

***CITY OF TULSA
BUSINESS DISPARITY STUDY
Final Report***



***Presented to City Council
by
MGT of America, Inc.***

June 8, 2010

Presentation Agenda

- ❖ Quick Facts About the Study
- ❖ Findings for Prime Contracting
- ❖ Findings for Subcontracting
- ❖ Private Sector Analysis
- ❖ Anecdotal Analysis
- ❖ Conclusion from Study Results
- ❖ Commendations and Recommendations
- ❖ Best Practices
- ❖ Questions and Answers

Quick Facts About the Study

Major Tasks of 2009 Disparity Study

- ❖ Legal Review
- ❖ Review of Policies, Procedures, and Program
- ❖ Data Assessment and Collection
- ❖ Statistical Analyses of City MSA Data - Utilization Analysis, Availability Analysis, and Disparity Analysis
- ❖ Anecdotal Analyses (Personal Interviews, Public Hearings, Focus Groups)
- ❖ Telephone Survey
- ❖ Private Sector Analyses
- ❖ Findings, Commendations, and Recommendations

Quick Facts About the Study (cont.)

Legal Guidelines

- ❖ Strict Scrutiny Standard of Review (Croson).
- ❖ A Compelling Interest can be Found in Private Sector Discrimination.
 - H.B. Rowe v. North Carolina DOT, December 2008
- ❖ Narrow Tailoring:
 - Evaluate and Employ Race-Neutral Methods.
 - Solution must be proportionate to the problem.
 - U.S. Department of Transportation guidelines for Narrowly Tailored M/WBE Program.
 - Oklahoma Law.

Quick Facts About the Study (cont.)

Legal Guidelines (cont.)

❖ Availability Approach:

- Comprehensive, broader approach.
- Separate subcontractor disparity ratios address a key issue raised in the courts.
- Census does not address interest in public sector work or separate public sector from private sector utilization.
- Legal defensibility.

Quick Facts About the Study (cont.)

Study Definitions

- ❖ Prime Contractor – A firm that contracts with the City to perform a service.
- ❖ Subcontractor – A firm that contracts with a prime contractor to perform a service.
- ❖ Relevant Market Area – Creek, Osage, Rogers, Tulsa, Okmulgee, Pawnee, and Wagoner counties.
- ❖ Utilization Analysis – Firms paid and awarded as prime contractor or subcontractor located within the relevant market area were categorized based on their ownership and control.
- ❖ Availability Analysis – Firms in the relevant market area that are ready, willing, and able to do work for the City at the prime or sub level.

Quick Facts About the Study (cont.)

Study Definitions (cont.)

- Disparity
 - Comparison between utilization and availability of minorities, females, and nonminority males.
 - Indicate whether the percentage of minority- and female-owned firms are receiving a proportional share of awards in the public and private sectors.
 - Disparity Index
 - Index of 0.00 – no utilization
 - Index under 80.00 – substantial underutilization
 - Index of 100.00 – parity
- Aspirational Targets – based on 80 percent of available firms.

Quick Facts About the Study (cont.)

Study Definitions - Business Categories

- ❖ Construction – General contractors, carpentry work, electrical work, plumbing, renovation, asbestos abatement, drainage, dredging, grading, hauling, paving, roofing, and toxic waste clean-up.
- ❖ Architecture & Engineering Services – Licensed architects, and professional engineers.
- ❖ Professional Services – Legal services, consulting services, computer services, and technical services.
- ❖ Other Services – Janitorial and maintenance services, uniformed guard services, landscaping, and other nontechnical or unlicensed services.
- ❖ Goods and Supplies – Office goods, miscellaneous building materials, equipment, vehicles, and computers.

Quick Facts About the Study (cont)

Study Definitions - Business Categories (cont.)

❖ Business Owner Classifications

- African American, Asian American, Hispanic American, Native American, Nonminority Females, and Non-M/FBE.

❖ Collection of Data

- Study period: FY2003-FY2008.
- Focus of availability analysis was bidders and contract awardees.
- Limited or inadequate amount of subcontracting data for nonminority subcontractors.
- Electronic contract awards data within the study period.
- Hard copy files of awarded contracts within the study period.
- Hard copy files of subcontractor and bidder data based on awarded contracts within the study period.
- Electronic City (of Tulsa) commercial construction permits data.
- U.S Census Survey of Business Owners (SBO) data.

Findings for Prime Contracting

Prime Utilization

The dollar value of M/FBE prime utilization by the City over the study period was as follows:

- ❖ Fifteen M/FBEs won 186 prime construction contracts for \$240.8 million (46.03% of the total).
 - ✓ Strong utilization of Native American firms, eight firms for \$190.5 million (36.42%).
 - ✓ Low utilization of African American firms, one firm for \$83,332 (0.02%)
 - ✓ No utilization of Asian American firms, \$0 (0.00%)
- ❖ Twelve M/FBEs won 117 architecture and engineering contracts for \$17.6 million (24.31% of the total).
- ❖ One M/FBE won one prime professional services contracts for \$46,000 (5.8% of the total).
- ❖ Six M/FBEs won nine (9) other services contracts for \$647,767 (6.1% of the total).
- ❖ Four M/FBEs won five (5) goods contracts for \$1.39 million (6.92% of the total).

Prime Availability

- ❖ Construction – Of the available pool (443) of all firms to perform work as prime contractors, 11.29% (50) were M/FBEs. Firms owned by Native Americans accounted for 4.97% (22), nonminority females 2.71% (12), African Americans 2.71% (12), and Hispanic Americans 0.68% (3).
- ❖ Architecture & Engineering - Of the available pool (79) of all firms, 13.92% (11) were M/FBEs. Firms owned by Native Americans were 6.33% (5). Nonminority Females were 3.80% (3), and African Americans were 2.53% (2).
- ❖ Professional Services – Of the available pool (250) of all firms, 6.00% were M/FBEs. Firms owned by Native Americans were 2.80% (7), African Americans were 2.40% (6), and Hispanic Americans were 0.80% (2).

Prime Availability (cont.)

- ❖ Other Services – Of the available pool (500) of all firms to perform work as prime contractors, 4.00% (20) were M/FBEs. Firms owned by African Americans accounted for 2.40% (12), Native Americans accounted for 0.80% (4), nonminority females 0.60% (3).
- ❖ Goods and Supplies – Of the available pool (980) of all firms, 1.73% (17) were M/FBEs. Firms owned by Native Americans were 1.22% (12), African Americans were 0.41% (4), and nonminority females were 0.10% (1).

Prime Utilization (cont.)

DISPARITY IN M/FBE PRIME CONTRACTOR UTILIZATION CITY OF TULSA FY2003-FY2008

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Females
Construction Prime Vendors	YES*	NO	YES*	NO	NO
Architecture and Engineering	YES*	N/A	NO	NO	NO
Professional Services	YES*	YES*	N/A	NO	N/A
Other Services	YES*	YES*	N/A	YES*	NO
Goods & Supplies	YES*	N/A	N/A	NO	NO

Source: Disparity findings are taken from the disparity exhibit previously shown in Chapter 5.0. An asterisk is used to indicate a substantial level of disparity.

Prime Utilization (cont.)

SUMMARY OF PRIME CONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY BY BUSINESS CATEGORY FY2003-FY2008

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: Disparity findings are taken from the disparity exhibit previously shown in Chapter 5.0

Findings for Subcontracting

Construction and Architecture and Engineering Subcontracting

- ❖ Sixteen M/FBEs won 109 construction subcontracts for \$6.1 million (4.69% of the total).
- ❖ Four M/FBEs won 21 Architecture and Engineering subcontracts for \$278,785 (46.74% of the total).

Construction and Architecture and Engineering Subcontracting Availability

- ❖ Construction – Of the available pool (568) of all firms, 28.17% (160) were M/FBEs. Nonminority females accounted for 15.32% (87), Native Americans were 5.81% (33), African Americans were 4.40% (25), and Hispanic Americans were 2.46% (14).
- ❖ Architecture & Engineering – Of the available pool (112), 28.57% (32) were M/FBEs. Nonminority females accounted for 20.54% (23), Native Americans were 5.36% (6), and African Americans were 1.79% (2).

Subcontracting Utilization

DISPARITY IN M/FBE SUBCONTRACTOR UTILIZATION CITY OF TULSA FY2003-FY2008

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Females
Disparity in City Construction Subcontracting	YES*	YES*	YES*	YES*	YES*
Disparity in City Architecture and Engineering Subcontracting	YES*	N/A	YES*	YES*	NO

Source: Disparity findings are taken from the disparity exhibit previously shown in Chapter 5.0. An asterisk is used to indicate a substantial level of disparity.

Subcontracting Utilization

SUMMARY OF SUBCONTRACTOR UTILIZATION, AVAILABILITY, AND DISPARITY BY BUSINESS CATEGORY FY2003-FY2008

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: Disparity findings are taken from the disparity exhibit previously shown in Chapter 5.0.

Private Sector Analysis

Private Sector Analysis

- ❖ M/FBE prime contractor utilization on private sector commercial construction was quite low, less than 5 percent.
- ❖ M/FBE subcontractors were 2 percent of the firms utilized on private sector commercial projects.

Private Sector Analysis (cont.)

Comparison of Public and Private M/WBE Utilization Percentage of Firms Private Commercial Construction

Business Category / Data Source	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms	Non-M/WBE Firms
Prime Contractors							
City of Tulsa Construction Prime Contractors	1.18%	3.53%	0.00%	9.41%	3.53%	17.65%	82.35%
Private Construction Prime Contractors (Building Permits) Excludes Not for Profits	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Private Construction Prime Contractors (Reed Construction) Excludes Not for Profits	0.00%	0.00%	0.00%	4.35%	0.00%	4.35%	95.65%
Subcontractors							
City of Tulsa Construction Subcontractors	10.71%	10.71%	0.00%	21.43%	17.86%	60.71%	39.29%
Private Construction Subcontractors (Building Permits) Includes Not for Profits	0.55%	0.11%	0.00%	1.21%	0.22%	2.09%	97.91%
Private Construction Subcontractors (Reed Construction)	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Private Sector Analysis (cont.)

Self-Employment Evidence – ACS

❖ American Community Survey (ACS) data from 2007 found statistically significant disparities in earnings from entry into self-employment for women and minorities in the Tulsa MSA.

Census Evidence

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 7.4% of sales in the Tulsa MSA and 67.2% of the market place average revenue per firm. Women-owned firms had 7.0% of sales and 76.9% of the market place average revenue per firm.

❖ *Professional Services Firms.* Minority-owned firms had 7.8% of sales in the Tulsa MSA and 65.9% of the market place average revenue per firm. Women-owned firms had 7.5% of sales and 32.0% of the market place average revenue per firm.

❖ *Other Services Firms.* Minority-owned firms had 3.6% of sales in the Tulsa MSA and 33.0% of the market place average revenue per firm. Women-owned firms had 8.6% of sales and 23.4% of the market place average revenue per firm.

Anecdotal Analysis

Anecdotal Analysis

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.

Conclusion from Study Results

Conclusion from Study Results

- ❖ Study provides evidence to support the reestablishment of an M/FBE program.

Commendations and Recommendations

Commendations and Recommendations

RECOMMENDATION:

Narrowly Tailored M/FBE Program

- ❖ This study provides evidence to support the reestablishment of a M/FBE program.
- ❖ COT should tailor its female and minority participation policy to remedy each of the specific disparities.
- ❖ DBE programs provide insight in designing a local M/FBE program.

Commendations and Recommendations

RECOMMENDATION:

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.
- ❖ Proposed goals are similar to in structure to the DBE goal setting process - the goals are a weighted average of estimated M/FBE availability and prior M/FBE utilization.

Commendations and Recommendations

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.

Commendations and Recommendations

RECOMMENDATION:

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.

RECOMMENDATION:

M/FBE Subcontractor Plans

Prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/FBEs that were the low-bidding subcontractors. Narrow tailoring elements to consider:

- ❖Good faith efforts (GFE) should apply to both M/FBE and non-M/FBE prime contractors.
- ❖Projects goals should vary by project and reflect realistic M/FBE availability.
- ❖Documented excessive subcontractor bid, or poor performance can be a basis for excluding M/FBE subcontractor.
- ❖Prime contractors should submit final payment affidavits to document M/FBE subcontractor payments.

Commendations and Recommendations

RECOMMENDATION:

Certification

Enforcement. 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 for “fronts.”

Socially and Economically Disadvantaged Firms. COT should consider adding socially and economically disadvantaged firms to its definition of M/FBEs.

Program Participation Limits. One graduation provision to consider is to restrict the overall amount of dollars a program participant can receive.

Commendations and Recommendations

RECOMMENDATION:

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:

RFP Language

- ❖ COT should put in their RFPs, particularly for large projects, language asking proposers about their strategies for M/FBE inclusion on the project.

Outreach

- ❖ COT should add resources and activities to strengthen or improve outreach to M/FBEs. There are 280 MBEs and 278 FBEs registered in the federal Central Contract Registry (CCR) in the Tulsa MSA. COT should insure that as many firms from these lists as is reasonable are on COT's certification list.

Commendations and Recommendations

COMMENDATION AND RECOMMENDATION:

Economic Development Projects

❖COT should be commended for seeking and achieving inclusion of M/FBEs on the BOK Center project. Data tracking of M/FBE utilization on economic development projects has been very limited. This study provides a basis for more aggressive subcontractor goal setting on economic development projects.

RECOMMENDATION:

Professionals Services and Other Services

❖COT should consider the selective use of vendor rotation to expand utilization of underutilized M/FBE groups.

Commendations and Recommendations

RECOMMENDATION:

State Contracts, Master Contracts, and Cooperative Agreements

❖COT should institute a policy of encouraging purchasing staff to use M/FBEs that are on state contracts and identified as such when COT uses state term contracts in purchasing.

RECOMMENDATION:

Construction Management, Requests for Proposals, and Design-Build

❖One method of debundling in construction is to use multi-prime construction contracts in which a construction project is divided into several prime contracts that are then overseen by a construction manager.

Commendations and Recommendations

RECOMMENDATION:

Joint Ventures

❖COT should adopt a joint venture policy similar to the one implemented by the City of Atlanta, which requires establishment of joint ventures on projects of over \$10 million (City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451). Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses.

RECOMMENDATION:

Fully Operated Rental Agreements

❖Under these arrangements, a firm may bid an hourly rate for using certain equipment and the necessary staff. In these field-let contracts, engineers select the firm with the appropriate equipment and the lowest bid rate. If that firm is not available, the engineers select the next lowest hourly rate.

Commendations and Recommendations

RECOMMENDATION:

SBE Program for Subcontracts

❖COT should consider imposing mandatory subcontracting clauses on contracts where there are subcontracting opportunities and such clauses would promote M/FBE utilization.

RECOMMENDATION:

Geographical Preferences and HUBZones

❖The federal HUBZone program is another variant of an SBE program that provides incentives for SBEs located in distressed areas.

Commendations and Recommendations

RECOMMENDATION:

Business Development Assistance

❖The COT needs to devote more resources to business development assistance. COT should review examples of other agencies with substantial business development initiatives and evaluate the impact of these initiatives on M/FBE utilization.

COMMENDATION AND RECOMMENDATION:

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.

Commendations and Recommendations

COMMENDATION AND RECOMMENDATION:

M/FBE Program Data Management

❖COT should be commended for continuing to track M/FBE utilization after establishing the BRIDGE program.

-COT should consider implementing a centralized vendor database that tracks ethnicity data and telephone numbers in addition to the address information currently kept for all vendors and bidders.

-COT should also consider installing a unique linking field between the vendor table and the contracts and tracking nonminority male subcontractor utilization.

Commendations and Recommendations

COMMENDATION AND RECOMMENDATION:

M/FBE Information on City Website

❖COT should be commended for having important information relevant to M/FBEs on its website. Other information to consider for inclusion:

- Information on the loan programs.
- Comprehensive contracting guides.
- M/FBE ordinance.
- Status of certification applications.
- Data on SBE and M/FBE utilization.
- Annual M/FBE program reports.
- Direct links to online purchasing manuals.
- Capacity, bonding, qualifications and experience data on certified firms.
- 90-day forecasts of business opportunities.

Best Practices

Best Practices

- ❖ Outreach
- ❖ SBE Set-Asides
- ❖ SBE Bid Preferences
- ❖ DBE Programs
- ❖ Bidder Rotation
- ❖ Contract Sizing
- ❖ Race-Neutral Joint Ventures
- ❖ Project Goal Setting
- ❖ Subcontractor Disclosure and Substitution

Best Practices (cont.)

- ❖ Economic Development Projects
- ❖ Insurance Programs
- ❖ Size Standards for Certification
- ❖ M/FBE Program Data Management
- ❖ Outsourcing Management and Technical Services
- ❖ Mentor Protégé Programs
- ❖ Performance Measures

Questions & Answers