



# EXECUTIVE SUMMARY

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2015 Disadvantaged Business Enterprise Disparity Study

*John Wayne Airport*

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## 1. INTRODUCTION

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In September 2015, John Wayne Airport (JWA), Orange County contracted with MGT of America, Inc. (MGT) to conduct a **Disadvantaged Business Enterprise (DBE) Disparity Study**. MGT followed a carefully designed work plan that was tailored to meet JWA's objectives for the study and allowed study team members to fully analyze availability and utilization of minority, women, and disadvantaged business enterprises (MWDBEs) in the procurement practices of JWA. The study analyzed contracting opportunities in order to identify with particularity whether a statistical disparity exists from which the existence of past or present public or private discrimination may be inferred in the relevant market area.

### SUMMARY SECTIONS

1. Introduction
2. Study Team
3. Overview and Approach
4. Findings
5. Conclusions

The work plan consisted of, but was not limited to, the following major tasks:

- ◆ Establish data parameters and finalize the work plan.
- ◆ Conduct a legal review.
- ◆ Review policies, procedures, and programs.
- ◆ Conduct market area and utilization analysis.
- ◆ Determine the availability of qualified firms.
- ◆ Analyze utilization and availability data for disparity.
- ◆ Conduct a survey of vendors.
- ◆ Analyze disparities, if any, in the private sector marketplace.
- ◆ Collect and analyze anecdotal information.
- ◆ Prepare and present draft and final reports for the study

To address JWA's objectives MGT's disparity study methodology was guided by an overarching research question: *Is there factual predicated evidence to support a race- and gender-conscious MWDBE program for JWA?* **Our research concluded that there is evidence to support the continuation of a modified DBE Program by JWA to address disparities identified in the report.**

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## 2. STUDY TEAM

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MGT of America is a Tallahassee-based research and management consulting firm and has conducted disparity and disparity-related studies since 1990. The team who conducted JWA's Disparity Study is the most experienced in the country at navigating the challenges, obstacles, and volatility, which can easily derail the most well-planned and executed study.

### MGT PROJECT TEAM

The team of experts who dedicated their time, attention, and expertise to this study:

**Mr. Reggie Smith, Executive-In-Charge**

Mr. Smith is the leader of MGT's disparity study business unit and is nationally recognized expert in managing and directing disparity studies. He has directed over three dozen studies since joining MGT and has managed some of the largest disparity studies in the country. He played a key role in developing and refining MGT's methodology and quality standards for conducting disparity studies.

**Ms. Vernetta Mitchell, Senior Consultant/Project Manager**

Ms. Mitchell is an expert in minority business program development and has developed and managed small, minority, and women business programs within local government and private sector companies. She has extensive knowledge and experience in project management, project scheduling, analytical reporting, facilitation, and public relations. Ms. Mitchell performs research regarding local business climates to bring her up to date on M/WBE issues that may be present during her qualitative research.

**Ms. Hope Smith, M.B.A, Senior Consultant/Quantitative Analyst**

Ms. Smith has more than 14 years of experience in quantitative and qualitative data analytics. She has advanced experience using statistical software such as SPSS, survey development platforms, diversity management, and compliance software as well as Microsoft Office software such as Access, Excel, PowerPoint, and Word.

**MGT SUBCONSULTANTS****Donaldson Enterprises**

Suzanne Donaldson-Stephens, as owner and founder of Donaldson Enterprises, has over 10 years of experience working with large firms, small minority-owned firms in the architectural, engineering, and construction industries, as well as with public agencies. Donaldson Enterprises is a Native American Woman-owned business and is DBE certified. On JWA's engagement, Donaldson Enterprises recruited firms and managed the focus groups, managed the public meetings, conducted in-depth interviews with business owners, and conducted interviews with area trade associations and business organization, also referred to as stakeholders.

**The Henne Group**

The Henne Group (THG) is a San Francisco-based consulting group. THG offers unique expertise on the complex issues of influencing public opinion and behavior while advancing and protecting client's brand and reputation. During JWA's engagement, The Henne Group conducted the custom census surveys and the survey of vendors.

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**3. STUDY OBJECTIVES**

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The objectives of this study were:

- ◆ Determine whether JWA, either in the past or currently, engages in discriminatory practices in the solicitation and award of contracts to minority-, and women- owned, and disadvantaged business enterprises (MWDBEs).
- ◆ Determine if a legally justified need exists for the establishment of an MWDBE program in accordance with the guidelines set forth by the Supreme Court and relevant subsequent cases.

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## 4. STUDY DEFINITIONS

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**Study Period.** MGT analyzed expenditures between July 1, 2010 through June 30, 2015.

**Business Categories or Industries<sup>1</sup>.** Construction, Architecture and Engineering, Professional Services, Nonprofessional Services, and Goods and Commodities.

### **Ethnic Gender Groups.**

- ◆ **African Americans:** an individual having origins in any of the black racial groups of Africa.
- ◆ **American Indians/Native Americans (Native Americans):** an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin.
- ◆ **Asian Americans:** an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part.
- ◆ **Hispanic Americans:** an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part. Hispanics of African ancestry are not counted among the African American group.
- ◆ **Nonminority Woman (Nonminority Female):** a woman, regardless of race or ethnicity, unless she is also a member of an ethnic or racial minority group and elects that category in lieu of the gender category.
- ◆ **Certified DBE Firms.** Certified DBE firms are businesses that were certified based on the California Unified Certification Program (CUCP) certification directory. This means the certified DBE firms met the eligibility criteria stated in 49 CFR Part 26, which includes:
  - Business status, including size.
  - Social and economic disadvantage.
  - Business ownership classification.
  - Independence.
  - Management and control.

MGT staff also conducted separate utilization analyses on certified DBE firms. However, it should be noted, MGT does not conduct availability or disparity analyses separately for certified DBE firms and, therefore, is not presented in this study. Courts have accepted disparity studies based on race, ethnicity, and gender (MWDDBE group) as opposed to DBE certification status. Therefore, MGT did not separately calculate availability and subsequently disparity for DBE certified firms.

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<sup>1</sup> Defined in **Chapter 4, Market Area and Utilization Analyses.**

- ◆ **Non-MWDBE Firms.** Firms that were identified as Nonminority Male or majority-owned were classified as non-MWDBE firms. If there was no indication of business ownership, these firms were also classified as non-MWDBE firms.
- ◆ **Non-DBE Certified Firms.** When MGT examined the utilization of certified DBE firms, firms that were identified as not being certified as a DBE were classified as non-DBE certified firms.

### Relevant Market

Based on the results of the Overall Market Area analyses, the Relevant Market Area includes those cities and counties in the **Los Angeles-Long Beach-Anaheim, California Metropolitan Statistical Area (MSA)**. Hence, the analyses such as utilization, availability, anecdotal, and disparity presented in this report were based on the established Relevant Market Area.

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## 4. FINDINGS

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### FINDING A: MWDBE PRIME UTILIZATION *(Reference Chapter 4 and Appendix B)*

The dollar value of MWDBE prime utilization on JWA projects over the current study period within the relevant market was as follows:

- ◆ Across all contract categories, minority firms were paid approximately \$4.25 million at the prime level, 1.06 percent of all prime dollars. Nonminority Female-owned firms were paid approximately \$204,491 at the prime level, 0.05 percent of all prime dollars.
- ◆ In Architecture & Engineering, minority firms were paid approximately \$3.82 million at the prime level, 13.42 percent of Architecture & Engineering prime dollars; Nonminority Female-owned firms were paid approximately \$61,690 at the prime level, 0.22 percent of Architecture & Engineering prime contract dollars. There was disparity for all MWDBE groups except for Hispanic American-owned firms. (There was no Architecture & Engineering prime availability for Native Americans).
- ◆ In Construction, minority firms were paid approximately \$102,899 at the prime level, 0.03 percent of the total Construction prime payment dollars; Nonminority Female-owned firms were paid approximately \$16,902 at the prime level, 0.01 percent of the Construction prime payment dollars. There was disparity for all MWDBE groups.
- ◆ In Professional Services, minority firms were paid approximately \$28,054 at the prime level, 0.18 percent of Professional Services prime dollars; Nonminority Female-owned firms were paid approximately \$125,899, 0.78 percent of Professional Services prime dollars. There was disparity for all MWDBE groups.
- ◆ In Nonprofessional Services, minority firms were paid approximately \$195,089 at the prime level, 0.29 percent of Nonprofessional Services prime payment dollars; Nonminority Female-owned firms did not have any utilization in Nonprofessional Services during the study period. There was disparity for all MWDBE groups.
- ◆ In Goods & Commodities, minority firms were paid approximately \$101,175 at the prime level, 0.92 percent of Goods & Commodities prime contract dollars; Nonminority Female-owned firms did not

have any utilization in Goods and Commodities during the study period. There was disparity for all MWDBE groups.

TABLE E-1  
SUMMARY OF PRIME UTILIZATION  
BY PROCUREMENT CATEGORY AND BUSINESS OWNERSHIP CLASSIFICATION

BUSINESS OWNERSHIP CLASSIFICATION	ARCHITECTURE & ENGINEERING	CONSTRUCTION	PROFESSIONAL SERVICES	NONPROFESSIONAL SERVICES	GOODS & COMMODITIES
	(\$)	(\$)	(\$)	(\$)	(\$)
Total Minority Firms	\$3,823,942	\$102,899	\$28,054	\$195,089	\$101,175
Total Nonminority Female Firms	\$61,690	\$16,902	\$125,899	\$0.00	\$0.00
Total MWDBE Firms	\$3,885,632	\$119,801	\$153,953	\$195,089	\$101,175
	(%)	(%)	(%)	(%)	(%)
Total Minority Firms	13.42%	0.03%	0.18%	0.29%	0.92%
Total Nonminority Female Firms	0.22%	0.01%	0.78%	0.00%	0.00%
Total MWDBE Firms	13.64%	0.04%	0.96%	0.29%	0.92%

Source: **Chapter 4 Utilization Analyses.**

### **FINDING B: DISPARITY FINDINGS U.S. CENSUS SURVEY OF BUSINESS OWNERS**

*(Reference Chapter 6)*

Based on the analysis of the U.S. Census, 2012 SBO data, overall there remains a significant gap between the market share of M/WBE firms and their share of the State of California and Los Angeles-Long Beach-Anaheim, California MSA metro area marketplaces business population, where data were available.

### **FINDING C: SURVEY RESULTS** *(Reference Chapter 7 and Appendix G)*

Among the MWDBE firms who responded to survey questions about barriers to doing business, the biggest concern for prime contractors was having unnecessary restrictive contract specifications (29.4% of MWDBEs). MWDBE subcontractors stated their biggest barrier working with primes on JWA projects is competing with large companies (33.3% of MWDBEs). Additional key barriers for MWDBE subcontractors included:

- ◆ Short or limited time given to prepare bid estimate or quote – 16.7 percent.
- ◆ Solicitation of subcontractor bids after contract award (i.e. bid shopping) – 16.7 percent.

### **FINDING D: DISPARITIES IN SELF-EMPLOYMENT AND REVENUE EARNINGS** *(Reference Chapter 6 and Appendix E)*

Based on the analysis of the U.S. Census, 2012 SBO data, overall there remains a significant gap between the market share of MWBE firms and their share of the State of California and Los Angeles-Long Beach-Anaheim, California MSA metro area marketplaces business population, where data were available.

Findings from the Public Use Microdata Sample (PUMS) 2014 data indicate minorities were significantly less likely than Nonminority Males to be self-employed and, if they were self-employed, they earned significantly less in 2014 than did self-employed Nonminority Males. When self-employment rates were stratified by race and by business type, trends varied within individual race-by-type cells, but disparities persisted, in general, for all minorities and Nonminority Females.

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### 3. COMMENDATIONS AND RECOMMENDATIONS

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#### COMMENDATION AND RECOMMENDATION A: SMALL BUSINESS ENTERPRISE PROGRAM

John Wayne Airport should be commended for development of a Small Business Program policy as required by 49 CFR Part 26. This study recommends JWA consider implementing the Small Business Program policy in its contracting practices.

#### RECOMMENDATION B: SUBCONTRACTOR PROJECT GOALS

John Wayne Airport should consider amending its MWDBE participating policy to remedy each of the specific disparities identified in **Table E-3** below. The core theme to consider is that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified MWDBEs and MWDBEs who were the low-bidding subcontractors.

#### RECOMMENDATION C: DATA MANAGEMENT

In order to gain a better understanding of the progress JWA is making with MWDBE participation, JWA should consider establishing processes and systems to collect more detailed data, to include but not limited to:

- ◆ Identify the type of funding (such as Federal Aviation Administration) for prime procurement and contracting.
- ◆ Indicate whether a subcontracting goal is associated with the prime procurement/contract.
- ◆ Consider tracking prime bidder data in JWA's Unifier System.
- ◆ Track all (certified and non-certified) subcontract awards on all projects.
- ◆ Track the payments to all subcontractors (certified and non-certified).
- ◆ Track the race, ethnicity, and gender of all firms (prime contractors and subcontractors).
- ◆ Consider tracking prime contractor and subcontractor information in JWA's Unifier System.

#### RECOMMENDATION D: OUTREACH

JWA should consider increasing its outreach efforts to DBEs. Outreach activities to consider include notification of contract opportunities, participation in area procurement fairs and partnering with area trade associations and business organizations to identify MWDBE firms and encourage support for JWA's procurement program.

## RECOMMENDATION E: MWDBE PROGRAM STAFFING

John Wayne Airport should consider providing additional staffing resources to manage and implement study recommendations and provide oversight and management of its DBE program, including compliance and budget.

## COMMENDATION AND RECOMMENDATION F: NARROWLY TAILORED DBE PROGRAM

John Wayne Airport should be commended for incorporating the DBE regulations in their DBE Program adopted in May 2013. Developments in court cases involving federal disadvantaged business enterprise (DBE) programs provide important insight into the design of such programs. Federal courts have consistently found DBE regulations in 49 CFR 26 to be narrowly tailored.<sup>2</sup> The federal DBE program has the features of 1) using race- and gender-conscious set-asides in extreme cases (49 CFR 26(43)(b)), and 2) meeting the maximum amount of DBE goals through race-neutral means (49 CFR 26(51)(a)) that contribute to this characterization as a narrowly tailored remedial procurement preference program. John Wayne Airport should consider adopting these features in any amended DBE program.

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## 4. CONCLUSION

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In response to the primary research question, this study provides evidence to support a JWA MWDBE program. This conclusion is based primarily on statistical disparities in current MWDBE utilization; and evidence of discrimination in business formation and revenue earned from self-employment. This evidence is based on quantitative and qualitative data from public and private sources. Any future efforts must be narrowly tailored to rectify the issues identified in this report. A summary of the percentage of utilization, estimation of availability, and disparity indices are provided in **Table E-3** below.

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<sup>2</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8<sup>th</sup> Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004).



EXECUTIVE SUMMARY



TABLE E-3  
DISPARITY INDICES AND T-TEST RESULTS  
BY BUSINESS CATEGORY

BUSINESS CATEGORY	BUSINESS OWNERSHIP CLASSIFICATION	PERCENT OF DOLLARS	AVAILABLE FIRMS ESTIMATE	DISPARITY INDEX	DISPARATE IMPACT OF UTILIZATION		STATISTICAL SIGNIFICANCE
			(%)				
CONSTRUCTION	African American Firms	0.00%	0.64%	0.00	Underutilization	*	¥¥
	Asian American Firms	0.03%	3.86%	0.78	Underutilization	*	¥¥
	Hispanic American Firms	0.00%	1.93%	0.00	Underutilization	*	¥¥
	Native American Firms	0.00%	0.00%	-	n/a		n/a
	<b>TOTAL MINORITY FIRMS</b>	<b>0.03%</b>	<b>6.43%</b>	<b>0.47</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
	Nonminority Female Firms	0.01%	1.61%	0.62	Underutilization	*	¥¥
	<b>TOTAL M/W/DBE FIRMS</b>	<b>0.04%</b>	<b>8.04%</b>	<b>0.50</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
Non-M/W/DBE Firms	99.96%	91.96%	108.70	Overutilization		¥¥	
ARCHITECTURE & ENGINEERING	African American Firms	0.00%	3.84%	0.00	Underutilization	*	¥¥
	Asian American Firms	0.71%	10.26%	6.92	Underutilization	*	¥¥
	Hispanic American Firms	12.71%	8.55%	148.65	Overutilization		¥¥
	Native American Firms	0.00%	0.00%	-	n/a		n/a
	<b>TOTAL MINORITY FIRMS</b>	<b>13.42%</b>	<b>22.65%</b>	<b>59.25</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
	Nonminority Female Firms	0.22%	6.41%	3.43	Underutilization	*	¥¥
	<b>TOTAL M/W/DBE FIRMS</b>	<b>13.64%</b>	<b>29.06%</b>	<b>46.94</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
Non-M/W/DBE Firms	86.36%	70.94%	121.74	Overutilization		¥¥	
PROFESSIONAL SERVICES	African American Firms	0.00%	4.18%	0.00	Underutilization	*	¥¥
	Asian American Firms	0.12%	5.64%	2.13	Underutilization	*	¥¥
	Hispanic American Firms	0.06%	2.51%	2.39	Underutilization	*	¥¥
	Native American Firms	0.00%	0.21%	0.00	Underutilization	*	n/ss
	<b>TOTAL MINORITY FIRMS</b>	<b>0.18%</b>	<b>12.54%</b>	<b>1.44</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
	Nonminority Female Firms	0.78%	5.21%	14.97	Underutilization	*	¥¥
	<b>TOTAL M/W/DBE FIRMS</b>	<b>0.96%</b>	<b>17.75%</b>	<b>5.41</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
Non-M/W/DBE Firms	99.04%	82.25%	120.41	Overutilization		¥¥	
NONPROFESSIONAL SERVICES	African American Firms	0.00%	0.70%	0.00	Underutilization	*	¥¥
	Asian American Firms	0.00%	1.87%	0.00	Underutilization	*	¥¥
	Hispanic American Firms	0.00%	6.78%	0.00	Underutilization	*	¥¥
	Native American Firms	0.29%	0.47%	61.70	Underutilization	*	n/ss
	<b>TOTAL MINORITY FIRMS</b>	<b>0.29%</b>	<b>9.82%</b>	<b>2.95</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
	Nonminority Female Firms	0.00%	0.93%	0.00	Underutilization	*	¥¥
	<b>TOTAL M/W/DBE FIRMS</b>	<b>0.29%</b>	<b>10.75%</b>	<b>2.70</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
Non-M/W/DBE Firms	99.71%	89.25%	111.72	Overutilization		¥¥	
GOODS & COMMODITIES	African American Firms	0.00%	0.25%	0.00	Underutilization	*	¥¥
	Asian American Firms	0.08%	1.00%	8.00	Underutilization	*	¥¥
	Hispanic American Firms	0.00%	1.25%	0.00	Underutilization	*	¥¥
	Native American Firms	0.84%	1.00%	84.00	Underutilization	*	n/ss
	<b>TOTAL MINORITY FIRMS</b>	<b>0.92%</b>	<b>3.50%</b>	<b>26.29</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
	Nonminority Female Firms	0.00%	0.24%	0.00	Underutilization	*	n/ss
	<b>TOTAL M/W/DBE FIRMS</b>	<b>0.92%</b>	<b>3.74%</b>	<b>24.60</b>	<b>Underutilization</b>	<b>*</b>	<b>¥¥</b>
Non-M/W/DBE Firms	99.08%	96.26%	102.93	Overutilization		¥¥	

Source: MGT developed a Master Payments and Availability Database for the study.

Disparity index is the ratio of the percentage of dollars to percentage of available firms multiplied by 100.00.

\* indicate a substantial level of disparity, which is a disparity index below 80.00.

n/a denotes the analyses cannot be applied in this case due to the mathematical constraint of division by zero.

Statistical Significance refers to a t-test performed to determine whether the disparity indices are within a small sampling error of 100.

Statistical significance is not based on tests of whether disparity violates the "80 rule.

¥¥ denotes the ratio of utilization to availability is statistically significant at a 0.05 level.

n/ss denotes the ratio of utilization to availability is not statistically significant.