



## 2009 SAN ANTONIO REGIONAL BUSINESS DISPARITY CAUSATION ANALYSIS STUDY

### -FREQUENTLY ASKED QUESTIONS-

#### BACKGROUND AND HISTORY

Below you will find some frequently asked questions regarding the background and history of the Disparity Study.

We appreciate your interest and look forward to working with all local businesses and other public entities to ensure a fair opportunity to compete.

- [How will the Supreme Court ruling on the Rothe Case affect this study?](#)

#### **MGT's Response:**

**Rothe Decision:** The most recent appellate decision (November 4, 2008) from the Court of Appeals for the Federal Circuit (not the U.S. Supreme Court) struck down the federal race-conscious program for the Department of Defense as unconstitutional. In this *Rothe Development Corporation v. DOD* opinion, the appellate court examined and criticized six disparity studies.

#### **Important differences with San Antonio Consortium:**

- The Federal SDB program involved in *Rothe* used race conscious set-asides.
- No disparity study was produced for federal SDB program; the court criticized studies developed for other jurisdictions.
- There was no expert witness for SDB program or for the factual predicate evidence for the SDB program. Consequently, many statements in the *Rothe* decision were simply inaccurate in their characterization of the disparity studies under review.
- Federal circuit courts differ in their approach to evaluating factual predicate evidence for disparity studies.
- Methodologies used in Consortium study have been upheld in several circuit court decisions, including *Concrete Works* (10<sup>th</sup> Circuit) and *Gross Seed* (8<sup>th</sup> Circuit). The *Rothe* court itself favorably cited MGT's regression analysis, similar to the one used for the Consortium (although the court mischaracterized the availability methodology in the regression analysis). Very similar methodology as deployed for the Consortium study was also upheld in the recent district court case in *HB Rowe v. North Carolina DOT*.

- **What Cities has MGT completed similar Disparity Studies for?**

**MGT's Response:**

MGT has extensive experience in conducting post-Croson and -Adarand disparity studies. We conducted our first equal opportunity study in 1978 and our first post-Croson disparity study in 1990. Having conducted disparity studies for over 120 jurisdictions, many for states, consortiums, and large-scale agencies, MGT has extensive experience with the collection, management, and analysis of large, complex sets of quantitative and qualitative data pertaining to race, disability, and gender issues.

Most of MGT's disparity studies conducted for state and local governments have been large scale. The depth and magnitude of these past studies validate our experience in successfully conducting a study of the magnitude required by the Comptroller. Some of our large scale studies include:

**STATE:**

- State of North Carolina.
- State of Delaware.
- Commonwealth of Virginia.
- State of Colorado and the Department of Transportation.
- State of New Jersey.

**DEPARTMENTS OF TRANSPORTATION:**

- North Carolina Department of Transportation.
- Nebraska Department of Roads.
- West Virginia Department of Transportation.
- Florida Department of Transportation I.
- Florida Department of Transportation II.
- Oregon Department of Transportation.
- South Carolina Department of Transportation.
- Virginia Department of Transportation.
- Colorado Department of Transportation.
- Arizona Department of Transportation.

**CONSORTIUMS:**

- Charlotte Consortium:
  - City of Charlotte.
  - Mecklenburg County.
  - Charlotte-Mecklenburg County School System.
- St. Louis Area Consortium:
  - City of St. Louis.
  - St. Louis Housing Authority.
  - Metropolitan St. Louis Sewer District.

- Sacramento Multi-Regional Public Agencies:
  - City of Sacramento.
  - Sacramento County.
  - Sacramento Housing and Redevelopment Agency.
  - Sacramento Regional Transit District.
  - Sacramento Education and Training Agency.
  
- Little Rock Consortium:
  - City of Little Rock.
  - City of Little Rock CDGB and Housing Programs.
  - Little Rock Municipal Airport Authority.
  - Little Rock Wastewater Authority.
  - Little Rock Water Works.
  - Central Arkansas Library System.
  - Little Rock Convention and Visitors Bureau.
  
- Kansas City Consortium:
  - City of Kansas City.
  - Kansas City School District.
  - Kansas City Area Transportation Authority.
  
- Savannah-Chatham County Consortium:
  - City of Savannah.
  - Chatham County.
  - Savannah-Chatham County School District.

**LOCAL AND METROPOLITAN JURISDICTIONS:**

- Dallas/Fort Worth International Airport Texas
- City of Fort Worth, Texas
- City of Phoenix I, II, and III
- Port Authority of New York and New Jersey
- City of Atlanta (private sector element)
- Orlando-Orange County Expressway Authority
- City of Tallahassee I and II
- Leon County, Florida I and II
- Nassau County (New York)
- Clark County Department of Aviation/McCarran International Airport
- Portland International Airport
- City of Dayton, Ohio
- City of Saint Paul & Saint Paul Housing and Redevelopment Authority, Minnesota

- **How many Disparity Studies has MGT completed in Texas?**

**MGT's Response:**

In addition to completing disparity and disparity-related studies for Dallas/Fort Worth International Airport and City of Fort Worth, Texas, MGT is currently conducting the disparity study for the State of Texas. The purpose of this study is to willing, and able HUBs within the total pool of ready, willing, and able Texas businesses, and the actual proportion of utilization of HUBs in state contracting. All state agencies and institutions of higher education are included in this assessment or study. The analysis will include contracting for goods and services, construction services (including subcontracting), and professional services, and will cover a three-year period.

- **Do other Cities in Texas use the same methodology when conducting their Disparity Studies?**

**MGT's Response:**

Not necessarily. There are many similarities and some differences between studies.

- **Does the Methodology MGT use vary from City to City when conducting these studies?**

**MGT's Response:**

There are some differences based on data availability and evolution of the case law.

- **Which are the shared Chapters?**

**MGT's Response:**

Chapter 2.0 - Legal Review

Chapter 5.0 - Anecdotal Chapter - summary of findings from public hearings, focus groups, personal interviews, and telephone surveys

Chapter 7.0 - Local Credit Market - summary of statistical disparities in the market related to lending, loan denials, etc.

Chapter 8.0 - Best Practices - overview of the program design and practices of federal, state, and local government small, minority, and women business enterprise (S/M/WBE) programs throughout the nation.

There are also shared appendices to the report which include: the survey instruments (personal interview, focus group guide, and telephone survey); the regression analyses which was conducted on the results from the telephone survey; the telephone survey results (presented by ethnic/racial/gender classification); and additional private sector findings.

- **Are there going to be percentages for overall utilization of S/M/WBEs by the entire Consortium?**

**MGT Response:**

The analyses for this study were based on the utilization of each Consortium member. However, comparison exhibit which will present the utilization results for each member by each business category (where applicable) will be provided upon the approval of all reports.

- **Why was the private sector researched in this study?**

**MGT Responses:**

Private sector analyses (including utilization and anecdotal) was presented as part of the scope of work in the Request for Proposals. In addition, *Croson* provided that the government “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.”<sup>1</sup> The government agency's active or passive participation in discriminatory practices in the marketplace may show the compelling interest. Finding discrimination in the portions of the private sector economy that are subjects of the disparity study can also show passive participation. In *Croson*, the Court stated, "A municipality has a compelling government interest in redressing not only discrimination committed by the municipality itself, but also discrimination committed by private parties within the municipality's legislative jurisdiction, so long as the municipality in some way participated in the discrimination to be remedied by the program."<sup>2</sup> The Court of Appeals decision in *Adarand* concluded that there was a compelling interest for a DBE program based primarily on evidence of private sector discrimination.<sup>3</sup> Similarly, in *Concrete Works IV* the Court of Appeals upheld the relevance of data from the private marketplace to the establishment of a factual predicate for M/WBE programs.<sup>4</sup>

- **Who decided to look at the private sector, was that the consultant or the City?**

**MGT Response:**

Private sector utilization was presented as part of the scope of work in the Request for Proposals submitted by the Consortium.

---

<sup>1</sup> See *Richmond v. Croson*, 488 U.S. 492 (1989); see generally I. Ayres and F. Vars, “When Does Private Discrimination Justify Public Affirmative Action?” 98 *Columbia Law Review* 1577 (1998).

<sup>2</sup> *Croson*, 488 U.S. 46, 109 S.Ct. at 720-21, 744-45.

<sup>3</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir 2000).

<sup>4</sup> *Concrete Works IV*, at 69