nature of any program based on the data.

Thus, this study appropriately measures the "ability/capacity" by analyzing industry affiliation (NAICS code), geographic location, and labor market experience (utilization weights).

With this in mind, a reliable estimation of the number of firms *willing* and *able* to provide each of the respective services under the examination scope is a significant element in determining disparity. There is no single approach to deriving vendor availability, and public agencies have used various means to estimate pools of available vendors. Due to the lack of data sources currently for veterans and LGBT businesses, an accurate estimation for these categories could not be determined.

Among the array of methods utilized, what is known as a "custom census" is one of the most accurate and equitable approaches to determine availability. This method provides a consistent, fair, and rigorous

comparison between establishments in the availability numerator and those in the denominator; it adheres with the remedial nature of most DIV-BE policies by measuring overall DIV-BE availability in the relevant market area as opposed to only those businesses currently certified by an agency; and, as discussed above, is less likely to be tainted by the effects of past and present discrimination than other methods. The steps used to calculate availability using a custom census are as follows:

1. Create a database of County contracts to identify utilization.
2. Identify the relevant geographic market based on the utilization data.
3. Identify the relevant product markets based on the utilization data.
4. Count all businesses in those relevant markets.
5. Identify listed minority- and women-owned businesses in those markets.
6. Verify the ownership status of listed minority- and women-owned businesses (misclassification).
7. Verify the ownership status of all other firms (non-classification).

MGT's data assessment and evaluation of alternative methods for measuring the numbers of firms of the types and classifications available to work with the County confirmed that a version of a custom census of firms in the relevant market area would provide the most accurate representation of available firms. The custom census approach used by MGT in this instance required the development of representative samples of firms within each of the four procurement categories identified for the study, each of which had to cover the defined 15-county geographic boundaries of the relevant market area.

First, an intensive examination of the County's procurements was required to define the appropriate characteristics of the universe of prospective vendors regarding the types of goods and services offered. The County procurements were assigned NAICS codes that Dun & Bradstreet uses to classify firms' primary lines of business. These industry selections were then used to establish weighting criteria in random samples of vendors to be surveyed. Target response thresholds were selected for each industry and NAICS code subsector to ensure a 95 percent confidence interval and +/-5 percent margin of error for findings. Second, a survey was designed and administered to sampled firms by telephone and email to verify the ownership status of listed diverse-owned businesses (misclassification) or verify the ownership status of all other firms (non-classification).

The survey results were then extrapolated to the full scale of the applicable universe to estimate available firms by ethnicity/gender classification and procurement category.

### 4.3.2 Availability Analysis

Following the methodology prescribed in the previous section, MGT derived estimates for the proportions of available firms for the racial, ethnic, and gender ownership classes and four defined procurement categories. Corresponding detailed analyses showing the availability of firms by race, ethnicity, and gender are presented in **Appendix C, Detailed Utilization, Availability, and Disparity Analyses**.

**Table 4-5** presents availability estimates spanning all procurement categories. Notable findings include:

- ◆ Non-Minority Women firms have a higher availability in all procurement categories compared to total MBEs.
- ◆ The highest DIV-BE availability is found in the Professional Services procurement category with 39.08 percent.

TABLE 4-5.  
ESTIMATION OF AVAILABLE FIRMS,  
ALL PROCUREMENT CATEGORIES

Business Ownership Classification	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	TOTAL
BLACK/AFRICAN AMERICAN	1.21%	1.98%	0.43%	0.13%	<b>1.21%</b>
ASIAN AMERICAN	8.29%	5.42%	6.41%	0.88%	<b>5.57%</b>
HISPANIC AMERICAN	4.70%	3.91%	3.91%	0.12%	<b>3.43%</b>
NATIVE AMERICAN	0.00%	2.05%	0.41%	0.23%	<b>0.85%</b>
MBE	14.20%	13.36%	11.16%	1.36%	<b>11.06%</b>
NON-MINORITY WOMEN	14.26%	25.72%	16.47%	4.45%	<b>16.85%</b>
DIV-BE	28.46%	39.08%	27.63%	5.81%	<b>27.91%</b>
UNCLASSIFIED FIRMS	71.54%	60.92%	72.37%	94.19%	<b>72.09%</b>
TOTAL	100.00%	100.00%	100.00%	100.00%	<b>100.00%</b>

Source: Custom Census Analysis. Due to rounding, the total may not add up to 100% Study Period: July 1, 2016, through June 30, 2021 (FY2017 – FY2021).

## 4.4 Disparity Analyses and Significance Testing

Building on the County’s vendor utilization (**Chapter 3**) and the availability estimates presented in the previous section of this chapter (**Section 4.3**), MGT used this information to identify potential disparities in the County’s procurement. A summary of the approach is provided in **Section 4.4.1**, followed by the results of these disparity calculations and associated statistical significance testing in **Section 4.4.2**.

### 4.4.1 Disparity Analysis Methodology

MGT’s disparity index methodology yields a value that is readily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within the minority- and women-owned firms can be assessed by comparing the utilization of nonminority- and male-owned firms. The disparity index gives the evidence necessary to infer whether discrimination in the marketplace has occurred.

Disparity, in this context, is the analysis of the differences between the utilization of minority- and women-owned firms (as presented in **Chapter 3**) and the respective availability of those firms (**Section 5.3**). Thus, MGT calculated disparity indices to examine whether minority- and women-owned firms received a proportional share of dollars based on the respective availability of minority- and women-owned firms located in the study’s defined Relevant Market Area (as presented in **Chapter 3**) and determine if there was an inference of discrimination in the marketplace.

The **disparity index** is a straightforward proportional calculation that divides utilization rates (percent of dollars awarded to firms by subcategory) by their associated availability (percent of firms available to work within that same class) and multiplies this value by 100. Thus, a disparity index value of zero (0.00) indicates absolutely no utilization and, therefore, absolute disparity. A disparity index of 100 indicates that utilization is perfectly proportionate to availability, indicating the absence of disparity (all things being equal). Alternatively, firms are considered **underutilized** if the disparity indices are less than 100.

$$\text{Disparity Index} = \frac{\%Um_{ip_i}}{\%Am_{ip_i}} \times 100$$

$Um_{ip_i}$  = utilization of minorities- and women-owned firms<sub>i</sub> for procurement;

$Am_{ip_i}$  = availability of minorities- and women-owned firms<sub>i</sub> for procurement;

MGT utilizes the “80 percent rule” in determining the indication of discrimination in procurement. MGT’s methodology to measure disparity or indication of discrimination, if any exists, is based on the Equal Employment Opportunity Commission’s (EEOC) “80 percent rule.”<sup>48</sup> An employment disparity index below 80 indicates a “substantial disparity.” Therefore, following a similar pattern, firms are considered substantially underutilized (substantial disparity) if the disparity indices are 80 or less.

Aside from the disparity index calculation, MGT also calculated standard deviations or statistical significance for the disparity index results. Standard deviation tests or testing for **statistical significance**, in this context, is the analysis to determine the significance of the difference between the utilization of minority- and women-owned firms and the availability of those firms. This analysis can determine whether the disparities are statistically significant, which lends further statistical support to a finding of discrimination. Statistical significance pertains to the assertion that the outcomes derived from the analyses are influenced by factors such as race, ethnicity, and gender, impacting an individual's capacity to engage in business activities. Despite Proposition 209 imposing restrictions on utilizing the study findings for targeted race, ethnicity, and gender initiatives, the statistical significance outcomes can still serve as valuable insights for the County to determine which procurement areas warrant further examination.

Standard deviation measures the probability that a result is a random deviation from a predicted outcome. The greater the number of standard deviations, the lower the probability that the result is random.

Regarding the use of statistical significance in the disparity study context, the National Cooperative Highway Research Program Report 644 notes that:

- ♦ “. . . for statistical disparities to be taken as legally dispositive in the discrimination context, they should be (a) statistically significant and (b) ‘substantively’ significant. Substantive significance is taken to mean, for

### Statistical Significance Testing

$$t = \frac{u - a}{\sqrt{\frac{a * (1 - a) * \sum c_i^2}{(\sum c_i)^2}}}$$

t = the t-statistic

$u$  = the ratio of minorities- and women-owned firms’ dollars compared to total dollars  
 $a$  = the ratio of M/W/DBE firms to all firms  
 $c_i$  = the dollar amount.

<sup>48</sup> Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*, Section 4, Part D, “Adverse impact and the ‘four-fifths rule,’ Sept. 13, 2023..

example, a DBE utilization measure that is less than or equal to 80% of the corresponding DBE availability measure.”<sup>49</sup>

Note that p-values are used to determine whether the differences between two populations feature legitimate differences (that would be sustained if we continued to collect more observations) or if the variation between them is simply a product of normal random variation between observations that would be washed out if MGT collected more data.

Thus, MGT applies two generally accepted tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective DIV-BE availability, which is labeled “substantial disparity,” and (2) whether the disparity index passes the t-test determination of statistical significance.

#### 4.4.2 Disparity Analyses and Statistical Significance Testing

This section includes inputs and calculations of disparity indices and significance testing for each of the procurement categories and ownership classifications. Corresponding detailed analyses showing the disparity analysis of firms by race, ethnicity, and gender are presented in **Appendix C, Detailed Utilization, Availability, and Disparity Analyses**. Analysis of disparities across all procurement categories in **Table 4-6** reveals:

TABLE 4-6. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
ALL PROCUREMENT CATEGORIES

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>Black/African Americans</b>	<b>0.28%</b>	<b>1.21%</b>	<b>22.76</b>	<b>Underutilization</b>		<b>Disparity</b>
Asian Americans	7.11%	5.57%	127.75	Overutilization		No Disparity
<b>Hispanic Americans</b>	<b>0.65%</b>	<b>3.43%</b>	<b>18.97</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Native Americans</b>	<b>0.13%</b>	<b>0.85%</b>	<b>15.06</b>	<b>Underutilization</b>		<b>Disparity</b>
<b>Total MBE Firms</b>	<b>8.17%</b>	<b>11.06%</b>	<b>73.83</b>	<b>Underutilization</b>		<b>Disparity</b>
<b>Non-Minority Women</b>	<b>6.95%</b>	<b>16.85%</b>	<b>41.25</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Total DIV-BE Firms</b>	<b>15.12%</b>	<b>27.91%</b>	<b>54.16</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Unclassified Firms	99.42%	88.97%	117.74	Overutilization	<b>***</b>	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence).

“\*\*” indicates the disparity is significant at a 10% level or better (90% confidence).

“\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial disparity.

**BOLD** indicates substantial statistically significant disparity.

<sup>49</sup> Transportation Research Board of the National Academies, National Cooperative Highway Research Program Report 644, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* (2010), pp 49-50.

Disparity indices and significance testing for **Public Works and Construction-Related Services** appear in **Table 4-7**. Noteworthy observations include:

TABLE 4-7. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
PUBLIC WORKS & CONSTRUCTION-RELATED SERVICES

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>Black/African Americans</b>	<b>0.01%</b>	<b>1.21%</b>	<b>0.62</b>	<b>Underutilization</b>		<b>Disparity</b>
Asian Americans	8.66%	8.29%	104.40	Overutilization		No Disparity
<b>Hispanic Americans</b>	<b>0.42%</b>	<b>4.70%</b>	<b>8.84</b>	<b>Underutilization</b>		<b>Disparity</b>
<b>Native Americans</b>	<b>0.19%</b>	<b>0.00%</b>	<b>0.00</b>	<b>Overutilization</b>	<b>**</b>	<b>No Disparity</b>
<b>Total MBE Firms</b>	<b>9.27%</b>	<b>14.20%</b>	<b>65.26</b>	<b>Underutilization</b>		<b>Disparity</b>
<b>Non-Minority Women</b>	<b>4.14%</b>	<b>14.26%</b>	<b>29.02</b>	<b>Underutilization</b>		<b>Disparity</b>
<b>Total DIV-BE Firms</b>	<b>13.41%</b>	<b>28.46%</b>	<b>47.10</b>	<b>Underutilization</b>	<b>*</b>	<b>Disparity</b>
Unclassified Firms	86.59%	71.54%	121.05	Overutilization	*	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence).

“\*\*” indicates the disparity is significant at a 10% level or better (90% confidence).

“\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial disparity.

**BOLD** indicates substantial statistically significant disparity.

The calculation of disparity indices and significance testing for the **Professional Services** procurement category are depicted in **Table 4-8**. Relevant findings include:

TABLE 4-8. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
PROFESSIONAL SERVICES

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>Black/African Americans</b>	<b>0.03%</b>	<b>1.98%</b>	<b>1.72</b>	<b>Underutilization</b>	<b>*</b>	<b>Disparity</b>
Asian Americans	2.30%	5.42%	42.36	Underutilization		Disparity
<b>Hispanic Americans</b>	<b>0.67%</b>	<b>3.91%</b>	<b>17.02</b>	<b>Underutilization</b>	<b>**</b>	<b>Disparity</b>
<b>Native Americans</b>	<b>0.01%</b>	<b>2.05%</b>	<b>0.59</b>	<b>Underutilization</b>	<b>*</b>	<b>Disparity</b>
<b>Total MBE Firms</b>	<b>3.01%</b>	<b>13.36%</b>	<b>22.52</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Non-Minority Women</b>	<b>12.83%</b>	<b>25.72%</b>	<b>49.89</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Total DIV-BE Firms</b>	<b>15.84%</b>	<b>39.08%</b>	<b>40.54</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Unclassified Firms	84.16%	60.92%	138.14	Overutilization	***	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence).

“\*\*” indicates the disparity is significant at a 10% level or better (90% confidence).

“\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial disparity.

**BOLD** indicates substantial statistically significant disparity.

Disparity indices and significance testing for the **Non-Professional Services** sector are presented in Table 4-9. Some findings include that:

TABLE 4-9. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
NON-PROFESSIONAL SERVICES

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
<b>Black/African Americans</b>	<b>2.39%</b>	<b>0.43%</b>	<b>562.57</b>	<b>Overutilization</b>	<b>***</b>	<b>Disparity</b>
Asian Americans	3.67%	6.41%	57.26	Underutilization		Disparity
<b>Hispanic Americans</b>	<b>0.14%</b>	<b>3.91%</b>	<b>3.69</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Native Americans	0.66%	0.41%	160.98	Overutilization		Disparity
<b>Total MBE Firms</b>	<b>6.87%</b>	<b>11.16%</b>	<b>61.53</b>	<b>Underutilization</b>	<b>**</b>	<b>Disparity</b>
<b>Non-Minority Women</b>	<b>3.64%</b>	<b>16.47%</b>	<b>22.10</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
<b>Total DIV-BE Firms</b>	<b>10.51%</b>	<b>27.63%</b>	<b>38.03</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Unclassified Firms	89.49%	72.37%	123.66	Overutilization	<b>***</b>	No Disparity

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability.  
 “\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence).  
 “\*\*” indicates the disparity is significant at a 10% level or better (90% confidence).  
 “\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial disparity.

**BOLD** indicates substantial statistically significant disparity.

Table 4-10 presents disparity indices and significance testing for the **Goods & Related Services** sector.

TABLE 4-10. DISPARITY INDICES AND SIGNIFICANCE TESTING,  
GOODS & RELATED SERVICES

Business Ownership Classification	Utilization	Availability	Disparity Index	Disparity Impact	Statistical Significance	Disparity Conclusion
Black/African Americans	0.20%	0.13%	153.57	Overutilization		No Disparity
Asian Americans	15.30%	0.88%	1740.66	Overutilization	<b>***</b>	No Disparity
Hispanic Americans	1.25%	0.12%	1000.53	Overutilization	<b>***</b>	No Disparity
Native Americans	0.00%	0.23%	0.00	Underutilization		Disparity
Total MBE Firms	16.75%	1.36%	1230.82	Overutilization	<b>***</b>	No Disparity
<b>Non-Minority Women</b>	<b>2.00%</b>	<b>4.45%</b>	<b>45.01</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>
Total DIV-BE Firms	18.75%	5.81%	322.61	Overutilization	<b>***</b>	No Disparity
<b>Unclassified Firms</b>	<b>81.25%</b>	<b>94.19%</b>	<b>86.26</b>	<b>Underutilization</b>	<b>***</b>	<b>Disparity</b>

Note: Disparity index values may vary slightly from calculations of depicted figures due to rounding of presented levels of utilization and availability.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence).

“\*\*” indicates the disparity is significant at a 10% level or better (90% confidence).

“\*\*\*” indicates significance at a 5% level or better (95% confidence).

**BOLD** indicates substantial statistically significant disparity.

**BOLD** indicates substantial statistically significant disparity.

## 4.5 Conclusion

The calculations of availability and disparity within this chapter and the preceding depiction of utilization serve as part of the evidentiary foundation for the future of the County’s inclusion of DIV-BE in procurement. As summarized in the table below (**Table 4-11**), disparities between utilization and availability have been observed for most procurement and DIV-BE categories included within the scope of the study, both in terms of the order of magnitude (disparity indices less than or equal to 80) and statistical significance, and thus an inference of discrimination in the marketplace can be derived. Where individual race, ethnicity, and gender categories were not statistically significant alone,<sup>50</sup> it’s important to understand that they are part of the DIV-BE total categories that were overall substantial and statistically significantly underutilized, and an inference of discrimination can be made where those categories saw substantial individual disparities.

TABLE 4-11. DISPARITY ANALYSIS SUMMARY

Procurement Category	All	Public Works & Construction	Professional Services	Non-Professional Services	Goods & Related Services
Black/African Americans	Disparity	Disparity	<b>Disparity</b>	Disparity	No Disparity
Asian Americans	No Disparity	No Disparity	Disparity	Disparity	No Disparity
Hispanic Americans	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	No Disparity
Native Americans	Disparity	No Disparity	<b>Disparity</b>	Disparity	Disparity
Total MBE Firms	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	No Disparity
Nonminority Women	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Total DIV-BE Firms	Disparity	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity

**BOLD** indicates substantial statistically significant disparity.

<sup>50</sup> This could be attributed to the small number of contracts awarded to these firms or the small actual number of firms in the marketplace.

# 5 Private Sector Analysis

## 5.1 Introduction

One requirement for many types of government-run minority- and women-owned business enterprise remedial programs is that the government entity must have evidence of active or passive discrimination.<sup>51</sup> This chapter focuses on the question:

- ◆ *Does evidence of discrimination in the private sector marketplace support the County of Santa Clara’s policies for remedying the effects that race, ethnicity, or gender may have on a firm’s ability to do business in the relevant market?*

Passive discrimination describes a circumstance where a public entity resides in a market with measurable discrimination in the public and/or private sector. Discriminatory practices in the private marketplace may support a compelling interest on the part of the public agency in implementing remedial measures resulting from the agency being a passive participant.

This chapter provides evidence for the question of whether or not the County has been a passive participant in discrimination within the relevant marketplace's private sector. Three sources of data can help ascertain disparities in the private sector:

- ◆ 2012 Census Survey of Business Owners (SBO) and 2017 Census Annual Business Survey (ABS) data, which may be used to determine whether marketplace disparities exist in the private sector regarding revenue within similar County procurement categories for firms owned by minorities or women.
- ◆ 2016-2020 Census American Community Survey (ACS) Public Used Microdata Sample (PUMS) data, which is used to determine whether, even after controlling for a number of relevant factors, there are disparities between minority- and women-owned firms on the one hand, and non-minority, non-women owned firms on the other hand. Among the issues this data informs are:
  1. *Does racial, ethnic, and gender status impact individual wages even after controlling for differences among firms?*
  2. *Does racial, ethnic and gender status impact business owner earnings even after controlling for differences among firms?*
  3. *Are racial, ethnic, and gender minority groups less likely than nonminority males to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
  4. *If minority and women-owned business enterprises and nonminority male-owned firms shared similar traits and marketplace “conditions” (i.e., similar “rewards” in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

Chapter Sections	
5.1	Introduction
5.2	Private Sector Disparities in SBO Census Data
5.3	Private Sector Disparities in ABS Census Data
5.4	Analysis of Race, Ethnicity, and Gender Effects on Self-Employment Rates
5.5	Access to Credit
5.6	Conclusions

<sup>51</sup> Disabled Veteran-Owned and LGBTQ-Owned firms are not analyzed as part of the private sector analysis. This is due to data not currently being accessible to analyze these groups in the same manner as DIV-BEs which would prohibit proper statistical results. Additionally, these groups are not protected classes like race and gender.

## 5.2 Private Sector Disparities in SBO Census Data

To ascertain the existence of disparities in the private sector, as well as whether these disparities exist in procurement categories relevant to the County of Santa Clara contracting domain, MGT obtained and analyzed the U.S. Census Bureau's 2012 Survey of Business Owners (SBO) data.<sup>52</sup> SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as states and metropolitan areas), categorized by industries defined by NAICS codes, and supporting information, including firm receipts (sales),<sup>53</sup> firm employment size, and business ownership classification. The survey has been administered every five years since 1972 as part of the economic census.

The SBO gathers and reports data on (1) firms with paid employees, including workers on the payroll (employer firms), (2) firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees on the payroll (non-employer firms), as well as (3) in aggregate across employer and non-employer firms (all). MGT calculated private sector disparity indices to examine whether DIV-BE firms in any of these categories received a proportionate share of firm sales based on the availability of DIV-BE firms. Disparity indices were reviewed for all firms and employer firms. It should be noted that all the disparity indices in the SBO tables are statistically significant within a 95 percent confidence interval.

The following NAICS codes<sup>54</sup> were analyzed because they align with the procurement categories used for the County of Santa Clara's utilization analysis:

- ◆ NAICS Code 23, Construction
- ◆ NAICS Code 42, Wholesale Trade
- ◆ NAICS Code 54, Professional, Scientific, and Technical Services
- ◆ NAICS Code 56, Administrative and Support and Waste Management and Remediation Services
- ◆ NAICS Code 81, Other Services (Except Public Administration)

### 5.2.1 Results of Analysis

This private sector analysis presents disparity results based on the County's geographic marketplace. The County's geographic marketplace, as identified through the utilization analysis, contains the following counties in the San José and San Francisco metropolitan statistical areas: Santa Clara County, CA; Alameda County, CA; San Francisco County, CA; Contra Costa County, CA; Stanislaus County, CA; San Mateo, CA; Santa Cruz, CA; San Joaquin, CA; Sonoma County, CA; Merced County, CA; Solana County, CA; Napa County, CA; Monterey County, CA; Marin County, CA; San Benito County, CA.

### 5.2.2 County of Santa Clara Market Area

Tables 5-1 through 5-5 show the measures of private sector disparities based on U.S. Census 2012 SBO data for the population of available firms in the County of Santa Clara marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public

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<sup>52</sup> These represent the most recent available data provided through the SBO program and were released in 2016.

<sup>53</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>54</sup> The two-digit NAICS code level was utilized—as opposed to the full six-digit NAICS code—as those codes are the most prevalent level across all the 2012 SBO data. The first two digits of the code designate the sector, the third designates the subsector, the fourth digit designates the industry group, the fifth digit designates the NAICS industry, and the sixth digit designates the national industry.

administration). Based on the analysis of the U.S. Census 2012 SBO data, overall, and where data was available, there remains a significant gap between the market share of DIV-BE firms and their share of the County market area business population.

### **NAICS Code 23: Construction, County of Santa Clara Market Area**

**Table 5-1** shows the construction availability, sales, and disparity results (NAICS Code 23). There was a total of 557,251 construction firms (all firms) in the County’s market area in 2012.<sup>55</sup> This represents the number of total firms in the market area that are either single proprietorships or have no employees. This is significant because it represents many of the small businesses in the market of which minorities and women encompass a higher percentage.

There were 150,011 construction employer firms in the County of Santa Clara marketplace in 2012.<sup>56</sup> Due to insufficient data Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

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<sup>55</sup> All firms include firms with and without payroll at any time during 2012.

<sup>56</sup> Employer firms include firms with payroll at any time during 2012.

TABLE 5-1.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 23, CONSTRUCTION  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
ALL FIRMS	557,251	362,955,819	150,011	336,050,155
NONMINORITY MALE	513,639	356,578,813	142,624	331,698,157
BLACK/AFRICAN AMERICAN	1,246	82,667	154	15,105
AMERICAN INDIAN AND ALASKA NATIVE	860	2,563	151	0
ASIAN	9,135	1,123,773	1,266	745,228
HISPANIC <sup>4</sup>	27,425	3,253,577	4,809	2,118,148
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0	0	0	0
NONMINORITY WOMEN	4,946	1,914,426	1,007	1,473,517
<b>PERCENTAGE OF MARKETPLACE</b>				
ALL FIRMS	100.00%	100.00%	100.00%	100.00%
NONMINORITY MALE	92.17%	98.24%	95.08%	98.70%
BLACK/AFRICAN AMERICAN	0.22%	0.02%	0.10%	0.00%
AMERICAN INDIAN AND ALASKA NATIVE	0.15%	0.00%	0.10%	0.00%
ASIAN	1.64%	0.31%	0.84%	0.22%
HISPANIC <sup>4</sup>	4.92%	0.90%	3.21%	0.63%
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0.00%	0.00%	0.00%	0.00%
NONMINORITY WOMEN	0.89%	0.53%	0.67%	0.44%
<b>DISPARITY RATIOS<sup>3</sup></b>				
ALL FIRMS		100.00		100.00
NONMINORITY MALE		106.58		103.82
BLACK/AFRICAN AMERICAN		10.19		4.38
AMERICAN INDIAN AND ALASKA NATIVE		0.46		0.00
ASIAN		18.89		26.28
HISPANIC <sup>4</sup>		18.21		19.66
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER		-		-
NONMINORITY WOMEN		59.43		65.32

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

### **NAICS Code 42: Wholesale Trade, County of Santa Clara Market Area**

**Table 5-2** shows wholesale trade availability, sales, and disparity results (NAICS Code 42). There was a total of 184,954 wholesale trade firms (all firms) in the County marketplace in 2012. This represents the number of total firms in the market area that are either single proprietorships or have no employees. This is significant because it represents many of the small businesses in the market of which minorities and women encompass a higher percentage. Due to insufficient data Native Hawaiian and Pacific Islander market area firm data was minimal and did not allow for a proper analysis.

There was a total of 89,285 wholesale trade employer firms in the County of Santa Clara market area in 2012. Due to insufficient data American Indian, Alaska Native, Native Hawaiian, and Pacific Islander market area firm data was minimal and therefore did not allow for a proper analysis.

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TABLE 5-2.  
PRIVATE SECTOR CENSUS DISPARITIES  
**NAICS CODE 42, WHOLESALE TRADE**  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
ALL FIRMS	184,954	1,558,827,108	89,285	1,546,289,362
NONMINORITY MALE	170,429	1,538,406,342	84,372	1,527,228,892
BLACK/AFRICAN AMERICAN	339	130,154	49	0
AMERICAN INDIAN AND ALASKA NATIVE	72	1,872	0	0
ASIAN	5,462	14,003,440	2,685	13,723,909
HISPANIC <sup>4</sup>	3,884	1,119,212	973	325,740
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0	0	0	0
NONMINORITY WOMEN	4,768	5,166,088	1,206	5,010,821
<b>PERCENTAGE OF MARKETPLACE</b>				
ALL FIRMS	100.00%	100.00%	100.00%	100.00%
NONMINORITY MALE	92.15%	98.69%	94.50%	98.77%
BLACK/AFRICAN AMERICAN	0.18%	0.01%	0.05%	0.00%
AMERICAN INDIAN AND ALASKA NATIVE	0.04%	0.00%	0.00%	0.00%
ASIAN	2.95%	0.90%	3.01%	0.89%
HISPANIC <sup>4</sup>	2.10%	0.07%	1.09%	0.02%
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0.00%	0.00%	0.00%	0.00%
NONMINORITY WOMEN	2.58%	0.33%	1.35%	0.32%
<b>DISPARITY RATIOS<sup>3</sup></b>				
ALL FIRMS		100.00		100.00
NONMINORITY MALE		107.10		104.52
BLACK/AFRICAN AMERICAN		4.56		0.00
AMERICAN INDIAN AND ALASKA NATIVE		0.31		-
ASIAN		30.42		29.51
HISPANIC <sup>4</sup>		3.42		1.93
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER		-		-
NONMINORITY WOMEN		12.86		23.99

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner. N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

## **NAICS Code 54: Professional, Scientific and Technical Services, County of Santa Clara Market Area**

**Table 5-3** shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54). There was a total of 1,554,412 professional, scientific, and technical services firms (all firms) in the County market area in 2012. Due to insufficient data Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

There was a total of 250,651 professional, scientific, and technical services employer firms in the County of Santa Clara marketplace in 2012. This represents the number of total firms in the market area that are either single proprietorships or have no employees. This is significant because it represents many of the small businesses in the market of which minorities and women encompass a higher percentage. Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

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TABLE 5-3.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
ALL FIRMS	1,554,412	634,464,253	250,651	563,686,030
NONMINORITY MALE	1,413,575	616,450,647	235,972	552,597,584
MINORITY	47,200	16,145,346	7,893	14,793,346
BLAC/AFRICAN AMERICAN	5,531	106,140	438	23,373
AMERICAN INDIAN AND ALASKA NATIVE	1,428	59,445	72	13,011
ASIAN	39,178	8,620,070	5,780	5,675,416
HISPANIC <sup>4</sup>	26,535	2,227,656	2,206	1,195,022
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0	0	0	0
NONMINORITY WOMEN	68,165	7,000,295	6,183	4,181,624
<b>PERCENTAGE OF MARKETPLACE</b>				
ALL FIRMS	100.00%	100.00%	100.00%	100.00%
NONMINORITY MALE	90.94%	97.16%	94.14%	98.03%
MINORITY	0.36%	0.02%	0.17%	0.00%
BLACK/AFRICAN AMERICAN	0.09%	0.01%	0.03%	0.00%
AMERICAN INDIAN AND ALASKA NATIVE	2.52%	1.36%	2.31%	1.01%
ASIAN	1.71%	0.35%	0.88%	0.21%
HISPANIC <sup>4</sup>	0.00%	0.00%	0.00%	0.00%
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	4.39%	1.10%	2.47%	0.74%
NONMINORITY WOMEN	0.36%	0.02%	0.17%	0.00%
<b>DISPARITY RATIOS<sup>3</sup></b>				
ALL FIRMS		100.00		100.00
NONMINORITY MALE		106.84		104.13
BLACK/AFRICAN AMERICAN		4.70		2.37
AMERICAN INDIAN AND ALASKA NATIVE		10.20		8.04
ASIAN		53.90		43.66
HISPANIC <sup>4</sup>		20.57		24.09
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER		-		-
NONMINORITY WOMEN		25.16		30.07

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner. Disparity results are statistically significant within a 95 percent confidence interval.

## **NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, County of Santa Clara Market Area**

**Table 5-4** shows the availability, sales, and disparity results for administrative, support, waste management, and remediation services (NAICS Code 56). There were 525,726 administrative and support and waste management and remediation services firms (all firms) in the County market area in 2012. This represents the number of total firms in the market area that are either single proprietorships or have no employees. This is significant because it represents many of the small businesses in the market of which minorities and women encompass a higher percentage. Due to insufficient data Native Hawaiian and Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

There were 78,485 administrative and support and waste management and remediation services employer firms in the County marketplace in 2012. Due to insufficient data Native Hawaiian and Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

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TABLE 5-4.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION  
SERVICES

U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
ALL FIRMS	525,726	191,897,823	78,485	177,981,575
NONMINORITY MALE	438,380	185,481,304	72,272	174,182,994
BLACK/AFRICAN AMERICAN	3,226	191,231	330	110,865
AMERICAN INDIAN AND ALASKA NATIVE	784	11,552	7	0
ASIAN	9,343	1,195,343	1,150	1,027,408
HISPANIC <sup>4</sup>	44,796	1,777,530	2,579	618,009
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0	0	0	0
NONMINORITY WOMEN	29,197	3,240,863	2,147	2,042,299
PERCENTAGE OF MARKETPLACE				
ALL FIRMS	100.00%	100.00%	100.00%	100.00%
NONMINORITY MALE	83.39%	96.66%	92.08%	97.87%
BLACK/AFRICAN AMERICAN	0.61%	0.10%	0.42%	0.06%
AMERICAN INDIAN AND ALASKA NATIVE	0.15%	0.01%	0.01%	0.00%
ASIAN	1.78%	0.62%	1.47%	0.58%
HISPANIC <sup>4</sup>	8.52%	0.93%	3.29%	0.35%
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER	0.00%	0.00%	0.00%	0.00%
NONMINORITY WOMEN	5.55%	1.69%	2.74%	1.15%
DISPARITY RATIOS <sup>3</sup>				
ALL FIRMS		100.00		100.00
NONMINORITY MALE		115.91		106.28
BLACK/AFRICAN AMERICAN		16.24		14.81
AMERICAN INDIAN AND ALASKA NATIVE		4.04		0.00
ASIAN		35.05		39.40
HISPANIC <sup>4</sup>		10.87		10.57
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER		-		-
NONMINORITY WOMEN		30.41		41.95

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

## NAICS Code 81: Other Services (Except Public Administration), County of Santa Clara Market Area

Table 5-5 shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81). There were 792,246 other services (except public administration) firms (all firms) in the County market area in 2012. This represents the number of total firms in the market area that are either single proprietorships or have no employees. This is significant because it represents many of the small businesses in the market of which minorities and women encompass a higher percentage. Due to insufficient data Native Hawaiian or Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

There were 98,960 other services (except public administration) employer firms in the County of Santa Clara marketplace in 2012. Due to insufficient data Native Hawaiian or Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

TABLE 5-5.  
PRIVATE SECTOR CENSUS DISPARITIES  
**NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)**  
U.S. CENSUS 2012 SURVEY OF BUSINESS OWNERS,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	ALL FIRMS <sup>1</sup> (#)	ALL FIRMS, SALES <sup>2</sup> (\$1,000)	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	792,246	82,472,139	98,960	58,664,108
Nonminority Male	675,021	77,365,172	89,340	57,063,076
Black/African American	6,429	147,354	153	14,867
American Indian and Alaska Native	1,532	29,623	149	0
Asian	25,022	1,770,829	4,251	1,031,922
Hispanic <sup>4</sup>	36,525	1,184,974	2,018	10,144
Native Hawaiian and Other Pacific Islander	0	0	0	0
Nonminority Women	47,717	1,974,187	3,049	544,099
<b>PERCENTAGE OF MARKETPLACE</b>				
All Firms	100.00%	100.00%	100.00%	100.00%
Nonminority Male	85.20%	93.81%	90.28%	97.27%
Black/African American	0.81%	0.18%	0.15%	0.03%
American Indian and Alaska Native	0.19%	0.04%	0.15%	0.00%
Asian	3.16%	2.15%	4.30%	1.76%
Hispanic <sup>4</sup>	4.61%	1.44%	2.04%	0.02%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%	0.00%	0.00%
Nonminority Women	6.02%	2.39%	3.08%	0.93%
<b>DISPARITY RATIOS<sup>3</sup></b>				
All Firms		100.00		100.00
Nonminority Male		110.10		107.74
Black/African American		22.02		16.39
American Indian and Alaska Native		18.57		0.00
Asian		67.98		40.95
Hispanic <sup>4</sup>		31.17		0.85
Native Hawaiian and Other Pacific Islander		-		-
Nonminority Women		39.74		30.10

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2012 Survey of Business Owners (SBO) data.

<sup>1</sup>Firms include employer and nonemployer firms since nonemployer firms can provide services at the subcontractor/subconsultant level and hire independent contractors to increase capacity. Employer firms include firms with payroll at any time during 2012.

<sup>2</sup>Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup>Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup>Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

### 5.2.3 SBO Conclusion

The SBO analysis shows consistent underutilization of DIV-BE firms relative to their availability in the market area. The results suggest that disparities exist in the broader private sector in which the County conducts business and supports a finding the County is a member of passive participation in discrimination, irrespective of circumstances in the public sector.

Further, the five procurement categories analyzed showed substantial and statistically significant disparities among defined DIV-BE classes where sufficient data were available.

## 5.3 Private Sector Disparities in ABS Census Data

As described above, SBO data is a vital resource in helping to answer the question regarding the existence of disparities in the private sector and whether these disparities exist in procurement categories relevant to the County of Santa Clara contracting domain. A limitation with the SBO data is its age. In 2017, the U.S. Census Bureau replaced the SBO data with the American Business Survey (ABS). Essentially this dataset is the same as the SBO with one caveat. ABS data no longer provides information for all firms, only employer firms. This data is still valuable for determining more recent private sector disparities, but it excludes a sector usually dominated by smaller businesses that are likely to be the beneficiary of a DIV-BE program.

As with the SBO data, ABS gathers and reports data on firms with paid employees, including workers on the payroll (employer firms). MGT calculated private sector disparity indices to examine whether DIV-BE firms in any of these categories received a proportionate share of sales based on the availability of DIV-BE firms. Disparity indices were reviewed for employer firms. It should be noted that all the disparity indices in the ABS tables are statistically significant within a 95 percent confidence interval. The same NAICS codes as the SBO analysis were analyzed for the ABS data and the same marketplace.

### 5.3.1 Results of Analysis

Tables 5-6 through 5-10 show the measures of private sector disparities based on U.S. Census 2017 ABS data for the population of available firms in the County of Santa Clara marketplace by race, ethnicity, and gender for construction; wholesale trade; professional, scientific, and technical services; administrative and support and waste management and remediation services; and other services (except public administration).

Based on the analysis of the U.S. Census, 2017 ABS data, overall, there remains a significant gap between the market share of DIV-BE firms and their share of the County market area business population, where data was available.

#### NAICS Code 23: Construction, County of Santa Clara Market Area

Table 5-6 shows the construction availability, sales, and disparity results (NAICS Code 23). There were 94,428 construction employer firms in the County of Santa Clara marketplace in 2017.<sup>57</sup> Due to insufficient data, American Indian and Alaska Native, and Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

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<sup>57</sup> Employer firms include firms with payroll at any time during 2017.

TABLE 5-6.  
PRIVATE SECTOR CENSUS DISPARITIES  
**NAICS CODE 23, CONSTRUCTION**  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	94,428	377,991,957
Nonminority Male	90,089	369,478,901
Black/African American	106	177,063
American Indian and Alaska Native	0	0
Asian	1,674	1,872,254
Hispanic <sup>4</sup>	1,672	2,787,833
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Women	887	3,675,906
PERCENTAGE OF MARKET AREA		
All Firms	100.00%	100.00%
Nonminority Male	95.40%	97.75%
Black/African American	0.11%	0.05%
American Indian and Alaska Native	0.00%	0.00%
Asian	1.77%	0.50%
Hispanic <sup>4</sup>	1.77%	0.74%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Women	0.94%	0.97%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		102.46
Black/African American		41.73
American Indian and Alaska Native		-
Asian		27.94
Hispanic <sup>4</sup>		41.65
Native Hawaiian and Other Pacific Islander		-
Nonminority Women		103.53

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

Disparity results are statistically significant within a 95 percent confidence interval.

## NAICS Code 42: Wholesale Trade, County of Santa Clara Market Area

Table 5-7 shows wholesale trade availability, sales, and disparity results (NAICS Code 42). There were 48,644 wholesale trade employer firms in the County of Santa Clara marketplace in 2017. Due to insufficient data, African American, American Indian, and Alaska Native, and Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

TABLE 5-7.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 42, WHOLESALE TRADE  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	48,644	1,004,925,573
Nonminority Male	44,845	980,445,850
Black/African American	0	0
American Indian and Alaska Native	0	0
Asian	2,496	13,913,420
Hispanic <sup>4</sup>	168	712,157
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Women	1,135	9,854,146
PERCENTAGE OF MARKET AREA		
All Firms	100.00%	100.00%
Nonminority Male	92.19%	97.56%
Black/African American	0.00%	0.00%
American Indian and Alaska Native	0.00%	0.00%
Asian	5.13%	1.38%
Hispanic <sup>4</sup>	0.35%	0.07%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Women	2.33%	0.98%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		105.83
Black/African American		-
American Indian and Alaska Native		-
Asian		26.98
Hispanic <sup>4</sup>		20.52
Native Hawaiian and Other Pacific Islander		-
Nonminority Women		42.03

Source: MGT Consulting Group, LLC conducted private sector disparities marketplace analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

## **NAICS Code 54: Professional, Scientific, and Technical Services, County of Santa Clara Market Area**

**Table 5-8** shows the availability, sales, and disparity results for professional, scientific, and technical services (NAICS Code 54). There was a total of 195,230 professional, scientific, and technical services employer firms in the County market area in 2017. Due to insufficient data, American Indian and Alaska Native, and Native Hawaiian and Pacific Islander firm data was minimal and did not allow for a proper analysis.

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TABLE 5-8.  
PRIVATE SECTOR CENSUS DISPARITIES  
**NAICS CODE 54, PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES**  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	195,230	517,434,129
Nonminority Male	181,114	497,807,228
Black/African American	411	343,215
American Indian and Alaska Native	0	0
Asian	6,615	10,945,086
Hispanic <sup>4</sup>	907	1,068,009
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Women	6,183	7,270,591
PERCENTAGE OF MARKET AREA		
All Firms	100.00%	100.00%
Nonminority Male	92.77%	96.21%
Black/African American	0.21%	0.07%
American Indian and Alaska Native	0.00%	0.00%
Asian	3.39%	2.12%
Hispanic <sup>4</sup>	0.46%	0.21%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Women	3.17%	1.41%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		103.71
Black/African American		31.51
American Indian and Alaska Native		-
Asian		62.43
Hispanic <sup>4</sup>		44.43
Native Hawaiian and Other Pacific Islander		-
Nonminority Women		44.37

Source: MGT Consulting Group, LLC conducted private sector disparities Market Area analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

## **NAICS Code 56: Administrative and Support and Waste Management and Remediation Services, County of Santa Clara Market Area**

**Table 5-9** shows the availability, sales, and disparity results for administrative and support and waste management and remediation services (NAICS Code 56). There were 49,491 administrative and support and waste management and remediation services employer firms in the County Market Area in 2017. Due to insufficient data, American Indian and Alaska Native, and Native Hawaiian and Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

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TABLE 5-9.  
PRIVATE SECTOR CENSUS DISPARITIES  
NAICS CODE 56, ADMINISTRATIVE AND SUPPORT/WASTE MANAGEMENT AND REMEDIATION  
SERVICES  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	49,491	193,461,639
Nonminority Male	45,561	183,902,779
Black/African American	198	228,122
American Indian and Alaska Native	0	0
Asian	1,018	3,091,393
Hispanic <sup>4</sup>	1,208	1,300,151
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Women	1,506	4,939,194
PERCENTAGE OF MARKET AREA		
All Firms	100.00%	100.00%
Nonminority Male	92.06%	95.06%
Black/African American	0.40%	0.12%
American Indian and Alaska Native	0.00%	0.00%
Asian	2.06%	1.60%
Hispanic <sup>4</sup>	2.44%	0.67%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Women	3.04%	2.55%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		103.26
African American		29.47
American Indian and Alaska Native		-
Asian		77.69
Hispanic <sup>4</sup>		27.53
Native Hawaiian and Other Pacific Islander		-
Nonminority Women		83.90

Source: MGT Consulting Group, LLC conducted private sector disparities market area analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

## **NAICS Code 81: Other Services (Except Public Administration), County of Santa Clara Market Area**

**Table 5-10** shows the availability, sales, and disparity results for NAICS Code other services (except public administration) (NAICS Code 81). There were 63,625 other services (except public administration) employer firms in the County marketplace in 2017. Due to insufficient data, American Indian and Alaska Native and Native Hawaiian or Pacific Islander marketplace firm data was minimal and did not allow for a proper analysis.

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TABLE 5-10.  
PRIVATE SECTOR CENSUS DISPARITIES  
**NAICS CODE 81, OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)**  
U.S. CENSUS 2017 ANNUAL BUSINESS SURVEY,  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	EMPLOYER FIRMS (#)	EMPLOYER FIRMS SALES (\$1,000)
All Firms	63,625	53,788,367
Nonminority Male	56,048	50,418,060
Black/African American	136	57,115
American Indian and Alaska Native	0	0
Asian	3,919	1,563,443
Hispanic <sup>4</sup>	769	484,599
Native Hawaiian and Other Pacific Islander	0	0
Nonminority Women	2,753	1,265,150
PERCENTAGE OF MARKET AREA		
All Firms	100.00%	100.00%
Nonminority Male	53.59%	66.54%
Black/African American	0.21%	0.11%
American Indian and Alaska Native	0.00%	0.00%
Asian	6.16%	2.91%
Hispanic <sup>4</sup>	1.21%	0.90%
Native Hawaiian and Other Pacific Islander	0.00%	0.00%
Nonminority Women	4.33%	2.35%
DISPARITY RATIOS <sup>3</sup>		
All Firms		100.00
Nonminority Male		106.41
Black/African American		49.68
American Indian and Alaska Native		-
Asian		47.19
Hispanic <sup>4</sup>		74.54
Native Hawaiian and Other Pacific Islander		-
Nonminority Women		54.36

Source: MGT Consulting Group, LLC conducted private sector disparities market area analyses based on U.S. Census Bureau, 2017 Annual Business Survey (ABS) data.

<sup>1</sup> Employer firms include firms with payroll at any time during 2017.

<sup>2</sup> Sales includes total shipments, receipts, revenue, or business done by the firm.

<sup>3</sup> Disparity index is the ratio of the percentage of sales to the percentage of available firms multiplied by 100.00. A disparity index below 80.00 indicates a substantial level of disparity.

<sup>4</sup> Hispanic firms are considered an ethnicity in this Census data and therefore may be double-counted in race categories, which leads to percentages equaling greater than 100%. Statistically this does not present an issue within the data as part of the analysis as historically these groups may be affected in the same manner.

N/A Denotes that there were no firms or sales for the classification.

Disparity results are statistically significant within a 95 percent confidence interval.

### 5.3.2 ABS Conclusion

Like the SBO analysis, the ABS analysis shows consistent underutilization of DIV-BE firms relative to their availability in the marketplace. These results provide evidence that disparities exist in the broader private sector, thus supporting the need for the County to implement remedies to avoid passive participation in discrimination, irrespective of circumstances in the public sector.

As with the SBO results, the ABS results for each of the five procurement categories analyzed showed substantial disparity among defined M/WBE classes where sufficient data were available.

## 5.4 Analysis of Race, Ethnicity, and Gender Effects on Self-Employment and Earnings

This section examines further evidence regarding the inquiry of whether business discrimination exists in the private sector and addresses three questions:

1. *Does racial, ethnic, and/or gender status impact individual wages even after controlling for differences among firms?*
2. *Does racial, ethnic, and/or gender status impact business owner earnings even after controlling for differences among firms?*
3. *Are racial, ethnic, and/or gender minority groups less likely than nonminority males (non-M/WBEs) to be self-employed after controlling for differences? If so, does race, ethnicity, or gender have a role in the disparity?*
4. *If minority and women-owned business enterprises and nonminority male-owned firms shared similar traits and marketplace conditions (e.g., are similar in terms of capital, wages, earning, etc.), what would be the effect on rates of self-employment by race, ethnicity, and gender?*

Answers to these questions are achieved by examining the effects of race, ethnicity, and gender, alongside controls for individual economic and demographic characteristics, on individuals' participation in the private sector as self-employed business operators and the effects of these variables on individuals' wages and business-owner earnings. Any negative and statistically significant effects by race, ethnicity, and gender found in the model after individual economic and demographic characteristics are controlled for would be consistent with business-related discrimination. The analysis is targeted to five categories of private sector business activity (Construction, Architecture & Engineering, Professional Services, Goods & Services, and all categories combined) that generally align with the County's procurement categories defined for the study due to the specificity of the use of the six-digit NAICS code used in the report.

MGT used Public Use Microdata Samples (PUMS) data derived from the 2016-2020 American Community Survey (ACS) to which MGT applied appropriate regression statistics to draw conclusions. The ACS is an ongoing survey covering the same type of information collected in the decennial census. The ACS is sent to approximately 3.5 million addresses annually, including housing units in all counties within the 50 states and the District of Columbia. The PUMS file from the ACS contains records for a subsample of the full ACS. The data used for the regression analyses are the multi-year estimates combining 2016 through 2020 ACS PUMS records. The combined file contains over six million person-level records. The 2016-2020 ACS PUMS data provides a full range of population and housing information collected in the annual ACS and the decennial census.

### 5.4.1 Links to Business Formation and Maintenance

Economics research consistently finds group differences by race, ethnicity, and gender in business formation rates. Research shows, for instance, that most minorities and women have a lower median age than nonminority males (ACS PUMS, 2016-2020). In general, the likelihood of being self-employed increases with age (ACS PUMS, 2016-2020).<sup>58</sup> An examination of these variables within the context of a disparity study seeks to control for these other important demographic and economic variables in conjunction with race, ethnicity, and gender – since they also influence group rates of business formation. Through the analyses, MGT can determine whether inequities specific to minorities and women are demonstrably present to warrant consideration of public sector remedies. Questions about marketplace dynamics affecting self-employment— or, more specifically, the odds of forming one’s own business and then excelling (i.e., generate earnings growth)— are at the heart of disparity analysis research.

### 5.4.2 Statistical Models and Methods

MGT employed two multivariate regression techniques to answer the inquiries for this section: (1) logistic regression and (2) linear regression. Logistic regression is an econometric method that allows for analyzing dichotomous dependent variables. The results can then be translated into log-likelihoods that examine how likely one variable is to be true compared to another variable. Linear regression is an econometric method that helps explain the linear relationship between the dependent and independent variables – how substantially and in what direction each independent variable influences the dependent variable. This will help analyze the direct impact of being part of a specific minority or gender group on earnings.

To understand the appropriate application of these regression techniques, it is helpful to explore the variables inherent in these questions in greater detail. There are two general categories of variables employed in the regression techniques: (1) dependent variables and (2) independent variables.

- ◆ Dependent variables are the phenomena to be explained by influences such as age, race, gender, and disability status (i.e., the independent or “explanatory” variables).
- ◆ The first dependent variable is individual wages, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.
- ◆ The second dependent variable is self-employment business earnings, a continuous variable with many possible values. A simple linear regression is used to analyze this variable.
- ◆ The third dependent variable is the probability of self-employment status, which is a binary, categorical variable based on two possible values: 0 (not self-employed) versus 1 (self-employed). Logistic regression is appropriately used to perform an analysis in which the dependent variable is binary and categorical. This technique was employed to analyze self-employment.<sup>59</sup>

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<sup>58</sup> See, e.g., *Journal of Econometrics*, Volume 61, Issue 1, March 1994, pp. 81-102, devoted entirely to the econometrics of labor market discrimination and segregation.

<sup>59</sup> Logistical regression, or logit, models generate predicted probabilities that are almost identical to those calculated by a probit procedure, however, has the added advantage of dealing more effectively with observations at the extremes of a distribution. For further explanation, see *Interpreting Probability Models (Interpreting Probability Models Logit, Probit, and Other Generalized Linear Models*, Tim Futing Liao, University of Illinois at Urbana-Champaign, USA, 1994).

- ◆ For each analysis, several specifications were conducted. The first specification looked at the impact of race, ethnicity, and gender on individuals from the national level. The second and third specifications examined whether race, ethnicity, and gender significantly impacted individuals in the County's Market Area more than at the national level. The results presented in this chapter are specific to the County Market Area. Full specification results can be found in **Appendix E**.

### 5.4.3 The Influences of Race, Ethnicity, and Gender on Individual Wages

To explore whether there are any measurable impacts on wages, MGT compared minority and women nonbusiness owner wages to those of nonminority males in the County marketplace when the effect of other demographic and economic characteristics was controlled. Holding all other personal characteristics constant, if minority and women wage earners cannot achieve comparable wages due to discrimination as their nonminority counterparts, then they are less likely to have the ability to save the necessary capital to start their own businesses. MGT was able to examine the wages of individuals of similar education levels, ages, etc., to permit comparisons more purely by race, ethnicity, and gender.

First, MGT derived a set of independent variables known to predict wages, including:

- ◆ *Race and Gender:* Black/African American, Asian American, Hispanic American, Native American, nonminority women, nonminority males.
- ◆ *Availability of Capital:* Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ *Marital Status.*
- ◆ *Ability to Speak English Well.*
- ◆ *Disability Status:* From individuals' reports of health-related disabilities.
- ◆ *Age and Age Squared:* Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ *Owner's Level of Education.*
- ◆ *Residing in the County of Santa Clara Market Area.*

MGT used 2016-2020 wages from employment for the dependent variable, as reported in the five percent PUMS data.

This analysis examined the statistical effects of these variables on wages for nonbusiness employees in the County's Market Area. Each number in **Table 5-11** represents a percent change in earnings associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an African American is -0.344, meaning that an African American would be predicted to earn 34 percent less than a nonminority male, all other variables considered or controlled for. Complete results of linear regression outputs can be found in **Appendix E**. Specifically, for the purpose of this Study:

- ◆ In Construction, the negative disparity differences ranged from -11 percent for Hispanic Americans to -91 percent for Native Americans.
- ◆ In Architecture & Engineering, the negative disparity differences ranged from -15 percent for Asian Americans and Hispanic Americans to -41 percent for nonminority women.

- ◆ In Professional Services, the negative disparity differences ranged from -26 percent for Asian Americans and Native Americans to -35 percent for Black/African Americans and nonminority women.
- ◆ In Goods & Services, the negative disparity differences ranged from -25 percent for Native Americans to -39 percent for nonminority women.

The findings provide further evidence that disparities exist in the private sector of the County’s marketplace. The findings also provide evidence to the more specific questions regarding impacts on wages, demonstrating that racial, ethnic, and gender minority groups earn less wages than their nonminority male counterparts, all variables considered.

TABLE 5-11.  
WAGE ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

WAGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
BLACK/AFRICAN AMERICAN	-34%***	-28%***	-19%***	-35%***	-34%***
ASIAN AMERICAN	-16%***	-23%***	-15%***	-26%***	-36%***
HISPANIC AMERICAN	-27%***	-11%***	-15%***	-36%***	-26%***
NATIVE AMERICAN	-40%***	-91%***	-27%***	-26%***	-25%***
MBE	-29%***	-38%***	-19%***	-31%***	-30%***
NONMINORITY WOMEN	-38%***	-36%***	-41%***	-35%***	-39%***
TOTAL M/WBE	-31%***	-38%***	-23%***	-32%***	-32%***

Source: PUMS data from 2016-2020 American Community Survey (County of Santa Clara market area) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“\*” indicates a significant adverse disparity at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence).

The regression “elasticity” means the percent change resulting from being a member of one of the M/WBE groups.

#### 5.4.4 The Influences of Race, Ethnicity, and Gender on Business Owner Earnings

To explore whether there are any measurable impacts on business owner earnings, MGT compared minority and women business owner earnings to those of nonminority males in the County’s Market Area when the effect of other demographic and economic characteristics was controlled or neutralized. Holding all other personal characteristics constant, if minority and women business owners cannot achieve comparable earnings from their businesses as similarly situated non-minorities because of discrimination, then failure rates for M/WBEs will be higher and M/WBE formation rates will be lower. MGT was able to examine the earnings of business owners of similar education levels, ages, etc., to permit comparisons more closely related to race, ethnicity, and gender.

MGT utilized the same model specifications as outlined for wages in this linear regression model. MGT used the dependent variable’s 2016-2020 earnings from business owners, as reported in the five percent PUMS data.

This analysis examined the statistical effects of the controlled variables on earnings for business owners in the County’s Market Area. Each number in **Table 5-12** represents a percent change in earnings

associated with introducing the variable (business ownership classification) in the left-hand column. For example, across all industries, the adjustment factor for an Asian American is -0.305, meaning that an Asian American would be predicted to earn 31 percent less than a nonminority male, all other variables considered or controlled for. Complete results of linear regression outputs can be found in **Appendix D**. Specifically:

- ◆ In Construction, the negative disparity differences ranged from -17 percent for Black/African Americans to -28 percent for nonminority women.
- ◆ In Architecture & Engineering, the negative disparity differences ranged from -6 percent for Native Americans to -21 percent for Asian Americans.
- ◆ In Professional Services, the negative disparity differences ranged from -26 percent for nonminority women to -36 percent for Asian Americans.
- ◆ In Goods & Services, the negative disparity differences ranged from -10 percent for Native Americans to -30 percent for Asian Americans.

As with individual wages, business owner earnings overall in the County’s Market Area provide consistent evidence that disparities exist in the private sector, indicating marketplace discrimination against M/WBEs when all other variables are controlled.

TABLE 5-12.  
BUSINESS EARNINGS ELASTICITIES OF MINORITY GROUPS RELATIVE TO NONMINORITY MALES AFTER CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

BUSINESS EARNINGS	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
BLACK/AFRICAN AMERICAN	-17%***	-17%***	-20%***	-30%***	-14%***
ASIAN AMERICAN	-31%***	-22%***	21%***	-36%***	-30%***
HISPANIC AMERICAN	-18%***	-19%***	-12%***	-29%***	-17%***
NATIVE AMERICAN	-17%***	-22%***	2%	-29%***	-10%***
MBE	-21%***	-20%***	-14%***	-31%***	-18%***
NONMINORITY WOMEN	-17%***	-28%***	-16%***	-26%***	-15%***
TOTAL M/WBE	-20%***	-22%***	-15%***	-30%***	-17%***

Source: PUMS data from 2016-2020 American Community Survey (County of Santa Clara market area) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“\*” indicates an adverse disparity that is statistically significant at the 15% level or better (85% confidence). “\*\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*\*” indicates significance at a 5% level or better (95% confidence).

The regression “elasticity” means the percent change resulting from being a member of one of the M/WBE groups.

## 5.4.5 The Influences of Race, Ethnicity, and Gender on Self-Employment

As noted in the wages and business earnings analyses, discrimination that negatively affects the wages and entrepreneurial earnings of minorities and women will negatively affect the number of businesses formed by these groups as well. MGT used the 2016-2020 U.S. Census ACS 5 percent PUMS data to derive a set of variables known to predict employment status (self-employed/not self-employed).<sup>60</sup> Logistic

<sup>60</sup> See, e.g., *Journal of Econometrics*, Volume 61, Issue 1, March 1994, pp. 81-102(devoted entirely to the econometrics of labor market discrimination and segregation).

regression was used to calculate the probability of being self-employed (the dependent variable) based on selected socioeconomic and demographic characteristics with the potential to influence the likelihood of self-employment. The sample for the analysis was limited to labor force participants who met the following criteria:

- ◆ A resident of the County of Santa Clara Market Area.
- ◆ Self-employed in construction, architecture and engineering, professional services, or goods and services.
- ◆ Employed full-time (more than 35 hours a week).
- ◆ Eighteen years of age or older.
- ◆ Employed in the private sector.

Next, MGT employed the following variables hypothesized as predictors of employment status:

- ◆ Race and Gender: Black/African American, Asian American, Hispanic American, Native American, nonminority women, nonminority male.
- ◆ Availability of Capital: Homeownership, home value, mortgage rate, unearned income, residual income.
- ◆ Marital Status.
- ◆ Ability to Speak English Well.
- ◆ Disability Status: From individuals' reports of health-related disabilities.
- ◆ Age and Age Squared: Squaring the age variable acknowledges the positive, curvilinear relationship between each year of age and earnings.
- ◆ Owner's Level of Education.
- ◆ Number of Individuals Over the Age of 65 Living in Household.
- ◆ Number of Children Under the Age of 18 Living in Household.

**Table 5-13** summarizes the business ownership formation rates in the United States and in the County's Market Area by race, ethnicity, and gender. Additionally, it compares the differences in the formation rates of M/WBEs to non-M/WBEs. As an example, Black/African Americans in the County's Market Area have a formation rate of 5.91 percent compared to 16.14 percent for their non-M/WBE counterparts. Thus, the formation rate for Black/African Americans in the County's Market Area is 63.37 percent lower than non-M/WBEs  $((5.91 - 16.14)/16.14)$ .

TABLE 5-13.  
SELF-EMPLOYMENT FORMATION RATES

<b>TOTALS</b>			
	<b>US</b>	<b>SANTA CLARA</b>	<b>DIFFERENCE FROM NON-M/WBE (SANTA CLARA)</b>
BLACK/AFRICAN AMERICAN	3.91%	5.91%	-63.37%
ASIAN AMERICAN	6.93%	5.88%	-63.58%
HISPANIC AMERICAN	8.11%	7.82%	-51.54%
NATIVE AMERICAN	7.39%	10.34%	-35.94%
MINORITY BUSINESS ENTERPRISES	5.75%	6.80%	-57.85%
NONMINORITY WOMEN	5.48%	9.51%	-41.06%
M/WBE	5.59%	7.89%	-51.11%
NON-M/WBE	13.09%	16.14%	

<b>CONSTRUCTION</b>			
	<b>US</b>	<b>SANTA CLARA</b>	<b>DIFFERENCE FROM NON-M/WBE (SANTA CLARA)</b>
BLACK/AFRICAN AMERICAN	15.09%	13.19%	-43.40%
ASIAN AMERICAN	16.71%	11.00%	-52.80%
HISPANIC AMERICAN	21.83%	22.68%	-2.67%
NATIVE AMERICAN	17.88%	24.31%	4.32%
MBE	16.54%	15.26%	-34.50%
NONMINORITY WOMEN	15.46%	13.77%	-40.91%
M/WBE	16.22%	15.01%	-35.60%
NON-M/WBE	22.93%	23.30%	

Source: PUMS data from 2016-2020 American Community Survey (County Market Area) and MGT Consulting Group, LLC, calculations using SPSS Statistics software

(CONT)  
SELF-EMPLOYMENT FORMATION RATES

<b>Architecture &amp; Engineering</b>			
	US	SANTA CLARA	DIFFERENCE FROM NON-M/WBE (SANTA CLARA)
BLACK/AFRICAN AMERICAN	6.09%	5.10%	-76.94%
ASIAN AMERICAN	9.18%	10.32%	-53.29%
HISPANIC AMERICAN	6.86%	8.54%	-61.36%
NATIVE AMERICAN	8.25%	0.00%	-100.00%
MBE	7.00%	8.04%	-63.60%
NONMINORITY WOMEN	8.40%	16.30%	-26.24%
M/WBE	7.78%	11.30%	-48.85%
NON-M/WBE	13.82%	22.09%	

<b>PROFESSIONAL SERVICES</b>			
	US	SANTA CLARA	DIFFERENCE FROM NON-M/WBE (SANTA CLARA)
BLACK/AFRICAN AMERICAN	3.40%	6.34%	-67.08%
ASIAN AMERICAN	5.63%	6.25%	-67.53%
HISPANIC AMERICAN	7.44%	8.05%	-58.19%
NATIVE AMERICAN	4.90%	10.57%	-45.14%
MBE	4.74%	7.06%	-63.32%
NONMINORITY WOMEN	5.12%	10.21%	-46.99%
M/WBE	4.99%	8.54%	-55.67%
NON-M/WBE	13.73%	19.26%	

<b>GOODS &amp; SERVICES</b>			
	US	SANTA CLARA	DIFFERENCE FROM NON-M/WBE (SANTA CLARA)
AFRICAN AMERICAN	2.49%	3.62%	-55.24%
ASIAN AMERICAN	4.00%	3.23%	-59.96%
HISPANIC AMERICAN	7.89%	5.31%	-34.27%
NATIVE AMERICAN	5.18%	3.62%	-55.17%
MBE	4.04%	4.00%	-50.53%
NONMINORITY WOMEN	5.27%	6.98%	-13.55%
M/WBE	4.72%	5.01%	-37.92%
NON-M/WBE	6.71%	8.08%	

Source: PUMS data from 2016-2020 American Community Survey (Santa Clara County Market Area) and MGT Consulting Group LLC, calculations using SPSS Statistics software.

To test the impact that race, ethnicity, and gender has on the self-employment rates, the logistics regression analysis examined the statistical effects of these variables on being self-employed in the County’s Market Area. The results in **Table 5-14** indicate the percentage difference between the probability of business ownership for a given race, ethnicity, or gender group compared to similarly situated nonminority males. For example, Black/African Americans in the construction industry have a business formation rate of 51 percent lower than expected in a race-, ethnicity-, and gender-neutral market area. The results in the following tables present rates for the groups after variables, such as age and education, have been controlled. Results of logistic regression can be found in **Appendix D**.

TABLE 5-14.  
SELF-EMPLOYMENT PERCENT DIFFERENCES CONTROLLING FOR DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

SELF-EMPLOYMENT PERCENT CHANGES	TOTAL	CONSTRUCTION	A&E	PROFESSIONAL SERVICES	GOODS & SERVICES
BLACK/AFRICAN AMERICAN	-39%***	-51%***	-39%***	-57%***	-96%***
ASIAN AMERICAN	-65%***	-41%***	-40%***	-65%***	-71%***
HISPANIC AMERICAN	-57%***	-52%***	-10%***	-69%***	-78%***
NATIVE AMERICAN	-1%***	85%***	-2%	-92%***	-48%***
MBE	-41%***	-14%***	-23%***	-71%***	-73%***
NONMINORITY WOMEN	-17%***	-36%***	3%***	-59%***	-6%***
TOTAL M/WBE	-36%***	-19%***	-18%***	-68%***	-60%***

Source: PUMS data from 2016-2020 American Community Survey (County Market Area) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

“\*” indicates a significant adverse disparity at the 15% level or better (85% confidence). “\*\*” indicates the disparity is significant at a 10% level or better (90% confidence). “\*\*\*” indicates significance at a 5% level or better (95% confidence).

These findings demonstrate that minorities and women, in general, are statistically significantly less likely to own their businesses than expected based upon their observable demographic characteristics, including age, education, geographic location, industry, and trends over time. Additionally, as with wage and business earnings, these groups are at a significant disadvantage to nonminority males whether they work as wage and salary employees or as entrepreneurs. These findings are consistent with results that would be observed in a discriminatory market area.

### 5.4.6 Disparities in Rates of Self-Employment

The analyses of self-employment rates and 2016-2020 ACS self-employment earnings revealed general disparities, consistent with business market discrimination, between minority and nonminority self-employed individuals whose businesses were located in the Santa Clara County Market Area. **Table 5-15** presents the results of observed formation rates versus expected formation rates from the logistics regression. Column A presents the observed rates as seen in **Table 5-13**. Column B is calculated using the regression results and adjusting the observed rates accordingly. For example, for a Hispanic American in professional services, the percentage difference compared to a nonminority male controlling for all other variables is 69 percent, indicating that the expected self-employment rate for a Hispanic American should be 69 percent higher than what is observed (8.05%) or 13.61 percent. Column C is the disparity ratio between observed rates and expected rates.

TABLE 5-15.  
OBSERVED AND PREDICTED SELF-EMPLOYMENT RATES  
COUNTY OF SANTA CLARA MARKET AREA

BUSINESS OWNERSHIP CLASSIFICATION	OBSERVED SELF-EMPLOYMENT RATES (A)	EXPECTED SELF-EMPLOYMENT RATES (B)	DISPARITY RATIO (C)
OVERALL			
AFRICAN AMERICAN FIRMS	5.91%	8.24%	72
ASIAN AMERICAN FIRMS	5.88%	9.72%	60
HISPANIC AMERICAN FIRMS	7.82%	12.24%	64
NATIVE AMERICAN FIRMS	10.34%	17.10%	60
MBE FIRMS	6.80%	10.65%	64
NONMINORITY WOMEN FIRMS	9.51%	11.11%	86
M/WBE FIRMS	7.89%	12.36%	64
CONSTRUCTION			
AFRICAN AMERICAN FIRMS	13.19%	19.95%	66
ASIAN AMERICAN FIRMS	11.00%	20.03%	55
HISPANIC AMERICAN FIRMS	22.68%	34.45%	66
NATIVE AMERICAN FIRMS	24.31%	39.83%	61
MBE FIRMS	15.26%	23.96%	64
NONMINORITY WOMEN FIRMS	13.77%	18.68%	74
M/WBE FIRMS	15.01%	23.55%	64
ARCHITECTURE & ENGINEERING			
AFRICAN AMERICAN FIRMS	5.10%	7.06%	72
ASIAN AMERICAN FIRMS	10.32%	14.49%	71
HISPANIC AMERICAN FIRMS	8.54%	9.42%	91
NATIVE AMERICAN FIRMS	0.00%	0.00%	
MBE FIRMS	8.04%	10.44%	77
NONMINORITY WOMEN FIRMS	16.30%	15.75%	
M/WBE FIRMS	11.30%	13.73%	82
PROFESSIONAL SERVICES			
AFRICAN AMERICAN FIRMS	6.34%	7.94%	80
ASIAN AMERICAN FIRMS	6.25%	10.30%	61
HISPANIC AMERICAN FIRMS	8.05%	13.61%	59
NATIVE AMERICAN FIRMS	10.57%	20.26%	52
MBE FIRMS	7.06%	11.49%	61
NONMINORITY WOMEN FIRMS	10.21%	16.22%	63
M/WBE FIRMS	8.54%	14.28%	60
GOODS & SERVICES			
AFRICAN AMERICAN FIRMS	3.62%	7.09%	51
ASIAN AMERICAN FIRMS	3.23%	5.52%	59
HISPANIC AMERICAN FIRMS	5.31%	9.44%	56
NATIVE AMERICAN FIRMS	3.62%	5.35%	68
MBE FIRMS	4.00%	7.47%	53
NONMINORITY WOMEN FIRMS	6.98%	7.39%	95
M/WBE FIRMS	5.01%	8.02%	63

Source: PUMS data from 2016-2020 American Community Survey (Santa Clara County Market Area) and MGT Consulting Group, LLC, calculations using SPSS Statistics software.

The findings provide evidence that for M/WBEs, discriminatory barriers exist to achieving the same level of self-employment rates as their non-M/WBE counterparts. The results further show that discriminatory marketplace factors are the cause of these differences in several instances.

## 5.5 Access to Credit

As noted elsewhere in this chapter, discrimination occurs when different outcomes occur for individuals of different races, ethnicities, and gender after holding all the personal characteristics constant. This might happen in private and public labor markets when equally productive individuals in similar jobs are paid different wages because of their race, ethnicity, or gender. In credit markets, it might occur when loan approvals differ across racial or gender groups with otherwise similar financial backgrounds. In this chapter, MGT examined whether there is evidence consistent with the presence of discrimination in the private sector against M/WBE businesses. Discrimination in the credit market against M/WBEs can significantly affect the likelihood that they will form and succeed, negatively impacting the business's size and longevity.

This section summarizes some national analyses about credit disparities and offers evidence of M/WBE firms' barriers to accessing credit. This information provides guidance to the results provided in the private-sector analysis.

### 5.5.1 Minority Business Development Agency

The U.S. Department of Commerce, Minority Business Development Agency published a report in January 2010 entitled, *“Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs.”* Findings highlighted that access to affordable credit remains one of the main impediments to minority-owned firm growth.

General findings show that minority-owned businesses: pay higher interest rates on loans, are more likely to be denied credit, and are less likely to apply for loans because they fear their applications will be rejected.

- ◆ Among high sales firms, 52 percent of nonminority firms received loans compared with 41 percent of minority firms.
- ◆ The average loan amount for all high sales minority firms was \$149,000. The nonminority average was more than twice this amount at \$310,000.
- ◆ Among firms with gross receipts under \$500,000, loan denial rates for minority firms were almost three times higher, at four percent compared to those of non-minority-owned firms, at 16 percent.
- ◆ Among firms with gross receipts under \$500,000, 33 percent of minority firms did not apply for loans because of fear of rejection compared to 17 percent of nonminority firms.
- ◆ For all firms, minority firms paid 7.8 percent on average for loans compared with 6.4 percent for nonminority firms.

## 5.5.2 The Federal Reserve Small Business Credit Survey

The Small Business Credit Survey (SBCS) is a national collaboration of the 12 Reserve Banks of the Federal Reserve System.<sup>61</sup> The SBCS is a robust survey of employer small business that gathers insight into business's workforce challenges, performance, and credit conditions. This survey has been conducted annually since 2015. Survey responses are collected from firms throughout the United States. While statistics are provided regarding how many responses are from each census region and division,<sup>62</sup> the data provided online does not report race by division. The reports vary somewhat from year to year. For example, the 2016 reports include specific information for minority- and women-owned firms. Overall, each year's report documents that minority- and women-owned firms, particularly Black-owned firms,<sup>63</sup> have less access to credit and pay more for credit than similarly situated White-owned firms. Data from four consecutive years documents the continuing challenge that minority-owned firms, particularly Black-owned firms, face regarding access to, and cost of, credit. Summary information from reports for employer firms is provided below.<sup>64</sup>

### SBCS 2016

#### REPORT ON MINORITY-OWNED FIRMS

The 2016 SBCS fielded in the second half of 2016 yielded 7,916 responses from employer firms with race/ethnicity information in 50 states and the District of Columbia.

- ◆ Black-owned firm application rates for new funding are ten percentage points higher than White-owned firms, but their approval rates are 19 percentage points lower.
- ◆ 40 percent of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 14 percent of White-owned firms.
- ◆ Regarding firms approved for at least some financing, when comparing minority- and nonminority-owned firms with good credit scores, 40 percent of minority-owned firms received the total amount sought compared to 68 percent of nonminority-owned firms.
- ◆ Black-owned firms report more credit availability challenges (58% vs. 32%) and difficulty obtaining funds for expansion (62% vs. 31%) than White-owned firms.

#### REPORT ON WOMEN-OWNED FIRMS

- ◆ Low credit risk women-owned firms were less likely to be approved for business loans than their low credit risk male counterparts (68% compared to 78%).
- ◆ 64 percent of women-owned firms reported a funding gap, receiving only some or none of the financing sought, compared to 56 percent of male-owned firms.

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<sup>61</sup> The survey methodology provides for sample weighting to adjust for any sampling biases; race, ethnicity, and gender imputation by using statistical models to capture missing data; comparisons and adjustments to past reports; and credibility intervals to aide in survey estimates.

<sup>62</sup> Census regions and divisions are areas delineated for the purposes of statistical analysis and presentation.

<sup>63</sup> Black-owned firms are the same as African American owned firms as used throughout this chapter. The terminology was not changed to preserve the same usage as in the original data.

<sup>64</sup> Source: Small Business Credit Survey, Federal Reserve Banks.

- ◆ Fewer women-owned firms received all the funding sought than male-owned firms, and more women received none. Among low credit risk firms, 48 percent of women-owned firms received all the financing requested, compared to 57 percent of male-owned firms.

## SBCS 2017

### REPORT ON EMPLOYER FIRMS

Fielded in the second half of 2017, the survey yielded 8,169 responses from small employer firms in the 50 states and the District of Columbia.

- ◆ Minority-owned firms report higher rates of financial challenges in the previous 12 months due to lack of credit availability than White-owned firms.
  - For firms with revenues less than \$1million, Black-owned firms (58%) reported financial challenges at approximately twice the rate of white-owned firms (32%) (Compare: Asian 42%, Hispanic 45%).
- ◆ Rates of firms receiving at least some financing requested: for Black-owned firms, 61 percent, and White-owned firms 80 percent (Compare: Asian 73%, Hispanic 74%).
- ◆ For low credit risk firms, 85 percent of nonminority-owned firms received partial financing requested compared with only 75 percent for similarly situated minority-owned firms.
- ◆ For low credit risk firms receiving total financing, 68 percent of nonminority-owned firms were approved compared to only 40 percent of minority-owned firms.

## SBCS 2018

### REPORT ON EMPLOYER FIRMS

There were 8,072 responses received for this survey from firms throughout the United States.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than White-owned firms. Rates were: Black-owned firms, 50 percent; Asian, 33 percent; Hispanic, 41percent; and White-owned firms, 28 percent.
- ◆ Rates of firms receiving at least some financing requested ranged from a high of 80 percent for White-owned firms to a low of 59percent for Black-owned firms.
- ◆ Rates of firms receiving the total amount requested ranged from a high of 49 percent for White-owned firms to a low of 23percent for Black-owned firms.
- ◆ 38 percent of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 12 percent of White-owned firms.

## SBCS 2019

### REPORT ON MINORITY-OWNED FIRMS & REPORT ON EMPLOYER FIRMS

The annual survey of businesses was fielded in the second half of 2018 and generated 6,614 responses from employer firms.

- ◆ Minority-owned firms report higher rates of financial challenges in the prior 12 months due to credit availability than white-owned firms. Rates were: Black-owned firms, 51 percent; Asian, 36 percent; Hispanic, 40 percent; and White-owned firms, 30 percent.
- ◆ Rates of firms receiving at least some of the financing requested ranged from a high of 80 percent for White-owned firms to a low of 62 percent for Black-owned firms.
- ◆ Rates of firms receiving the total amount requested ranged from a high of 49 percent for White-owned firms to a low of 31 percent for Black-owned firms.
- ◆ 28 percent of Black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 13 percent of White-owned firms.
- ◆ On average, Black- and Hispanic-owned firm applicants received approval for smaller shares of the financing they sought than White-owned small businesses that applied for financing.
- ◆ Larger shares of Black- and Hispanic-owned firm applicants did not receive any financing they applied for—38 percent and 33 percent, respectively—compared to 20 percent of White-owned business applicants.
- ◆ White-owned business applicants received approval for all the financing they applied for: 49 percent, compared to 39 percent of Asian, 35 percent of Hispanic-, and 31 percent of Black-owned firm applicants.

## 5.6 Conclusions

- ◆ Analysis of the U.S. Census 2012 SBO data, 2017 ABS data, and the PUMS 2016-2020 data demonstrate that significant marketplace discrimination exists for M/WBE firms operating in the private sector within the County of Santa Clara’s Market Area. Specifically:
  - ◆ Findings from the U.S Census 2012 SBO and 2017 ABS data indicate substantial disparities for most M/WBE firms across industry sectors resembling the procurement categories identified for this study.
  - ◆ Findings from the 2016-2020 PUMS data indicate that:
    - Minority and women wages were significantly less in 2016-2020 than those of nonminority males, holding all other variables constant.
    - M/WBE firms were significantly less likely than nonminority males to be self-employed.
    - If they were self-employed, most M/WBE firms earned significantly less in 2016-2020 than self-employed nonminority males, holding all other variables constant.
    - Analysis of observed versus predicted self-employment rates show that marketplace discrimination impacted these rates. Further, this analysis indicates that holding all factors consistent, race, ethnicity, and gender play a role in the lower level of self-employment for M/WBEs.

A review of access to credit indicates that minorities and women tend to receive less than the requested amount of credit when they are approved than nonminority males; they are approved for credit less frequently than nonminority males, and that credit costs them more than nonminority males.

This evidence of passive discrimination stands alongside the disparities observed in public sector contracting to illustrate that substantial discriminatory inequities that exist in the County's Market Area, supporting a finding that the County may have a compelling interest in implementing remedies to address these gaps.

DRAFT

# 6 Qualitative Data Analysis

## 6.1 Introduction

This chapter examines the qualitative evidence from Diverse Business Enterprise (DIV-BE) firms about the discriminatory obstacles they face in the study market area and their experiences working with the County, the County’s prime contractors, and within the private sector. MGT has presented statistical findings in previous sections that are consistent with an indication of business discrimination against minority and women-owned firms in the geographic and product markets that are relevant to the County in **Chapter 3 Market Area and Utilization Analyses, Chapter 4 Product Market, Availability, and Disparity Analyses, and Chapter 5 Private Sector.** In conjunction with the quantitative data, MGT also drew inferences from the qualitative data as to the prevalence of obstacles perceived as limiting the participation of DIV-BEs in the County’s procurements. The evidence indicated that businesses that participated in the qualitative research experienced discriminatory acts more commonly with prime contractors that do not solicit their firms when diversity inclusion goals are not included in either public or private bid solicitations. Businesses did indicate that the primary barriers to doing business with the County were the lack of knowledge on upcoming bids or proposals, and the consistent practice of awarding contracts to larger firms while excluding smaller, local firms.

Chapter Sections	
6.1	Introduction
6.2	Qualitative Background
6.3	Methodology
6.4	Conclusion

Qualitative data and anecdotal comments in this chapter detail the perceptions and opinions of individuals as they relate to discrimination 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. Unlike conclusions derived from other analyses in this report, the qualitative analysis does not rely solely on quantitative data. Instead, the analysis in this chapter utilizes qualitative data to describe the discriminatory context of the examined social, political, and economic environment in which all businesses and other relevant entities applicable to the study operate. This analysis assesses the broad patterns among large groups of businesses based on their business ownership classification and industry.

## 6.2 Qualitative Background

A major component of this study is collecting and analyzing quantitative data from the County’s procurement and contracting records to determine if discrimination bears any relationship to the extent to which businesses are “awarded” County contracts to provide needed goods and services that the County cannot deliver on its own. Government purchasing records identifying race, ethnicity, or gender of utilized businesses provide the quantitative record for determining inferences of discrimination. To provide context to the quantitative results, an account of business owner experiences in dealing with the County’s procurement processes and with other businesses, qualitative and anecdotal information is also gathered in the form of telephone, online surveys, and individual interview sessions. The data collected are intended to explain the quantitative results from purchasing and procurement data by providing

insight into purchasing trends that might explain how discrimination plays out and evolves in the marketplace.

## 6.3 Methodology

MGT used a combination of online and telephone surveys, business engagement meetings, and one-on-one interviews with businesses to collect qualitative data that was analyzed to identify the presence of discrimination, issues, and concerns common to businesses in the County's Relevant Market Area. In addition to the qualitative data collection from area businesses, MGT and the County identified area professional organizations that support the business and technical development of businesses in the market area, whose insights could potentially be valuable in understanding the dynamics and perceptions of the vendor community.

MGT also conducted in-depth interviews with area professional organizations to gather anecdotes on their perceptions of discriminatory and non-discriminatory barriers that diverse businesses are experiencing in the relevant marketplace. Input from advocacy and professional development organizations gives a third-party perspective of DIV-BE issues. Their opinions and experiences broaden the collection of DIV-BE firms' experiences doing or attempting to do business in the County's marketplace.

In the successive sections, findings are generally organized around themes of concerns expressed by vendors, with evidence divided between (1) items identified through qualitative input from qualitative research participants (interviews and open-ended comments) and (2) quantitative summaries of perceptions collected through the business surveys. In some cases, content is limited to one category of findings based on the scope of the information collected through either medium.

### 6.3.1 Communication, Outreach and Engagement

Businesses in the County's Relevant Market Area were contacted using various communication methods of phone calls, email blasts distributed by the County and MGT, direct mailing of postcards, press releases, and County-sponsored procurement events. The County disseminated 10 email campaigns to their vendor list and distributed two press releases to inform and encourage firms in the market area to participate in the various qualitative activities. By invitation of the County, MGT presented ways firms were invited to engage at a County-sponsored training that had over 300 attendees. The business community response to participating in the study was substantially low. Businesses were simply not interested in participating in the study. A minimum of three, and as many as five, contacts either by phone or email were conducted. In total 329 firms in the County's Relevant Market Area participated in the qualitative data collection.

### 6.3.2 Sampling Methodology

MGT's sampling methodology for in-depth interviews and business surveys randomly selected firms from the Study's master vendor database.<sup>65</sup> The samples were stratified by the number of firms, race, ethnicity, gender ownership classification, and business industry. The database was cross-referenced with previous extractions to avoid contacting businesses multiple times to ensure that firms did not participate in more than one qualitative data collection activity. Receiving single anecdotal accounts allows for a broader

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<sup>65</sup> See Chapter 33, Market Area and Utilization Analysis for an explanation, *supra*.

collection of unique experiences. The qualitative analysis is not steered to the interests of a small group of participants. The master vendor database contained 28,738 potential qualitative respondents.

Additionally, DIV-BE firms were oversampled to facilitate statistical comparisons with non-DIV-BEs. Oversampling is the practice of selecting respondents so that some groups make up a larger share of the survey sample than they do in the population. Knowing that DIV-BEs make up a smaller population, oversampling is crucial to acquire accurate and comparable responses.

### 6.3.3 Business Survey Methodology

The business survey asked respondents to provide information on business ownership, demographics, and structure; work bid or performed as prime contractors with the County; bid or performed as subcontractors to County prime contractors; whether the respondent firm bid or performed work in the private sector; and any perceived barriers they had experienced doing business with the County or its prime contractors during the study period. The survey was administered via telephone and online. The survey of vendors questionnaire is included in this report as **Appendix F, Business Survey Instrument**.

The data from the survey responses was analyzed to determine the types of firms represented in the findings included in this chapter. These survey results are included in **Appendix D, Demographics of Business Survey Respondents**.

#### 6.3.3.1 Online and Telephone Business Survey

MGT attempted to collect data in proportion to the distribution of DIV-BEs and non-DIV-BEs in the Relevant Market Area. Although MGT's goal is to report data that can satisfy a 95 percent confidence level, this does not mean that data should not be reported because of slightly reduced confidence intervals, especially when due diligence has been exercised. The survey of vendors questionnaire is included in this report as **Appendix F, Business Survey Instrument**.

The data from the survey responses were analyzed to determine the types of firms represented in the findings included in this chapter. These survey demographics are included in **Appendix D, Demographics of Business Survey Respondents**.

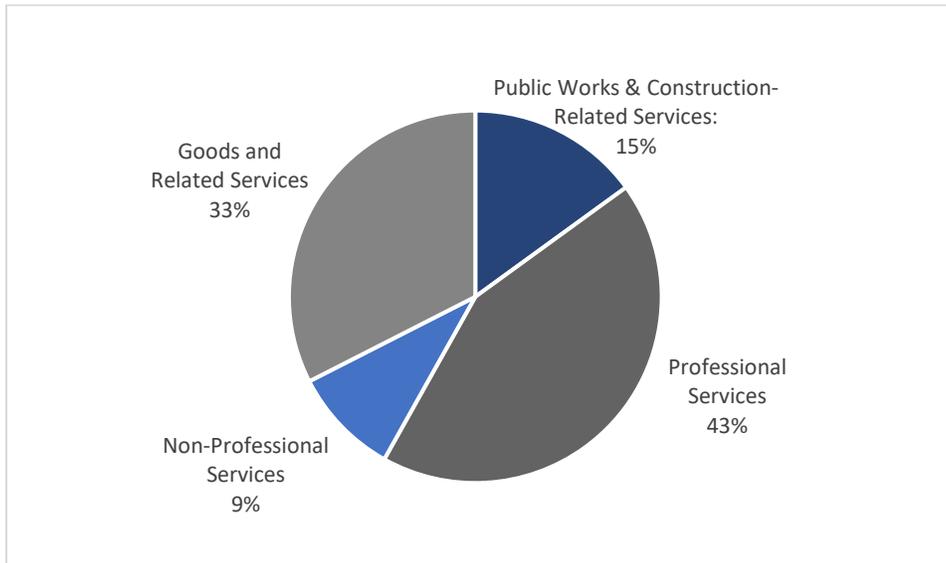
The survey collected 280 responses from firm owners and representatives in the County's Relevant Geographic Market Area. **Table 6-1** provides the race, ethnicity, and gender of respondents. DIV-BE firms accounted for 72 percent of the total respondents with Asian American firms representing 23 percent of those that participated, followed by Hispanic American firms at 15 percent, Black/African American firms at 8 percent, Native Americans at 5 percent, and Nonminority Women firms totaling 8 percent. **Table 6-1** shows response rates per business category.

TABLE 6-1. COUNTY OF SANTA CLARA  
SURVEY OF VENDORS DEMOGRAPHICS:  
PROPORTION OF RESPONDENTS BY DIV-BE CLASS

BUSINESS OWNERSHIP CLASSIFICATION	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	TOTAL BY CLASSIFICATION
BLACK/AFRICAN AMERICAN	13%	44%	13%	19%	8%
ASIAN AMERICAN	4%	60%	4%	26%	23%
HISPANIC AMERICAN	30%	17%	10%	37%	15%
NATIVE AMERICAN	9%	45%	0%	45%	5%
NONMINORITY WOMEN	16%	36%	12%	28%	8%

Source: Vendor Surveys, SkyBase7 & Online Surveys, 2023.

FIGURE 6-1. COUNTY OF SANTA CLARA  
SURVEY OF VENDORS DEMOGRAPHICS:  
PROPORTION OF RESPONDENTS BY INDUSTRY



Source: Business Surveys, SkyBase7 & Online Surveys, 2023.

### 6.3.3.2 Discriminatory Experience Doing Business with the County

Understanding whether DIV-BE firms experience discriminatory behaviors while doing business or attempting to do business on Santa Clara County projects is important to the research of what remedies can be implemented to address the issues. **Table 6-2** illustrates the survey respondents that experienced various discriminatory behaviors. Black/African Americans and Nonminority Women firms expressed that

they experience discriminatory behavior more than other DIV-BEs. The complete question is in **Appendix F, Business Survey Instrument**.

TABLE 6-2. TOTAL RESPONDENTS WHO EXPERIENCED DISCRIMINATORY BEHAVIORS

DISCRIMINATORY BEHAVIORS	Asian American	Black/African American	Hispanic American or Latino	Native American/American Indian	Nonminority Women
An informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boy" network)	3.9%	7.8%	3.9%	0.0%	2.0%
Use of racial slurs or workplace violence, intimidation, or sabotage	0.0%	0.0%	0.0%	0.0%	2.0%
Because of your LGBTQ identity	0.0%	0.0%	0.0%	0.0%	0.0%
Because of your disability status	0.0%	0.0%	0.0%	0.0%	0.0%
Refusal by agencies, primes, suppliers and/or customers to deal with minorities or women	0.0%	3.9%	0.0%	0.0%	0.0%
Harassment on the Jobsite	0.0%	0.0%	0.0%	0.0%	2.0%
Double standards in measuring performance	0.0%	2.0%	2.0%	0.0%	3.9%
Denial of opportunity to bid	3.9%	2.0%	3.9%	0.0%	2.0%
Unfair denial of contract award	2.0%	3.9%	0.0%	0.0%	2.0%
Predatory business practices such as price discrimination by suppliers/inspectors, bid shopping, slow payment, or non-payment	0.0%	2.0%	0.0%	0.0%	3.9%

Source: Business Surveys, SkyBase7 & Online Surveys, 2023.

### 6.3.3.3 Barriers to Doing Business with the County

Barriers to doing business with the County of Santa Clara, the County’s prime contractors, or in the private sector market area can hinder a business’s ability to exist, compete, and grow. The telephone and online survey included questions regarding instances of barriers based on minority or gender status experienced while attempting to do business. **Table 6-3** shows that in many of the categories, regardless of prime or subcontractor status, DIV-BE firms experience substantially higher barriers while doing business with the County.

Overall, indications of barriers by the County were reported highest by Black/African American firms, with an overall rate of 28 percent. Specific reported barriers for DIV-BEs are detailed in **Table 6-3**.

TABLE 6-3. BARRIERS IDENTIFIED BY SURVEY RESPONDENTS  
PRIME AND SUBCONTRACTOR DOING BUSINESS WITH THE COUNTY

BARRIER	BLACK/ AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON- MINORITY WOMEN	TOTAL DIV-BE
Proposal/bid specifications	38%	10%	10%	0%	20%	12%
Prequalification Requirements	9.8%	0.0%	2.0%	0.0%	2.0%	15.7
Short or limited time given to prepare bid package or quote	22%	14%	5%	0%	10%	10%
Restrictive contract specifications	44%	15	5%	0%	14%	10%
Selection process/evaluation criteria	24%	30%	11%	0%	17%	11%
Insurance requirements (general liability, professional liability, etc.)	18%	5%	5%	0%	10%	5%
Competing with large companies	55%	5%	11%	0%	20%	12%
Contract too large	30%	0%	0%	0%	10%	5%
Changes in the scope of work (after work began)	0%	0%	0%	0%	10%	2%
Slow payment or non-payment for project work	13%	0%	5%	0%	6%	4%

Source: Business Surveys, SkyBase7 & Online Survey., 2023

Note: Percentages are calculated based on responses within each individual race, ethnicity, or gender category.

As discussed in **Chapter 5 Private Sector Analysis**, variables such as firm age, firm financing, bonding limits, or experience can all be impacted by discrimination. Regardless, if specific differences between M/W BE inference of discrimination is more likely. As described in **Chapter 5 Private Sector Analysis**, a logit model was utilized to control for these variables and show the impact that M/WBE status had on an individual, indicating that the barrier had a discriminatory effect on doing business. This model was conducted as an aggregate for prime contractor and subcontractor respondents. For the model, the firm characteristics used as control variables were the firm's age, the number of employees, the size of revenues, and the education level of the primary owner of the firm.

Using the vendor survey question regarding private sector barriers, **Table 6-4**, indicates a “+” that M/WBEs are more likely to indicate that the barriers had an impact on doing business than Unclassified firms. Overall, the results show that when firm characteristics are held constant, M/WBE firms are more likely to experience barriers in doing business in the County of Santa Clara marketplace as noted below at statistically significant rates.

TABLE 6-4. PRIVATE SECTOR SURVEY RESPONSES LOGIT

BARRIER	TOTAL DIV-BE
Proposal/bid specifications	+*
Short or limited time given to prepare bid package or quote	+*
Restrictive contract specifications	+*
Selection process/evaluation criteria	+*
Insurance requirements (general liability, professional liability, etc.)	+
Competing with large companies	+*
Contract too large	+
Changes in the scope of work (after work began)	
Slow payment or non-payment for project work	+

Source: Business Surveys, Telephone & Online Surveys. Note: “\*” indicates significance at a 5% level or better (95% confidence).

#### 6.3.3.4 Prime Contracting Inclusion of DIV-BEs on Projects with and without Goals in the Private Market

Businesses that perform as prime contractors in the private market (non-government) that participated in the qualitative data collection noted that relationships are the foundation of their success. However, DIV-BE subcontractors were not as fortunate in developing such relationships with prime contractors because the private sector does not historically have DIV-BE goal requirements on their contracts, which means that there is no incentive for prime contractors to utilize DIV-BEs. Public agencies, where applicable, have business inclusion programs that establish DIV-BE participation goals. Therefore, DIV-BEs noted that without goals, prime contractors typically hire DIV-BE subcontractors for their projects at lower rates than their non-DIV-BE counterparts. The failure of prime contractors to solicit qualified DIV-BE firms may provide significant evidence in helping to establish the presence of discrimination.

Survey respondents who indicated they were subcontractors or suppliers were asked how often prime contractors/vendors solicited their firm to bid on projects with DIV-BE goals compared to those without DIV-BE goals. The survey sought to determine if prime contractor behavior was the same when projects applied DIV-BE goals versus projects without goals.

Participants overwhelmingly agreed that prime contractors who solicit bids for projects with goals were not soliciting DIV-BE firms for projects without goals. **Table 6-5** below details survey respondents’ experiences with prime contractors when projects do not include DIV-BE goals. The survey asked, “Do prime contractors or direct vendors who contract with your company on public or government projects with goals also solicit your company on projects (private or public) with goals?” For DIV-BEs collectively, 94 percent indicated that they are not solicited on projects without goals. Individually, Hispanic American firms and Native American firms experienced the largest impact of exclusion when there were no goals (100 percent). Additionally, 91 percent of African American firms responded that they were not used on projects without goals. Similar results were observed in each major procurement category.

TABLE 6-5. PRIME CONTRACTORS LACK OF SOLICITATION OF DIV-BE FIRMS ON PROJECTS WITHOUT GOALS

BUSINESS OWNERSHIP CLASSIFICATION	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	TOTAL BY CLASSIFICATION
BLACK/AFRICAN AMERICAN	100%	100%	80%	100%	91%
ASIAN AMERICAN	100%	100%	100%	100%	100%
HISPANIC AMERICAN	80%	0%	100%	91%	88%
NATIVE AMERICAN	100%	0%	100%	100%	100%
NONMINORITY WOMEN	86%	100%	94%	82%	89%

Source: Business Surveys, Telephone & Online Surveys, 2023.

Further evidence is set forth in **Table 6-6**. This table summarizes the firms’ experiences being released from County and non-County projects after the project has been awarded. As shown above, in **Table 6-5**, DIV-BE firms are seldomly asked to participate in nongoal projects. When DIV-BEs are asked to be a part of non-County projects, the table shows, that the prevalence of DIV-BEs being dropped from the project is much higher on non-County projects than on County projects. Nonminority Women-owned businesses experienced being dropped from non-County projects at the highest degree, followed by Hispanic Americans and Black/African Americans.

TABLE 6-6. DIV-BE FIRMS DROPPED AFTER PROJECT AWARD

PROJECT TYPE	BLACK/AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMEN	TOTAL DIV-BE
Santa Clara County Project	0%	0%	0%	0%	8%	4%
Non-Santa Clara County Project	20%	0%	25%	0%	29%	18%

Source: Business Surveys, SkyBase7, & Online Surveys, 2023.

### 6.3.3.5 Barriers and Disparate Treatment in the Private Sector

This section examines understanding and identifying the type of disparate treatment encountered by DIV-BEs working on private projects. Disparate treatment occurs when individuals who are members of a protected class are treated differently than others. A trend for firms that participated in interviews, surveys, or business engagement meetings was the indication that disparate treatment is prevalent and happens frequently in subtle ways and even to their peer competitors in the private marketplace. **Table 6-7** shows the type of disparate treatment felt by those indicating they were discriminated against based on their race, ethnicity, or gender. Individually, African American firms indicated experiencing the highest levels of direct disparate treatment against them due to race on private projects. All other groups indicated varying forms of disparate treatment.

TABLE 6-7. DISPARATE TREATMENT IDENTIFIED BY PRIMES AND SUBCONTRACTORS IN THE PRIVATE SECTOR

BARRIER	BLACK/ AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	MBE	NON- MINORITY WOMEN	TOTAL DIV-BE
An informal network of prime contractors and subcontractors that has excluded my company from doing business ("good ole boys" network)	40%	10%	10%	0%	13%	6%	13%
Use of racial slurs or workplace violence, intimidation, or sabotage	0%	0%	0%	0%	0%	3%	0%
Because of your LGBTQ identity	0%	0%	0%	0%	0%	0%	0%
Because of your disability status	0%	0%	0%	0%	0%	0%	0%
Refusal by agencies, prime contractors, suppliers and/or customers to deal with minorities or women	20%	0%	0%	0%	5%	3%	5%
Harassment on the Jobsite	0%	0%	0%	0%	0%	3%	0%
Double standards in measuring performance	10%	0%	5%	0%	3%	8%	3%
Denial of opportunity to bid	10%	9%	10%	0%	8%	5%	7%
Unfair denial of contract award	20%	5%	0%	0%	5%	8%	5%
Predatory business practices such as price discrimination by suppliers/inspectors, bid shopping, slow payment, or non-payment	11%	0%	0%	0%	2%	6%	2%
Unequal access to bonding, credit, or financing as compared to nonminority- or nonwomen-owned companies	10%	0%	5%	0%	3%	3%	3%

Source: Business Surveys, Telephone & Online Surveys, 2023.

### 6.3.4 Business Engagement Meetings Methodology

The business meetings were widely advertised and open to businesses in the County's Relevant Market Area. Due to the COVID-19 pandemic, MGT conducted five virtual business meetings that resulted in 37 businesses attending the meetings with the opportunity to provide their experiences of doing business in

the County's marketplace and whether race, ethnicity, or gender was a factor in their ability to do business. Translation services in Chinese, Spanish, Tagalog, and Vietnamese were provided by the County.

### 6.3.5 In-Depth Interviews Methodology

The in-depth interviews were individual interviews with DIV-BE and non-DIV-BE owners or representatives to gather information about the firms' experiences attempting to conduct business within the County marketplace (both directly as a prime contractor or as a subcontractor). During the interviews, MGT gathered demographic information such as the firm's primary line of business, ethnicity, gender, education/training background of the owner, business history, size, and gross revenues during a selected calendar or fiscal year. The in-depth interviews were structured settings where an interviewer or facilitator used an interview guide (**Appendix G, In-Depth Interview Guide**) to obtain input from participants. The interviews provided more latitude for additional information on issues unique to the respondents' experiences than the community meetings or surveys. The interviewer did not attempt to prompt or guide responses from the participants, although follow-up questions were asked to obtain further clarification or information as necessary and appropriate. The willingness of firms to participate was a challenge and resulted in 15 completed interviews with area business owners. Each participant attested that their responses were given freely and were true and accurate reflections of their experience with the County, its prime contractors, or in the marketplace.

### 6.3.6 Business Owners In-Depth Interviews

The in-depth interviews were individual interviews with DIV-BE and non-DIV-BE business owners or representatives to gather information about the firms' experiences attempting to conduct business with the County (both directly as a prime or as a subcontractor) and in the private market area. The in-depth interviews were structured settings where an interviewer or facilitator used an interview guide (**Appendix G, In-Depth Interview Guide**) to gain individual perspective and experiences from participants. There were 15 area businesses that completed an in-depth interview.

The following are summaries of the discriminatory issues discussed.

- ◆ A Service-Disabled Veteran business owner [6] stated that there is a "good old boy" network that excludes their business from projects. After participating in several outreach meetings and networking events, their business does not get invited to bid on County contracts.
- ◆ A Black/African American professional services firm [5] stated in reference to doing business in the County's Market Area that "there is certainly unconscious biases that exist" about working with minority firms.
- ◆ A Hispanic American specialty contractor [12] has experienced being excluded from networks in which they attempt to do business. The firm stated that "if you are not already connected, the same firms get repeat work."

#### 6.3.6.1 Experiences from DIV-BEs on Prime Contractor Behavior

A couple of the anecdotes from the interview and the community meetings include:

- ◆ A Black/African American professional services firm [5] stated that being solicited by prime contractors to bid as a subcontractor is “very rare.”
- ◆ A Black/African American nonprofessional service firm [10] stated that the prime contractors that repeatedly win County contracts are not interested in diversity, especially since it is not included in their contract.

### 6.3.6.2 Procurement Process Issues and Challenges for DIV-BEs

Included below are comments from interview and business engagement meetings participants reflecting specific instances of these barriers:

- ◆ A Black/African American professional services firm [8] stated that their challenge is that the County utilizes the same businesses repeatedly and is not interested in working with new businesses.
- ◆ A Black/African American professional services firm [15] stated that the timeframe to prepare and submit bids is short given the amount of paperwork necessary to bid. The firm feels like the process is streamlined for small businesses and that larger organizations with dedicated staff to prepare bids will win the contract.

## 6.3.7 Professional Organization Engagement Methodology

Outreach to and engagement of professional organizations sought to benefit the study’s outreach strategy by sharing information with these professional organizations to disseminate communications released by the County or MGT to its members regarding how businesses could engage in the study. Professional organizations were also asked to provide MGT with a copy of membership or vendor lists they used to help build the master vendor database used for outreach. The County and MGT identified 169 professional organizations. The organizations and associations included in these efforts are identified in [Appendix L, List of Professional Organizations](#).

### 6.3.7.1 Professional Organizations Engagement

Involving area professional organizations (trade associations and business organizations) that advocate for and provide professional development to businesses in similar services in the County’s market area can be helpful to the success of County’s program objectives. Professional organizations were divided into four engagement subgroups.

- ◆ 14 municipal chambers of commerce were invited to a focus group in which no representative from the chambers attended.
- ◆ 45 organizations were sent a survey to collect qualitative data on their members’ experiences with discrimination in the marketplace. No surveys were completed.
- ◆ 13 organizations were contacted to conduct an in-depth interview. Four professional organizations participated in the interviews and provided insight into DIV-BEs business growth, development, and barriers their members face in the marketplace.
- ◆ The remaining organizations were disseminated engagement communications to share with their members.

There were two major themes that were identified:

**Theme 1:** The decline of minority business presence is due in part by the expansion of the scope of diverse businesses included in business inclusion programs, e.g., LGBT, non-minority women, etc. Without intentional inclusion in contracts, prime contractors will not include diverse businesses in contracts.

**Theme 2:** Self-employment is a challenge for many businesses because they lack the knowledge of running a business, bidding for contracts, and other administrative requirements of running and operating a business.

## 6.4 Conclusion

There were challenges encouraging diverse and non-diverse businesses to participate in this study. First the lower engagement could be attributed to businesses unfamiliar with the purpose and benefit of the study. Prop 209 can also be assumed to have had an impact on the limited engagement. Significant and targeted outreach was conducted to encourage more businesses to participate. Qualitative data were collected using multiple methods and included a broad reach of diverse businesses and business industries via surveys, interviews, and business engagement meetings. A significant effort was made by the County and MGT to reach out to firms in the Relevant Market Area. While there is limited evidence from the qualitative data collected that indicates discriminatory barriers exists in the market area, most of the evidence coincides with firm being excluded from doing business due to social networks or good old boy networks in the market area in which the County does business. The qualitative data collected is not substantial enough to identify discrimination faced by firms in the County's market area. Therefore, the remedies suggested in **Chapter 7** are race and gender-neutral initiatives and programmatic enhancements that should assist the County in expanding its outreach and engagement of diverse businesses and professional organizations.

# 7 Remedy Analysis and Recommendations

## 7.1 Introduction

The County of Santa Clara (County) retained MGT of America Consulting, LLC (MGT) to conduct County's 2023 Disparity Study. The goal of the Disparity Study is to determine if there are any disparities between the utilization of minority-, women-, disabled veteran-, and LGBT-owned business enterprises (DIV-BEs) compared to the availability of DIV-BEs in the marketplace who are ready, willing, and able to perform work, and whether such disparities are consistent with the existence of discrimination. MGT examined the statistical data using the following procurement categories:

- Public Works and Construction-Related Services;
- Non-Professional Services;
- Professional Services; and
- Goods and Related Services

The County's 2023 Disparity Study consisted of fact-finding to analyze procurement trends and practices from July 1, 2016, through June 30, 2021 (FY2017 – FY2021) regarding the utilization of minority-owned, women-owned, disabled veteran-owned, and LGBT-owned business enterprises, and to evaluate various options for future program development.

This chapter will summarize the evidence on the research questions:

1. *Is there a disparity between the utilization of firms and their availability in the County's Relevant Market Area? If so, is this disparity significant?*
2. *Is there disparity in the un-remediated market where there are no goals for contracting?*
3. *Is any disparity identified in the County's contracting attributable to factors other than discrimination?*
4. *What are the experiences of DIV-BE firms in working or attempting to work on public and private contracting opportunities?*
5. *What are the opinions and perceptions of firms regarding the County's procurement and program practices?*
6. *What actions can the County take in its procurement and program policies to help create a level playing field for all firms?*

MGT's methodology included a review of the County's policies and procedures, analyses of utilization, availability, and statistical disparity, qualitative and anecdotal research, private sector analyses, and findings, the establishment of aspirational goals methodology, and industry-selected practices. The results of this study and the conclusions drawn are presented in detail in **Chapters 2** through **7** of this report.

Chapter Sections	
7.1	Introduction
7.2	Findings
7.3	Aspirational Goals Methodology
7.4	Remedies
7.5	Strategic Implementation Plan
7.6	Selected Industry Practices

## 7.2 Findings

### 7.2.1 Finding A: Relevant Geographic Market Areas (Chapter 3, Appendix B)

Data collected and prepared for the study was analyzed to determine the relevant geographic market area for the study.<sup>66</sup> This included both payments to primes and subcontractors. The relevant geographic market area analysis includes 15-counties geographically as seen in the right-hand box. The spending in the relevant geographic market area is represented in **Table 7-1**. The entire NAICS codes that made up County’s product market are shown in **Appendix D**.

County of Santa Clara Relevant Market Area	
Alameda County, CA	San Joaquin County, CA
Contra Costa County, CA	San Mateo County, CA
Marin County, CA	Santa Clara County, CA
Merced County, CA	Santa Cruz County, CA
Monterey County, CA	Solano County, CA
Napa County, CA	Sonoma County, CA
San Benito County, CA	Stanislaus County, CA
San Francisco County, CA	

TABLE 7-1. RELEVANT MARKET AREA ANALYSIS  
DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY,  
COUNTY OF SANTA CLARA MARKET AREA

PUBLIC WORKS & CONSTRUCTION	Amount	Percent
<b>Inside MARKET AREA</b>	<b>\$679,180,587</b>	<b>84.62%</b>
Outside MARKET AREA	\$123,455,956	15.38%
<b>PUBLIC WORKS &amp; CONSTRUCTION, TOTAL</b>	<b>\$802,636,543</b>	<b>100.00%</b>
PROFESSIONAL SERVICES	Amount	Percent
<b>Inside MARKET AREA</b>	<b>\$544,555,205</b>	<b>59.81%</b>
Outside MARKET AREA	\$365,951,548	40.19%
<b>PROFESSIONAL SERVICES, TOTAL</b>	<b>\$910,506,753</b>	<b>100.00%</b>
NON-PROFESSIONAL SERVICES	Amount	Percent
<b>Inside MARKET AREA</b>	<b>\$81,183,695</b>	<b>36.43%</b>
Outside MARKET AREA	\$141,681,357	63.57%
<b>NON-PROFESSIONAL SERVICES, TOTAL</b>	<b>\$222,865,052</b>	<b>100.00%</b>
GOODS & RELATED SERVICES	Amount	Percent
<b>Inside MARKET AREA</b>	<b>\$241,331,703</b>	<b>50.50%</b>
Outside MARKET AREA	\$236,518,640	49.50%
<b>GOODS &amp; RELATED SERVICES, TOTAL</b>	<b>\$477,850,343</b>	<b>100.00%</b>
ALL BUSINESS CATEGORIES	Amount	Percent
<b>Inside MARKET AREA</b>	<b>\$1,546,251,191</b>	<b>64.06%</b>
Outside MARKET AREA	\$867,607,501	35.94%
<b>ALL BUSINESS CATEGORIES, TOTAL</b>	<b>\$2,413,858,6911</b>	<b>100.00%</b>

Source: Chapter 3 Market Area and Utilization Analyses.

<sup>66</sup> Chapter 3, Market Area and Utilization Analyses.

## 7.2.2 Finding B: DIV-BE utilization (Chapter 3, Appendix C)

In **Table 7-2**, the utilization analysis shows that the DIV-BE utilization amounted to \$364.8 million, or 15.12 percent of total payments analyzed. The DIV-BE utilization includes firms classified as Lesbian, Gay, Bisexual, and Transgender (LGBT) and Disabled Veteran Business Enterprises (DV-BE) by their specific race, ethnicity, or gender. Since there is an overlap of the race, ethnicity, and gender classifications, utilization is shown for DV-BE and LGBT classification and not by race, ethnicity, or gender as shown in **Table 7-3**. DVBE utilization totaled 1.53 percent and LGBT-owned utilizations totaled 0.07 percent of the \$2.4 Billion spent during the study period. Minority women are captured in the specific business ownership classification of their identified race and ethnicity.

TABLE 7-2.  
UTILIZATION ANALYSIS  
BY BUSINESS OWNERSHIP CLASSIFICATION AND BY PROCUREMENT CATEGORY

BUSINESS OWNERSHIP CLASSIFICATION	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	GRAND TOTAL
AFRICAN AMERICAN	\$60,000	\$310,715	\$5,331,449	\$965,580	\$6,667,744
ASIAN AMERICAN	\$69,474,842	\$20,898,334	\$8,185,776	\$73,095,494	\$171,654,446
HISPANIC AMERICAN	\$3,336,734	\$6,065,127	\$321,737	\$5,965,035	\$15,688,633
NATIVE AMERICAN	\$1,525,872	\$110,707	\$1,470,387	\$0	\$3,106,966
MINORITY FIRMS	\$74,397,449	\$27,384,882	\$15,309,349	\$80,026,109	\$197,117,789
NON-MINORITY WOMEN	\$33,216,182	\$116,850,197	\$8,109,074	\$9,573,384	\$167,748,837
DIV-BE	\$107,613,631	\$144,235,079	\$23,418,424	\$89,599,493	\$364,866,627
UNCLASSIFIED FIRMS	\$695,022,913	\$766,271,673	\$199,446,628	\$388,250,851	\$2,048,992,065
<b>Grand Total</b>	<b>\$802,636,543</b>	<b>\$910,506,753</b>	<b>\$222,865,052</b>	<b>\$477,850,343</b>	<b>\$2,413,858,691</b>

Source: Chapter 3, Market Area and Utilization Analyses.

Business ownership classifications are defined in Chapter 1, Introduction.

TABLE 7-3.  
UTILIZATION ANALYSIS BY DVBE AND LGBT FIRMS,  
AND BY BUSINESS CATEGORY

BUSINESS OWNERSHIP CLASSIFICATION	ALL	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES
DVBE	\$36,882,732.14	\$33,300,702.18	\$157,403.70	\$3,051,211.87	\$373,414.39
LGBT	\$1,688,882.35	\$95,270.00	\$25,000.00	\$0.00	\$1,568,612.35
TOTAL DVBE/LGBT	\$38,571,614.49	\$33,395,972.18	\$182,403.70	\$3,051,211.87	\$1,942,026.74
BUSINESS OWNERSHIP CLASSIFICATION	ALL	PUBLIC WORKS AND CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES
	(%)	(%)	(%)	(%)	(%)
DVBE	1.53%	1.38%	0.01%	0.13%	0.02%
LGBT	0.07%	0.00%	0.00%	0.00%	0.06%

Source: Chapter 3, Market Area and Utilization Analyses.

### 7.2.3 Finding C: Availability Estimates (Chapter 4, Appendix C)

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 codes are provided in **Appendix C**. The availability estimates by procurement category are illustrated in **Table 7-4**.

TABLE 7-4.  
ESTIMATION OF AVAILABLE FIRMS

Business Ownership Classification	PUBLIC WORKS & CONSTRUCTION	PROFESSIONAL SERVICES	NON-PROFESSIONAL SERVICES	GOODS & RELATED SERVICES	TOTAL
AFRICAN AMERICAN	1.21%	1.98%	0.43%	0.13%	<b>1.21%</b>
ASIAN AMERICAN	8.29%	5.42%	6.41%	0.88%	<b>5.57%</b>
HISPANIC AMERICAN	4.70%	3.91%	3.91%	0.12%	<b>3.43%</b>
NATIVE AMERICAN	0.00%	2.05%	0.41%	0.23%	<b>0.85%</b>
MBE	14.20%	13.36%	11.16%	1.36%	<b>11.06%</b>
NON-MINORITY WOMEN	14.26%	25.72%	16.47%	4.45%	<b>16.85%</b>
DIV-BE	28.46%	39.08%	27.63%	5.81%	<b>27.91%</b>
UNCLASSIFIED FIRMS	71.54%	60.92%	72.37%	94.19%	<b>72.09%</b>
TOTAL	100.00%	100.00%	100.00%	100.00%	<b>100.00%</b>

Source: Chapter 4, Product Market, Availability, and Disparity Analyses.

Business ownership classifications are defined in Chapter 1, Introduction.

### 7.2.4 Finding D: Disparity (Chapter 4, Appendix C)

This section includes the results of the disparity ratios calculated in **Chapter 4**. 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. MGT applies two tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective DIV-BE availability, which is labeled “substantial disparity,” and (2) whether the disparity index passes the t-test determination of statistical significance. In cases where one, or especially both, measures hold true, a remedy may be justified.

The overall results show that statistically significant disparity was identified for Hispanic Americans, and Nonminority Women as illustrated in **Table 7-5**. Statistically significant disparity was identified collectively for minority firms but not minority and women businesses in total. Detailed disparity results by business category and 4-digit NAICS codes are provided in **Appendix C**.

TABLE 7-5.  
DISPARITY RATIO SUMMARY ANALYSIS

Procurement Category	All	Public Works & Construction	Professional Services	Non-Professional Services	Goods & Related Services
AFRICAN AMERICANS	Disparity	Disparity	<b>Disparity</b>	Disparity	No Disparity
ASIAN AMERICANS	No Disparity	No Disparity	Disparity	Disparity	No Disparity
HISPANIC AMERICANS	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	No Disparity
NATIVE AMERICANS	Disparity	No Disparity	<b>Disparity</b>	Disparity	Disparity
TOTAL MBE FIRMS	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	No Disparity
NONMINORITY WOMEN	<b>Disparity</b>	Disparity	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
TOTAL DIV-BE FIRMS	Disparity	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity

**RED BOLD** indicates substantial statistically significant disparity.  
Refer to: Chapter 4, Product Market, Availability, and Disparity Analyses.  
Business ownership classifications are defined in Chapter 1, Introduction.

## 7.2.5 Finding E: Private Sector Disparities in Census SBO and ABS Data (Chapter 5)

Based on US Census 2012 SBO and 2017 ABS data, MGT attempted to answer the question; “Do marketplace disparities exist in the private sector regarding revenue within similar County procurement categories for firms owned by minorities or women?” Both data sets gather and report information for firms with paid employees, including workers on the payroll (employer firms). SBO data is the only data set that provides firms without paid employees, including sole proprietors and partners of unincorporated businesses that do not have any other employees (non-employer firms). This is an important distinction because it provides a more encompassing picture of the private sector. SBO is limited in the age of the data, but it can be supplemented with more recent ABS data. It should also be noted that all the disparity indices in the SBO tables are statistically significant within a 95 percent confidence interval.

According to the findings, the SBO and ABS data analysis show consistent underutilization of DIV-BE firms relative to their availability in the marketplace. Further, each of the procurement categories analyzed showed substantial disparity among defined DIV-BE classes where sufficient data were available.

## 7.2.6 Finding F: Qualitative and Anecdotal Results (Chapter 6)

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 Market Area regarding their experiences of how discrimination or barriers to doing business has affected their experiences working with the County or with prime contractors as subcontractors on

County projects, or on the private contracts. The County and MGT executed multiple outreach campaigns from direct emails, personal contact, press releases, etc. to encourage more businesses to participate in the study.

Overall, indications of discriminatory treatment in the Private sector were reported highest by African American firms, with an overall rate of 28 percent. For specific barriers, DIV-BES reported experiencing higher levels of each discriminatory treatment, in particular:

- ◆ For DIV-BE contractors in selection process/evaluation criteria, the incidence of discriminatory treatment was approximately 20 times higher than non-DIV-BES.
- ◆ For DIV-BE contractors in competing with large companies, the incidence of discriminatory treatment was approximately 17 times higher than non-DIV-BES.
- ◆ For DIV-BE contractors in restrictive contract specifications, the incidence of discriminatory treatment was approximately 16 times higher than non-DIV-BES.
- ◆ For DIV-BE contractors in proposal/bid specifications, the incidence of discriminatory treatment was approximately 14 times higher than non-DIV-BES.
- ◆ For DIV-BE contractors in short or limited time given to prepare bid package or quote, the incidence of discriminatory treatment was approximately 10 times higher than non-DIV-BEs.

### 7.3 Remedies and Selected Practices

The findings of underutilization of diverse businesses compared to their availability in the marketplace lends credence for the County to identify initiative and processes to increase DIV-BE utilization across all contracting methods. The remedies are recommendations to increase outreach, engagement, and contracting opportunities with the County and if fully implemented should address the qualitative findings. Selected practices are excerpts from other California and government agencies.

Many state and local government agencies have policies and practices that attempt to address marketplace discrimination and barriers faced by minority-owned businesses, women-owned businesses, disabled veteran-owned businesses, and LBGTQ-owned businesses in their contracting. These practices are categorized as race- and gender-neutral measures. Race- and gender-neutral measures are methods designed to encourage the participation of all businesses—or all small and/or local businesses—in an organization’s contracting. Participation in such measures is not limited to minority- and women-owned businesses. The County of Santa Clara must also comply with Proposition 209, which prohibits preferential treatment based on race, sex, color, ethnicity, and national origin in public employment, education, and contracting.

The following sections provides selected industry practices for race- and gender-neutral measures to encourage the participation of small, minority-owned, women-owned, disabled veteran-owned, and LBGTQ-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 practices 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.

### 7.3.1 Small Business Enterprise (SBE) Program

The County should consider establishing a Small Business Enterprise (SBE) program, including targeting specific contracts for competition among certified SBEs. Combining SBE programs with Local Business Enterprise (LBE) has become common among agencies to expand the economic inclusion of diverse firms in a market area as a race- and gender-neutral method. There is usually an overlap of the diverse firms participating in small business and local business programs administered by an agency. Specifically, the United States SBA 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 the state are owned by women.<sup>67</sup> Generally, smaller firms are also 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 Market Area. The following California agencies have established SBE and/or Local Business Enterprise programs:

- ♦ **County of Alameda (California).** Alameda County established the Small and Emerging Local Business (SLEB) Program to achieve a minimum of 20% SLEB participation level in all County discretionary spending, contracts, and awards.<sup>68</sup> The County defines a small business as an entity, located within Alameda County, that meets the U.S. Federal Small Business Administration (SBA) size standards for its classification; whereas an emerging business is considered an entity that meets half of SBA size standards.<sup>69</sup>

Alameda County allows price preferences for SLEB prime contractors for procurements over \$25,000.<sup>70</sup> Businesses that meet the County’s local definition are eligible for a 5% bid preference and an additional 5% for small or emerging business certification. The maximum bid evaluation preference point is 10%.<sup>71</sup> Bid preferences are applied to price when an award is based on the lowest cost or to evaluation criteria points when an award is based on qualifications. The additional components of the County’s SLEB program are discussed in the respective categories of selected practices.

- ♦ **Orange County (California).** On January 1, 2020, the Orange County Local Small Business (OCLSB) Preference Policy was established for firms with principal operations in Orange County and certified as a Small Business by the State of California Department of General Services (DGS). The following year Orange County’s Disabled Veteran Business Enterprise (DVBE) Preference Policy went into effect. Firms must be certified as a Disabled Veteran Business Enterprise by the State of California DGS to be eligible.<sup>72</sup>

Per County policies, Invitation for Bids OCLSBs/DVBEs within 5% of a non-OCLSB/DVBE lowest bidder is given three business days to price match the lowest bidder. For Request for Proposals, OCLSBs/DVBEs are given an additional 5% increase to their score. In the

<sup>67</sup> 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/>

<sup>68</sup> Alameda County, Cali., Admin. Code §4.12.150 (2022)

<sup>69</sup> Alameda County. “FAQ’s - Small, Local and Emerging Business (SLEB) Program.” About Us. Accessed June 30, 2023. <https://www.acgov.org/sleb/faq.htm>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Orange County, Cal., “Orange County Local Small Business and Disabled Veteran Business Enterprise Preference Policies,,” County Procurement Office — Orange County ,Cal., accessed June 15, 2023. <https://cpo.ocgov.com/doing-business-oc/preference-policies>.

event of a tie with a non-OCLSB/DVBE, preference is given to the OCLSB/DVBE.<sup>73</sup> If a firm is certified as both a DVBE and OCLSB, a total of 8% of the firm’s score will be added to the RFP evaluation.

- ◆ **City and County of San Francisco (California).** San Francisco administers a Local Business Enterprise (LBE) program that also considers the size classification of businesses.<sup>74</sup> To meet eligibility requirements, firms must (a) establish that the principal place of business is located within San Francisco;<sup>75</sup> (b) have a current business license;<sup>76</sup> (c) have gross receipts that fall within specified thresholds based on primary industry;<sup>77</sup> and, (d) experience within industry certification is sought as evidenced by invoices or contracts.<sup>78</sup> Firms may be classified as micro, small, or SBA-LBE based on gross receipts.

San Francisco allows up to a 13% bid discount for construction contracts if firms meet micro-, small-, and/or local-business certification criteria.<sup>79</sup> In addition to the standard discount for small and micro LBEs, the Neighborhood/Zip Code LBE Program is a pilot program designed to encourage the participation of neighborhood businesses in City public works projects located within their neighborhood. The hyper-local program applies to projects between \$10,000 and \$10,000,000.

- ◆ **City of Oakland (California).** On February 16, 2021, the Oakland City Council passed Ordinance No. 13640 C.M.S., which operated to revise the provisions governing the participation of local and small local business enterprises in the City’s contracting.<sup>80</sup> The City’s Local and Small Local Business Enterprise (L/SLBE) program is comprised of several certification categories based on a business’ for-profit or non-profit status, size classifications, and whether the business is a manufacturer.<sup>81</sup>
- ◆ **City of San Diego (California).** The City of San Diego’s Emerging Local and Small Local Business Enterprise (“EL/SLBE”) Program exists to facilitate capacity development and increased participation of the local business community.<sup>82</sup> The City defines a SLBE as a local San Diego based business whose has operated for at least a year and its three most recent federal income tax returns do no exceed \$7 million for construction; \$4.5 million for specialty construction; \$4.5 million for goods/materials/services; \$4.5 million for trucking; or \$3.5 million for professional services and architect engineering.<sup>83</sup> An ELBE must meet the same requirements, however, the annual revenues for the prior fiscal year do not exceed half of the SLBE requirements.

<sup>73</sup> Orange County, Cal., 2021 Contract Policy Manual, Retrieved from <https://cpo.ocgov.com/doing-business-oc>.

<sup>74</sup> City and County of San Francisco,, “14B Local Business Enterprise (LBE) Program — Economic Thresholds,,” Local Business Enterprise (LBE) Program | San Francisco, accessed June 30, 2023. <https://sf.gov/14b-local-business-enterprise-lbe-program>.

<sup>75</sup> City and County of San Francisco, Cal., Admin. Code § 14B.3(A)(5).

<sup>76</sup> City and County of San Francisco,, “14B Rules and Regulations Local Business Enterprise Utilization and Nondiscrimination in Contracting Ordinance,” eff. July 1, 2022,a, accessed June 30, 2023,r, retrieved from: <https://sf.gov/14b-local-business-enterprise-lbe-program>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> City and County of San Francisco. “Attachment 1 Requirements for Construction Contracts”. Contract Monitoring Division. Rev. 07/01/22, Retrieved from: <https://sf.gov/resource/2022/lbe-contract-requirements-cmd-attachments>

<sup>80</sup> Amended City of Oakland, Cal., Ord. § 12389 (Dec. 20, 2011).

<sup>81</sup> *Id.*

<sup>82</sup> City of San Diego, Cal., “Small Local Business Enterprise (SLBE) Program,,” City of San Diego Official Website, accessed June 16, 2023,, <https://www.sandiego.gov/eoc/programs/slbe>.

<sup>83</sup> City of San Diego, Cal.,, “Small Local Business Enterprise (SLBE) Program Requirements,,” City of San Diego Official Website, accessed June 16, 2023. [https://www.sandiego.gov/sites/default/files/slbe\\_program\\_requirements.pdf](https://www.sandiego.gov/sites/default/files/slbe_program_requirements.pdf)

- ♦ **Sacramento Municipal Utility District in California (SMUD) (California).** SMUD’s Supplier Education and Economic Development (SEED) program is open to vendors who are certified by the California Department of General Services (DGS) Office of Small Business or is a DVBE that is certified as a small or microbusiness. Additionally, the firm must qualify as a SMUD ratepayer in the most recent six months.<sup>84</sup> All prime contractor bids, including 20% SBE subcontract utilization with SEED vendors, receive a five percent bid preference (capped at \$250,000) and 10 points on RFP evaluations.<sup>85</sup> Proposals with less than 20% SBE subcontract utilization are awarded a five percent bid preference on the part of their bid that includes SBE subcontractors.<sup>86</sup>

### 7.3.2 Adopt Aspirational SBE Goals

Aspirational goals and availability are outlined in **Table 7-6**. The calculation of the proposed SBE goals was based on a similar goal setting process that is established in 49 CFR 26, the U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) regulations. DIV-BE firms are included in the calculation of the SBE goals proposed below. There is often an overlap of SBE firms within the DIV-BE business classification. Therefore, SBE goals are appropriate to address disparities identified.

The proposed goals are based on a weighted average of DIV-BE utilization and availability. DIV-BE utilization was weighted at 60 percent plus 40 percent of availability to arrive at the proposed goals (see **Table 7-6**). The formula for goals calculation is below:

$$G = (\text{Utilization \%} * \% \text{ weight}) + (\text{Availability \%} * \% \text{ weight})$$

For example: Construction MWBE Goal= (27.94% \* .60) + (38.31% \* .40) = 32.09%

During the goal setting process, different weights may be utilized to establish reasonable and achievable goals for the agency. The point 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 7-6.  
PROPOSED SMALL BUSINESS ASPIRATIONAL GOALS

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

<sup>84</sup> Sacramento Municipal Utility District,, “Become a SEED Vendor,” accessed June 30, 2023,, <https://www.smud.org/en/Corporate/Do-Business-with-SMUD/Small-Business-Incentive-Program/Become-a-SEED-vendor>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

### 7.3.3 Procurement Forecasts

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.

### 7.3.4 Improve Data Collection

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 include and recommend that all contracts, construction, professional services, etc., are entered into and monitored using one of the County's existing contracts 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 a contracts management system. A contract management system should be utilized by all County departments to populate and monitor their contracts.

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. Data collection should:

- ◆ Require prime contractors to report subcontractor and supplier utilization (both DIV-BE and non-DIV-BE). As identified in this report, subcontracting data was not directly available. All subcontracting/supplier utilization data should be collected and maintained to analyze and report total DIV-BE and non- DIV-BE subcontracting participation.
- ◆ Consistently collect bid and proposal responses and identify those that are small business firms. Bid and proposal data will assist the County in monitoring marketplace availability. For example, if data illustrates there are enough small businesses in the market presumed to be available to bid but do not bid, the County should contact firms and determine the cause.
- ◆ Data system should connect intuitively with the County's payment data system from the beginning of a contract to its completion.
- ◆ Collect and report the expenditures and percentage of spending by each County department.
- ◆ List of certified DIV-BE and small businesses in the established relevant Market Area. The database of firms located in the Relevant Market Area should be readily available to County departments and potential bidders or proposers.

For example, the San Diego Association of Governments (SANDAG) utilizes its Diversity in Small Contractor Opportunities Compliance Information System to monitor the utilization of small business on its

contracts.<sup>87</sup> SANDAG departments, vendors, and subcontractors have access to the system to exchange communication regarding compliance issues, submit online utilization reports – including automated tracking of contract goals, and verification of subcontractor payments.<sup>88</sup>

### 7.3.5 Streamline Technologies

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 (formerly 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 are awarded to registered vendors or purchases made.

### 7.3.6 Establish Business Relationships with Organizations

The County should develop a more formal and structured business relationship with regional public agencies and 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 professional development and business support organizations, such as minority chambers of commerce and technical assistance centers, 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.

- ♦ **City of Oakland (California).** On July 28, 2022, the City announced the launch of the Minority Contractor Support Program, one of two business support programs funded by a recent grant from the U.S. Department of Commerce’s Economic Development Agency (EDA). Merriwether & Williams Insurance Services provides technical support for small and local firms, including Black, Indigenous, and People of Color (BIPOC)-owned construction firms<sup>89</sup>. One-on-one business assistance and training is intended to prepare contractors to navigate the requirements of construction contracts for the City’s capital improvement projects. Focus areas in the public contracting process include pre-qualification, certification with City social policies, online bidding, bonding and insurance requirements, and labor reporting requirements.<sup>90</sup> The program funds are used to support the Minority Contractor Support Program and Technical Assistance Support for BIPOC-owned Small Businesses.
- ♦ **Metrolink (California).** The Small Business Partnership Program (SBPP) is a free program that supports local small businesses to compete for agency contracts and eliminates barriers to drive

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<sup>87</sup> San Diego Association of Governments,, “Diversity in Small Contractor Opportunities (DISCO) Compliance Information System (CIS,a),” accessed July 30, 2023,, <https://sandag.sdbde.com/>.

<sup>88</sup> *Id.*

<sup>89</sup> “Business Support Programs Launched for Small Low-Income Contractors, Including BIPOC-Owned Small Businesses,” July 18, 2022,, City of Oakland,, <https://www.oaklandca.gov/news/2022/small-low-income-contracting-business-support-programs-launched>.

<sup>90</sup> *Id.*

equity and representation among agency contractors.<sup>91</sup> SBPP was created for local small businesses (nonprofit and for-profit) within Metrolink’s six-county service area: Los Angeles County, Orange County, Riverside County, North San Diego County, San Bernardino County, and Ventura County.<sup>92</sup> Businesses are assigned Business Advisors who assess their business goals, capacity, capability, and contingencies to provide services and products to Metrolink. The assessment may include reviewing certification(s) and business documentation such as licenses. The advisor will also recommend business development training to aid the business in achieving a “contract-ready” designation. A “contract ready” indicates that a company has the capability, capacity, and contingencies to compete for and service Metrolink contracts.<sup>93</sup>

- ◆ **Riverside County (California).** The County annually hosts Innovation Month to celebrate innovation and entrepreneurship. The County partners with various educational institutions in the area and trade associations to deliver month-long events and workshops. Cities within the County collaborate to host a series of quick pitch competitions. The month ends with the Pitch Finale, by which entrepreneur finalists will present their business ideas to a panel of venture capitalists and angel investors.
- ◆ **California Infrastructure and Economic Development Bank (IBank).** IBank provides financial assistance to support infrastructure and economic development in California and has a Small Business Finance Center (SBFC). The SBFC helps businesses create and retain jobs and encourages investment in low to moderate-income communities. The SBFC has several programs to support small businesses, including a Disaster Relief Loan Guarantee and a Jump Start Loan Program. In FY 2022, IBank issued 1,107 small business loan guarantees and \$501 million in bonds and loans.<sup>94</sup>

### 7.3.7 Adopt a Utilization Audit Clause for Contracts

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.

## 7.4 Strategic Implementation Plan

The strategic implementation plan located in **Appendix M** details goals and action items to implement remedies provided in this chapter. 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.

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<sup>91</sup> Metrolink. “Small Business Partnership Program.” Metrolink. Accessed April 30, 2023. <https://metrolinktrains.com/about/doing-business-with-metrolink/small-business-partnership-program/>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> California Infrastructure and Economic Development Bank

## 7.5 Conclusion

The County of Santa Clara is commended for its dedication to economic inclusion of diverse businesses. DIV-BE outreach is the County's initial approach to encourage businesses to engage with the County. A well-rounded disparity study has three major components: 1) quantitative, 2) qualitative, and 3) private sector analysis. The correlation between the three components is important to assess marketplace discrimination.

The completion of this study was extended to address and collect the appropriate and complete quantitative data necessary for the utilization, availability, and disparity analyses. The study suggests a remedy on data that should be collected that will provide the County accurate metrics of any future program efficacy.

Analysis of the U.S. Census 2012 SBO data, 2017 ABS data, and the PUMS 2016-2020 data demonstrate that significant marketplace discrimination exists for DIV-BE firms operating in the private sector within the County of Santa Clara's Market Area. A review of access to credit indicates that minorities and women tend to receive less than the requested amount of credit when they are approved than nonminority males; they are approved for credit less frequently than nonminority males, and that credit costs them more than nonminority males.

This evidence of passive discrimination stands alongside the disparities observed in public sector contracting to illustrate that substantial discriminatory inequities that exist in the County's Market Area, supporting a finding that the County may have a compelling interest in implementing remedies to address these gaps.

The Disparity Study identified significant disparity in the utilization of DIV-BE firms in their spending, and disparity in the private market. However, the qualitative data did not determine that discrimination was prevalent among DIV-BE due to the limited qualitative data gathered. In partnership with and support from the County, there were extensive outreach campaigns that encouraged businesses in the marketplace to participate in the study.

California Prop 209 limits the use of race- and gender-based remedies in non-federal contracting. Therefore, the data obtained and analyzed for this report should provide a foundation for the County to implement a race- and gender-neutral business inclusion program that can address the disparities identified.