
E.0 EXECUTIVE SUMMARY

In May 2008, MGT of America, Inc., (MGT), was retained to conduct a minority and female business enterprise disparity study for the City of Tulsa (COT) to determine whether there was a compelling interest to establish narrowly-tailored minority- and female-owned business enterprise (M/FBE) program for COT. The study consisted of fact-finding to examine the extent to which race- and gender-conscious and race- and gender-neutral remedial COT efforts had effectively eliminated ongoing effects of any past discrimination affecting COT's relevant marketplace; analyzing COT procurement trends and practices for the study period FY 2002 through FY 2008 and evaluating various options for future program development.

The results of this study and conclusions drawn are presented in detail in **Chapters 3.0** through **7.0** of this report. The following sections present selections from the study's findings and recommendations contained in **Chapter 9.0**.

E.1 Findings for M/FBE Utilization and Availability

FINDING E-1: M/FBE Prime Utilization, Availability and Disparity

The dollar value and percent of M/FBE prime utilization by COT over the study period is shown in **Exhibits E-1**. Availability and disparity are also shown in **Exhibits E-1**.

- Fifteen M/FBEs won 186 prime construction contracts for \$240.8 million (46.03 percent of the total). There was substantial disparity for African American- and Asian American-owned firms.
- Twelve M/FBEs won 117 architecture and engineering (A&E) contracts for \$17.6 million (24.31 percent of the total). There was substantial disparity for African American-owned firms.
- One M/FBEs won one professional services contract for \$46,000 (5.80 percent of the total). There was substantial disparity for African American- and Hispanic American-owned firms.
- Six M/FBEs won nine other services contracts for \$647,767 (6.10 percent of the total). There was substantial disparity for African American, Hispanic American- and Native American-owned firms.
- Four M/FBEs won five goods contracts for \$1.39 million (6.92 percent of the total). There was substantial disparity for African American-owned firms.

**EXHIBIT E-1
CITY OF TULSA
SUMMARY OF PRIME UTILIZATION, AVAILABILITY, AND DISPARITY
BY BUSINESS CATEGORY
JULY 1, 2002, THROUGH JUNE 30, 2008**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Female	Total M/FBE
Construction Prime Contractors						
Utilization Dollars	\$83,332	\$23,437,772	\$0	\$190,510,854	\$26,799,982	\$240,831,940
Utilization Percent	0.02%	4.48%	0.00%	36.42%	5.12%	46.04%
Availability Percent	2.71%	0.68%	0.23%	4.97%	2.71%	11.30%
Disparity	YES	NO	YES	NO	NO	
Architecture & Engineering Prime Consultants						
Utilization Dollars	\$0	\$0	\$3,809,147	\$5,748,289	\$8,110,282	\$17,667,718
Utilization Percent	0.00%	0.00%	5.24%	7.91%	11.16%	24.31%
Availability Percent	2.53%	0.00%	1.27%	6.33%	3.80%	13.93%
Disparity	YES	N/A	NO	NO	NO	
Professional Services Prime Consultants						
Utilization Dollars	\$0	\$0	\$0	\$46,000	\$0	\$46,000
Utilization Percent	0.00%	0.00%	0.00%	5.80%	0.00%	5.80%
Availability Percent	2.40%	0.80%	0.00%	2.80%	0.00%	6.00%
Disparity	YES	YES	N/A	NO	N/A	
Other Services Firms						
Utilization Dollars	\$175,907	\$0	\$0	\$59,509	\$407,350	\$642,766
Utilization Percent	1.67%	0.00%	0.00%	0.56%	3.87%	6.10%
Availability Percent	2.40%	0.20%	0.00%	0.80%	0.60%	4.00%
Disparity	YES	YES	N/A	YES	NO	
Goods and Supplies Vendors						
Utilization Dollars	\$0	\$0	\$0	\$597,700	\$797,286	\$1,394,986
Utilization Percent	0.00%	0.00%	0.00%	2.97%	3.96%	6.93%
Availability Percent	0.41%	0.00%	0.00%	1.22%	0.10%	1.73%
Disparity	YES	N/A	N/A	NO	NO	

Source: Chapters 4.0 and 5.0, Analysis Results.

FINDING E-2: M/FBE Subcontractor Utilization, Availability, and Disparity

The dollar value and percent of M/FBE prime utilization by COT over the study period is shown in **Exhibits E-2**. Availability and disparity are also shown in **Exhibits E-2**.

- Sixteen M/FBEs won 109 construction subcontracts for \$6.1 million (4.69 percent of the total). M/FBEs were 28.17 percent of construction subcontractors. There was substantial disparity in the underutilization of available of all M/FBE construction subcontractors.
- Four M/FBEs won 21 A&E subcontracts for \$278,785 (46.74 percent of the total). M/FBEs were 28.58 percent of A&E subconsultants. There was substantial disparity in the underutilization of available African American, Asian American, and Native American A&E subconsultants.

**EXHIBIT E-2
CITY OF TULSA
SUMMARY OF SUB UTILIZATION, AVAILABILITY, AND DISPARITY
BY BUSINESS CATEGORY
JULY 1, 2002, THROUGH JUNE 30, 2008**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Female	Total M/FBE
Construction Subcontractors						
Utilization Dollars	\$456,907.00	\$681,192.00	\$0	\$575,830.00	\$4,452,775.00	\$6,166,704
Utilization Percent	0.34%	0.52%	0.00%	0.44%	3.39%	4.69%
Availability Percent	4.40%	2.46%	0.18%	5.81%	15.32%	28.17%
Disparity	YES	YES	YES	YES	YES	
Architecture & Engineering Subconsultants						
Utilization Dollars	\$0	\$0	\$0	\$25,304	\$253,481	\$278,785
Utilization Percent	0.00%	0.00%	0.00%	4.24%	42.50%	46.74%
Availability Percent	1.79%	0.00%	0.89%	5.36%	20.54%	28.58%
Disparity	YES	N/A	YES	YES	NO	

Source: Chapters 4.0 and 5.0 Analysis Results.

FINDING E-3: Disparities in the Survey of Business Owners Data

There was evidence of disparities based on the 2002 Survey of Business Owners from the U.S. Census Bureau for the Tulsa MSA:

- *Construction Firms.* Minority-owned firms had 7.5 percent of sales in the Tulsa MSA and 67.2 percent of the market place average revenue per firm. Women-owned firms had 5.4 percent of sales and 76.9 percent of the market place average revenue per firm.
- *Professional Services Firms.* Minority-owned firms had 5.1 percent of sales in the Tulsa MSA and 65.9 percent of the market place average revenue per firm. Women-owned firms had 7.5 percent of sales and 32.0 percent of the market place average revenue per firm.
- *Other Services Firms.* Minority-owned firms had 3.6 percent of sales in the Tulsa MSA and 33.0 percent of the market place average revenue per firm. Women-owned firms had 8.6 percent of sales and 23.4 percent of the market place average revenue per firm.

FINDING E-4: Private Sector Commercial Construction Evidence

MGT collected data on private sector commercial construction in the Tulsa MSA. M/FBE subcontractor utilization on private sector commercial construction was quite low. M/FBE subcontractors were 2 percent of the firms utilized on private sector commercial projects.

FINDING E-5: Survey Evidence

Among the M/FBEs who responded to survey questions about barriers to doing business, the biggest concern was competing with large firms (123 respondents, 58.6% of M/FBEs). Other key issues noted were as follows:

- Limited time to prepare bids (76 M/FBEs, 36.2%).

- Selection process (70 M/FBEs, 33.3%).
- Bid specifications (63 M/FBEs, 30.0%).
- Size of contracts (51 M/FBEs, 24.5%).
- Thirteen M/FBEs (6.2% of M/FBE respondents) reported discriminatory experiences with city of Tulsa departments over the past three years.
- Forty-one M/FBEs (19.5%) reported discriminatory experiences in the private sector over the past three years. Fifty-six M/FBEs (26.7% of M/FBEs) felt that an informal network had excluded them from work on COT projects.

E.2 Commendations and Recommendations

RECOMMENDATION E-1: Small Purchases

COT should require the solicitation of M/FBEs for small purchases. In addition, the use of new M/FBE vendors could be an element in buyer evaluations.

COMMENDATION AND RECOMMENDATION E-2: Small Business Enterprise (SBE) Program

COT should be commended for establishing the BRIDGE program. A strong SBE program is central to maintaining a narrowly tailored program to promote M/FBE utilization. In particular, COT should focus on increasing M/FBE utilization through the BRIDGE program. COT does not face constitutional restrictions on its SBE program, only those procurement restrictions imposed by State law. Specific suggestions for a city SBE program can be found in features of other SBE programs around the United States, including: setting aside contracts for SBEs, granting financial incentives for prime contractors to use SBEs that have never worked on an agency project, providing bid preferences to SBEs in bidding on contracts and tax-assisted projects, making SBE utilization part of department performance reviews and starting mentor-protégé programs.

RECOMMENDATION E-3: Commercial Anti-discrimination Rules

The COT needs to establish a commercial anti-discrimination policy. Some courts have noted that establishing anti-discrimination rules is an important component of race-neutral alternatives.

RECOMMENDATION E-4: Narrowly Tailored M/FBE Program

This study provides evidence to support the reestablishment of a M/FBE program. This conclusion is based primarily on some statistical disparities in current M/FBE utilization, particularly in subcontracting; substantial disparities in the private marketplace; evidence of discrimination in business formation and revenue earned from self-employment; some evidence of passive participation in private sector disparities; and some anecdotal

evidence of discrimination. COT should tailor its women and minority participation policy to remedy each of these specific disparities.

The case law involving federal Disadvantaged Business Enterprise (DBE) programs provide important insight into the design of local M/FBE programs. The federal courts have consistently found the DBE regulations to be narrowly tailored. The federal DBE program avoids the use of quotas and places emphasis on achieving aspirational goals through race neutral means supplemented by race- and gender-conscious goals where warranted by the evidence..

RECOMMENDATION E-5: Annual Aspirational M/FBE Goals

The study provides strong evidence to support the setting of annual aspirational goals by business category, not rigid project goals. To establish a benchmark for goal setting, aspirational goals should be based on relative M/FBE availability. The primary means for achieving these aspirational goals should be the BRIDGE program, race-neutral joint ventures, outreach, and adjustments in City procurement policy. As in the DOT DBE program goals on particular projects should, in general, vary from overall aspirational goals.

Possible revised aspirational goals based on M/FBE availability are proposed below in **Exhibit E-3**. These proposed goals are similar to in structure to the DBE goal setting process in that the goals are a weighted average of estimated M/FBE availability and prior M/FBE utilization.

**EXHIBIT E-3
CITY OF TULSA
PROPOSED M/FBE ASPIRATIONAL GOALS
BY PROCUREMENT CATEGORY**

Procurement Category	Proposed Goal
Construction	26%
Architecture & Engineering	21%
Professional Services	12%
Other Services	13%
Goods	12%
Construction Subcontracting*	10%
Architecture & Engineering Subcontracting*	35%

*Subcontractor goals are the percentage of subcontract dollars to be awarded to M/FBEs, not the percentage of the total prime contract.

RECOMMENDATION E-6: M/FBE Subcontractor Plans

The basis for reestablishing good faith efforts M/FBE subcontractor requirements is disparities in construction subcontracting, the very low utilization in private sector commercial construction and other evidence of private sector disparities, even after controlling for capacity and other race-neutral variables. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/FBEs that were the low-bidding subcontractors.

RECOMMENDATION E-7 : Certification

Enforcement. As noted above complaints about fronts were a common theme in the anecdotal testimony. A stronger S/M/FBE program must be accompanied by more resources, including staff, devoted to weeding out “fronts” from program participation. Finally, there should be stiffer penalties on fronts.

Socially and Economically Disadvantaged Firms. COT should consider adding socially and economically disadvantaged firms to its definition of M/FBEs. The North Carolina Historically Underutilized Business (M/FBE) program has this feature. Federally certified DBE, HUBZone and Small Disadvantaged Businesses (SDB) located in COT should automatically qualify for M/FBE status.

Program Participation Limits. Another graduation provision is to restrict the overall amount of dollars a program participant can receive. For example, the city of New York graduates firms that have received more than \$15 million in prime contracts within the past three years.