

**San Antonio Regional Business
Disparity Causation Analysis Study**

San Antonio Water System



**Presentation to:
San Antonio Water System Board of Trustees**

Presented by:



Wednesday, December 16, 2009

About MGT of America, Inc.

About MGT

- MGT is a national management and research consulting firm
- With over 34 years of consulting experience, completed over 3,600 client engagements in 50 states
- Since 1989, MGT has conducted disparity studies and disparity-related studies for more than 127 jurisdictions
- Founded in 1974 in Tallahassee, FL
- Network of offices - 140 employees
 - Austin, TX
 - Tallahassee, FL
 - Sacramento, CA
 - Olympia, WA



Litigation Experience

- MGT has conducted more Disparity Studies Than Any Other Firm
 - Out of 127, Two have Gone to Trial – Both Programs Upheld*
 - All Other Challenges were Successfully Resolved

About MGT

<u>Jurisdictions</u>	<u>Outcomes</u>
North Carolina DOT (Rowe)	Program Upheld (M/WBE Program)
Nebraska Department of Roads (Gross Seed Co.)	Program Upheld
City of Baltimore (Associated Utility Contractors) II	Settled – Program Intact
Kansas DOT (Klavier)	Suit Dismissed
Colorado DOT (Adarand)	Program Upheld
South Florida Water Management District (IT Corp.)	Settled – Program Intact
Phoenix (Arizona AGC)	Settled – Program Intact
Florida DOT (Phillips and Jordan)	Remedy Suspended – Balance of Program Intact
Florida DOT (Cone Construction)	Settled – Program Intact
North Carolina DOT (Dickerson)	Program Reinstated



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
 - “The 2004 (MGT) Disparity Study demonstrated the existence of previous discrimination in the specific industry and locality at issue.”
 - 4th Circuit District Court Decision – No Other Decisions Accepting Race Conscious Policies in Procurement or Employment
 - North Carolina DOT M/WBE program (not DBE program)
 - MGT Disparity Study and Expert Witness - Dr. J. Vincent Eagan

*Legal Update
and
Guidelines*



Legal Guidelines (continued)

- **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
 - Goals Related to Availability
 - Flexibility
 - Texas Law

*Legal Update
and
Guidelines*



Current Data

- Old Data in case law
 - *Thompson Bldg v. Augusta* – “Program is still in place 13 years after the Study was compiled without any further investigation into the underlying reasons for creating a program, and without any sunset or expiration provision”
 - *Rothe* – reasonably recent, within the past five years, 10-year old data is probably stale

*Legal Update
and
Guidelines*



Quick Facts About the Study

- Major Tasks of Disparity Study
 - Legal Review
 - Review of Policies, Procedures, and Program
 - Statistical Analyses of SAWS-Related Data - Utilization Analysis, Availability Analysis, and Disparity Analysis
 - Anecdotal Analyses (Personal Interviews, Public Hearings, Focus Groups)
 - Telephone Survey and Regression Analysis
 - Private Sector Analyses
 - Findings, Commendations, and Recommendations

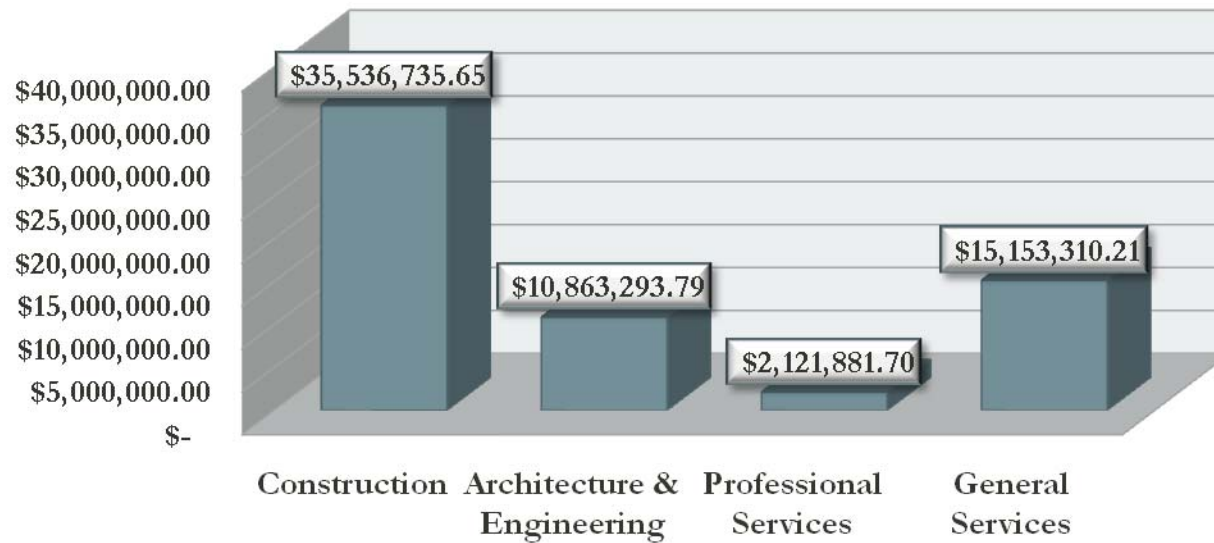
*Facts About
the Study*



Utilization,
Availability, and
Disparity Findings

Findings

**M/WBE Utilization Dollars by Procurement Category
January 1, 2002 through December 31, 2006**



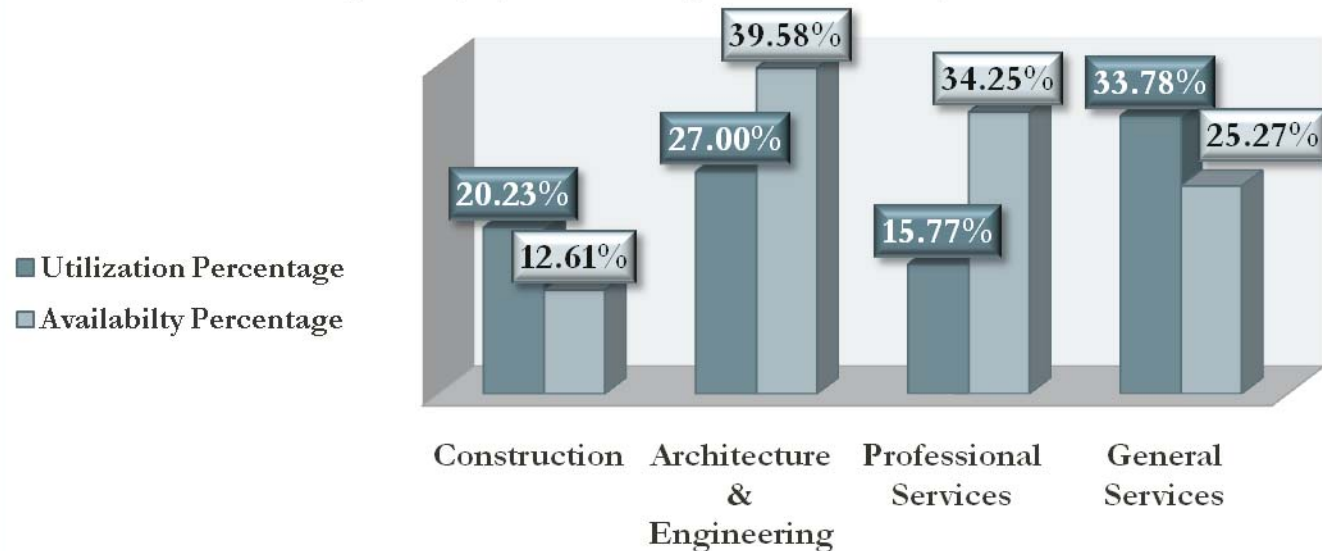
Source: Utilization findings, availability findings, and aspirational goals are taken from exhibits previously shown in Chapters 3.0, 4.0, and 9.0, respectively.

*Study
Results*



Findings (continued)

M/WBE Utilization and Availability Percentages
Comparison by Procurement Category
January 1, 2002 through December 31, 2006



Source: Utilization findings, availability findings, and aspirational goals are taken from exhibits previously shown in Chapters 3.0, 4.0, and 9.0, respectively.

* Based on available data determine availability. There was limited bidder data available for construction projects and no bidder /proposal data available for other types of projects (such as general services).

Study Results



Findings (continued)

Disparity In M/WBE Prime Contractors Utilization January 1, 2002, through December 31, 2006

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Construction Prime Contractors	N/A	No	Yes*	N/A	Yes*
Architecture & Engineering Services Consultants	N/A	Yes*	No	N/A	Yes
Professional Services Consultants	Yes*	Yes*	N/A	N/A	Yes*
General Services Firms	Yes	Yes	Yes*	N/A	No

Source: Utilization findings, availability findings, and aspirational goals are taken from exhibits previously shown in Chapters 3.0, 4.0, and 9.0, respectively.

Yes denotes that there was disparity, No denotes that disparity did not exist. 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 not applicable because zero availability for a group in that procurement category.

Study Results



Findings (continued)

- Private Sector Analysis
 - Evidence of passive participation in private sector discrimination in commercial construction, i.e. *Concrete Works* .
 - Evidence is an important component of a factual predicate when an agency program has been in place for a long time.
 - MGT has built and developed the most comprehensive private sector analyses. In the recent *H.B. Rowe* case, MGT's methodology was upheld in the Fourth Circuit District Court .
 - The evidence for this study includes:
 - Building Permits Evidence.
 - Self Employment - Public Use Microdata Sample (PUMS) Evidence.
 - Census Evidence.

Study Results



Findings (continued)

Study Results

Comparison of M/WBE Utilization Percentage of Dollars Based on Commercial Construction and SAWS Expenditures

Business Category	African American	Hispanic American	Asian American	Native American	Non-minority Women	M/WBE Firms
Prime Contractors						
SAWS Construction Prime Contractors	0.00%	19.89%	0.00%	0.00%	0.34%	20.23%
Private Sector Prime Contractors (Building Permits)	0.00%	0.51%	0.00%	0.00%	0.48%	0.92%
Private Sector Prime Contractors (RCD)	0.00%	0.72%	0.00%	0.00%	0.00%	0.72%

Source: Utilization findings, availability findings, and aspirational goals are taken from exhibits previously shown in Chapters 3.0, 4.0, 6.0, and 9.0, respectively.

* Based on available data. There was limited bidder data available for construction projects and no bidder /proposal data available for other types of projects (such as general services).



Findings (continued)

- **2002 Economic Census, Survey of Business Owners' (SBO) Evidence**

- *Construction Firms.* Hispanic American-owned firms were 3.5 percent of sales, with \$619,588 in average revenue per firm, and 26.9 percent of the San Antonio market place.
- *Professional Services Firms.* Hispanic American-owned firms were 1.2 percent of sales, with \$442,973 in average revenue per firm, and 28.9 percent of the market place average. Women-owned firms were 1.3 percent of sales, with \$310,725 in average revenue per firm, and 20.3 percent of the San Antonio market place.
- *Other Services Firms.* Hispanic American-owned firms were 11.0 percent of sales, with \$297,886 in average revenue per firm, and 53.1 percent of the market place average. Women-owned firms were 8.0 percent of sales, with \$307,513 in average revenue per firm, and 54.8 percent of the San Antonio market place.

Study Results



Findings (continued)

Study Results

- **Self-Employment Evidence**

- Census Public Use Microdata Sample (PUMS) 2000 data for the San Antonio metropolitan area indicates that there were statistically significant disparities in entry into and earnings from self-employment

- **Credit Analysis Evidence**

- National Survey of Small Business Finance (NSSBF) found a statistically significant positive relationship between the probability of loan denial and African American ownership.
- Slightly higher denial rates for M/WBEs in local survey evidence.



Findings (continued)

- **Regression Analysis**

- Favorably cited in *Rothe Development Corporation v. Department of Defense and Department of Air Force*.
- Regression analyses based on telephone survey data.
- When controlling for the effects of variables related to company demographics , M/WBE status had a negative effect on 2007 company earnings of all M/WBE groups except for Hispanic Americans.

Study Results



Conclusion from Study Results

Conclusions from Study Results

- Study provides strong basis in evidence to support continuation of a program to promote M/WBE utilization.
- Absent affirmative measures, SAWS would be a passive participant in a pattern of exclusion of M/WBE firms.

*Study
Conclusion*



How to Use Study Results

*(Aspirational Goals, Recommendations,
and Commendations)*

How to Use Study Results

- A disparity study is not a shield; in other words, once there is a study, an agency cannot implement random desired actions.
- Instead, proposed program should match the evidence.
- Program should evolve in response to facts.

*Using Study
Results*



How to Use Study Results

- Framework
 - Narrow tailoring is essential.
 - Priority of race-neutral efforts
 - Goals linked to availability
 - Limit burden on third parties
- Federal DBE program as model of narrow tailoring—consistently upheld by federal circuit courts
- Best practices

*How to Use
Study Results*



Recommendations & Commendations

- Commendation :

Outreach

- SAWS should be commended for requiring the soliciting of M/WBEs on small purchases.
- SAWS should be commended for participating in the annual Bexar County, Texas, Small, Minority, and Women Business Owners Conference.
- SAWS should be commended for using the SCTRCA lists for solicitations.

How to Use Study Results

Prime Contracting



Recommendations & Commendations

(continued)

- Recommendation:

SBE Program for Subcontracts

- A strong SBE program is central to maintaining a narrowly tailored program to promote M/WBE utilization.
- SAWS should focus on increasing M/WBE utilization through the SBE program.
 - Setting SBE goals for contracts.
 - Requiring good faith negotiations by bidders with SBEs.
 - Rejecting bids for bidder noncompliance .
 - Imposing mandatory subcontracting clauses.
 - HUBZones

How to Use Study Results

Race-Neutral Alternatives



Recommendations & Commendations

(continued)

- Recommendation:

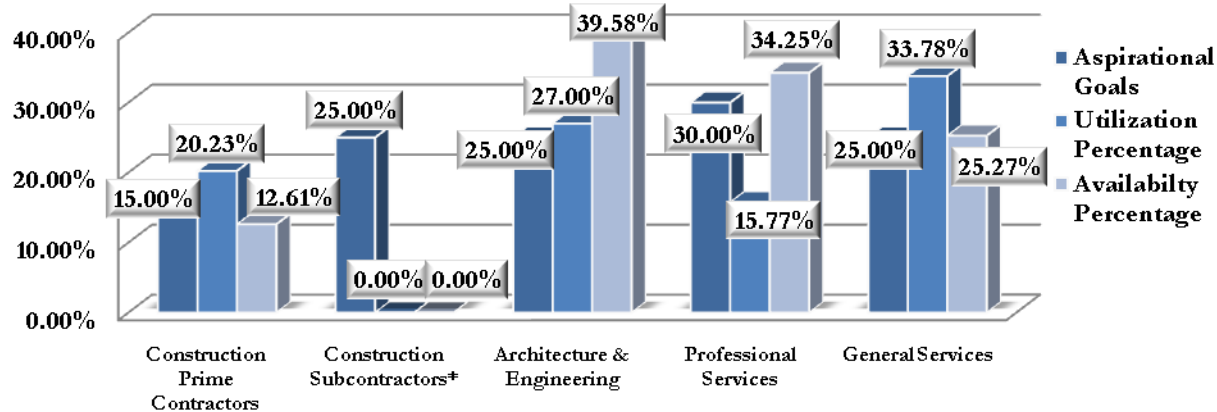
Annual Aspirational M/WBE Goals

- Aspirational goals vs. project goals (not rigid project goals).
- Goals should be adjusted annually in relationship to availability.
- Annual adjustments to goals should also be based on degree of success in program in previous year based on race-neutral efforts.

How to Use Study Results

Small Business Program

M/WBE Aspirational Goals, Utilization, and Percentages by Procurement Dollars Spent



Source: Utilization findings, availability findings, and aspirational goals are taken from exhibits previously shown in Chapters 3.0, 4.0, and 9.0, respectively.



Recommendations & Commendations

(continued)

- Recommendation:

Narrowly Tailored S/M/WBE Program

- Study provides evidence to support a narrowly tailored program to promote M/WBE utilization.
- SAWS should tailor its women and minority participation policy to remedy specific disparities.
- DBE programs provide insight in designing a local M/WBE program.

M/WBE Subcontractor Plans

- SAWS should consider modifying the good faith effort requirements in its contracts.

*How to Use
Study Results*

*Small Business
Program*



Recommendations & Commendations

(continued)

- Recommendation:

RFP Language

- SAWS should consider putting in its request for proposals (RFPs), particularly for large projects, language asking proposers about their strategies for M/WBE inclusion on the project.

M/WBE Program Data Management

- SAWS should closely monitor the utilization of all businesses by race, ethnicity, gender, and by prime and subcontractor levels.

*How to Use
Study Results*

*Small Business
Program*



Questions and Answers