

4.0 DISPARITY ANALYSIS

4.0 DISPARITY ANALYSIS

This chapter examines the issue of disparity within each business category of procurement. Disparity, in this context, is the analysis of the differences between the utilization of minority- and nonminority women-owned business enterprises (M/WBEs) and the availability of those firms. Accordingly, MGT of America, Inc., (MGT) used disparity indices to examine whether M/WBEs received a proportional share of dollars based on the availability of M/WBEs in the relevant market area.

This chapter consists of the following sections:

- Section 4.1 describes the methodology used by MGT to test for the presence or absence of disparity in each of the business categories.
- Section 4.2 applies the disparity indices to the business categories and determines the presence or absence of statistically significant disparity in the COSA procurement activity.

4.1 Methodology

MGT used the availability and utilization information presented in **Chapter 3.0** of this report as the basis to determine if M/WBEs received a proportional share of payments and other procurements by COSA. This determination is made primarily through the disparity index calculation which compares the availability of firms with the utilization of those firms. The disparity index also provides a value that can be given a commonly accepted substantive interpretation.

4.1.1 Disparity Index

MGT pioneered the use of disparity indices as a means of quantifying the disparity in utilization relative to availability. The use of a disparity index for such calculations is supported by several post-*Croson* cases, most notably *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*.¹ Although a variety of similar indices could be utilized, MGT's standard for choosing its particular index methodology is that it must yield a value that is easily calculable, understandable in its interpretation, and universally comparable such that a disparity in utilization within M/WBE categories can be assessed with reference to the utilization of non-M/WBEs.

¹ *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 91 F 3d at 603.

For this study, the ratio of the percentage of utilization² to the percentage of availability multiplied by 100 serves as our measure of choice, as shown in the formula:

$$(1) \text{ Disparity Index} = \frac{\%U_{m_1p_1}}{\%A_{m_1p_1}} \times 100$$

Where: $U_{m_1p_1}$ = utilization of M/WBE₁ for procurement₁
 $A_{m_1p_1}$ = availability of M/WBE₁ for procurement₁

Due to the mathematical properties involved in the calculations, a disparity index value of 0.00 for a given race, ethnicity or gender category of firm indicates absolutely no utilization and, therefore, absolute disparity. An index of 100 indicates that vendor utilization is perfectly proportionate to availability for a particular group in a given business category, indicating the absence of disparity—that is, the proportion of utilization relative to availability one would expect, all things being equal. In general, firms within a business category are considered underutilized if the disparity indices are less than 100, and overutilized if the indices are above 100.

Since there is no standardized measurement to evaluate the levels of underutilization or overutilization within a procurement context, MGT has appropriated the Equal Employment Opportunity Commission's (EEOC) "80 percent rule" in *Uniform Guidelines on Employee Selection Procedures*. In context of employment discrimination, an employment disparity ratio below 80 indicates a "substantial disparity" in employment. The Supreme Court has accepted the use of the 80 percent rule in *Connecticut v. Teal* (*Teal*), 457 U.S. 440 (1982), and in *Teal* and other affirmative action cases, the terms "adverse impact," "disparate impact," and "discriminatory impact" are used interchangeably to characterize values of 80 and below.

4.2 Disparity Indices

Tables showing disparity indices results for construction, architecture and engineering, professional services, other services, and goods and supplies are analyzed in this section. As mentioned before, the tables are based on the utilization and availability of M/WBEs and non-M/WBEs in COSA's MSA as shown in **Chapter 3.0**.

4.2.1 Construction

Disparity Analysis of Construction Prime Contractors

Exhibit 4-1 shows the disparity indices for prime construction based on COSA's payments data. Over the study period for COSA, non-M/WBE firms were overutilized in 2005, 2006, and 2007 resulting in overall overutilization with a disparity index of 122.47. Based on construction prime payments, firms owned by African Americans, Asian Americans, Native Americans, and nonminority women were substantially underutilized in each year of the study period, resulting in disparity indices of 31.29, 13.21, and 9.56, respectively. Firms owned by Native Americans were not utilized over the study period. The disparity index for Hispanic Americans over the study period was 65.09, which

² Percentage of utilization is based on procurement dollars and the percentage of availability is based on the number of firms.

resulted in substantial underutilization on the prime contractors' level for construction from 2004 to 2007.

**EXHIBIT 4-1
DISPARITY ANALYSIS OF CONSTRUCTION PRIME CONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION
SEPTEMBER 2004 THROUGH DECEMBER 2007**

M/WBE Classification	% of Gross Dollars Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
Calendar Year 2004				
African Americans	0.00%	0.48%	0.00	Underutilization *
Hispanic Americans	42.57%	25.04%	170.01	Overutilization
Asian Americans	1.07%	0.32%	334.92	Overutilization
Native Americans	0.00%	0.16%	0.00	Underutilization *
Nonminority Women	11.30%	10.37%	109.00	Overutilization
Non-M/WBE Firms	45.06%	63.64%	70.81	Underutilization *
Calendar Year 2005				
African Americans	0.00%	0.48%	0.00	Underutilization *
Hispanic Americans	24.31%	25.04%	97.07	Underutilization
Asian Americans	0.28%	0.32%	89.02	Underutilization
Native Americans	0.00%	0.16%	1.27	Underutilization *
Nonminority Women	0.24%	10.37%	2.34	Underutilization *
Non-M/WBE Firms	75.16%	63.64%	118.12	Overutilization
Calendar Year 2006				
African Americans	0.00%	0.48%	0.20	Underutilization *
Hispanic Americans	12.24%	25.04%	48.87	Underutilization *
Asian Americans	0.01%	0.32%	4.59	Underutilization *
Native Americans	0.01%	0.16%	5.56	Underutilization *
Nonminority Women	1.25%	10.37%	12.01	Underutilization *
Non-M/WBE Firms	86.49%	63.64%	135.92	Overutilization
Calendar Year 2007				
African Americans	0.00%	0.48%	0.19	Underutilization *
Hispanic Americans	30.41%	25.04%	121.44	Overutilization
Asian Americans	0.17%	0.32%	54.36	Underutilization *
Native Americans	0.00%	0.16%	0.51	Underutilization *
Nonminority Women	5.80%	10.37%	55.98	Underutilization *
Non-M/WBE Firms	63.61%	63.64%	99.96	Underutilization
All Calendar Years				
African Americans	0.00%	0.48%	0.14	Underutilization *
Hispanic Americans	22.44%	25.04%	89.61	Underutilization
Asian Americans	0.20%	0.32%	61.51	Underutilization *
Native Americans	0.00%	0.16%	2.80	Underutilization *
Nonminority Women	3.31%	10.37%	31.95	Underutilization *
Non-M/WBE Firms	74.05%	63.64%	116.36	Overutilization

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

Disparity Analysis of Subcontractors

Exhibit 4-2 shows the disparity indices, based on awarded contractors proposed to be utilized on COSA projects, for subcontractor awards based on hard copy files (where data was available). Based on study period, all awarded M/WBE groups, except for firms owned by Hispanic Americans and nonminority women, were underutilized for construction subcontractor awards. Firms owned by African Americans, Asian Americans, and Native Americans were substantially underutilized with a disparity index of 23.15, 53.97, and 60.21, respectively.

**EXHIBIT 4-2
DISPARITY ANALYSIS OF SUBCONTRACTORS
BY RACE/ETHNICITY/GENDER CLASSIFICATION
SEPTEMBER 2004 THROUGH DECEMBER 2007**

M/WBE Classification	% of Subcontract Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
All Years				
African Americans	0.86%	3.73%	23.15	* Underutilization
Hispanic Americans	9.43%	7.33%	128.71	Overutilization
Asian Americans	0.75%	1.38%	53.97	* Underutilization
Native Americans	0.42%	0.69%	60.21	* Underutilization
Nonminority Women	13.04%	8.58%	152.05	Overutilization
Non-M/WBE Firms	75.50%	78.28%	96.44	Underutilization

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

4.2.2 Architecture and Engineering

In this section, we present the results of the disparity analysis for the architecture and engineering business category for prime consultants within the MSA.

Architecture and Engineering Consultants

Exhibit 4-3 shows the disparity indices for architecture and engineering consultants. Overall, among M/WBEs, Hispanic American-, African American-, and Asian American-owned firms were substantially underutilized as architecture and engineering consultants during the study period at a disparity index of 45.74, .76, and 63.83. However, firms owned by nonminority women were overutilized during each year of the study.

EXHIBIT 4-3
DISPARITY ANALYSIS OF ARCHITECTURE AND ENGINEERING CONSULTANTS
BY RACE/ETHNICITY/GENDER CLASSIFICATION
SEPTEMBER 2004 THROUGH DECEMBER 2007

M/WBE Classification	% of Gross Dollars ¹	% of Available Firms ²	Disparity Index ³	Disparate Impact of Utilization
Calendar Year 2004				
African Americans	0.00%	1.16%	0.00	Underutilization *
Hispanic Americans	5.60%	18.02%	31.09	Underutilization *
Asian Americans	2.60%	3.49%	74.50	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	54.03%	12.21%	442.54	Overutilization
Non-M/WBE Firms	37.77%	65.12%	58.00	Underutilization *
Calendar Year 2005				
African Americans	0.00%	1.16%	0.00	Underutilization *
Hispanic Americans	17.58%	18.02%	97.52	Underutilization
Asian Americans	3.95%	3.49%	113.25	Overutilization
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	15.33%	12.21%	125.55	Overutilization
Non-M/WBE Firms	63.15%	65.12%	96.97	Underutilization
Calendar Year 2006				
African Americans	0.00%	1.16%	0.00	Underutilization *
Hispanic Americans	17.26%	18.02%	95.74	Underutilization
Asian Americans	0.37%	3.49%	10.72	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	23.25%	12.21%	190.41	Overutilization
Non-M/WBE Firms	59.12%	65.12%	90.79	Underutilization
Calendar Year 2007				
African Americans	0.05%	1.16%	4.09	Underutilization *
Hispanic Americans	1.92%	18.02%	10.63	Underutilization *
Asian Americans	1.19%	3.49%	33.99	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	18.24%	12.21%	149.42	Overutilization
Non-M/WBE Firms	78.61%	65.12%	120.72	Overutilization
All Calendar Years				
African Americans	0.01%	1.16%	0.76	Underutilization *
Hispanic Americans	8.24%	18.02%	45.74	Underutilization *
Asian Americans	2.23%	3.49%	63.83	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	37.60%	12.21%	307.99	Overutilization
Non-M/WBE Firms	51.92%	65.12%	79.73	Underutilization *

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

N/A denotes that in these cases due to the mathematical constraint of division by zero. This occurred because there is zero utilization in this category. Because the utilization percentage is the denominator in the final calculation, the existence of disparity can be inferred due to the prima facie evidence of zero utilization levels.

4.2.3 Professional Services

In this section, we present the results of the disparity analysis for the professional services business category for prime consultants..

Professional Services Consultants

Exhibit 4-4 shows the disparity indices for professional services consultants. Overall, M/WBE firms were substantially underutilized as professional services consultants during the study period. Hispanic American-owned firms were substantially underutilized in each year of the study, except for 2004 where they were overutilized with a disparity index of 386.47. African American-, Asian American, and nonminority women-owned firms were substantially underutilized in each year of the study, thus resulting with a disparity index of 31.29, 65.09, and 13.21, respectively. Native American-owned firms were not utilized during the study period. Overall, non-M/WBE firms were overutilized at a disparity index of 122.47..

EXHIBIT 4-4
DISPARITY ANALYSIS OF PROFESSIONAL SERVICES
CONSULTANTS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
SEPTEMBER 2004 THROUGH DECEMBER 2007

M/WBE Classification	% of Gross Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
Calendar 2004				
African Americans	0.15%	3.50%	4.31	Underutilization *
Hispanic Americans	60.81%	15.73%	386.47	Overutilization
Asian Americans	0.00%	0.35%	0.00	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	4.14%	8.74%	47.31	Underutilization *
Non-M/WBE Firms	34.91%	71.68%	48.70	Underutilization *
Calendar 2005				
African Americans	0.60%	3.50%	17.14	Underutilization *
Hispanic Americans	2.57%	15.73%	16.34	Underutilization *
Asian Americans	0.05%	0.35%	14.67	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	1.15%	8.74%	13.11	Underutilization *
Non-M/WBE Firms	95.63%	71.68%	133.42	Overutilization
Calendar 2006				
African Americans	1.77%	3.50%	50.74	Underutilization *
Hispanic Americans	6.42%	15.73%	40.82	Underutilization *
Asian Americans	0.05%	0.35%	13.77	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.50%	8.74%	5.67	Underutilization *
Non-M/WBE Firms	91.26%	71.68%	127.32	Overutilization
Calendar 2007				
African Americans	0.22%	3.50%	6.34	Underutilization *
Hispanic Americans	15.08%	15.73%	95.86	Underutilization
Asian Americans	0.05%	0.35%	13.44	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.62%	8.74%	7.10	Underutilization *
Non-M/WBE Firms	84.03%	71.68%	117.23	Overutilization
All Calendar Years				
African Americans	1.09%	3.50%	31.29	Underutilization *
Hispanic Americans	10.24%	15.73%	65.09	Underutilization *
Asian Americans	0.05%	0.35%	13.21	Underutilization *
Native Americans	0.00%	0.00%	N/A	N/A
Nonminority Women	0.84%	8.74%	9.56	Underutilization *
Non-M/WBE Firms	87.78%	71.68%	122.47	Overutilization

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

N/A denotes that in these cases due to the mathematical constraint of division by zero. This occurred because there is zero utilization in this category. Because the utilization percentage is the denominator in the final calculation, the existence of disparity can be inferred due to the prima facie evidence of zero utilization levels.

4.2.4 Other Services

In **Exhibit 4-5**, our analysis shows that of the M/WBE groups, African American-, Native American-, and Asian American-owned firms were substantially underutilized, while nonminority women and Hispanic American firms, non-M/WBE firms were also overutilized as other service vendors with a disparity index of 213.91 and 123.22, respectively. The underutilization of Native American- and Asian American-owned in each year of the study period resulted in overall substantial underutilization with a disparity index of .88 and 2.86, respectively. While African American-owned firms were overutilized in 2004 (September to December 2004) with a disparity index of 238.34, our analysis shows that African American-owned firms overall resulted in substantial utilization with a disparity index of 67.73.

EXHIBIT 4-5
DISPARITY ANALYSIS OF OTHER SERVICES VENDORS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
SEPTEMBER 2004 THROUGH DECEMBER 2007

M/WBE Classification	% of Gross Dollars ¹	% of Available Firms ²	Disparity Index ³	Disparate Impact of Utilization
Calendar Year 2004				
African Americans	2.09%	0.88%	238.34	Overutilization
Hispanic Americans	11.19%	13.70%	81.69	Underutilization
Asian Americans	0.00%	0.44%	0.00	Underutilization *
Native Americans	0.02%	0.18%	8.66	Underutilization *
Nonminority Women	50.05%	5.79%	863.66	Overutilization
Non-M/WBE Firms	36.66%	79.02%	46.39	Underutilization *
Calendar Year 2005				
African Americans	0.27%	0.88%	30.83	Underutilization *
Hispanic Americans	12.19%	13.70%	89.03	Underutilization
Asian Americans	0.00%	0.44%	0.00	Underutilization *
Native Americans	0.00%	0.18%	0.00	Underutilization *
Nonminority Women	7.58%	5.79%	130.87	Overutilization
Non-M/WBE Firms	79.95%	79.02%	101.18	Overutilization
Calendar Year 2006				
African Americans	0.22%	0.88%	25.63	Underutilization *
Hispanic Americans	24.27%	13.70%	177.18	Overutilization
Asian Americans	0.00%	0.44%	0.00	Underutilization *
Native Americans	0.00%	0.18%	0.00	Underutilization *
Nonminority Women	2.11%	5.79%	36.37	Underutilization *
Non-M/WBE Firms	73.40%	79.02%	92.89	Underutilization
Calendar Year 2007				
African Americans	0.74%	0.88%	83.93	Underutilization
Hispanic Americans	14.67%	13.70%	107.11	Overutilization
Asian Americans	0.04%	0.44%	8.63	Underutilization *
Native Americans	0.00%	0.18%	0.00	Underutilization *
Nonminority Women	14.56%	5.79%	251.19	Overutilization
Non-M/WBE Firms	70.00%	79.02%	88.59	Underutilization
All Calendar Years				
African Americans	0.59%	0.88%	67.73	Underutilization *
Hispanic Americans	16.88%	13.70%	123.22	Overutilization
Asian Americans	0.01%	0.44%	2.86	Underutilization *
Native Americans	0.00%	0.18%	0.88	Underutilization *
Nonminority Women	12.40%	5.79%	213.91	Overutilization
Non-M/WBE Firms	70.12%	79.02%	88.74	Underutilization

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

4.2.5 Goods and Supplies

In **Exhibit 4-6**, our analysis shows that of the M/WBE groups, Hispanic American-, Native American-, and nonminority women-owned firms were underutilized, while African American-owned firms were overutilized.

**EXHIBIT 4-6
DISPARITY ANALYSIS OF GOODS AND SUPPLIES VENDORS
IN THE RELEVANT MARKET AREA
BY RACE/ETHNICITY/GENDER CLASSIFICATION
JANUARY 1, 2005, THROUGH DECEMBER 31, 2007**

M/WBE Classification	% of Gross Dollars¹	% of Available Firms²	Disparity Index³	Disparate Impact of Utilization
Calendar Year 2004				
African Americans	2.61%	1.29%	202.53	Overutilization
Hispanic Americans	8.77%	17.68%	49.58	Underutilization *
Asian Americans	0.70%	0.12%	601.36	Overutilization
Native Americans	0.02%	0.29%	6.10	Underutilization *
Nonminority Women	8.49%	8.02%	105.84	Overutilization
Non-M/WBE Firms	79.41%	72.60%	109.39	Overutilization
Calendar Year 2005				
African Americans	20.98%	1.29%	1,628.83	Overutilization
Hispanic Americans	16.52%	17.68%	93.41	Underutilization
Asian Americans	2.95%	0.12%	2,522.56	Overutilization
Native Americans	0.02%	0.29%	8.24	Underutilization *
Nonminority Women	16.93%	8.02%	211.11	Overutilization
Non-M/WBE Firms	42.59%	72.60%	58.67	Underutilization *
Calendar Year 2006				
African Americans	1.05%	1.29%	81.49	Underutilization
Hispanic Americans	5.22%	17.68%	29.53	Underutilization *
Asian Americans	0.58%	0.12%	491.83	Overutilization
Native Americans	0.01%	0.29%	1.90	Underutilization *
Nonminority Women	3.61%	8.02%	45.01	Underutilization *
Non-M/WBE Firms	89.54%	72.60%	123.33	Overutilization
Calendar 2007				
African Americans	6.86%	1.29%	532.53	Overutilization
Hispanic Americans	17.32%	17.68%	97.93	Underutilization
Asian Americans	3.78%	0.12%	3,229.07	Overutilization
Native Americans	0.03%	0.29%	9.34	Underutilization *
Nonminority Women	6.77%	8.02%	84.39	Underutilization
Non-M/WBE Firms	65.25%	72.60%	89.87	Underutilization
All Calendar Years				
African Americans	5.51%	1.29%	428.11	Overutilization
Hispanic Americans	9.48%	17.68%	53.59	Underutilization *
Asian Americans	1.57%	0.12%	1,339.72	Overutilization
Native Americans	0.01%	0.29%	4.49	Underutilization *
Nonminority Women	6.61%	8.02%	82.40	Underutilization
Non-M/WBE Firms	76.82%	72.60%	105.81	Overutilization

Source: MGT developed a procurement and vendor database for the COSA from September 2004 through December 2007.

¹ The percentage of dollars is taken from the prime utilization exhibit previously shown in **Chapter 3.0**.

² The percentage of available contractors is taken from the availability exhibit previously shown in **Chapter 3.0**.

³ The disparity index is the ratio of % utilization to % availability times 100.

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

N/A denotes that in these cases due to the mathematical constraint of division by zero. This occurred because there is zero utilization in this category. Because the utilization percentage is the denominator in the final calculation, the existence of disparity can be inferred due to the prima facie evidence of zero utilization levels.

4.2.6 Conclusions based on Disparity Indices

This chapter used disparity indices to compare the availability and utilization findings from **Chapter 3.0**. The disparity indices for each of the business categories indicate whether disparity exists for each ethnic or gender group.

Exhibit 4-7 summarizes the findings of M/WBE underutilization.

**EXHIBIT 4-7
SUMMARY OF M/WBE UNDERUTILIZATION**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Construction Prime Contractors	YES*	YES	YES*	YES*	YES*
Construction Subcontractors – COSA	YES*	NO	YES*	YES*	NO
Architecture and Engineering Consultants	YES*	YES*	YES*	N/A	NO
Professional Services Firms	YES*	YES*	YES*	N/A	YES*
Other Services Firms	YES*	NO	YES*	YES*	NO
Goods and Supplies Firms	NO	YES*	NO	YES*	YES

* An asterisk is used to indicate a substantial level of disparity – index below 80.00.

N/A denotes that in these cases due to the mathematical constraint of division by zero. This occurred because there is zero utilization in this category. Because the utilization percentage is the denominator in the final calculation, the existence of disparity can be inferred due to the prima facie evidence of zero utilization levels.