

**MEMORANDUM**

December 2, 2024

TO: Government Operations & Fiscal Policy Committee

FROM: Christine Wellons, Chief Legislative Attorney

SUBJECTS: Briefing on the *Montgomery County, Maryland 2024 Disparity Study*  
Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date

PURPOSES: Worksession – receive briefing on 2024 disparity report; recommendation expected on Expedited Bill 23-24

**Expected Attendees:**

Ash Shetty, Director of Procurement  
Grace Denno, Office of Procurement  
Trevor Ashbarry, Chief, Finance and Procurement Division, Office of the County Attorney  
Megan Greene, Associate County Attorney  
Debby Kreit, MGT Impact Solutions, LLC  
Vernetta Mitchell, MGT Impact Solutions, LLC  
Andres Bernal, MGT Impact Solutions, LLC

After receiving a briefing regarding the Montgomery County Disparity Study (2024) from MGT Impact Solutions, LLC, and the Office of Procurement, the Government Operations & Fiscal Policy Committee will consider Expedited Bill 23-24.

Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date, was introduced 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 took place on November 12.

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	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity	<b>Disparity</b>
Asian Americans	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Hispanic Americans	No Disparity	No Disparity	No Disparity	<b>Disparity</b>	No Disparity
Native Americans	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Total MBE Firms	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	Disparity	Disparity
Nonminority Females	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity
Total M/FBE Firms	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	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.

**SUMMARY OF IMPACT STATEMENTS**

**Fiscal impact.** According to the Office of Management and Budget, “The bill is not expected to impact County revenue or expenditures.”

**Economic Impact.** “The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 23-24 would have a positive impact on economic conditions in the County. By extending the County’s Minority, Female, and Disabled-Owned Businesses (MFD) Program by five years, more local businesses likely would receive County procurement contracts than otherwise would occur without the continuation of the program, which would prevent capital outflow in County spending. Local businesses that would not otherwise work as prime or sub-contractors would likely see increases in business income, earnings, and potentially workforce size. Additionally, the Bill would benefit certain County residents who own or work for these businesses, resulting in higher earnings and household income.”

**Racial equity and social justice impact.** “The Office of Legislative Oversight (OLO) anticipates Expedited Bill 23-24 will have a positive impact on racial equity and social justice (RESJ) in the County by extending the County’s minority owned business purchasing program.”

**Climate assessment.** “The Office of Legislative Oversight (OLO) anticipates Expedited Bill 23-24 will have no impact as the bill seeks to extend an existing County program that does not have an impact on the County’s contribution to addressing climate change.”

#### **SUMMARY OF PUBLIC TESTIMONY**

The Council did not receive any public testimony regarding Expedited Bill 23-24.

#### **ISSUES FOR THE COMMITTEE’S CONSIDERATION**

The Disparity Study identifies ongoing disparities in County procurement, which justify the continuation of the MFD program in the County under applicable caselaw. Under Supreme Court jurisprudence – including *Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989) and *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) – a race-conscious governmental procurement program must be evaluated under a *strict scrutiny* standard. In other words, the program must be (1) justified by a compelling governmental interest in remedying identified discrimination in the marketplace; and (2) narrowly tailored to remedy that discrimination.

In Montgomery County, statistically significant disparities between the availability and utilization of M/FBE firms have been found to persist, as evidenced in Table E-5, above. Thus, a narrowly tailored program to remedy the ongoing discrimination continues to be legal and appropriate in the County. Program outcomes should be evaluated again in five years under relevant caselaw.

**Potential questions** the Committee might wish to ask MGT and the Office of Procurement about the Study include:

- How does Montgomery County compare to other jurisdictions in terms of addressing inequities in procurement? Are there jurisdictions you have identified as implementing best practices?

- Since the Study period covered the first 15 months of the pandemic, did the pandemic and the County’s associated procurement actions/responses have any impact on the study’s methodology and/or conclusions?
- The study references (page 102) difficulty of minority-owned firms in obtaining credit and other financial changes reported on the Federal Reserves’ Small Business Credit Surveys – does MGT believe that the recent macro-economic environment (e.g., higher interest rates, inflation) has led to more challenges among minority-owned firms such that the disparity results would have worsened since July 2021?
- Are there recommendations to address the following concern identified on page 39 of the Study?  
*County staff acknowledged that the policies guiding the administration of the MFD program and related contracts are well-written and clearly articulated. However, they expressed concern that the program lacks enforceable measures and effective sanctions to ensure compliance. While the framework for administering the program is solid, there is a perceived gap in the ability to hold parties accountable, which diminishes the program's overall effectiveness.*
- What actions is the County taking, or should the County take, to address the following anecdotal concerns noted at page 117 of the Study:  
*The top three barriers for all qualitative participants were:*
  - *Limited communication from the County before, during, and after the bidding process.*
  - *Perception of informal networks and preferred businesses winning bids.*
  - *Lack of access to capital to maintain or improve business.*
The Study noted: a “disconnect in communication of the opportunities to the Black community”.
- One recommendation in the Study (Recommendation F) is to implement a graduation program for M/FBE businesses that have “scaled their businesses to the point where there are no barriers to competing”. Have other jurisdictions or the federal government adopted any graduation programs, and how would sufficient scaling be determined?

**Next Step:** Recommendation on whether to enact Expedited Bill 23-24. Note: If the Committee recommends enactment of the bill, it is anticipated that the Council will hold a vote on the expedited bill on December 10, 2024.

<u>This packet contains:</u>	<u>Circle #</u>
Expedited Bill 23-24	1
Executive Summary: Montgomery County Disparity Study (2024)	3
PowerPoint Presentation by MGT Impact Solutions, LLC	21
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*Montgomery County Disparity Study (2024)*, available at:

[Montgomery County Disparity Study Report FINAL 9 23 2024.pdf](#)

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

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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

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**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

<b>Boldface</b>	<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.**

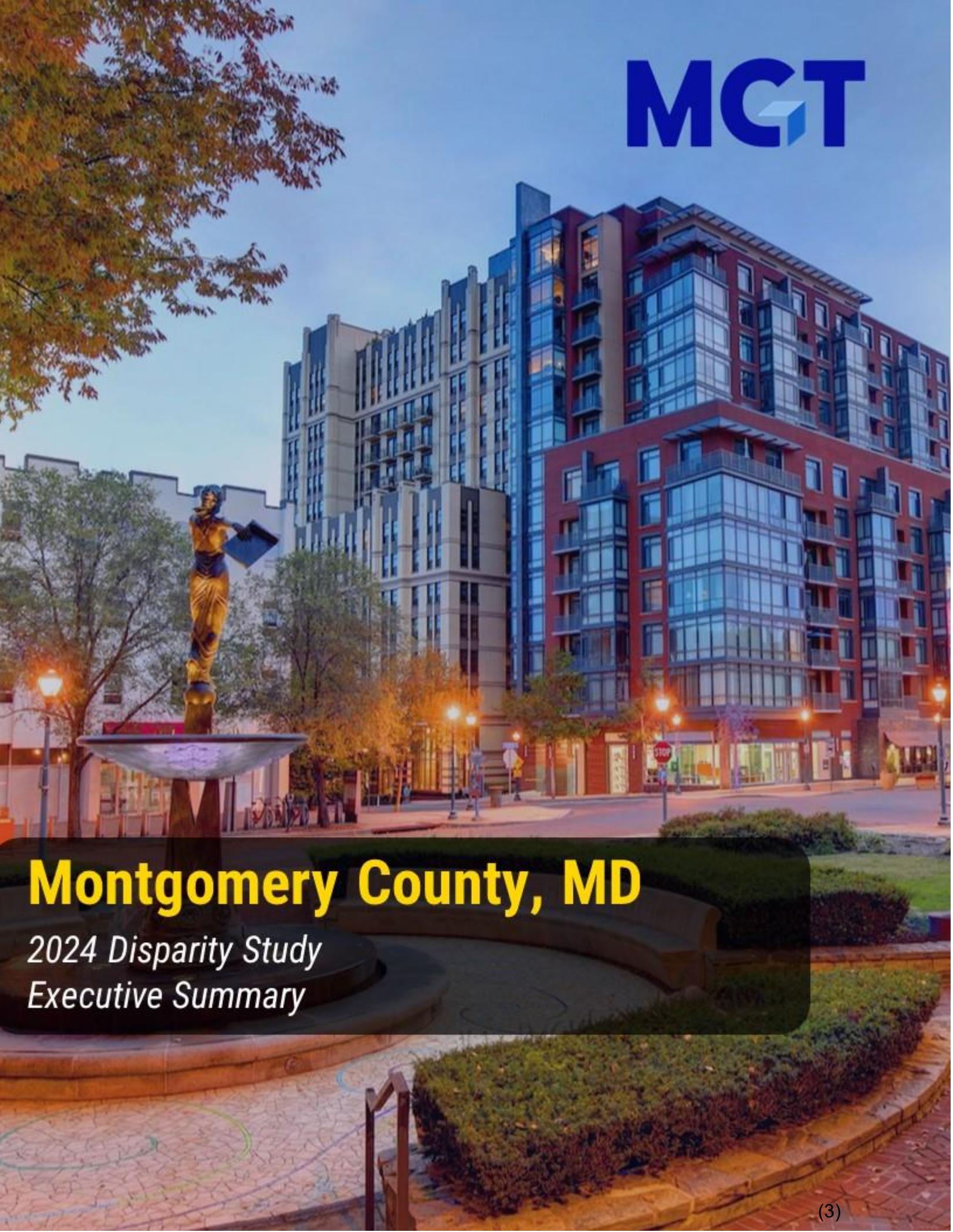
3   \*                   \*                   \*

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 golden statue of a woman holding a tablet. The scene is illuminated by streetlights and the building's interior lights.

# Montgomery County, MD

*2024 Disparity Study  
Executive Summary*



# Montgomery County, MD

Disparity Study  
SEPTEMBER 24, 2024

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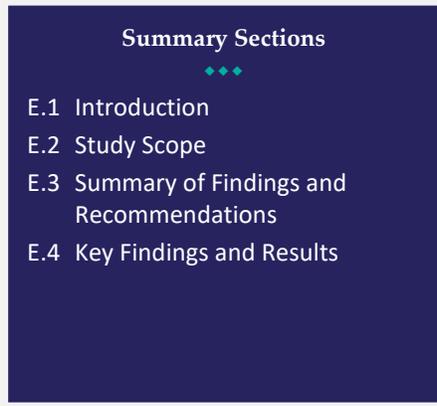
## EXHIBITS

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**MGT Impact Solutions, LLC**  
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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'. The 'E.1 Introduction' item is highlighted with a light blue background.

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.<sup>1</sup> 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.

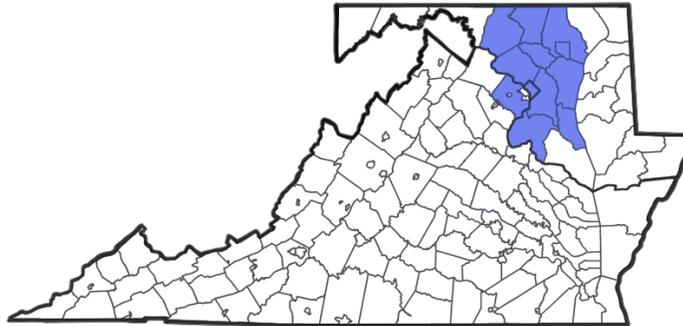
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<sup>1</sup> Chapter 4, Market Area and Availability Analyses

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

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

### 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%
<b>Total MBE Firms</b>	<b>24.37%</b>
Nonminority Females	18.14%
<b>Total M/FBE Firms</b>	<b>42.52%</b>
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%
<b>Total MBE Firms</b>	<b>\$569,657,835.14</b>	<b>16.34%</b>
Nonminority Females	\$470,766,268.10	13.51%
<b>Total M/FBE Firms</b>	<b>\$769,372,453.87</b>	<b>22.07%</b>
Unclassified Firms	\$2,716,145,384.68	77.93%
<b>TOTAL</b>	<b>\$3,485,517,838.55</b>	<b>100.00%</b>

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
<b>DOBE</b>	\$237,343.63	\$0.00	\$237,343.63	\$0.00	\$0.00
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
	(%)	(%)	(%)	(%)	(%)
<b>DOBE</b>	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	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity	<b>Disparity</b>
Asian Americans	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Hispanic Americans	No Disparity	No Disparity	No Disparity	<b>Disparity</b>	No Disparity
Native Americans	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Total MBE Firms	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	Disparity	Disparity
Nonminority Females	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity
Total M/FBE Firms	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	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.





**MCT**



# 2024 Disparity Study Results

# Agenda



Disparity Study Overview



Disparity Study Objectives



Disparity Study Results



Q&A

# OUR EXPERTISE

Nationally-recognized  
Locally-focused

## Accelerating Social Impact and Improving Performance



Equity, DEI, Disparity Studies,  
Technology, Finance,  
Performance & Education  
**solutions in one provider**



**900 staff**  
across the US



**230 + Successful**  
Disparity Studies



Past partnerships  
on **more than 30,000**  
engagements



**Andres Bernal, JD**

Executive in Charge  
Methodological &  
Quantitative Research Leader



**Vernetta Mitchell**

Project Director/ Qualitative  
Research Team Lead/  
Subconsultant Manager



**Debby Kreit**

Manager/Project Manager  
*Qualitative Research*



**Corlisha Mitchell**

Manager  
*Policy Analysis*



**Rocio Burboa**

Manager  
*Quantitative Research*



**Walter Benitez**

Sr. Consultant  
*Quantitative Research*



**Haita Toure**

Consultant  
*Qualitative Research*



**Jaime Benitez**

Consultant  
*Quantitative Research*



**Sophia Burgess**

Analyst  
*Qualitative Research*

Project Leaders  
& Key Staff

**MGT**

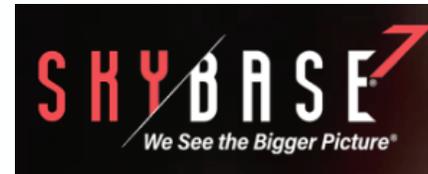
Project Partners



**McMillon Communications**  
Conducted area businesses in-depth interviews and professional organizations in-depth interviews.



**Chrysalis Collaborations**  
Conducted area businesses in-depth interviews.



**SkyBase7**  
Administered the custom census surveys to establish estimates of M/FBE availability and the qualitative vendor survey of business owners.



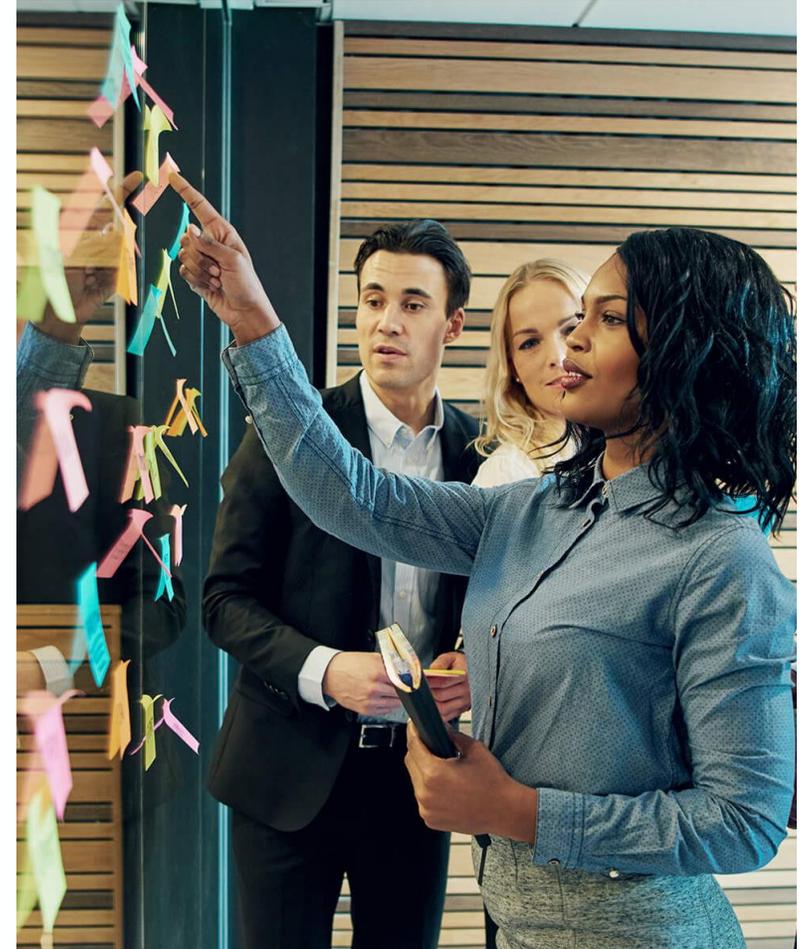
**Create A Heart Marketing**  
Designed, built, and maintained the disparity study website.

# Disparity Study Overview



## What is a Disparity Study:

- Disparity studies are used to determine whether there is evidence of discrimination in the market in which a public entity does business that would permit the use of policies to eliminate discrimination and remedy its effects
- Montgomery County's disparity study involved the collection and analysis of quantitative and qualitative data to make this determination
- Disparity studies provide actionable results that can be used to narrowly tailor a supplier diversity program



# Disparity Study Objectives



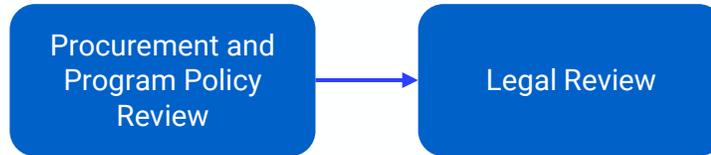
- Determine if a disparity exists in awarding contracts to Minority- and Female-owned businesses that are qualified and available to perform Construction, Professional Services, Other Services, or provide Goods as well as participate on Montgomery County contracts in the County's Relevant Geographic Market Area (RGMA).
- If such disparity exists, determine if past discrimination against Minority- and Female-owned businesses in the County's procurement categories persists due to the County's direct actions or passive participation in discriminatory practices by entities doing business with the County.

# Disparity Study Project Flow

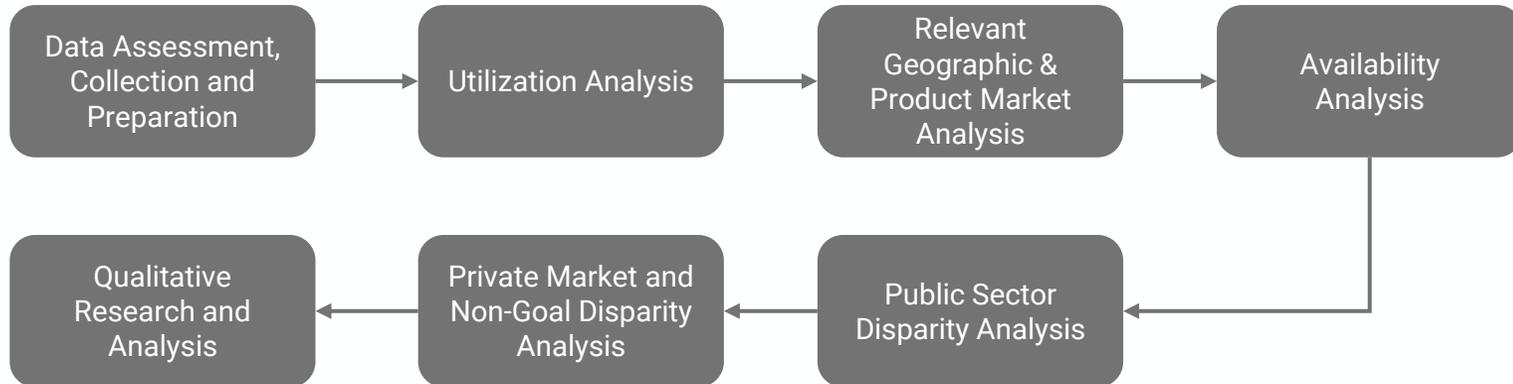


## Project Initiation

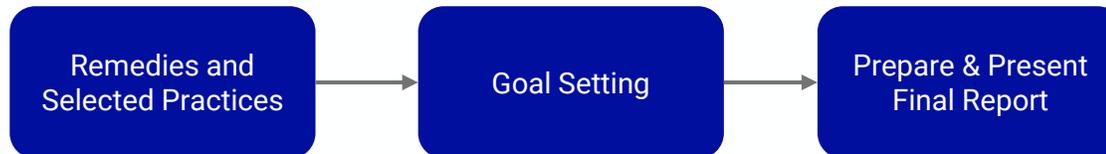
### 1 Policy and Legal Review



### 2 Data Collection, Preparation, and Analysis



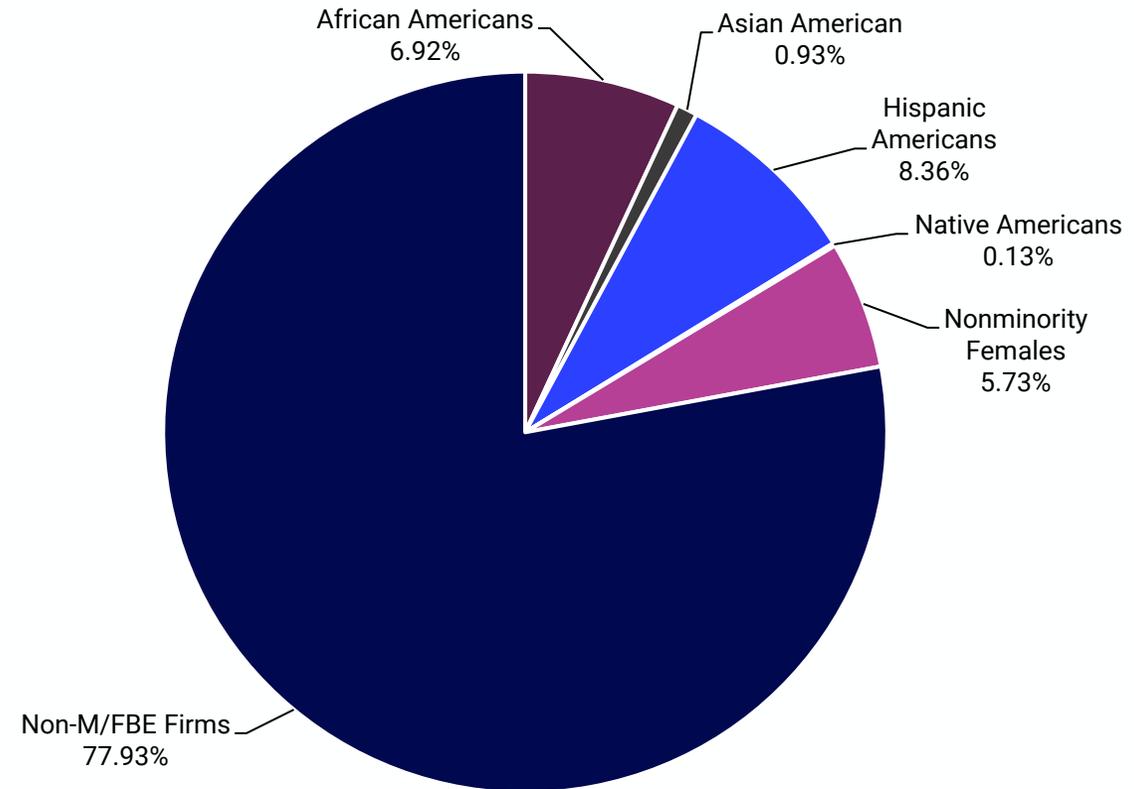
### 3 Remedies, Goals, and Final Report



# Montgomery County Utilization Results



- The County's total analyzed spend was **\$3,485,517,838.50**.
- The County's utilization of Non-M/FBE Firms totaled 77.93 percent vs **22.07 percent** that was spent with **MFBE** firms.
- Overall, the highest utilization rates among M/FBEs were **Hispanic American** firms accounting for **8.36%** of dollars spent, and **African American** firms accounting for **6.92%** of dollars spent.



The data analyzed was within the study period from July 1, 2015, through June 30, 2021

# Montgomery County Utilization Results



- **African American** firms had the greatest utilization rates in **Other Services** at **14.19 percent**, as well as **Asian American** firms at **1.92 percent**
- **Hispanic American** firms had the greatest utilization rates in **Construction** at **16.28 percent**, as well as **Native American** firms at **0.23 percent**
- **Nonminority Female** firms had the greatest utilization rates in **Goods** at **16.44 percent**

BUSINESS OWNERSHIP CLASSIFICATION	All Procurement Categories	Construction	Professional Services	Other Services	Goods
African Americans	\$241,194,355.63	\$14,566,868.60	\$77,580,973.32	\$135,341,846.76	\$13,704,666.95
Asian Americans	\$32,419,844.86	\$1,343,396.12	\$12,114,798.36	\$18,285,641.04	\$676,009.34
Hispanic Americans	\$291,477,444.49	\$177,648,356.35	\$65,869,347.65	\$25,057,489.36	\$22,902,251.13
Native Americans	\$4,566,190.16	\$2,538,190.69	\$111,294.00	\$1,682,982.34	\$233,723.13
<b>TOTAL MBE FIRMS</b>	<b>\$569,657,835.14</b>	<b>\$196,096,811.76</b>	<b>\$155,676,413.33</b>	<b>\$180,367,959.50</b>	<b>\$37,516,650.55</b>
Nonminority Female Firms	\$199,714,618.73	\$26,752,827.40	\$62,589,768.07	\$27,798,447.15	\$82,573,576.11
<b>TOTAL M/FBE FIRMS</b>	<b>\$769,372,453.87</b>	<b>\$222,849,639.16</b>	<b>\$218,266,181.40</b>	<b>\$208,166,406.65</b>	<b>\$120,090,226.66</b>
TOTAL Non-M/FBE Firms	\$2,716,145,384.68	\$868,107,378.35	\$720,640,721.75	\$745,318,976.92	\$382,078,307.66
<b>TOTAL FIRMS</b>	<b>\$3,485,517,838.55</b>	<b>\$1,090,957,017.51</b>	<b>\$938,906,903.15</b>	<b>\$953,485,383.57</b>	<b>\$502,168,534.32</b>
BUSINESS OWNERSHIP CLASSIFICATION	All Procurement Categories	Construction	Professional Services	Other Services	Goods
African Americans	6.92%	1.34%	8.26%	14.19%	2.73%
Asian Americans	0.93%	0.12%	1.29%	1.92%	0.13%
Hispanic Americans	8.36%	16.28%	7.02%	2.63%	4.56%
Native Americans	0.13%	0.23%	0.01%	0.18%	0.05%
<b>TOTAL MINORITY FIRMS</b>	<b>16.34%</b>	<b>17.97%</b>	<b>16.58%</b>	<b>18.92%</b>	<b>7.47%</b>
Nonminority Female Firms	5.73%	2.45%	6.67%	2.92%	16.44%
<b>TOTAL M/FBE FIRMS</b>	<b>22.07%</b>	<b>20.43%</b>	<b>23.25%</b>	<b>21.83%</b>	<b>23.91%</b>
TOTAL Non-M/FBE Firms	77.93%	79.57%	76.75%	78.17%	76.09%

# Montgomery County DOBE Utilization Results



- The County's utilization of Disabled-Owned Business Enterprises (**DOBE**) amounted to **\$237,343.63**, or **less than a half percent** of total payments analyzed.
- The **DOBE** utilization was only within the **Professional Services** Industry.

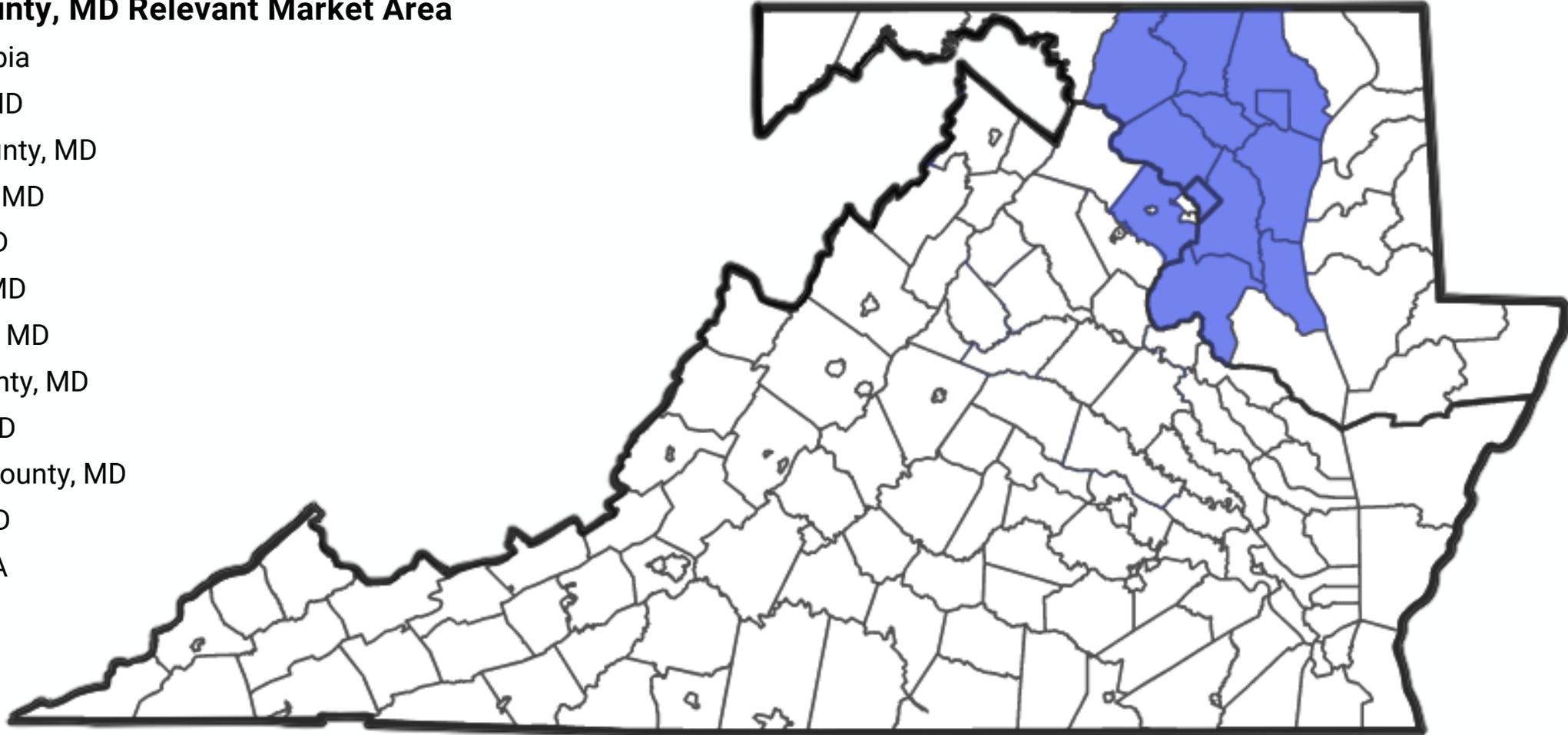
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
<b>DOBE</b>	\$237,343.63	\$0.00	\$237,343.63	\$0.00	\$0.00
BUSINESS OWNERSHIP CLASSIFICATION	ALL	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
	(%)	(%)	(%)	(%)	(%)
<b>DOBE</b>	0.01%	0.00%	0.01%	0.00%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

# Montgomery County Relevant Market Area



## Montgomery County, MD Relevant Market Area

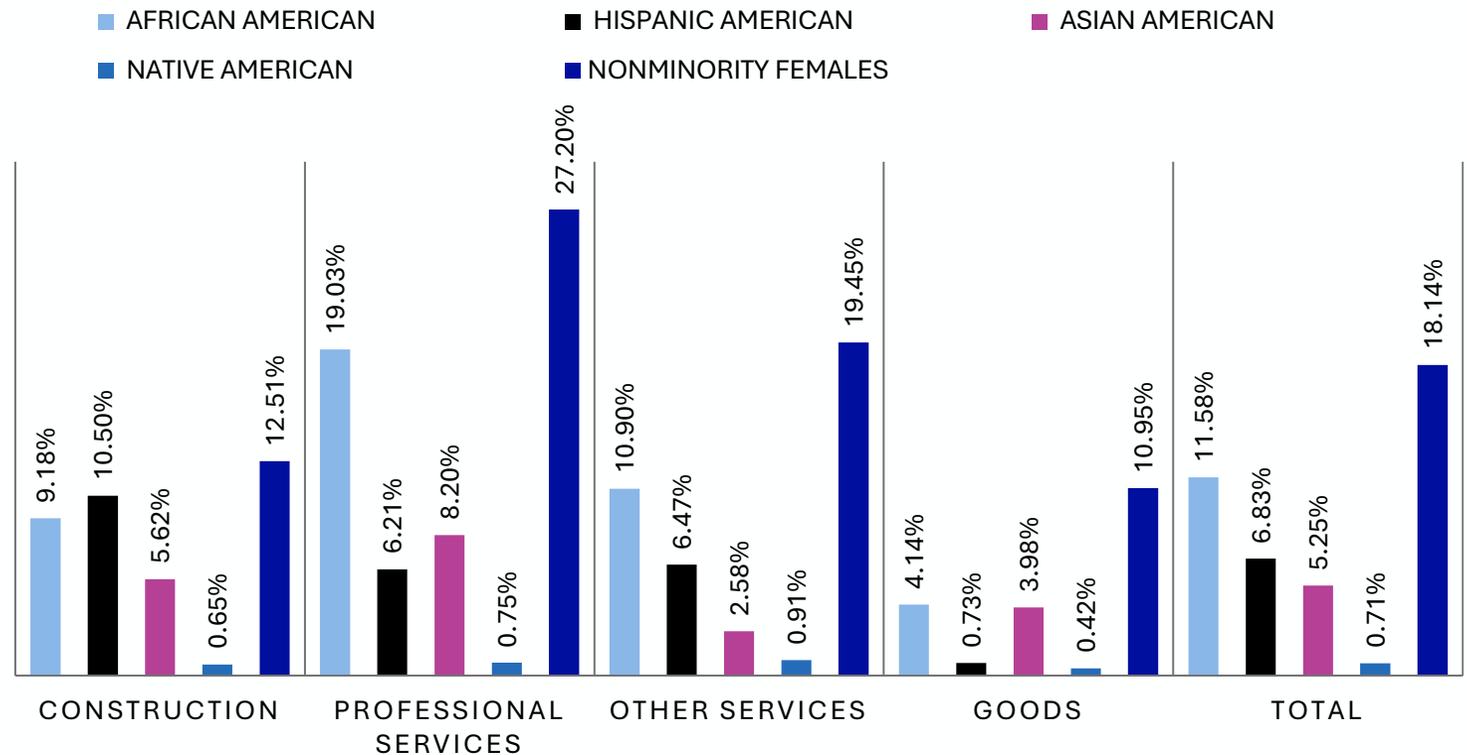
- District Of Columbia
- Charles County, MD
- Anne Arundel County, MD
- Frederick County, MD
- Baltimore City, MD
- Howard County, MD
- Baltimore County, MD
- Montgomery County, MD
- Calvert County, MD
- Prince George's County, MD
- Carroll County, MD
- Fairfax County, VA



# Montgomery County Availability Estimates



- **Total Availability Estimates are:**
  - African Americans – 11.58%
  - Hispanic Americans – 6.83%
  - Asian Americans – 5.25%
  - Native Americans – 0.71%
  - Nonminority Females – 18.14%
- Highest rates of availability for **African American** and **Nonminority Female** firms are within **Professional Services**
- Highest rates of availability for **Asian American** and **Hispanic American** firms are within **Construction**
- Highest rates of availability for **Native American** firms is within **Other Services**



Availability is based on the 12 counties within the Relevant Market Area

# Montgomery County Disparity Results



- Disparity index methodology yields an easily calculable value, understandable in its interpretation, and universally comparable result
- Substantial and statistically significant disparity gives evidence of discrimination within the public sector
- **M/FBEs exhibit significant and statistically substantial disparities** across all procurement categories, with the exception of Goods.

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

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

# Montgomery County Private Sector Results



- Private sector disparity indices were calculated to examine whether M/FBE firms in any of these categories received a proportionate share of sales based on the availability of M/FBE firms.
- Disparity indices were reviewed for employer firms and all of the disparity indices in the ABS tables within the report are statistically significant within a 95 percent confidence interval.
- The Analysis shows **consistent underutilization of M/FBE firms** relative to their availability in the marketplace, largely amongst the **African American and Nonminority Female Firms**.

Business Ownership Classification	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES		GOODS
	NAICS CODES (23)	NAICS CODES (54)	NAICS CODES (56)	NAICS CODES (81)	NAICS CODES (42)
African American	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Asian	Disparity	Disparity	Disparity	No Disparity	No Disparity
Native Hawaiian and Other Pacific Islander	<b>Disparity</b>	<b>Disparity</b>	Disparity	<b>Disparity</b>	-
Hispanic	Disparity	<b>Disparity</b>	Disparity	No Disparity	<b>Disparity</b>
American Indian and Alaska Native	Disparity	<b>Disparity</b>	Disparity	Disparity	-
Nonminority Female	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Nonminority Male	No Disparity	No Disparity	No Disparity	No Disparity	No Disparity

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

# Montgomery County Qualitative Results



- Hispanic American firms reported the highest indications of discriminatory treatment with an overall rate of 17 percent** and other groups reported:
  - Nonminority females (10 percent)
  - African Americans (7 percent)
  - Asian Americans (0 percent)
  - Native American (0 percent)
- All M/FBE groups except Native Americans indicated** experiencing some form of **discrimination** and/or disparate treatment **compared to nearly no indication for non-M/FBEs.**
- Firms indicated experiencing discriminatory treatment most due to an **Informal Network** followed by **Double Standards in Performance** and **Refusal To Work With.**

DISCRIMINATORY ACT	African Americans	Asian Americans	Hispanic Americans	Native Americans	Total MBE Firms	Nonminority Females	Total M/FBE Firms	Total Non-M/FBE Firms
Informal Network	7%	0%	17%	0%	7%	10%	8%	0%
Price Discrimination	5%	0%	0%	0%	3%	5%	3%	0%
Bid Shopping	2%	0%	0%	0%	1%	5%	2%	0%
Harassment	0%	0%	8%	0%	1%	5%	2%	0%
Double Standards In Performance	5%	0%	8%	0%	4%	5%	4%	0%
Refusal To Work With	5%	0%	8%	0%	4%	5%	4%	0%
Denial Of Opportunity To Bid	5%	0%	0%	0%	3%	0%	2%	4%
Any Discriminatory Act	7%	0%	17%	0%	8%	10%	8%	4%

# Study Findings



- **Availability Estimates:** Firm availability was highest for Nonminority Female firms at 18.14% and African American firms at 11.58%
- **M/FBE Utilization:** Unclassified Firms are utilized more than M/FBE firms. The County's utilization with M/FBE firms was 22.07%, with Nonminority Female firms at 5.73%.
- **Disabled-Owned Business Enterprise Utilization:** DOBE utilization was \$237,343.63, less than half a percent of total payments.
- **Disparity Analysis:** Significant disparities were found for minority and nonminority female firms, especially in Goods and Other Services.
- **Private Sector Disparities:** Minority and women wages, as well as earnings of self-employed M/FBE firms, were significantly less than those of nonminority males in 2016-2020.
- **Qualitative Results:** Many Minority- and Female-Owned Business Enterprises (M/FBEs) reported obstacles such as informal networks, limited access to capital, and limited communication from the County. They also expressed concerns about discrimination, lack of support, and challenges in competing with larger businesses.

# Study Recommendations



- **Expand Race- and Gender-Neutral Initiatives:** Broaden small and local business initiatives to include DBE certified firms and set contract-specific goals.
- **Expand and Enhance Data Collection:** Improve data collection for understanding economic impact and use an e-procurement system for consistency.
- **Business Outreach and Engagement:** Continue outreach efforts like procurement fairs and workshops, and administer surveys to gauge effectiveness.
- **Narrow Tailoring:** Tailor the MFD Program to address disparities, following case law guidance.
- **Expand the Division of Business Relations and Compliance Staff:** Increase staff to extend contract compliance, goal setting, and outreach.
- **Implement a Graduation Program:** Consider a graduation program for M/FBE firms that have scaled their businesses.
- **Adopt Annual Aspirational M/FBE Goals:** Set countywide annual goals for contracting across all industry categories.
- **M/FBE Program Sunset:** Review the M/FBE program every five years to ensure it continues only if strong evidence of discrimination persists.

# Study Recommendations



	CONSTRUCTION	PROFESSIONAL SERVICES	OTHER SERVICES	GOODS
Disparity Study Recommended Goal	22%	25%	24%	10%
Current Goals based on the last Disparity study	16%	19%	23%	8%

- Aspirational goal methodology is established in 49 CFR 26, the U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) regulations.
- The proposed goals are calculated using a weighted average of MBE/FBE utilization and availability.
- The differences are between 1% to 6% of previous goals
- These aspirational goals should not be applied rigidly to every individual procurement. Instead, MBE/FBE goals should be tailored to the project.

**MGT**

Thank you

# Racial Equity and Social Justice Impact Statement

Office of Legislative Oversight

## EXPEDITED CONTRACTS AND PROCUREMENT – MINORITY OWNED BILL 23-24 BUSINESS PURCHASING PROGRAM – EXTENSION OF SUNSET DATE

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 23-24 will have a positive impact on racial equity and social justice (RESJ) in the County by extending the County’s minority owned business purchasing program.

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a goal of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social disparities.<sup>2</sup>

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### PURPOSE OF BILL 23-24

County law includes a sunset date for the Minority, Female, and Disabled-Owned (MFD) Business purchasing program and requires the Office of Procurement to evaluate the need to extend the program.<sup>3</sup> The County’s MFD program was initially created as the Minority Business Enterprise (MBE) program in 1978 and later expanded to include women-owned businesses and to encompass disabled-owned enterprises.<sup>4</sup> The MFD program has continued to evolve, consolidating other programs to support under-represented businesses.<sup>5</sup>

In September 2024, the County released the 2024 Disparity Study. Based upon the findings of ongoing disparities in procurement affecting MFD businesses as illustrated in the 2024 study, 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.<sup>6</sup>

The Council introduced Expedited Bill 23-24 on October 15, 2024.

This RESJ impact statement (RESJIS) builds on the RESJIS for Expedited Bill 37-23, Contracts and Procurement - Minority Owned Businesses–Sunset Date - Amendments, published, October 18, 2023, and Expedited Bill 29-21, Contracts and Procurement–Minority Owned Businesses–Sunset Date–Amendments, published September 13, 2021. Please refer to these impact statements for a detailed background on entrepreneurship and racial equity.

# RESJ Impact Statement

## Bill 23-24

### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 23-24 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could the passage of this bill weaken or strengthen?

OLO anticipates Bill 23-24 could positively impact RESJ in the County as it could especially benefit Black, Asian, and Indigenous-owned businesses that are under-represented in County contracts as observed in Table 1 and Table 2 (Appendix A) which summarizes data on disparities in business utilization and availability by business type and owner race, ethnicity, and gender. Extension of the MFD program could also benefit Latinx-owned businesses who are not currently under-represented in County contracts as well as White women owned business who are also under-represented among County contractors.

**Table 1 – Summary of Disparities in Business Utilization and Availability by Business Type and Owner Race, Ethnicity, and Gender, Montgomery County, MD – 2024**

Business Ownership Classification	All Firms	Construction	Professional Services	Other Services	Goods
By Race and Ethnicity					
Black Owned	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity	<b>Disparity</b>
Asian Owned	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
Latinx Owned	No Disparity	No Disparity	No Disparity	<b>Disparity</b>	No Disparity
Indigenous Owned	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>
By Gender					
Women Owned	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	<b>Disparity</b>	No Disparity
Men Owned	No Disparity	No Disparity	No Disparity	No Disparity	Disparity

**BOLD** Indicates a statistically significant disparity.<sup>7</sup>

Source: Montgomery County, MD Disparity Study 2024 Table 5-16

As noted in Appendix A, 85 businesses were awarded contracts with procurement in 2024 totaling \$570 million. Among these businesses:<sup>8</sup>

- 68 were owned by White men who received \$355 million in contracts;
- 7 were owned by White women who received \$136 million in contracts; and
- 8 were owned by BIPOC men and women who received \$78 million in contracts.

Regarding whether Bill 23-24 could narrow racial and social disparities, the RESJIS for Expedited Bill 37-23 observes that increased participation of BIPOC-owned businesses in County contracting could help narrow racial disparities in business ownership and revenue.<sup>9</sup> Similarly, OLO finds that Bill 23-24 could also help narrow racial and social disparities in business ownership and revenue. Taken together, OLO anticipates Bill 23-24 would have a favorable impact on RESJ in the County.

### RECOMMENDED AMENDMENTS

Bill 44-20 amending the County’s Racial Equity and Social Justice Act<sup>10</sup> requires OLO to consider whether recommended amendments to narrow racial and social inequities are warranted in developing RESJ impact

# RESJ Impact Statement

## Bill 23-24

statements for Bills. OLO anticipates Expedited Bill 23-24 will have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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### CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Peña, Janmarie. OLO Racial Equity and Social Justice (RESJ) Statement for Expedited Bill 37-23. October 13, 2023. [Racial Equity and Social Justice Impact Statement for Expedited Bill 37-23 \(montgomerycountymd.gov\)](https://montgomerycountymd.gov)

<sup>4</sup> MGT Impact Solutions, LLC. Montgomery County, MD, 2024 Disparity Study September 24, 2024. [https://montgomerycountymd.granicus.com/Viewer.php?view\\_id=169&event\\_id=16285&meta\\_id=184741](https://montgomerycountymd.granicus.com/Viewer.php?view_id=169&event_id=16285&meta_id=184741)

<sup>5</sup> Ibid.

<sup>6</sup> Memorandum from Christine Wellons, Chief Legislative Attorney, to County Council. Bill 23-24: Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date. October 10, 2024. [https://montgomerycountymd.granicus.com/Viewer.php?view\\_id=169&event\\_id=16285&meta\\_id=184741](https://montgomerycountymd.granicus.com/Viewer.php?view_id=169&event_id=16285&meta_id=184741)

<sup>7</sup> Montgomery County, MD Disparity Study 2024, Executive Summary

<sup>8</sup> Office of Procurement. FY2024 Annual Report, Minority, Female and Disabled–Owned Business (MFD) Program, p.9. <https://www.montgomerycountymd.gov/PRO/report/index.html>

<sup>9</sup> Peña, Janmarie. Expedited Bill 37 -23.

<sup>10</sup> Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020. [https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682\\_1\\_12149\\_Bill\\_44-20\\_Signed\\_20201211.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf)

Appendix A

**Table 2: Total Dollar and Value of Request for Proposals by Minority, Female, and Disabled-Owned (MFD) Group– Owner’s Race, Ethnicity, Gender, and Disability  
Montgomery County, MD – 2024**

	<u>No. of Awards</u>	<u>% of No. of Awards</u>	<u>Award Dollar Value</u>	<u>% of Dollar Value</u>	<u>% of Total MFD Dollar Value</u>	<u>No. of Proposals Submitted</u>	<u>% of Proposals Submitted</u>
<b>By Race and Ethnicity*</b>							
<u>Black</u>	<u>4</u>	<u>4.71%</u>	<u>\$58,461,980</u>	<u>10.27%</u>	<u>27.21%</u>	<u>22</u>	<u>8.47%</u>
<u>Latinx</u>	<u>2</u>	<u>2.36%</u>	<u>\$13,999,999</u>	<u>2.46%</u>	<u>6.52%</u>	<u>7</u>	<u>2.70%</u>
<u>Asian</u>	<u>4</u>	<u>4.71%</u>	<u>\$6,325,000</u>	<u>1.11%</u>	<u>2.94%</u>	<u>12</u>	<u>4.62%</u>
<u>Indigenous</u>	<u>0</u>	<u>0.00%</u>	<u>\$0</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0</u>	<u>0.00%</u>
<b>Persons with Disabilities</b>							
<u>Persons with Disabilities</u>	<u>0</u>	<u>0.00%</u>	<u>\$0</u>	<u>0.00%</u>	<u>0.00%</u>	<u>1</u>	<u>0.39%</u>
<b>By Gender among White-Owned Firms</b>							
<u>Female Owned</u>	<u>7</u>	<u>8.24%</u>	<u>\$136,075,675</u>	<u>23.89%</u>	<u>63.33%</u>	<u>23</u>	<u>8.85%</u>
<u>Male Owned</u>	<u>68</u>	<u>80.00%</u>	<u>\$354,815,863</u>	<u>62.29%</u>	<u>---</u>	<u>195</u>	<u>75.00%</u>
<b>Total Businesses</b>	<b>85</b>	<b>100%</b>	<b>\$569,678,517</b>	<b>100.00%</b>		<b>260</b>	

Source: Adapted from the table “Total Dollars & Value of RFPs by MFD Group”(p.9), Office of Procurement FY 2024 Annual Report, Minority, Female and Disabled–Owned Business (MFD) Program for OLO’s analysis.

\*The County’s MFD program recognizes six (6) groups of MFD firms that must be at least 51% owned, controlled, and operated by: Blacks, Asians, Hispanic Americans, Native Americans, Persons with Disabilities, and White Females,

# Economic Impact Statement

Montgomery County, Maryland

## Expedited Bill 23-24

## Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 23-24 would have a positive impact on economic conditions in the County. By extending the County’s Minority, Female, and Disabled-Owned Businesses (MFD) Program by five years, more local businesses likely would receive County procurement contracts than otherwise would occur without the continuation of the program, which would prevent capital outflow in County spending. Local businesses that would not otherwise work as prime or sub-contractors would likely see increases in business income, earnings, and potentially workforce size. Additionally, the Bill would benefit certain County residents who own or work for these businesses, resulting in higher earnings and household income.

### BACKGROUND AND PURPOSE OF EXPEDITED BILL 23-24

The County’s Minority, Female and Disabled-Owned (MFD) Businesses Program “assists certified minority firms in gaining access to prime contractor and subcontractor opportunities with County government agencies.”<sup>1</sup> Towards this end, the program establishes goals for MFD participation in the purchasing categories of construction, professional services, non-professional services, and goods.<sup>2</sup> The program was established “to remedy the effects of discrimination on minority owned businesses,” as stated in County law.<sup>3</sup> The MFD Program has been in place for over 25 years.<sup>4</sup>

County law includes a sunset date for the Minority, Female, and Disabled-Owned (MFD) Businesses Purchasing Program and requires the Office of Procurement to evaluate the need to extend the program. In September 2024, the County released the 2024 Disparity Study, which found disparities in County procurement. According to the study, “[t]he findings underscore the need for targeted efforts to address these disparities and promote equitable opportunities for M/FBEs in Montgomery County’s contracting activities.”<sup>5</sup> Expedited Bill 23-24 would extend the sunset of the County’s MFD law by five years—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.<sup>6</sup>

The Council introduced Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date, on October 15, 2024.

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<sup>1</sup> “Minority, Female and Disabled-Owned Businesses (MFD) Program.”

<sup>2</sup> Ibid.

<sup>3</sup> Article XIV. Purchases from Minority Owned Businesses.

<sup>4</sup> Introduction Staff Report for Bill 20-16.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

## INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Expedited Bill 23-24 on residents and private organizations in terms of the Council’s priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.<sup>7</sup>

This analysis evaluates the extent to which extending the MFD Program would direct County spending towards local businesses. If the program directs County spending to local businesses, then it would prevent “leakages” in County spending (i.e., spending that occurs outside the County) and generate local multiplier effects. To evaluate the program’s impact on County spending, this analysis performs a qualitative assessment based on the following sources of information:

- Economic Impact Statement for Expedited Bills 29-21 and 37-23, which had previously extended the sunset for the MFD program;
- FY24 and FY20 MFD Annual Reports; and
- Additional data provided to OLO by staff from the Office of Procurement.

This analysis does not consider the positive or negative opportunity cost of alternative uses of County spending nor the program’s impact on County contracting costs – either reducing or increasing costs relative to what they would otherwise be without the program.

## VARIABLES

The primary variables that would affect the economic impacts of extending the MFD program through enacting Expedited Bill 23-24 are the following:

- change in total County contracting allocation to local businesses;
- industrial composition of local businesses awarded contracts; and
- prime contractor compliance with MFD requirements.

## IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

### Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Expedited Bill 23-24 would have a positive impact on private organizations in the County in terms of the Council’s priority indicators.

By directing County spending to local businesses, extending the current sunset date for the MFD program likely would positively impact local businesses that would not otherwise participate as prime or sub-contractors on County projects. While the Office of Procurement publishes a range of metrics to assess the impact of the MFD program in its annual

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<sup>7</sup> Sec. 2-81B, Economic Impact Statements.

reports, the reports do not include the location of MFD firms. However, data provided to OLO from the Procurement Office indicate that a significant portion of total eligible funding for the MFD program goes to local businesses.

In FY24, total eligible funding for MFD program prime contractors was approximately \$194 million, with around \$97 million, or 50%, awarded to prime contractors based in the County. In comparison, only 32% of the total eligible funding for prime contractors in the County's Local Small Business Reserve Program (LSBRP) went to local businesses. This difference underscores the MFD program's relatively stronger support for County-based businesses.

Local businesses that otherwise would not work as prime or sub-contractors in the Bill's absence likely would increase in business income and earnings and/or the size of their workforce.

Directing County spending to local businesses would benefit other businesses in the County through a local multiplier effect. Indeed, local businesses that participate in the MFD program and their workforces would be more likely to purchase goods and services from other local firms. If so, these businesses would experience increases in business income and workforce earnings and/or size.<sup>8</sup>

## Residents

By increasing County spending to local businesses above what would occur otherwise without the program, Expedited Bill 23-24 would have a positive impact on County residents in terms of several of the Council's priority indicators. The primary residents impacted by the Bill would be owners and employees of the affected businesses who reside in the County and experience an increase in earnings and household income. It is beyond the scope of this analysis to investigate the Bill's impacts on residents in terms of the Council's other priority indicators.

## Net Impact

OLO anticipates that Expedited Bill 23-24 would have a positive impact on economic conditions in the County. By extending the County's Minority, Female, and Disabled-Owned Businesses (MFD) Program by five years, more local businesses likely would receive County procurement contracts than otherwise would occur without the continuation of the program, which would prevent capital outflow in County spending. Local businesses that would not otherwise work as prime or sub-contractors would likely see increases in business income, earnings, and potentially workforce size. Additionally, the Bill would benefit certain County residents who own or work for these businesses, resulting in higher earnings and household income.

However, it is important to note the potential for noncompliance among prime contractors with MFD Program requirements may undermine its local economic impacts. Compared to other programs administered by the Office of Procurement, the MFD Program has relatively weaker enforcement requirements. For example, where the MFD law instructs the Chief Administrative Officer to develop "monitoring" procedures for program compliance (adopted as a regulation in the Code of Montgomery County Regulations (COMCOR)), the Wage Requirement Law outlines much more detailed "enforcement" requirements in the Montgomery County Code. Where the MFD regulations say program monitoring "may include ... audits of contractors' books and records relative to County contracts," random or regular

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<sup>8</sup> For more on the multiplier effect, see U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013.

audits are not required.<sup>9</sup> By contrast, the Wage Requirement Law requires the Chief Administrative Officer or a designee to “perform random or regular audits and investigate any complaint of a violation.”<sup>10</sup> **Table A1** in the Appendix presents the full language of monitoring procedures for the MFP Program from COMCOR and the enforcement requirements from the County Code for the Wage Requirement Law Program.

## DISCUSSION ITEMS

Councilmembers may want to consider discussing with the Office of Procurement whether the MFD Program’s enforcement procedures should be strengthened to increase program compliance among prime contractors.

Finally, Councilmembers may want to consider reviewing how County contracting policies could further incentivize prime contractors to include MFD-owned businesses based in the County to optimize the program’s local economic impacts.

## WORKS CITED

11B.04.01.07. Minority Owned Business Contracting, 11B.04.01.07 Code of Montgomery County Regulations (COMCOR) § (n.d.). [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_comcor/0-0-0-65371](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-65371).

Article XIV. Purchases from Minority Owned Businesses, Montgomery County Code § (n.d.). [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md/0-0-0-123609](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-123609).

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Office of Procurement. “FY20 Annual Report: Minority, Female & Disabled Business Program (MFD).” Montgomery County Government, n.d. [https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/MFDReport\\_FY20.pdf](https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/MFDReport_FY20.pdf).

———. “FY24 Annual Report: Minority, Female & Disabled Business Program (MFD).” Montgomery County Government, September 24, 2024. <https://www.montgomerycountymd.gov/PRO/report/index.html>.

Sec. 2-81B, Economic Impact Statements, Montgomery County Code § (n.d.). [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md/0-0-0-80894](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894).

Sec. 11B-33A. Wage requirements, Montgomery County Code § (n.d.). [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md/0-0-0-123067](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-123067).

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<sup>9</sup> 11B.04.01.07. Minority Owned Business Contracting.

<sup>10</sup> Sec. 11B-33A. Wage requirements.

## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

## AUTHOR

Stephen Roblin (OLO) prepared this report.

# APPENDIX

**Table A1. MFD Program Monitoring Procedures and Wage Requirement Law Program Enforcement**

<b>MFD Program Monitoring – <a href="#">COMCOR § 11B.04.01.07.5</a></b>
<p>7.5 Monitoring Procedures</p> <p>7.5.1 The contract administrator must monitor all contracts with an MFD plan to ensure compliance by contractors with the requirements of the contract. Monitoring may include site visits, audits of contractors' books and records relative to County contracts, the submission of copies of invoices from minority subcontractors to the prime contractor, submission of Contract Monitoring Reports at scheduled intervals during the life of the contract, and other procedures that the Director may require.</p> <p>7.5.2 The Director must notify certified MFD owned businesses of their responsibility to report to the contract administrator in a timely manner any changes in status that affects the entity's eligibility for certification as an MFD owned business. The failure of the MFD owned business to report any relevant change in a timely manner constitutes sufficient grounds for de-certification.</p>
<b>Wage Requirement Law Program – <a href="#">Montgomery County Code § 11B-33A(i)</a></b>
<p>(i) <i>Enforcement.</i></p> <p>(1) The Chief Administrative Officer must require each covered employer to:</p> <ul style="list-style-type: none"><li>(A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;</li><li>(B) keep and submit any records necessary to show compliance; and</li><li>(C) conspicuously post notices informing employees of the requirements of this Section and send a copy of each such notice to the Chief Administrative Officer's designee.</li></ul> <p>(2) The Chief Administrative Officer or a designee must perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to:</p> <ul style="list-style-type: none"><li>(A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section;</li><li>(B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and</li><li>(C) reimburse the County for the cost of the audit.</li></ul> <p>(3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.</p>

(4) The sanctions of Section [11B-33](#)(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify:

(A) that liquidated damages may be imposed on the contractor in the event that a covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and

(B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.

(6) If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

# Fiscal Impact Statement

Office of Management and Budget

## Bill 23-24E

## Contracts and Procurement - Minority Owned Business Purchasing Program - Extension of Sunset

### Bill Summary

Expedited Bill 23-24 would extend the sunset date for the County's Minority, Female and Disabled owned (MFD) business purchasing program (§ 11B-64) by five years, to December 31, 2029. The amendment is proposed in consideration of the fact that a Disparity Study was recently concluded and transmitted to the Council.

### Fiscal Impact Summary

The bill is not expected to impact County revenue or expenditures.

Fiscal Year	2026	2027	2028	2029	2030	2031	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

### Fiscal Impact Analysis

The bill is not expected to impact County revenue or expenditures.

### Staff Impact

The bill is not expected to impact staff time or duties.

### Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

### Information Technology Impact

The bill is not expected to impact the County Information Technology (IT).

### Other Information

*Later actions that may impact revenue or expenditures if future spending is projected*

The bill does not authorize future spending.

*Ranges of revenue or expenditures that are uncertain or difficult to project*

The bill is not expected to impact County revenue or expenditures.

*Sources of information*

Office of Procurement

*Contributors*

Ash Shetty, Director, Office of Procurement  
 Grace Denno, Division Chief, Office of Procurement  
 Mahnoor Anjum, Fiscal and Policy Analyst, Office of Management and Budget



# Climate Assessment

Office of Legislative Oversight

## **Expedited Bill 23-24: Contracts and Procurement – Minority Owned Business Purchasing Program – Extension Sunset Date**

### **SUMMARY**

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 23-24 will have no impact as the bill seeks to extend an existing County program that does not have an impact on the County’s contribution to addressing climate change.

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### **BACKGROUND AND PURPOSE OF EXPEDITED BILL 23-24**

The County’s Minority, Female and Disabled-Owned (MFD) Businesses Program “assists certified minority firms in gaining access to prime contractor and subcontractor opportunities with County government agencies.”<sup>1</sup> Towards this end, the program establishes goals for MFD participation in the purchasing categories of construction, professional services, non-professional services, and goods.<sup>2</sup> The program was established “to remedy the effects of discrimination on minority owned businesses,” as stated in County law.<sup>3</sup> The MFD Program has been in place for over 25 years.<sup>4</sup>

County law includes a sunset date for the Minority, Female, and Disabled-Owned (MFD) Businesses Purchasing Program and requires the Office of Procurement to evaluate the need to extend the program.<sup>5</sup> In September 2024, the County released the 2024 Disparity Study, which found disparities in County procurement.

According to the study, “[t]he findings underscore the need for targeted efforts to address these disparities and promote equitable opportunities for M/FBEs in Montgomery County’s contracting activities.” Expedited Bill 23-24 would extend the sunset of the County’s MFD law by five years—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.<sup>6</sup>

The Council introduced Expedited Bill 23-24, Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date, on October 15, 2024

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### **ANTICIPATED IMPACTS**

OLO anticipates Expedited Bill 23-24 will have no impact as the bill seeks to extend an existing County program that does not have an impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

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## RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.<sup>7</sup> OLO does not offer recommendations or amendments as Expedited Bill 23-24 is likely to have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

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## CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the bill under consideration.

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## PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County’s contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County’s contribution to addressing climate change, specifically upon the County’s contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County’s adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

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## CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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<sup>1</sup> [Minority, Female and Disabled-Owned Businesses \(MFD\) Program](#), Office of Procurement.

<sup>2</sup> Ibid.

<sup>3</sup> Montgomery County Code § 11B-57

<sup>4</sup> [Introduction Staff Report for Bill 20-16](#), Montgomery County Council, May 13, 2016.

<sup>5</sup> Peña, Janmarie. OLO Racial Equity and Social Justice (RESJ) Statement for Bill 37-23. October 13, 2023. [Racial Equity and Social Justice Impact Statement for Expedited Bill 37-23 \(montgomerycountymd.gov\)](#)

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<sup>6</sup> Memorandum from Christine Wellons, Chief Legislative Attorney, to County Council. Bill 23-24: Contracts and Procurement – Minority Owned Business Purchasing Program – Extension of Sunset Date. October 10, 2024.

[https://montgomerycountymd.granicus.com/MetaViewer.php?view\\_id=169&event\\_id=16285&meta\\_id=184741](https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=16285&meta_id=184741)

<sup>7</sup> Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022