Disparity Study Data & Methods, Findings & Conclusions

Prepared for the City of Austin

Jon Wainwright, Ph.D.
Senior Vice President, NERA

Don O'Bannon, Esq.
Law Firm of Don T. O'Bannon

Austin, TX

March 1, 2016

Insight in Economics™

Study Team

Prime Consultant:

- NERA Economic Consulting

Subconsultants:

- Business Resource Consultants

- The Law Firm of Don T. O'Bannon

- D'Moriea Consulting

- CR Dynamics & Associates

- Combat Veteran Voicewriters LLC

- J&D Data Services

Disparity Study: Key Points

- Between 2008 and 2013, overall M/WBE participation was 21%, or $876 million

- M/WBEs make up 26% of all available firms

- When contracts had M/WBE goals, overall participation rose to 31%; without goals, it averaged 17%.

- Disparities continue in the broader Austin market area

- Anecdotal evidence supports the statistical findings

- Findings support program continuation, with potential modifications

Legal Standards

- M/WBE programs must meet "strict constitutional scrutiny," the most demanding level of constitutional review, ever since the 1989 *Croson* decision

- Strong basis in evidence of government's "compelling interest" in remedying discrimination means:
  - Statistical evidence of disparities in the market area
  - Anecdotal evidence of barriers to full & fair inclusion

- Remedies must be "narrowly tailored" to that evidence:
  - Each group must have some evidence of discrimination
  - Overall goals must reflect the evidence
  - Contract goals must reflect the relevant scopes of work
  - Beneficiaries must be socially & economically disadvantaged
  - Goals must be flexible
  - Race & gender-neutral measures must also be used

Relevant Markets (Chapter II)

- The City of Austin's geographic market area is based on the distribution of contract and subcontract spending from 2008-2013.

- For the City of Austin, we successfully obtained 80% of all contracts sampled and 93% of all awarded prime contract dollars.

- Market area was determined to be the Austin-Round Rock, TX Metropolitan Statistical Area.

- The Austin-Round Rock MSA includes the Texas counties of Travis, Williamson, Hays, Bastrop and Caldwell.

M/WBE Availability (Chapter III)

- Used Dun & Bradstreet records to identify establishments (both M/WBE & Non-M/WBE) in the Austin market area, within the relevant NAICS codes.

- Merged custom M/WBE master directory with Dun & Bradstreet to improve race & sex assignment accuracy.

- Used results from 25k telephone surveys to statistically correct availability numbers for instances of race & gender misclassification.

- For overall M/WBE availability, see Table A1

- For overall VOB/SDVOB results, see Table A2

M/WBE Availability (Chapter III)

Table A1. M/WBE Availability in Austin's Market Area

	African American	Hispanic	Asian/ Pacific Islander	Native American	MBE	Non-minority Female	M/WBE	Non- M/WBE
CONSTRUCTION								
WEIGHTED BY AWARD DOLLARS	2.27	10.94	1.14	0.56	14.92	9.61	24.53	75.47
WEIGHTED BY PAID DOLLARS	2.30	10.80	1.11	0.59	14.80	9.56	24.35	75.65
PROFESSIONAL SERVICES								
WEIGHTED BY AWARD DOLLARS	1.60	7.18	2.81	0.38	11.97	6.93	18.90	81.10
WEIGHTED BY PAID DOLLARS	1.64	7.54	2.90	0.40	12.49	6.74	19.22	80.78
NONPROFESSIONAL SERVICES								
WEIGHTED BY AWARD DOLLARS	3.91	8.95	2.40	0.30	15.56	14.39	29.95	70.05
WEIGHTED BY PAID DOLLARS	4.33	9.40	2.50	0.25	16.49	15.48	31.96	68.04
COMMODITIES								
WEIGHTED BY AWARD DOLLARS	1.74	8.28	3.13	0.42	13.57	9.03	22.60	77.40
WEIGHTED BY PAID DOLLARS	1.89	8.16	3.16	0.47	13.68	9.20	22.88	77.12

Note: See Chapter III, Table 3.11

Market-Based Disparities (Chapter IV)

- **Based on regression analysis using Census data from the most recent *American Community Surveys*. Also includes data from the most recent *Survey of Business Owners*.**

- **Comparing minorities & women to similarly-situated nonminority males, we:**

  – Tested for disparities in (1) wages, (2) business owner earnings, and (3) business formation rates

  – Identified adverse & statistically significant disparities for all M/WBE types in construction, goods & services, & economy-wide

Market-Based Disparities (Chapter IV)

Summary of Chapter IV Regression Results

	Construction			Goods & Services		
	Wages	**Business Owner Earnings**	**Business Formation Rate**	**Wages**	**Business Owner Earnings**	**Business Formation Rate**
African American	Adverse	Adverse	Adverse	Adverse	Adverse	Adverse
Hispanic	Adverse	Adverse	Adverse	Adverse	Adverse	Adverse
Asian/Pacific Islander	Adverse	Adverse	Adverse	Adverse	Adverse	Adverse
Native American	Adverse	Adverse	Adverse	Adverse	Adverse	Adverse
Non-minority Female	Adverse	Adverse	Adverse	Adverse	Adverse	Adverse

All results are statistically significant at a 5% or better (1-in-20) probability value

Market-Based Disparities (Chapter IV)

Summary of Chapter IV Regression Results

	Construction			Goods & Services		
	Wages	**Business Owner Earnings**	**Business Formation Rate**	**Wages**	**Business Owner Earnings**	**Business Formation Rate**
VOB	Adverse*	Adverse*	Adverse	Adverse*	Adverse*	Adverse*
SDVOB	Not Adverse	Adverse*	Adverse	Adverse*	Adverse*	Adverse

***Result is statistically significant at a 5% or better (1-in-20) probability value**

Capital Market Disparities (Chapter V)

- Based on regression analysis using data from Federal Reserve Board & NERA's own surveys

- Loan applications of M/WBEs, esp. African Americans, were more likely to be denied, *even after accounting for differences in balance sheets and creditworthiness*

- M/WBEs (specifically African Americans) paid higher interest rates, on average, for their loans

- Results were not significantly different in the region including Austin than in the nation as a whole

- The results from NERA's own past credit surveys and more recent academic research are entirely consistent with the Federal Reserve results.

Disparities in City Contracting (Chapter VI)

Disparities for M/WBEs (All Contracts)

M/WBE Type	Utilization (%)	Availability (%)	Disparity Ratio (if Adverse)	
Dollars Paid				
African American	1.84	2.91	63.1	*
Hispanic	8.61	9.10	94.6	
Asian	2.27	2.37	95.7	
Native American	0.09	0.39	23.7	****
Minority-owned	12.81	14.78	86.7	
White female	5.94	11.20	53.0	****
M/WBE total	18.75	25.98	72.2	****

Includes $4.22 billion across 3,533 prime contracts and 8,511 subcontracts

Disparities for M/WBEs (Contracts without Goals)

M/WBE Type	Utilization (%)	Availability (%)	Disparity Ratio (if Adverse)	
Dollars Paid				
African American	1.79	2.91	61.3	*
Hispanic	6.30	9.10	69.3	***
Asian	2.07	2.37	87.2	
Native American	0.11	0.39	28.7	**
Minority-owned	10/27	14.78	69.5	****
White female	5.13	11.20	45.8	****
M/WBE total	15.40	25.98	59.3	****

Includes $3.17 billion across 3,094 prime contracts and 3,879 subcontracts

Disparities in City Contracting (Chapter VI)

Disparities for VOBs & SDVOBs

M/WBE Type	Utilization (%)	Availability (%)	Disparity Ratio (if Adverse)	
Dollars Paid				
VOB	1.30	6.96	18.6	****
SDVOB	0.20	1.53	12.8	****

- Mail survey of area business owners found:
  - More M/WBEs than non-M/WBEs experienced disparate treatment, even when capacity is held constant across firms.
  - More M/WBEs than non-M/WBEs report business environment factors make it harder or impossible to obtain contracts, even when capacity is held constant across firms.
  - In the large majority of cases, prime contractors who use M/WBEs on contracts with goals rarely use them or even solicit them on contracts without goals.

Anecdotal Evidence (Chapter VII)

- **M/WBE interviewees reported:**

  – Discriminatory attitudes and negative perceptions and expectations of minorities' and women's competence

  – Workplace harassment

  – Not being paid on equal terms

  – Exclusion from industry and information networks

  – Discrimination in access to commercial loans, surety bonds & commercial insurance

  – Barriers to obtaining work on public & private sector contracts

Recommendations (Chapter IX)

- **Race- & Gender-Neutral Recommendations:**

  - Increase Efforts to Ensure Prompt Payment

  - Ensure Bidder Non-Discrimination

  - Review Surety Bonding, Insurance & Experience Requirements

  - Increase Contract Unbundling

  - Expand Information on Upcoming Contract Opportunities

  - Facilitate Increased Access to Capital

  - Adopt a Mentor-Protégé Program

  - Continue Supportive Services for Construction Firms and Expand Supportive Services for Non-Construction Firms

  - Implement a Small Local Business Enterprise Program

  - Initiate Recordkeeping for Third Party Contracts[†]

[†]SMBR has informed NERA that this practice is already underway.

Recommendations (Chapter IX)

- **Race- & Gender-Conscious Recommendations:**

  - Adopt a Renewed M/WBE Ordinance and Accompanying Program Regulations

  - Tailor the MWBE Ordinance to the Specific Type of Procurement

  - Revise Certification Eligibility Standards
    - Adopt a social disadvantage test
    - Adopt an economic disadvantage test[††]
    - Review firm size standards
    - Review the certification period
    - Certification database and outreach
    - Consider reciprocal certification opportunities

  - Contract Award Policies and Procedures
    - Standardize Good Faith Efforts waiver requirements and related policies
    - Standardize M/WBE Program implementation across City departments[*]
    - Scrutinize Commercially Useful Function and increase contract monitoring

[††]NERA has learned that this practice is already underway. No additional action is necessary.

[*]This recommendation resulted from feedback NERA received from our M/WBE business interviews.

- **Race- & Gender-Conscious Recommendations:**

  – M/WBE Goal-Setting

  - Adopt annual aspirational M/WBE goals
  - Revise the method for counting M/WBE prime participation towards meeting M/WBE goals*
  - Count lower tier M/WBE participation towards meeting M/WBE goals†
  - Continue to set contract-specific goals
  - Consider the effects of discrimination on current levels of availability when setting M/WBE goals

  – Clarify SMBR Authority

  – Review Sanctions Policy

  – Continue the M/WBE Program Sunset Review Process

*This recommendation resulted from feedback NERA received from our M/WBE business interviews.

†SMBR has informed NERA that this practice is already underway.

Questions & Answers