



Committee: GO
Committee Review: At a future date
Staff: Christine Wellons, Chief Legislative Attorney
Purpose: To receive testimony – no vote expected

AGENDA ITEM #7
November 12, 2024
Public Hearing

SUBJECTS

Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date

- Lead Sponsors: Councilmembers Jawando and Sayles
- Co-Sponsors: Council President Friedson, Councilmember Balcombe, Council Vice-President Stewart, and Councilmembers Albornoz, Fani-González, Mink, Katz, and Glass

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Receive public testimony.

DESCRIPTION/ISSUE

Expedited Bill 23-24 would:

- (1) extend the sunset date for the County’s minority owned business purchasing program;
- (2) require an evaluation and report regarding the need to extend the program; and
- (3) generally amend the law regarding procurement.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report	Page 1
Expedited Bill 23-24	© 1
Montgomery County Disparity Study (2024) – Executive Summary	© 3

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MEMORANDUM

November 7, 2024

TO: County Council

FROM: Christine Wellons, Chief Legislative Attorney

SUBJECT: Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date

PURPOSE: Public Hearing – receive public testimony

Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date, is scheduled for introduction on October 15, 2024. The Lead Sponsors are Councilmembers Jawando and Sayles. Co-Sponsors are Council President Friedson, Councilmember Balcombe, Council Vice-President Stewart, and Councilmembers Albornoz, Fani-González, Mink, Katz, and Glass.

A public hearing on the bill is scheduled for November 12 at 1:30 p.m. A worksession of the Government Operations and Fiscal Policy (GO) Committee is tentatively scheduled for December 5 at 9:00 a.m.

Expedited Bill 23-24 would:

- (1) extend the sunset date for the County’s minority owned business purchasing program;
- (2) require an evaluation and report regarding the need to extend the program; and
- (3) generally amend the law regarding procurement.

BACKGROUND

Since 1978, the County has had a minority business program under its procurement system. Since 1990, the program has been known as the Minority, Female, and Disabled-Owned Business Enterprise (MFD). To justify the continuation of the MFD program under applicable law, the County periodically hires experts to conduct a disparity study to gauge the ongoing need for the program.

In September 2024, the County’s latest disparity study was released. The study justifies the ongoing need for the MFD program, as illustrated by the following disparities:

TABLE E-5 – DISPARITY ANALYSIS SUMMARY

Business Ownership Classification	All	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
African Americans	Disparity	Disparity	Disparity	No Disparity	Disparity
Asian Americans	Disparity	Disparity	Disparity	Disparity	Disparity
Hispanic Americans	No Disparity	No Disparity	No Disparity	Disparity	No Disparity
Native Americans	Disparity	Disparity	Disparity	Disparity	Disparity
Total MBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity
Nonminority Females	Disparity	Disparity	Disparity	Disparity	No Disparity
Total M/FBE Firms	Disparity	Disparity	Disparity	Disparity	No Disparity
Unclassified Firms	No Disparity	No Disparity	No Disparity	No Disparity	Disparity

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00. **Disparity** indicates statistically significant disparity.

See © 14

BILL SPECIFICS

Based upon the findings of ongoing disparities in procurement affecting MFD businesses, Expedited Bill 23-24 would extend the sunset of the County’s MFD law from December 31, 2024 until December 31, 2029. The bill would require the Director of Procurement to complete a new disparity study by July 1, 2029.

This packet contains:

Expedited Bill 23-24	<u>Circle #</u> 1
Montgomery County Disparity Study (2024) – Executive Summary	3

Expedited Bill No. 23-24
Concerning: Contracts and Procurement
– Minority Owned Business
Purchasing Program – Extension of
Sunset Date
Revised: 10/15/2024 Draft No. 2
Introduced: October 15, 2024
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Jawando and Sayles
Co-Sponsors: Council President Friedson, Councilmember Balcombe, Council Vice-President Stewart, and Councilmembers Albornoz, Fani-González, Mink, Katz, and Glass

AN EXPEDITED ACT to:

- (1) extend the sunset date for the County’s minority owned business purchasing program;
- (2) require an evaluation and report regarding the need to extend the program; and
- (3) generally amend the law regarding procurement.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-61 and 11B-64

Boldface	<i>Heading or a defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland, approves the following act:

1 **Sec 1. Sections 11B-61 and 11B-64 are amended as follows:**

2 **Sec. 11B-61. Reports.**

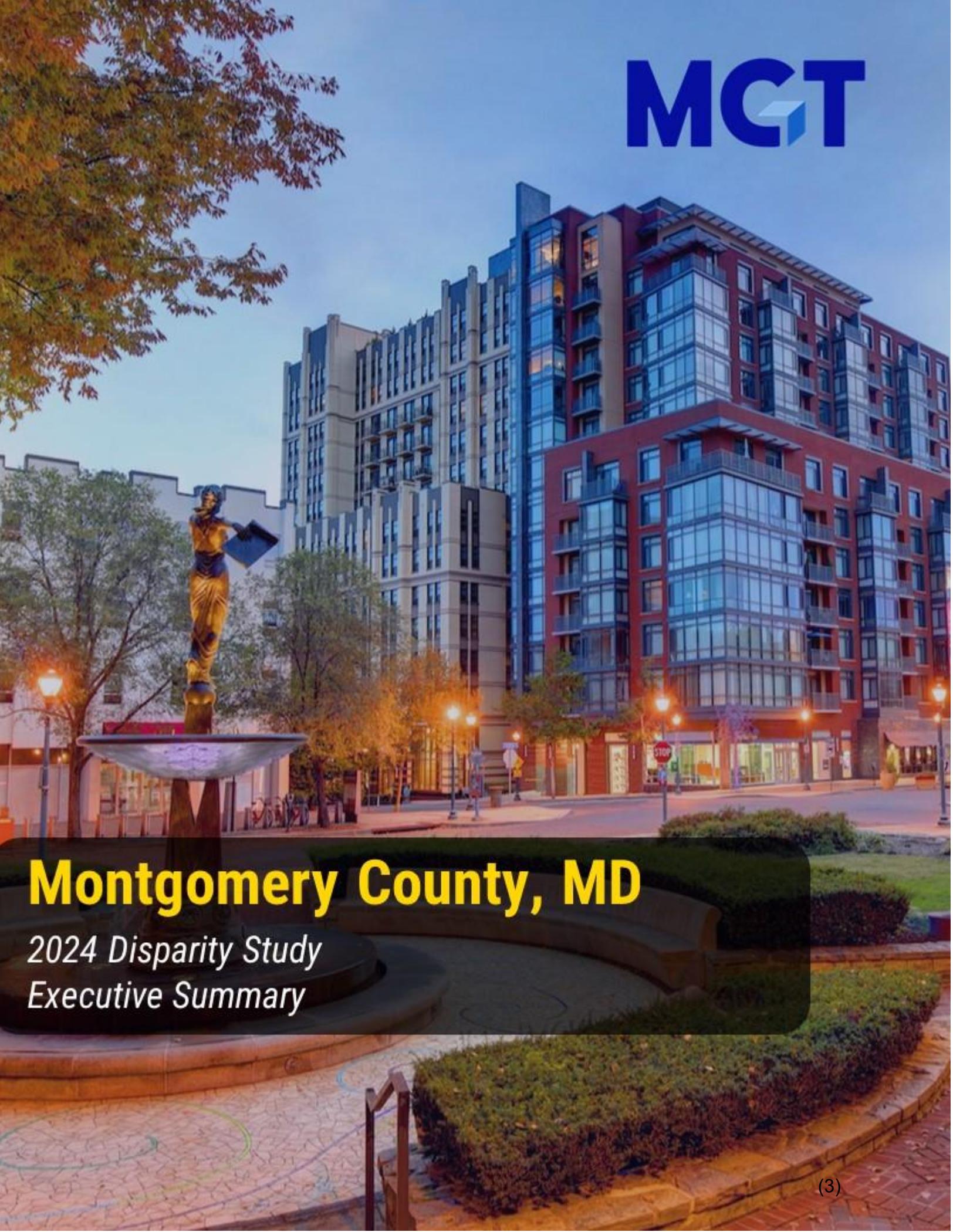
3 * * *

4 (b) By July 1, [2023] 2029, the Director of the Office of Procurement must
5 submit a report to the County Council evaluating the need to extend the
6 minority owned business purchasing program.

7 **Sec. 11B-64. Sunset date.**

8 This Article is not effective after December 31, [2024] 2029.

9 **Sec 2. Expedited Effective Date.** The Council declares that this legislation
10 is necessary for the immediate protection of the public interest. This Act takes effect
11 on the date on which it becomes law.

The background of the slide is a photograph of a modern, multi-story brick and glass apartment building at dusk. In the foreground, there is a circular fountain with a bronze statue of a woman holding a tablet. The scene is illuminated by streetlights, and trees with autumn foliage are visible on the left.

Montgomery County, MD

*2024 Disparity Study
Executive Summary*



Montgomery County, MD

Disparity Study
SEPTEMBER 24, 2024

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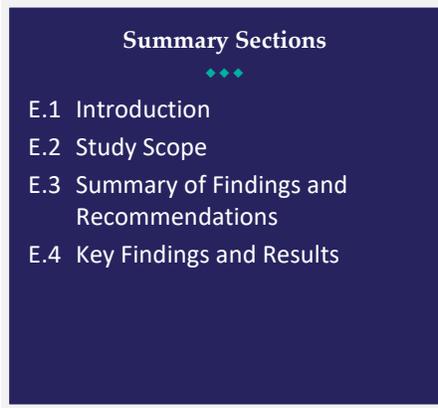
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MGT Impact Solutions, LLC
4320 West Kennedy Blvd.
Tampa, Florida 33609

Executive Summary

E-1. Introduction



A dark blue rectangular box containing a table of contents for the summary sections. The title 'Summary Sections' is at the top, followed by three small green diamond icons. Below are four items: 'E.1 Introduction', 'E.2 Study Scope', 'E.3 Summary of Findings and Recommendations', and 'E.4 Key Findings and Results'.

Summary Sections	
E.1	Introduction
E.2	Study Scope
E.3	Summary of Findings and Recommendations
E.4	Key Findings and Results

Montgomery County, Maryland (County) retained MGT to conduct a Disparity Study for the purpose of ascertaining whether there is a statistically significant disparity between the availability of qualified minority, female, and disabled-businesses (MFDs) in the relevant geographic marketplace that are willing and able to provide goods and services to the County—and in addition, ascertaining the County’s utilization of such MFDs.

Within the context of studying the County’s procurement practices, the study was conducted in a manner consistent with disparity study best practices, controlling local legal precedents, and constitutional law in order to properly

advise the County about the legal basis for potential remedies, if necessary. MGT’s methodology included a review of disparity studies legal framework, analyses of utilization, availability, and statistical disparity, qualitative research, private sector analyses, and findings, commendations, and recommendations.

The results of this study and the conclusions drawn are presented in detail in **Chapters 4** through **7** of the report.

E-2. Background

Montgomery County’s MFD Program has a rich history of supporting minority, female, and disabled-owned businesses, reflecting the county’s commitment to diversity and inclusivity. Established in 1978 as the Minority Business Enterprise (MBE) Program, it aimed to increase the participation of minority-owned businesses in county contracts. This early initiative paved the way for greater inclusivity, leading to the program’s expansion in 1980 to include women-owned businesses and in 1985 to encompass disabled-owned businesses. By 1990, these programs were consolidated into the Minority, Female, and Disabled-Owned Business Enterprise (MFD) Program, symbolizing a holistic approach to supporting underrepresented business owners.

As the MFD Program matured, it introduced additional initiatives to further empower MFD-owned businesses. In 2001, the program began offering outreach and technical assistance, recognizing the need to provide support beyond certification. This step was crucial in helping MFD-owned

businesses navigate the complexities of contracting and procurement, ultimately enhancing their competitiveness in the marketplace.

The establishment of the Local Small Business Reserve Program (LSBRP) in 2008 marked another milestone in the MFD Program's evolution. This program was designed to provide contracting opportunities specifically for small businesses, including those owned by minorities, women, and individuals with disabilities. By creating a pathway for small businesses to participate in county contracts, the LSBRP contributed to a more diverse pool of contractors and promoted economic growth among underrepresented groups.

In 2010, the MFD Program expanded its support for MFD-owned businesses with the creation of the Business Development Assistance Program (BDAP). This program offered training and support to help MFD-owned businesses enhance their competitiveness and navigate the challenges of the business landscape. By providing resources and guidance, the BDAP empowered MFD-owned businesses to thrive and succeed.

Recent advancements in the MFD Program include the adoption of a new MFD Program Policy in 2015, reaffirming Montgomery County's commitment to supporting MFD-owned businesses. The launch of the MFD Online Certification and Compliance System in 2020 further streamlined the certification process, making it easier for MFD-owned businesses to access county contracts.

The Montgomery County MFD Program has evolved significantly since its inception, reflecting the county's commitment to diversity, equity, and inclusion in its business practices. Through its various initiatives and policies, the MFD Program has not only supported MFD-owned businesses but has also contributed to the economic vibrancy and inclusivity of the local community.

E-3. Study Scope

The Study assessed and identified gaps between vendor availability and utilization in the County's portfolio of acquired goods and services across the six-year study period between July 1, 2015, through June 30, 2021. The Study analyzed contract expenditures which were competitively procured during the six-year period. The Study excluded contracts that were exempt from competitive procurement requirements (including COVID-19 related purchases), awarded to non-profit or other governmental organizations, or transactions outside of the study period. The Study examined whether disparity exists within the following procurement categories: a) Construction; b) Professional Services; c) Other Services; and d) Goods.

The Study identified utilization of Disability-Owned Business Enterprises (DOBE) as defined by the Montgomery County Office of Procurement. The data on this business ownership classification was minimal in utilization and availability. Therefore, disparity was not calculated.

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

The methodology and data parameters employed by MGT to conduct the Study are detailed in **Chapter 4, Market Area and Availability Analysis** of the full report.

E-4. Key Findings

The Study provides a comprehensive analysis of the county's expenditure data, focusing on the utilization, availability, and disparity of minority- and women-owned businesses (M/FBEs) in contracting activities. The Study identifies the relevant geographic market area and highlights significant disparities in some business categories. The findings underscore the need for targeted efforts to address these disparities and promote equitable opportunities for M/FBEs in Montgomery County's contracting activities.

Finding A: Relevant Geographic Market Areas (*Chapter 4, Appendix A*)

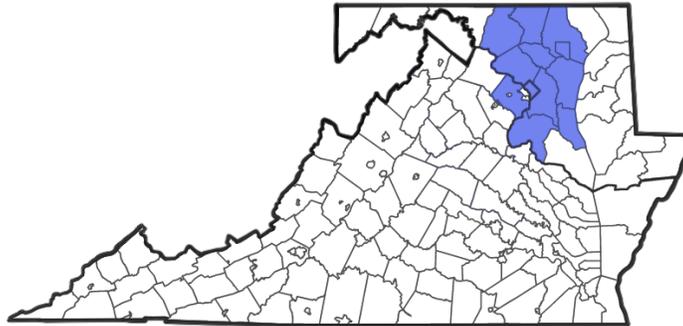
Expenditure data was utilized to determine the Relevant Geographic Market Area for the study.¹ This included both expenditures to prime contractors and subcontractors. Based on the market area analysis results for each business category, the recommended relevant market area are the 12 counties within the Montgomery County Market Area ("Market Area"), as seen in **Figure 8-1** below.

¹ Chapter 4, Market Area and Availability Analyses

FIGURE E-1. RELEVANT GEOGRAPHIC MARKET AREA

Montgomery County, MD Relevant Market Area	
District Of Columbia	Charles County, MD
Anne Arundel County, MD	Frederick County, MD
Baltimore City, MD	Howard County, MD
Baltimore County, MD	Montgomery County, MD
Calvert County, MD	Prince George's County, MD
Carroll County, MD	Fairfax County, VA

EXHIBIT E-1. RELEVANT GEOGRAPHIC MARKET AREA MAP



The spending in the Relevant Geographic Market Area is represented in **Table E-1**. The product market represents the spending by North American Industry Classification System (NAICS). Overall, City procurements occur in **203** NAICS industry groups. In Construction, County procurements occur in **56** NAICS industry groups. In Professional Services, County procurements occur in **95** NAICS industry groups. In Other Services, County procurements occur in **108** NAICS industry groups. In Goods, County procurements occur in **99** NAICS industry groups. The City's product markets are shown in **Appendix A, Detailed Product Market Analysis**.

TABLE E-1.
MARKET AREA ANALYSIS, CONTRACTS DISTRIBUTION OF DOLLARS BY BUSINESS CATEGORY,
COUNTY MARKET AREA

CONSTRUCTION	Amount	Percent
<i>Inside MONTGOMERY COUNTY, MD RGMA</i>	\$962,872,013.89	88.26%
Outside MONTGOMERY COUNTY, MD RGMA	\$128,085,003.62	11.74%
CONSTRUCTION, TOTAL	\$1,090,957,017.51	100.00%
PROFESSIONAL SERVICES	Amount	Percent
<i>Inside MONTGOMERY COUNTY, MD RGMA</i>	\$766,080,080.91	81.59%
Outside MONTGOMERY COUNTY, MD RGMA	\$172,826,822.24	18.41%
PROFESSIONAL SERVICES, TOTAL	\$938,906,903.15	100.00%
OTHER SERVICES	Amount	Percent
<i>Inside MONTGOMERY COUNTY, MD RGMA</i>	\$659,761,407.18	69.19%
Outside MONTGOMERY COUNTY, MD RGMA	\$293,723,976.39	30.81%
OTHER SERVICES, TOTAL	\$953,485,383.57	100.00%
GOODS	Amount	Percent
<i>Inside MONTGOMERY COUNTY, MD RGMA</i>	\$275,889,463.06	54.94%
Outside MONTGOMERY COUNTY, MD RGMA	\$226,279,071.26	45.06%
GOODS, TOTAL	\$502,168,534.32	100.00%
ALL BUSINESS CATEGORIES	Amount	Percent
<i>Inside MONTGOMERY COUNTY, MD RGMA</i>	\$2,664,602,965.04	76.45%
Outside MONTGOMERY COUNTY, MD RGMA	\$820,914,873.51	23.55%
ALL BUSINESS CATEGORIES, TOTAL	\$3,485,517,838.55	100.00%

Finding B: 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. Post-Croson case law has not prescribed a single approach to deriving firm availability, and agencies have used various means to estimate pools of available vendors that have withstood legal scrutiny.

MGT calculated 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, Market Area and Availability Analyses**. Detailed availability results by business category and 4-digit NAICS code are provided in Appendix C. The availability estimates aggregated by all procurement categories are illustrated in [Error! Reference source not found. E-2](#)

TABLE E-2 - ESTIMATION OF AVAILABLE FIRMS, ALL PROCUREMENT CATEGORIES

BUSINESS OWNERSHIP CLASSIFICATION	% OF AVAILABLE FIRMS
African Americans	11.58%
Hispanic Americans	6.83%
Asian Americans	5.25%
Native Americans	0.71%
Total MBE Firms	24.37%
Nonminority Females	18.14%
Total M/FBE Firms	42.52%
Unclassified Firms	57.48%

Source: Custom Census Analysis. Study Period: July 1, 2015, through June 30, 2021

Finding C: M/FBE Utilization (Chapter 5, Appendix C)

In **Table E-3**, the utilization analysis shows that Unclassified Firms are utilized at higher rates than their M/FBE counterparts. The County's utilization with M/FBE firms was 22.07 percent while Unclassified Firms totaled 77.93 percent. MBE utilization represented 16.34 percent of the total dollars analyzed. The highest utilization rates among M/FBE classifications included Nonminority Female firms accounting for 13.51 percent of dollars paid.

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

BUSINESS OWNERSHIP CLASSIFICATION	ALL PROCUREMENT CATEGORIES	
	Dollars (\$)	Percent (%)
African Americans	\$241,194,355.63	6.92%
Asian American	\$32,419,844.86	0.93%
Hispanic Americans	\$291,477,444.49	8.36%
Native Americans	\$4,566,190.16	0.13%
Total MBE Firms	\$569,657,835.14	16.34%
Nonminority Females	\$470,766,268.10	13.51%
Total M/FBE Firms	\$769,372,453.87	22.07%
Unclassified Firms	\$2,716,145,384.68	77.93%
TOTAL	\$3,485,517,838.55	100.00%

Source: MGT developed a Master Utilization Database based on County's spending between July 1, 2015, through June 30, 2021

Finding D: Disabled-Owned Business Enterprise Utilization (Chapter 5)

The utilization analysis shows that the Disabled-Owned Business Enterprises (DOBE) utilization amounted to \$237,343.63, or less than a half percent of total payments analyzed. The data collection and preparations included identifying firms that classify as owned by persons with disabilities. Data sources that identify these business ownership classifications were limited because it is not maintained as broadly as minority and female data sources are. Being that there is an overlap of the race, ethnicity, and gender classifications, utilization is shown at the total DOBE classification and not by race, ethnicity, or gender.

TABLE E-4 - UTILIZATION ANALYSIS BY BUSINESS OWNERSHIP CLASSIFICATION
DISABLED-OWNED BUSINESS ENTERPRISES

BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
DOBE	\$237,343.63	\$0.00	\$237,343.63	\$0.00	\$0.00
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
	(%)	(%)	(%)	(%)	(%)
DOBE	0.01%	0.00%	0.01%	0.00%	0.00%

Source: MGT developed a Master Utilization Database based on County’s spending between July 1, 2015 through June 30, 2021

Finding E: Disparity (Chapter 5 and Appendix C)

This section includes the results of the disparity ratios calculated in **Chapter 5**. MGT’s disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable. MGT applies two significant tests to determine statistical significance: (1) whether the disparity index is less than or equal to 80 percent of respective M/FBE 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 is typically deemed justifiable by courts, making these results critical outcomes of the subsequent analyses.

The overall results show disparity for minority and nonminority female, collectively. Statistically significant disparity was identified collectively for minority and nonminority females within Goods and Other Services. Detailed disparity results by business category and 4-digit NAICS code are provided in **Appendix C, Utilization, Availability, and Disparity by NAICS Codes**.

TABLE E-5 – DISPARITY ANALYSIS SUMMARY

Business Ownership Classification	All	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
African Americans	Disparity	Disparity	Disparity	No Disparity	Disparity
Asian Americans	Disparity	Disparity	Disparity	Disparity	Disparity
Hispanic Americans	No Disparity	No Disparity	No Disparity	Disparity	No Disparity
Native Americans	Disparity	Disparity	Disparity	Disparity	Disparity
Total MBE Firms	Disparity	Disparity	Disparity	Disparity	Disparity
Nonminority Females	Disparity	Disparity	Disparity	Disparity	No Disparity
Total M/FBE Firms	Disparity	Disparity	Disparity	Disparity	No Disparity
Unclassified Firms	No Disparity	No Disparity	No Disparity	No Disparity	Disparity

BOLD Indicates a substantial level of disparity, which is a disparity index below 80.00. **Disparity** indicates statistically significant disparity.

Finding F: Private Sector Disparities in Census SBO and ABS Data (Chapter 6)

Analysis of the U.S. Census 2012 SBO data, 2017 ABS data, and the PUMS 2016-2020 data demonstrate, in response to the overarching research question driving this analysis, that marketplace discrimination exists for M/FBE firms operating in the private sector within Montgomery’s marketplace. Thus, based on the courts’ guidance in this domain, Montgomery has a compelling interest in continuing its current M/FBE program (referred to as MFD for the County).

To the more specific research questions:

- Findings from the U.S. Census 2012 SBO and 2017 ABS data indicate substantial disparities for most M/FBE 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/FBE firms were significantly less likely than nonminority males to be self-employed.
 - If they were self-employed, most M/FBE firms earned significantly less in 2016-2020 than self-employed nonminority males, holding all other variables constant.

Analysis of observed vs. 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/FBEs.

Finding G: Disparities in Individual Wages, Business Earnings, Self-Employment Rates (Chapter 6)

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 Montgomery marketplace.

The analysis of observed versus predicted self-employment rates showed 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/FBEs.

Finding H: Qualitative Results (Chapter 7)

The collective qualitative and anecdotal activities gathered input through vendor surveys, in-depth interviews, and business engagement meetings, business owners or representatives in the Relevant Market Area regarding their opinions and perceptions of how discrimination has affected their experiences working with County or with primes as subcontractors on County projects. Together, the County and MGT executed various outreach methods including direct emails, postcards, personal contact, and more to encourage business participation in the study.

Anecdotal data was gathered from a broad spectrum of businesses and industries using various methods. Many M/FBEs pointed to informal networks, limited access to capital, limited communication from the County, and similar factors as obstacles in their dealings with the County. Some M/FBEs reported feeling discriminated against by the County or its prime contractors based on race, ethnicity, or gender, citing remarks or a lack of contracting opportunities as evidence. Additionally, M/FBEs frequently expressed concerns about the lack of support from the County, challenges in competing with larger businesses for contracts, and frustrations with the prolonged bidding process. The insights collected from the diverse business group serve as a foundation for developing policies and procedures that address the needs of businesses in the area

E-5. Key Recommendations

Montgomery County is applauded for its ongoing commitment to investing resources in fostering M/FBE growth and development. The recent Disparity Study conducted by MGT has played a

pivotal role in this endeavor by meticulously identifying existing initiatives aimed at promoting inclusive opportunities for businesses within the community. Through this study, the City has demonstrated its dedication to creating an environment that fosters diversity, equity, and inclusion, thus paving the way for a more vibrant and thriving local economy.

Therefore, the remedies are suggested to encourage the participation of small, minority-owned, woman-owned, physically disabled businesses in government contracting and procurement. The majority of the forthcoming suggestions are derived from a combination of various discoveries and may not exclusively correlate with a single finding. 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. Most of the following commendations and recommendations are based on multiple findings and do not necessarily tie to one finding.

Recommendation A: Expand Race- and Gender-Neutral Initiatives

The County is commended for incorporating various layer of race- and gender-neutral initiatives in its procurement process. Initiatives such as the Local Small Business Reserve Program, Local Business Preference Program, Local Business Subcontracting Program, and Disabled-Owned Business Enterprise Program. Small and Local Business Program initiatives have more flexibility to increase the economic mobility of businesses in the marketplace where the County does business. Race- and gender-neutral programs also offer more flexibility for the inclusion of minority and female businesses to engage in procurement opportunities.

As such, the County should expand the small and local business initiatives to include the Maryland Department of Transportation Disadvantaged Business Enterprise (DBE) certified firms as part of their outreach and engagement for procurement opportunities. The County should also incorporate contract specific goals in procurements where these initiatives are enacted.

Recommendation B: Expand and Enhance Data Collection

Within this report, MGT detailed the level of effort it took to combine multiple data sources for an accurate analysis of the utilization. It was identified during the study that there are significant gaps and processes that are lacking in order for the latter to be the case. Improved data collection will allow the County to understand its true economic impact of the diverse businesses in the market area and produce more detailed reports on the program's utilization. Agencies achieve comprehensive data collection through the use of an e-procurement system that integrates contract compliance to streamline processes and reduce manual workloads. The County also should incorporate and regulate a process to collect all subcontractor data to include non-minority, LSBP, DBE, etc. for comprehensive analysis as part of the contract with vendors.

Improving techniques for collecting subcontractor data requires that there is consistency across departments, which aids in internal and external reporting and future disparity studies.

Recommendation C: Business Outreach and Engagement

Montgomery County should be commended for its extensive and creative outreach to encourage M/FBE and disabled businesses to engage in the County's procurement opportunities. The County hosts several events such as procurement fairs where firms learn about upcoming bids, how to do business with Montgomery County workshops, and a recurring online open house session with procurement staff. These are a few examples of the extensive outreach to M/FBE and disabled firms that the County hosts.

Anecdotal comments by businesses indicated that the County's procurement process as opaque and somewhat of a closed shop, which may not be a fair representation of the actual process. Knowledge of contracting opportunities is the first step in gaining trust with the business community that procurement is open and transparent. Contracting opportunities can be posted on the County's website as well as emailed to M/FBE to encourage bidding on contracts. The County should consider administering a short survey to understand how firms learn about the outreach sessions, if the firms that attend outreach events, bid on County opportunities even as subcontractors, and which of the sessions are useful for their business growth.

To address technical and professional development of M/FBEs, the County should work with professional organizations to facilitate business growth workshops and to improve public understanding of the procurement process. Better education on the procurement process should be a frequent workshop offered directly by the County. need for more educational outreach to the vendor community, including vendor fairs and meetings, to clarify the procurement process and address common questions and concerns.

Recommendation D: Narrow Tailoring

Modifications to the County's MFD Program to address the findings of this study should be narrowly tailored to specifically address the identified disparity in accordance with guidance from case law regarding race- and gender-based procurement programs. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of local M/FBE programs. Federal courts have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored. The federal DBE program has the features in **Table 8-6** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The County should adopt these features in any new or revised M/FBE program policies and procedures.

TABLE E-6 - NARROWLY TAILORED M/FBE PROGRAM FEATURES

NARROWLY TAILORED GOAL-SETTING FEATURES	DBE REGULATIONS
The County should not use M/FBE quotas.	49 CFR 26(43)(a)
The County should use race- or gender-conscious set-asides only in extreme cases.	49 CFR 26(43)(b)
The County should meet the maximum amount of M/FBE goals through race-neutral means.	49 CFR 26(51)(a)

Recommendation E: Expand the Division of Business Relations and Compliance Staff

The Division of Business Relations and Compliance plays a crucial role in fostering economic mobility for businesses in the marketplace. Key responsibilities include coordinating with County departments to identify M/FBE opportunities, contract compliance, goal setting, etc.

The presence of more Business Relations and Compliance personnel is essential for extending contract compliance, goal setting, and outreach to the business community. The necessity for more staff and enhanced system support to effectively manage the growing workload and complexity of tasks associated with economic growth of small, minority, and female businesses.

Recommendation F: Implement a Graduation Program

The utilization analysis identified Hispanic American overutilization in multiple procurement categories in the study where larger M/FBE firms were successfully winning multiple large prime contracts. The County should consider a graduation program for M/FBE firms once they have scaled their businesses to the point where there are no barriers to competing. The County should consider one-half of the Small Business Administration size standards to determine whether a firm graduates out of its program. However, this standard may not accurately reflect the economic landscape, and challenges faced by businesses at the local level. Local size standards can be crafted to align with the economic conditions, industry makeup, and business environment of the Montgomery County region. This ensures that the graduation criteria are more relevant and reflective of the challenges and opportunities faced by M/FBE firms operating within the community. Furthermore, tailoring the M/FBE graduation criteria to local dynamics can aid in stimulating economic growth and supporting small businesses. This ensures that contracting opportunities are accessible to a broader range of local vendors, thereby maximizing the socio-economic impact of the County’s spending. These standards can be reviewed during recertification or a routine audit to confirm continued eligibility in the County’s programs.

Recommendation G: Adopt Annual Aspirational M/FBE Goals

Estimates of M/FBE availability in the County’s market area provide the starting point for countywide annual aspirational goals for contracting across all industry categories. As the County continues to review its achievement toward the annual aspirational goals, it should assess whether race- and gender-based remedies are necessary for all industry categories. Proposed goals are presented in **Table 8-7**. The proposed goals are based on a weighted average of utilization and availability. Aspirational goals are based on an accumulation of all spending within the County and should not be applied rigidly to every individual procurement. Future adjustments to countywide aspirational goals should be based on relative availability and adjusted as needed.

TABLE E-7 – M/FBE ASPIRATIONAL GOALS

Procurement Category	Current Goals	Study Recommended Goal
Construction	16%	22%
Professional Services	19%	25%
Other Services	23%	24%
Goods	8%	10%

Recommendation H: M/FBE Program Sunset

The County should continue the review of their M/FBE program to determine if an evidentiary basis to continue these programs exists every five years and that it should be continued only if there is strong evidence that discrimination continues to disadvantage M/FBEs in the relevant market area. The Program should be reevaluated prior to the sunset date in 2030.

