



24-4792

DATE: April 16, 2024 (Item No. {{item.number}})

TO: Board of Supervisors

FROM: Ky Le, Deputy County Executive

SUBJECT: 2023 County of Santa Clara Disparity Study

RECOMMENDED ACTION

Receive report from the Office of the County Executive relating to the 2023 County of Santa Clara Disparity Study.

FISCAL IMPLICATIONS

There are no fiscal impacts as a result of receiving this report.

REASONS FOR RECOMMENDATION AND BACKGROUND

Introduction

Board of Supervisors Policy Manual Section 3.11 calls for inclusive outreach activities to be taken, as permitted by law, to ensure that small and diverse business enterprises have the opportunity to compete for and participate in contracts issued by the County for construction, services, and the purchase of supplies and equipment. Board policy recognizes Minority-Owned Business Enterprises (MBE), Women-Owned Business Enterprises (WBE), LGBT-Owned Business Enterprises (LGBT-BE), and Disabled Veteran-Owned Business Enterprises, collectively known as “diverse business enterprises” (DIV-BE).

On March 9, 2021 (Item No. 46), Administration recommended engaging consultants to conduct a study on County utilization of DIV-BEs across its portfolio of contracted goods and services and assess any disparities in utilization relative to the DIV-BEs' availability in the County's marketplace. Study findings would inform strategies to advance the principles of equity through County procurement and contracting processes. In February 2022, the County retained MGT of America Consulting, LLC (MGT) to complete the County's inaugural “Disparity Study” to achieve the following objectives.

1. Determine if disparity exists between the utilization of diverse businesses and their availability in the relevant geographic market area.
2. 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.

3. Recommend strategies to improve small and diverse business enterprises' ability to participate in County procurement and contracting processes.

Methodology and Community Engagement

In preparation for the County's first Disparity Study, representatives from key County Departments and Agencies were invited to serve on the Equity in Contracting Steering Committee (ECSC). As the center-led governance body for all supplier diversity-oriented programs across the County, representatives were asked to review project plans and deliverables for the Disparity Study. Additionally, MGT interviewed nearly 50 staff at all levels of the organization to better understand County purchasing processes and identify any barriers staff may perceive as limiting small and diverse business enterprises from conducting business with the County.

The Disparity Study focused on three areas. First, MGT completed an expansive quantitative analysis of more than \$2.4 billion of County contracted expenditures between July 1, 2016, and June 30, 2021.¹ To qualify as in-scope, expenditures must have originated from a competitive sourcing method or a single-source exception and resulted in a contract award to a for-profit company. Contract expenditures with nonprofit entities, contracts pursuant to sole-source exceptions, and expenditures otherwise exempt from competitive procurement (i.e., field purchase orders, p-card transactions, direct payment transactions, assumed contracts, or exemptions to competitive procurement) were excluded from the utilization analysis. It should be noted that significant data limitations, such as a lack of relevant subcontractor data or cohesive contracts reports from the County's multiple procurement systems, narrowed the scope of the spend data available for analysis.

In-scope data was used to calculate the County's utilization of DIV-BEs and determine the County's geographic marketplace from which goods and services are most often acquired. MGT then used their proprietary "custom census" approach to derive estimates of available DIV-BE firms located within this market area. Finally, the difference between the availability of DIV-BE firms and the County's utilization of DIV-BE firms was used to calculate the magnitude of any identified disparities.

Secondly, data from the U.S. Census Bureau and other third-party sources were analyzed to determine the existence of passive discrimination in the private marketplace in which the County resides. 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. To identify any pattern of discriminatory practices in the private marketplace, MGT calculated private sector disparity indices using U.S. Census Bureau's 2012 Survey of Business Owners data. This examined whether DIV-BE firms received a proportionate share of sales based on their availability in the marketplace. MGT also employed logistic regression and linear regression to Public Use Microdata Samples (PUMS) data derived from the 2016-2020 American Community Survey to rule out factors other than discrimination to describe identified disparities.

¹ The study assessed spend from competitively established contracts for-profit vendors to determine utilization levels of DIV-BEs in the study period. A detailed list of excluded contract types can be found in section 3.2.1 of the Disparity Study report.

Finally, MGT gathered qualitative data through a variety of methods and campaigns to identify broad patterns of perceived discrimination and possible causes behind disparities. Vendor community engagement and participation opportunities included:

Outreach efforts included:

- 57 Professional Association focus groups, interviews, and surveys
- 280 Surveys of firms within market area
- 37 participants throughout 6 Business engagement meetings
- 15 Personal interviews with business owners
- 10 Email Campaigns
- 2 Press Releases
- County social media campaigns
- Disparity Study Website and 24/7 web survey

Findings and Recommendations

The Disparity Study showed underutilization of DIV-BE firms relative to their availability in the marketplace. From July 1, 2016, through June 30, 2021, approximately 15% of County contract expenditures were with DIV-BE firms. However, if County contract expenditures with DIV-BE firms had been equivalent to the estimated number of DIV-BE firms available in the County’s relevant marketplace, expenditures with DIV-BE firms would have been closer to 28% of total expenditures. The Disparity Study reinforced the need for process improvements and initiatives to increase the utilization of DIV-BE firms as part of the County’s ongoing commitment to equity and inclusion. The County’s public sector effort would be part of a broader effort to overcome “significant marketplace discrimination” that exists for DIV-BE firms operating in the private sector within the County’s market area.

It should be noted that staff’s recommendations below allow the County to address the underutilization of DIV-BEs found in the Study through mechanisms that are in compliance with Proposition 209. In 1996, the voters of California passed Proposition 209 (“Prop 209”). Prop 209 amended the California Constitution to, in part, preclude public entities from granting preferential treatment on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. This includes contract quotas, set-asides, and formulas giving preference on the basis of race and gender.

One exception to this prohibition is when preferential treatment is required “to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.” (Cal. Const., art. I, § 31.) This exception is primarily found in federal programs which impose minority- or women-owned business enterprise participation requirements, such as projects that are funded in part by funds from the Federal Highway Administration or Federal Aviation Administration. The County has few such contracts.

In support of County efforts to increase DIV-BE utilization, MGT included seven recommendations—listed as remedies in the Disparity Study report—for the County’s consideration. Of MGT’s seven recommendations, Administration proposes proceeding with six and delaying one for consideration in the future. The remaining six recommendations can be divided into two workstreams: (1) Enhancing procurement practices and technologies to

reduce barriers and improve vendor participation and data collection; and, (2) Improving outreach and targeted programs for the small and local business community to advance inclusivity, diversity, and economic development for DIV-BEs.

1. Improve Data Collection

Staff recommend expanding the vendor setup process to capture key business demographic information. This includes developing relevant fields in the SAP vendor profile, such as small business and diverse business enterprise identifiers, and partnering with the Controller-Treasurer's Office to create a process for vendors to provide this information to the County when setting up the vendor profile. Staff also recommends the development of an online mandatory subcontractor utilization reporting tool through which prime contractors can provide necessary data regarding the business demographics and utilization of subcontractors on County contracts.

2. Procurement and Solicitation Forecast

Staff recommends including all competitive procurement methods in the public-facing "Upcoming Solicitations" dashboard. Staff also recommend assessing whether the Master Acquisition List (MAL) report remains necessary once an all-solicitations dashboard is finalized. Staff recognizes the challenge of an accurate procurement forecast longer than six months in the future.

3. Streamline Procurement Technologies

The County needs one unified procurement IT system; its current system is too fragmented. Staff are currently assessing capabilities of Ariba to meet the County's purchasing, contract management, and reporting needs. If it is determined that Ariba is unable to meet County requirements, Administration will seek an alternative solution. Following a gap analysis and existing systems evaluation, the Office of Countywide Contracting Management (OCCM) will forward recommendations to the Enterprise Resource Planning (ERP) Subcommittee regarding streamlining technologies for accuracy and data collection.

4. Adopt a Utilization Audit Clause for Contracts

A subcontractor utilization tool would be complemented by a contract provision mandating the annual report and non-compliance may be subject to County audit of subcontractor payment records.

5. Establish Business Relationships with Organizations

Administration will augment its current outreach and engagement initiatives to incorporate or expand its current efforts on the following:

- Staff will seek to collaborate with municipal and ethnic chambers of commerce as thought partners to identify opportunities for expanded and inclusive outreach, including language interpretation and translation needs, through listening sessions and surveys.
- Staff will continue to deploy a mix of in-person, virtual, or hybrid outreach and educational events and will participate in relevant vendor outreach events hosted by

local municipal and ethnic chambers of commerce such as the Silicon Rainbow Chamber of Commerce's annual CONNECT event.

- Additionally, staff will seek to create opportunities for a regional and/or coordinated outreach approach and infrastructure, such as:
 - Partnering with the State of California, the Small Business Administration, and local technical assistance centers to provide resources to the small business community.
 - Partnering with the Santa Clara Valley Transportation Authority and the City of San José to host networking events and educational workshops for parallel business lines.

6. Establish a Small Business Enterprise Program

Due to prohibitions on the use of affirmative action in public contracting (i.e., Proposition 209), staff concurs with MGT that a robust and small and local business enterprise program may potentially increase utilization with DIV-BE. OCCM has developed a policy and program proposal to establish a formal Local and Small Enterprise Program (LSEP). This includes:

- Expanding the local bidding preference for local businesses.
- Establishing a new bidding preference for California DGS certified small business enterprises.
- Extension of the small business enterprise bidding preference to primes who subcontract 20% or more of the work to a certified small business enterprise.
- Application of bidding preferences to all applicable procurement methods, unless precluded by law or funding source.
- Good faith effort requirements for including certified small business enterprises in limited competition procurements.
- Extension of Pay Now payment term to certified SBEs.

7. Adopt aspirational small-business enterprise goals.

Staff recommend setting aspirational goals after the next Disparity Study is completed. While MGT's analyses were as comprehensive and thorough as possible, their report was constrained by significant data limitations inherent in the County's current procurement technology infrastructure. For instance, the County does not currently collect and assign key business demographics in vendor profiles, nor does it yet have the capability to capture and report on subcontractor utilization that may contain a significant portion of spend with small business enterprises. Some of the very significant data limitations may explain why levels of disparity varied so significantly across procurement and DIV-BE firm categories.

Current Activities and Next Steps

County staff have worked concurrently throughout the Disparity Study to engage the broader business community in outreach and education initiatives on County procurement. Related efforts include:

- Expansion of the report of Upcoming Solicitations to be shared at Board of Supervisors meetings.
- County-hosted training and events, including multiple Supplier Day events to connect interested vendors with County buyers and hosting several in-person RFP and ITB-focused trainings and workshops.
- Representation at chambers of commerce and community partner-hosted events, such as the Rainbow Chamber of Commerce Silicon Valley’s “Connect: 2024” event.
- Continued engagement of the County’s community-based partners through the Community Based Initiative.
- Increased the frequency of the County’s vendor newsletter and information campaigns to highlight current and upcoming business opportunities, relevant trainings and events, and other procurement-related updates.
- Supplier Diversity reporting for the Health and Hospital System in compliance with California Assembly Bill 962.
- Development of a solicitation to acquire a new electronic sourcing and solicitation management tool.

Staff intends to provide the Finance and Government Operations Committee with a detailed proposal and implementation plan for each of the above recommendations in its next semi-annual report in August 2024.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

STEPS FOLLOWING APPROVAL

Please notify Michael Fogelstrom in the Office of Countywide Contracting Management upon processing of this report.

ATTACHMENTS:

- SCC Disparity Study Executive Summary Final Draft
- SCC Disparity Study Report Final Draft
- SCC Disparity Study Appendices