

# King County Disparity Study 2024

## Executive Summary

Colette Holt & Associates ("CHA"), a national expert in conducting disparity studies and designing effective business diversity programs, was retained by King County ("County") to conduct a disparity study of the County's construction and construction-related services contracting activities in conformance with strict constitutional scrutiny.

### A. Disparity Study Objectives

- Develop quantitative and qualitative evidence to meet the federal judicial test of constitutional "strict scrutiny", which is the highest level of judicial review.
- Provide policy and program recommendations.
- Educate policy makers and interested parties about the legal and economic issues to build consensus.

### B. Disparity Study Findings

#### 1. Review of the County's Business Opportunity Programs

King County's Contracting Opportunities Program for locally funded contracts is designed to promote opportunities for Small Contractors and Suppliers ("SCS") in the County's procurement and contracting process. The program is fully neutral in terms of race and gender and applies incentives, requirements, and goals to contracts to increase the competitiveness of SCS and Minority- and Woman-owned Business Enterprises ("M/WBEs"). In 2016, the County launched a comprehensive Equity and Social Justice Initiative that aims to support M/WBEs. The Initiative utilizes voluntary M/WBE contract goals and SCS participation requirements, technical assistance arrangements, and community partnerships to encourage greater participation on County architecture/engineering services, construction, and other professional services associated with construction projects. In April 2021, the County embarked on a pro-equity contracting initiative with an Executive Order intended to amplify the participation of M/WBEs as part of the Contracting Opportunities Program.

King County is a recipient of funds from various United States (US) Department of Transportation ("USDOT") agencies, including the Federal Transit Administration ("FTA") and the Federal Aviation Administration ("FAA").<sup>a</sup> King County administers a Disadvantaged Business Enterprise ("DBE") program in compliance with the DBE

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a. The County also receives Federal Highway Administration funds as a subrecipient of the Washington State Department of Transportation. FHWA funded contracts were not examined in this Study.

federal regulations. The program includes a race neutral SBE Program. The SBE program includes outreach, good faith efforts, and identification of work opportunities.

King County also receives funding from the US Environmental Protection Agency (“EPA”) and participates in the EPA’s Fair Share program to foster opportunities for enterprises owned or controlled by socially and economically disadvantaged individuals and women.

## 2. M/W/DBE Utilization, Availability and Disparity Ratios

CHA analyzed a statistically valid sample of the County’s architecture/engineering and professional services consulting services contracts, and construction and construction-related services contract data for fiscal years 2018 through 2022. The analyses determined the County’s utilization of M/WBEs and DBEs (“M/W/DBEs”) on County construction and construction-related services contracts by funding source; the availability of M/W/DBEs as a percentage of all firms in the County’s geographic and industry market areas; and any disparities between the County’s utilization of M/W/DBEs and their availability in the County’s geographic market (the Seattle Metropolitan Statistical Area) and product market. Below are the results of our analysis for locally funded contracts. The detailed results and the results for the other funding sources are presented in Chapter IV of the report.

At the County’s request, we disaggregated the results for locally funded contracts into architecture/engineering and professional services consulting contracts, and construction and construction related services contracts. These data are provided in Appendix D.

### King County Funded Contracts<sup>b</sup> All Industries

King County Contracts	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	4.7%	2.2%	4.3%	5.2%	8.4%	24.9%	75.1%
Weighted Availability	2.3%	2.4%	3.2%	2.6%	6.7%	17.2%	82.8%
Disparity Ratio	203.3%***	94.2%***	133.0%***	205.0%***	125.9%***	145.1%***	90.7%***

‡ Indicates substantive significance  
\*\*\* Statistically significant at the 0.001 level

### King County Funded Contracts

b. CHA analyzed 296 prime contracts and 2,141 subcontracts, with a net value of \$550,265,205.

**Construction Contracts**

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	4.1%	2.7%	3.3%	7.3%	6.3%	23.6%	76.4%
Weighted Availability	2.7%	2.9%	3.5%	3.4%	6.4%	18.9%	81.1%
Disparity Ratio	149.5%***	91.1%***	93.8%***	215.3%***	99.6%***	125.1%***	94.2%***

Source: CHA analysis of King County data  
 \*\*\* Statistically significant at the 0.001 level

**King County Funded Contracts  
 A&E Professional Services Contracts**

	Black	Hispanic	Asian	Native American	White Woman	M/WBE	Non-M/WBE
Utilization	6.3%	1.2%	6.8%	0.1%	13.7%	28.2%	71.8%
Weighted Availability	1.3%	1.1%	2.5%	0.5%	7.5%	12.8%	87.2%
Disparity Ratio	498.9%***	115.3%	270.5%	27.6%‡	182.4%***	219.2%***	82.4%***

Source: CHA analysis of King County data  
 ‡ Indicates substantive significance  
 \*\*\* Statistically significant at the 0.001 level

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>c</sup> Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.<sup>d</sup> A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

c. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

d. A chi-square test – examining if the utilization rate was different from the weighted availability – was used to determine the statistical significance of the disparity ratio.

Overall, the disparity results, both for all industries and the broad industry groupings of A & E and construction, demonstrate that minority- and woman-owned businesses are at or very close to parity with non-M/WBEs in the award of County dollars. The ratios are over 80 percent and are mostly statistically significant. These outcomes indicate that the County's programs have been effective in addressing marketplace discrimination. The only exception is Native American-owned firms performing on locally funded A & E contracts and FTA funded contracts. However, these outcomes are not statistically significant, probably as the result of the very small number of available firms.

Disparity ratios were not calculated for EPA and FAA funded contracts because the analysis was not legally required for EPA funded contracts and there were not enough contracts to perform the analysis for FAA funded contracts.

### **3. M/WBE Disparities in the County's Market Area**

CHA examined the outcomes for M/WBEs in construction and construction related professional and non-professional services in the wider Puget Sound economy beyond the County's own contracting activities. The goal was to shed light on the likely results if King County were to abandon the use of its contracting equity tools. To conduct this examination, CHA analyzed the Census Bureau's American Community Survey from 2017-2021 and the State of Washington Industry Data from the Census Bureau's 2018 Annual Business Survey.<sup>e</sup> CHA also reviewed surveys and literature on barriers to access to commercial credit and the development of human capital. Although these results, taken as a whole, show that there are systemic and endemic inequalities outside of the County's programs in the ability of firms owned by minorities and women to have full and fair access to construction and construction-related contracts and associated subcontracts in the Puget Sound and overall Washington economy, King County's specific statistical results contrast with this picture.

### **4. Qualitative Evidence of Discrimination**

CHA developed anecdotal evidence of firms' marketplace with current or past discrimination that may impede equal opportunities for M/W/DBEs to compete for County opportunities. CHA interviewed 72 business owners. CHA also collected 109 responses from an anecdotal electronic survey of business owners. M/W/DBE firms reported experiencing entrenched relationships and networks that impeded their access to information and contract opportunities. Many MBEs said they had faced systemic racial barriers and negative assumptions and perceptions about their competency and capabilities. Some women suffered gender-based discrimination in business opportunities and negative assumptions about their competency. Many found breaking into construction and engineering industry networks

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e. The 2018 report provides 2017 data, which are the most recent data available.

particularly challenging. M/W/DBEs often found it difficult to access capital. Most participants reported that the COVID-19 pandemic had no lasting negative impacts on their ability to compete for work.

## **5. County Contracting Opportunities**

Most M/WBEs supported the Small Contractor Supplier (“SCS”) program and found it helpful. A few participants had not benefited from the program. Some interviewees reported that they have been successful in obtaining County work and enjoyed working with the County. Others had negative experiences. Functioning as a subcontractor lead to serious problems for some SCS firms, because of the prime vendor’s control of information and access to County staff. Recent changes to the procurement portal were reported to have made it more difficult to access information on specific contracting opportunities.

In addition, many firms requested the following:

- More outreach events and information about how to network with County decisionmakers and larger firms.
- More support from Business Development Contract Compliance to access information.
- Unbundling contracts so SCS and M/WBE firms can perform as prime vendors.
- Reducing excessive insurance requirements.
- Reforms to the process for setting billing rates on consulting contracts.

## **6. Recommendations**

Based on the Study’s results, case law and national best practices for contracting equity programs, we make the following recommendations for enhancements to the County’s initiatives that have already led to parity:

- Increase communication and outreach to M/W/DBE and SCS firms.
- Focus on increasing prime contract awards to certified firms.
- Enhance opportunities on professional services projects by reviewing the system for setting rates; establishing a task force to make specific recommendations; providing additional points to proposers using a firm new to King County work; and consideration of a fixed markup percentage.
- Reduce insurance requirements, where possible.
- Enhance the SCS Program and the Equity and Social Justice Innovation Plan by developing a program manual; adopting “quick pay” schedules; using the Study’s availability estimates to set race- and gender-neutral SCS and ESJ

contract goals; ensuring the SCS certification list is up to date; reviewing relationships between SCS and non-certified firms during the certification process; and dropping the additional training requirement for continued SCS certification.

- Use the Disparity Study to set the triennial DBE goal for FTA and FAA funded contracts.
- Consider partnering with other agencies and local organizations to provide bonding, financing, and technical assistance programs.
- Develop performance measures for program success.
- Conduct regular program reviews.