



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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# Disparity Study: An Overview of Municipalities and Government Agencies

## OVERVIEW

On April 13, 2016, the Citizens Equal Opportunity Commission presented a report regarding recommendations for a disparity study and other improvements, to the Budget and Government Efficiency Committee. As a result of this presentation, the Committee directed the Office of the Independent Budget Analyst (IBA) to conduct a high-level overview of other municipalities and government agencies with disparity studies in place, in order to provide information on the cost to produce a study. This report summarizes that information and also includes some issues for consideration should the City Council be interested in allocating resources for a disparity study and a supporting program.

## FISCAL/POLICY DISCUSSION

A disparity study is a complex report that collects qualitative and quantitative data on businesses within a defined market area, and analyzes that information within the context of the area's governing laws and regulations, and the purchasing program of the city or other government agency commissioning the study. This analysis is done with the intent of identifying whether or not any gaps exist in the organization's contracting with traditionally underrepresented groups, and will include recommendations on how to remedy those gaps.

The City's Equal Opportunity Contracting Program (EOC) administers programs that support small, local businesses in San Diego, by working to increase their participation in City contracting. Firms that meet location, length of time in operation, and average gross annual receipts criteria, can be classified as either a Small Local Business Enterprise (SLBE) or an Emerging Local Business Enterprise (ELBE) and may be eligible to participate in the City's SLBE Program. Participation in the City's SLBE Program gives businesses access to restricted bidding

opportunities, additional points when bids are evaluated, and other benefits. EOC also administers the City's Disadvantaged Business Enterprise (DBE) Program Plan<sup>1</sup>, which provides a business that is certified by the State as being owned by a "socially and economically disadvantaged individual," opportunities to bid on City contracts that have federal funding sources tied to federal DBE goals.

The City currently tracks diversity information on awarded contracts in construction and architectural and engineering professional services (A&E) through its Equal Opportunity Contracting Program (EOC). While EOC tracks and reports on those businesses that are awarded City contracts, and puts processes in place to increase SLBE/ELBE participation in City contracting, the City is not able to establish contractor race- or gender-related participation goals for traditionally underrepresented groups for non-federally funded contracts, as it would risk contravening Proposition 209 that California voters approved in 1996. When voters approved Proposition 209, they abolished the State's public "affirmative action programs" by prohibiting preferential treatment based on race, sex, color, ethnicity, or national origin in a number of areas including public contracting. However, disparity studies may (depending upon the results) provide a justification for preferential treatment as they provide a means to more objectively conclude if disparity exists within a market area, and determine which groups experience that disparity. A disparity study for the City of San Diego would provide information on whether or not disparity in contracting with the City exists, and to what extent the City's current EOC program is able to address the disparity identified. In speaking to the City Attorney's Office, however, we note that any disparity study undertaken must be able to pass strict scrutiny in order to be considered an exception to Proposition 209, and therefore should include participation by the City Attorney's Office.

### **Disparity Studies in Other Jurisdictions**

Our Office reached out to a number of cities to discuss their disparity studies. Most of the jurisdictions that have conducted studies update them every five to seven years<sup>2</sup>. To the extent that they had a current study in place and were willing to provide us with cost information, we have included them in the table below.

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<sup>1</sup> The DBE Program Plan is administered in accordance with U.S. Department of Transportation (DOT), 49, Code of Federal Regulations, Part 26 requirements.

<sup>2</sup> After a disparity study is commissioned, the report is usually released 12-18 months later. Therefore, work on a new disparity study may begin about five years after the previous report is released, and the new report would typically be available up to 18 months after the work begins, extending the time between reports from 5 years to 6 or 7 years.

Selection of Cities/Counties with Disparity Studies		
City	Cost	Date of Last Report
Austin, Texas	\$1.0 million	2016
Cincinnati, Ohio	\$1.0 million	2015
Houston, Texas <sup>1</sup>	\$750,000-\$1.2 million	2012
Philadelphia, Pennsylvania <sup>2</sup>	\$100,000/\$1.0 million	2014/2003
Shelby County, Tennessee <sup>3</sup>	\$310,000	2016
Selection of Other Agencies with Disparity Studies		
Entity	Cost	
Caltrans <sup>4</sup>	\$1.0 million	2012
SANDAG	\$420,000	2014
San Francisco Municipal Transportation Agency	\$450,000	2015

<sup>1</sup>Houston is currently conducting a disparity study to update the one released in 2012. The cost range listed is for the disparity study that is currently being conducted.

<sup>2</sup>Philadelphia conducted a comprehensive disparity study in 2003, at a cost of \$1.0 million. They have been updating aspects of their study on an annual basis every year since 2008.

<sup>3</sup>Disparity studies for the cities and county listed on this table varied in whether the respective study reviewed the value of contracts awarded, or the value of contracted expenditures. The dollar amount for all of the cities however, was in the billions, while Shelby County's study included contracts valued at a total of \$190.5 million--this difference may account for the difference in the cost of the study.

In comparison, the City of San Diego procures about \$1 billion worth of goods annually.

<sup>4</sup>Caltrans is currently conducting a disparity study to update the one released in 2012, they expect to release it in the fall of 2016.

Other jurisdictions contacted, such as San Francisco and the City of Phoenix, previously had disparity studies in place, but have since moved from gender- and race-based programs to programs focused on supporting local businesses.

Transportation agencies that receive U.S. Department of Transportation funds also put disparity studies in place in order to meet federal requirements. These agencies' studies resemble the disparity studies conducted by cities and counties, but we note that the applicant pool working with these agencies may differ as they focus on transportation contracts as opposed to the breadth of contracting needs of municipal governments.

**Issues to Consider**

While our Office was able to gather some information on the cost of disparity studies put in place by cities, counties, and government agencies, we would also like to raise other issues for Council consideration that may affect the cost of a study:

- **Scope:** the disparity study costs for the cities and counties included in this report are for all agency contracts, including construction, architectural and engineering, professional services, and goods and supplies. In speaking with staff at other municipalities however, some indicated that earlier disparity studies had a reduced scope (for instance, only

construction contracts) that reduced the cost of the study. The City's Purchasing & Contracting Department staff have also noted that disparity studies include a review of three to five years' worth of contracting data. Staff indicates this data exists for construction and A&E contracts, but have raised concerns about the availability of historical data for goods and services contracts.

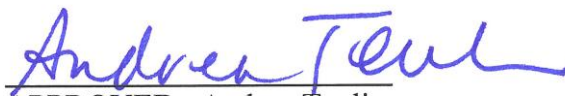
- **Multi-jurisdiction:** not included in the list of cities above due to the age of their disparity study (released in 2007), is the City of Tampa which partnered with the Hillsborough County Aviation Authority to produce a multi-jurisdictional study. The City of Tampa indicated that they achieved cost-savings in their study by partnering with another agency and sharing costs. SANDAG has also partnered with other agencies (the North County Transit District and Imperial County Transportation Commission) in order to achieve cost savings.
- **Project management, implementation, and monitoring:** as noted in the introduction to this report, disparity studies are large, complex documents that take significant time to produce and may result in recommendations for changes in a city's procurement practices. Depending upon the scope of the study and the number and type of changes recommended (and implemented), additional staffing or other resources may need to be put in place to properly manage producing the study and monitoring its benefits.

## CONCLUSION

At the request of the Budget and Government Efficiency Committee, this report provides a high-level overview of other cities' and agencies' disparity studies, including procurement costs. Disparity studies provide a framework for understanding if disparity in contracting exists, as well as providing recommendations for mitigating those disparities. Due to the City of San Diego's size, our Office believes that it is reasonable to expect that a disparity study could be conducted at a cost of \$1.0 million, although we note that this cost could be reduced depending upon the scope of the study or by partnering on a disparity study with another jurisdiction. We also note that the City will need to identify current or additional resources for project management, implementation, and monitoring in order to put the study in place and monitor its benefits.



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