



2009 SAN ANTONIO REGIONAL BUSINESS DISPARITY CAUSATION ANALYSIS STUDY

-FREQUENTLY ASKED QUESTIONS-

DATA AND METHODOLOGY

Below you will find some frequently asked questions regarding the data and methodology used in 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.

- **Were medical services included in this data analysis? If so, were they included in Professional Services or Other Services?**

MGT's Response:

Please refer to **Chapter 3.0** for examples and description of business categories; however, medical services are classified under professional services.

- **Please verify the Asian American Prime Consultant utilization percentages.**

MGT's Response:

The utilization percentages are based on the total dollars paid by business category. MGT goes through a detailed and thorough review process with our clients requesting that the clients approve and/or provide feedback on the assignment of business categories (such as professional services, construction, other services, etc.) as well as the assignment of racial/gender/ethnic classifications. MGT had the assistance of knowledgeable City staff from the City's applicable departments to provide feedback on the analyses submitted to the City. MGT in turn incorporated feedback received in order to finalize the analyses.

- **What data did MGT use to determine the Private Sector's M/WBE utilization of sub-consultants as it states they were awarded less than 1% of the projects based on private sector construction projects?**

MGT's Response:

MGT selected two sources of data for its private sector analysis: (1) permit data¹ (such as building, electrical, plumbing)² provided by the City for commercial construction projects permitted during the period of the study and (2) data provided by Reed Construction Data Corporation. The value in examining permits is that it offers the most complete and up-to-date record of actual construction activity undertaken in the relevant market area. However, to corroborate findings, MGT also analyzed Reed Construction Data (RCD), which gathers information on both general construction and civil engineering projects in a given market area at both the prime contractor and subcontractor level.³

The City of San Antonio's (COSA) Development Services Department⁴ transmitted permit data electronically to MGT in a Microsoft Excel spreadsheet format. In order to isolate only commercial construction projects as the focus of analysis, public sector and residential building permit records were eliminated. Please refer to **Chapter 6.0, Private Sector Utilization and Availability Analyses** for additional information.

- **Regarding the exhibit Key Findings COSA Comparison to the Private Sector, specifically with Construction utilization of sub-consultants, how were the figures .89% and 24.5% derived? (What was the denominator/numerator for the determinations?)**

MGT's Response:

The .89% is based on permits that were valued as commercial construction subcontracting projects. M/WBE firms were permitted for projects totaling \$301,520 (.89 percent of the commercial construction subcontracting projects).

MGT did cross reference the permits data with the firms utilized by the City of San Antonio (two separate data sets). The goal of this analysis was to examine public sector and private sector contracting patterns for construction. In doing so, MGT has compared the public sector utilization of vendors in COSA-issued data with private sector utilization of such firms as reflected in the San Antonio MSA permit data. The general questions to be answered regarding the permitting analysis included the following:

¹ Please note that the analyses on permit data activity was based on January 1, 2002 through December 31, 2006, and January 1, 2002 through December 31, 2007 for prime contractor and subcontractor level of work, respectively.

² Appropriate permits are required for any building, construction, alteration or repair involving new or changed uses of property (other than ordinary repairs). Although in most instances, individual permits were issued for work on the same project, it was possible, in many cases, to identify subcontractors who were clearly providers of construction and other services to prime contractors, based on the type of work, since separate permits are required for building, electrical, heating, air conditioning, and plumbing.

³ RCD were also reviewed but proved to be incomplete for this analysis. Although RCD's subcontractor data was incomplete and unusable, Reed's prime contracting data was sufficient for a prime contractor analysis. Results from the prime contractor analysis are summarized briefly in this chapter.

⁴ MGT also obtained permits data from Bexar County. However, based on the data received as well as subsequent meetings with representatives for COSA's Development Services Department and the County, MGT opted to conduct the analyses based on the permits data provided by COSA. This decision was made based on the fact that majority of the permits let in the San Antonio market area are let by COSA.

- To what extent do utilized prime contractors that appear in the COSA data set also appear in the private sector permitting data for construction contracts?
- What is the utilization of subcontractors that are in the COSA data set that are also in the permitting data set?

When San Antonio permitting patterns and COSA data were cross referenced by vendor, five contractors were issued permits by San Antonio for subcontractor level permitting work. Please refer to **Chapter 6.0, Private Sector Utilization and Availability Analyses** for additional information.

- **Please have MGT clarify the payments made to Primes. Does the data only focus on payments made to Primes? Does it include the payments that were made to subs as well?**

MGT's Response:

The analyses of payments made to primes were based on the electronic data extracted from the City of San Antonio's SAP financial system. The analysis for subcontractors was based on data collected from the City of San Antonio's hard copy files, where available. The analysis was based on dollars awarded to subcontractors, since this was the data readily available. However, it should be noted that the City is now implementing a tracking system that will not only track the awards made to subcontractors, but also the payments made.

- **Has SAWS completed their Study?**

MGT's Response:

MGT has submitted SAWS complete draft report. A revised report will be submitted to SAWS no later than the week of May 4, 2009.

- **For the A&E Prime Contractor data, did MGT determine the availability numbers first and then the utilization?**

MGT's Response:

MGT calculated utilization first, since firms that are utilized are included in the pool of firms available to provide services.

- **Referring to the Executive Summary, Exhibit E-2: A&E, what factor(s) determined how they answered "Yes" or "No"?**

MGT's Response:

This exhibit is a summary of our findings. The detailed results of the report's disparity findings are presented in **Chapter 4.0**. "Yes" or "No" are a summary of report's disparity findings. "Yes" denotes underutilization (disparity exists) and "No" denotes that there was no underutilization found (no evidence of disparity).

An * denotes substantial disparity, which is a value of 80 or less. Please refer to **Chapter 4.0** for the detailed presentation of these results.

- **Referring to the Executive Summary, Exhibit E-2: A&E, how was the availability percentage determined?**

MGT's Response:

For the purposes of this study, prime availability was based on firms that (1) have performed prime contract work for COSA; (2) have bid on or been notified about prime contract work for COSA; or (3) have performed work or bid on work for one of members of the Consortium. These firms are considered to be available because they have either performed or indicated their willingness to perform prime contract work for the local San Antonio market area.

- **Based on awarded contracts, did they analyze for those contracts that were not awarded?**

MGT's Response:

The analyses for primes were based on actual payments made by the City of San Antonio to firms. The analyses for subcontractors were based on contract awards to subcontractors as opposed to actual payments made to subcontractors. This approach was used due to the limited data available for actual payments made to subcontractors.

- **How do you address the Non-Minority availability and utilization? There seems to be under utilization there, if you subtract the entire Minority and women owned business enterprises from 100%.**

MGT's Response:

Please refer to **Chapter 4.0, Exhibits 4-1 through Exhibit 4-6** for the disparity findings regarding non-M/WBE firms.

- **How did MGT account for the subs that were paid out of the total project dollars paid to the primes?**

MGT's Response:

Based on available data (through hard copy files), MGT did conduct an analyses of subcontractor contract awards. This was due to payment to subcontractors not being readily available. However, it should be noted, the City has implemented a tracking and monitoring system that will ultimately not only tracks awards to subcontractors, but also tracks payments to subcontractors. The analyses for primes were based on payments made by the City to primes.

- **Was the A&E data collected by the City in the same manner as data was collected for Construction?**

MGT's Response:

Yes, data was collected in the same manner.

- **Exhibit 3-3 – is this based on Construction dollars only?**

MGT's Response:

Yes

- **Is MGT rolling A&E into Construction?**

MGT's Response:

No

- **For information regarding the year 2007 – does this refer to 410 individual projects paid out to women owned firms?**

MGT's Response:

The review of the data was conducted by MGT and our client. There are separate procurement categories, which were 5 for the purpose of the study. The 410 "individual projects" are not projects but payments to the firm. For example, HSN was awarded 1 contract but might submitted 15 invoices and received a payment for each invoice. Therefore, there were 15 payments. These analyses were based on the data collected, which was payment data.

- **How were the focus group, industry capacity, and company availability data incorporated into the analyses and conclusions?**

MGT's Response:

The findings from the focus groups are highlighted throughout the anecdotal chapter of this report. While we do not highlight the findings by location of focus group, the findings from the focus groups are presented based on the anecdotal topic. However, in the report, the location of all focus groups is mentioned. The data related to industry capacity and availability was reviewed and some of the data is incorporated throughout the report. This data was also reviewed and compared to the statistical data and additional anecdotal data collected and analyzed as a part of the study.

- **On page 6-18, how was the conclusion that "...M/WBE subcontractor utilization is all but absent in the private sector" drawn?**

MGT's Response:

The conclusion of M/WBE subcontractor utilization for the private sector was solely based on the data analyzed, which was the permits data. Reed Construction data was collected; however, the analysis was based on prime contractor participation since data was not available on the subcontractor level.

- **Page iv references Private Commercial Construction: How do building permits and Reed Construction Data track MWBE utilization?**

MGT's Response:

Building permits and Reed Construction Data do not track M/WBE utilization. Therefore, the contractors presented in the Reed Construction Data and permits data were cross referenced with ethnicity/gender/racial classification information obtained from the Consortium members' data as well as additional vendor lists that maintained this information.

- **Please clarify the Availability Data Collection discussion on page 3-7. Does it include just those primes who have bid and/or been awarded projects, or companies who have simply been notified?**

MGT's Response:

For COSA's study, MGT used firms who bid on COSA projects in addition bidding on Consortium projects, and firms that performed work for COSA, as well as, for other members of the Consortium.

- **Page 3-7 references Utilization Methodology: Why go beyond COSA's defined political subdivision boundary by pulling in counties in the entire MSA? Is that approach consistent with the courts directive to "narrowly tailor" and how does it apply to "relevant market area?"**

MGT's Response:

Courts have found that when a program grants preferences to firms from other parts of the country the program fails narrow tailoring. The failure to satisfy narrow tailoring is due to the fact that firms from other parts of the country cannot in general demonstrate that they suffered from discrimination in the relevant marketplace. The relevant market can be the agency's jurisdiction limits. However, for most cities the MSA is the relevant marketplace, that is, the geographical area where most purchases are made from by a local government agency.

- **Did MGT go down another tier to collect data from the primes regarding their subcontractors or from joint venture partnerships to evaluate further availability? How is the "available subcontractor" data being collected?**

MGT Response:

The primary source of data was through the contract files. In addition verification reports were submitted to the paid prime contractors requesting additional subcontractor data for the projects presented. The availability of subcontractors was based on the shared pool of subcontractors.

- **Regarding page 3-14, Subcontractor Analysis, what does "skewed in favor of higher participation" mean?**

MGT Response:

There were a larger number (as far as count) of M/WBE firms in comparison to the number of non-M/WBE firms.

- **If there are a given number of “available” minority primes that exist in the region, wouldn’t the use of one of those primes by a certain entity (e.g. SAWS) affect the disparity from another entity (e.g. COSA)? Meaning, if there are three available minority primes in the region and SAWS is using all three, aren’t they “no longer available” to COSA?**

MGT Response:

Conceivably, yes. But that qualification would apply to measuring non-MWBE firm availability as well. MGT prioritized using availability measures from the agency itself. In the absence of that data, Consortium availability evidence was used. In either case the same approach was used to measure availability for M/WBEs and non-M/WBEs.

- **Which numbers were pulled from permits? How could these numbers reveal the actual number of subcontractors that bid on a project? Meaning, there are a significantly higher number of subcontractors than those showing up from permits.**

MGT Response:

Yes, this is possible. However, does this dramatically change the M/WBE percentage of subcontractors? In other words, does the M/WBE percentage in the data presented possess a dramatic negative bias in the estimate of the percentage of M/WBE subcontractors? MGT looked at the private sector construction data from a variety of angles and the evidence was consistent with the anecdotal evidence of barriers to participation in private sector commercial construction.

- **What is the 36.37% availability of total M/WBE prime construction firms made up of? (Exhibit E-2)**

MGT Response:

For the purposes of this study, prime availability was based on firms that (1) have performed prime contract work for COSA; (2) have bid on or been notified about prime contract work for COSA; or (3) have performed work or bid on work for one of members of the Consortium. These firms are considered to be available because they have either performed or indicated their willingness to perform prime contract work for the local San Antonio market area.

- **How many people were surveyed in the anecdotal evidence and did these people express outright discrimination?**

MGT Responses:

Between the telephone survey, focus groups, public hearings, and personal interviews, MGT, along with our sub-consultants, interviewed 614 business

owners or community representatives that have done business with, or attempted to do business with, members of the Consortium.

Appendix D presents the results from the telephone survey. Respondents to the telephone survey were requested to answer questions regarding perceived discrimination from the private sector, if any, as well as perceived discrimination experienced by each member of the Consortium. Questions 31 through 36, presents the findings based on the private sector. Questions 64A through 80K presents the findings based on each consortium member.

- **Is the subcontractor percentage of utilization being calculated on the available work that was subcontracted out and not on the entire project? The concern is that it should be utilization in terms of percentage of the work subcontracted out not on the entire project.**

MGT Responses:

The subcontractor utilization dollars were based on subcontractor dollars awarded to the subcontractor. Our methodology does not base subcontractor utilization dollars based on the dollar amount awarded and/or paid to the prime contractor.

- **Did MGT consider the capacity of the firms bidding on projects?**

MGT's Response:

The courts generally take bidding as evidence of being qualified, willing and able. The analysis in the study was also broken out by prime and subcontractor, procurement type, the number of contracts awards, as well as some evidence on the size of the projects awarded.

- **Please clarify how Availability was accessed.**

MGT's Response:

Bidder and census availability data is present in the report

- **Did MGT consider including firms certified through the SCTRCA for Availability?**

MGT's Response:

Yes

- **Why does race take precedent over gender in terms of classification?**

MGT Response:

It is consistent with U.S Census measures. In addition, MGT has historically conducted studies where gender is included in race, except for nonminority women and nonminority males.

- **What are the implications of separating the women out throughout the study?**

MGT Response:

The study primarily separated out nonminority women. Ethnic women were generally studied as part of their own ethnic group. Firms owned by nonminority women generally face a different set of issues than firms owned by minority women.

- **Please confirm that we can not get a true picture of how many awards are currently being given to women?**

MGT Response:

The analyses for this study, as far as the prime analyses (which includes prime construction, architecture & engineering, professional services, other services, and goods & supplies) were conducted on payment data obtained from the City's financial system.

- **Have other Disparity Studies broken out reports by race and gender?**

MGT Response:

Yes, there have been disparity studies conducted that break out the analyses by race and gender. However, MGT has historically conducted studies where gender is included in race, except for nonminority women and nonminority males.

- **Are there legal ramifications to a Hispanic female or Hispanic male obtaining a contract over another?**

MGT Response:

The question is not clear. There are no legal implications per se to a Hispanic female obtaining a contract over a Hispanic male. However, there would be legal ramifications to granting a procurement preference to a Hispanic female over a Hispanic male. The 2009 study did not make recommendations based on the evidence for such a policy.

- **How can MGT state that there is disparity if data is not comparing apples to apples?**

MGT's Response:

The ratio of the percentage of utilization to the percentage of availability times 100 serves as MGT's measure of choice. A disparity index calculates the difference between availability and utilization and provides an index value that can be given a commonly accepted substantive interpretation. The results from these analyses determine if minority and woman-owned businesses received a proportional share of an agency's contracts and contract dollars. The disparity index is used to measure the differential between utilization and availability.

Several post-Crosen cases, most notably *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, support the use of disparity indices for determining disparity within the marketplace.⁵

An index of 100 indicates perfect parity between utilization and availability. An M/WBE group is considered underutilized if the disparity index is less than 100 and overutilized if the index is above 100. A disparity index value under 80 indicates substantial underutilization. Please refer to **Chapter 4.0** for more information.

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.

Having conducted disparity studies for over 120, jurisdictions, many for states, consortiums, and large-scale agencies, MGT has extensive experience in conducting post-Crosen and -Adarand disparity studies. We conducted our first equal opportunity study in 1978 and our first post-Crosen disparity study in 1990.

- **Is there a total number for all prime availability and utilization and all sub availability and utilization for private and public sector?**

MGT's Response:

Yes, **Chapter 3.0** presents the total (by race/ethnic/gender classification - M/WBE and non-M/WBE) utilization and availability analyses for the public sector data (meaning City of San Antonio). **Chapter 6.0** presents the total (by race/ethnic/gender classification - M/WBE and non-M/WBE) utilization and availability for private sector.

- **Please clarify Exhibit 3-2, is this referring to those that bid only? Or those that bid and were awarded?**

MGT Response:

Utilization for firms working as a prime was based on payment data obtained for the City of San Antonio's financial system. The utilization of firms on a subcontractor level was based on award data, which was collected via hard copy files. For the purposes of this study, prime availability was based on firms that (1) have performed prime contract work for COSA; (2) have bid on or been notified about prime contract work for COSA; or (3) have performed work or bid

¹ *Contractors Ass'n of Eastern Pennsylvania, Inc. v City of Philadelphia*, 91 F 3d at 604.

on work for one of members of the Consortium. These firms are considered to be available because they have either performed or indicated their willingness to perform prime contract work for the local San Antonio market area.

- **Please list the organizations and databases used to collect the construction data.**

MGT Response:

As far as the construction data, for COSA data, payments data as well as data collected from the hard copies were used. In addition, databases and/or hard copy data were collected from the members of the Consortium. Permits and RCD data were the primary sources for the private sector analyses dealing with construction.

However, the following is a list of organizations contacted during the course of the study. These organizations were contacted in order to obtain their membership lists. Some of the organizations contacted were: San Antonio Minority Business Development Center, UTSA Institute for Economic Development, San Antonio Minority Business Enterprise Center, Small Minority Women Business Enterprise Program, Hispanic Women's Network of Texas, San Antonio Women's Chamber of Commerce, the South Texas Women's Business Center, Society of Women Engineers - Southwest Division, San Antonio Hispanic Women's Network of Texas, Hispanic Contractors of San Antonio, San Antonio Women's Chamber of Commerce, African American Chamber of Commerce, Alamo City Chamber of Commerce, ACCION San Antonio, Community Development Loan Fund, San Antonio Media Alliance - American Women in Radio, The San Antonio Greater Chamber of Commerce, The San Antonio Hispanic Chamber of Commerce, North Chamber of Commerce, West San Antonio Chamber of Commerce, Small Business Assistance Services, SanAntonioBizWomen.com, San Antonio Small Business Development Center, Institute for Economic Development, Greater San Antonio Builders, VIA Metropolitan Transit, AGC-Associated General Contractors, South Central Texas Regional Certification Agency, and 8(a) Listing. In addition, local area cities such as Universal and Saint Hedwig were contacted in order to obtain their vendor lists. In addition, databases and/or hard copy data were collected from the members of the Consortium.

- **Why were institutions like Builder's Exchange not contacted (they probably have the most extensive database of any organization in the area)?**

MGT Response:

The Builder's Exchange of Texas was contacted and the database was obtained as well.

- **What specifically were the barriers identified in the study?**

MGT Response:

Specifically, for the telephone survey, participants were asked if he/she had experienced any of the following barriers in obtaining work on projects. The following is a few items from the list presented on the survey instrument: prequalification requirements, performance bond requirements, bid bond requirements, financing, insurance requirements, bid specifications, limited time given to prepare bid package or quote, limited knowledge of purchasing contracting policies and procedures, lack of experience, lack of personnel, contract too large, contract too expensive to bid, selection process, etc. Please refer to Appendix D questions 49A through 63O for the findings. The findings are presented by question for each member of the Consortium. In addition, the anecdotal chapter highlights findings from the telephone survey, personal interviews, focus groups, and public hearings regarding any perceived barriers.

- **Was there any effort to refute the claims of discrimination in the anecdotal evidence?**

MGT Response:

As part of our practice, we do not refute claims; however, we do seek clarification as well as examples regarding any anecdotal (such as perceived discrimination, commendations, etc.) responses. As emphasized in the anecdotal chapter, it should be cautioned that the anecdotal comments are the perceptions and opinions of individuals, and the evidentiary weight of these opinions depends on how much they are corroborated by statements of others and the quantitative data in the report.

- **Some of firms stated they were dismissed during the course of their contracts. Were these claims investigated? If not, why?**

MGT Response:

During the anecdotal process, specifically the telephone survey, participants were asked if they had been hired on a project and ultimately replaced.

- **The study charges that there is discrimination in the private sector. What is the evidence besides anecdotal stories?**

MGT Response:

The data for these analyses primarily came from permits data and Reed Construction (RCD) data, which are presented in Chapter 6.0. We also used the 2002 Survey of Business Owners (SBO), US Census Bureau, which were used as the baseline for availability estimates. Based on the SBO, we also conducted a private sector disparity analyses in construction, professional services, and other services in the San Antonio MSA. These findings are presented in Appendix K of the report.

In addition to the above analyses, we conducted a statistical analysis of disparities in entry into and earning from construction self-employment using data from the Public Use Micro Sample (PUMS) from the Census Bureau. MGT presented

results to estimate self-employment disparities for minorities and women controlling for education, age, wealth and other relevant variables. These findings can be found in Appendix H and I for the report.

We also conducted a credit analyses which is relevant to the “but for” element of private sector discrimination. The credit market analysis relied on two data sources. The first source was the direct evidence from the telephone survey for the Study Consortium of contractors on disparities, if any, in denial rates for credit, bonding and insurance, controlling for firm characteristics. The second source was the National Survey of Small Business Finance (NSSBF). The analysis used data from the NSSBF region containing Texas. The model will control for variables representing creditworthiness, firm size (e.g., sales, number of employees), firm age, and firm assets. In this chapter, we also tested for disparities in loan applications, loan denials and interest rates on loans. Please refer to Chapter 7.0 of this report for the findings.