Package A: 2021 Disadvantaged Business Enterprise Program Disparity Study

WASHINGTON STATE DEPT OF TRANSPORTATION
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1. Qualifications/Expertise of Team

Disparity Experience

MGT has 30+ years of experience successfully completing disparity research studies, which conform to applicable federal, state, and local laws (including applicable case law and regulations). Our availability analysis and data collection set us apart. We strategically narrowly tailor your program specifically to your community. Here at MGT, we analyze ALL OPPORTUNITIES available.

In 1990, MGT completed our first post-Croson disparity study for the City of Tallahassee (FL) and has gone on to successfully complete more than 225 disparity and disparity related MWBE program implementation, litigation, etc.) studies for public sector clients across the country.

At the conclusion of an MGT study, our clients feel confident they have a study that is accurate, comprehensive, and legally defensible - the most important standards for judging disparity studies.

The depth and quality of our experience is matched by our study execution and our methodology and approach to evaluating barriers to inclusion and the prevalence, magnitude, and extent of marketplace discrimination, if any, against MBE/WBEs. The framework, approach, and methodology for study execution is premised on a set of research questions and assumptions grounded in legal, statistical, econometric, and analytical research that is time-tested and proven to be reliable, valid, and legally defensible. Our research framework, approach, and methodology adhere to the highest and strictest standards of social science research and is clearly articulated in a concise, but detailed technical work plan that includes all necessary requirements and elements for a comprehensive and legally defensible disparity study.

MGT has completed two of the largest disparity studies in the country:

- **City of New York Disparity Study**: The study included purchases from July 1, 2006-June 30, 2015, totaling $87,269,054,086 of procurement and contracting which is the largest procurement contract volume analyzed in any disparity study.
- **State of Texas Historically Underutilized Business Disparity Study of State Contracting**: The study included purchases from September 1, 2005-August 31, 2008, totaling $11,108,291,320 of procurement including 210 agencies and institutions of higher education. The study’s finding and recommendations were adopted by the State.

The organizational structure of the project team identifying the reporting structure and areas of responsibility is illustrated in Exhibit 1. The core MGT team has worked together on numerous disparity studies throughout the country.
1. QUALIFICATIONS/EXPERTISE OF TEAM

Exhibit 1. Proposed Organizational Structure

Availability of our team

<table>
<thead>
<tr>
<th>Current Projects</th>
<th>Project End Dates</th>
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<td>January 2023</td>
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<tr>
<td>City of Waco, TX</td>
<td>July 2023</td>
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<tr>
<td>County of Santa Clara, CA</td>
<td>July 2023</td>
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1. QUALIFICATIONS/EXPERTISE OF TEAM

Availability of our team by hours per month

<table>
<thead>
<tr>
<th>Staff</th>
<th>Hours Availability per Month</th>
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</thead>
<tbody>
<tr>
<td>Andres Bernal</td>
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<tr>
<td>Vernetta Mitchell</td>
<td>31</td>
</tr>
<tr>
<td>Fred Seamon</td>
<td>10</td>
</tr>
<tr>
<td>Lara Opheim</td>
<td>10</td>
</tr>
<tr>
<td>David Bushnell</td>
<td>10</td>
</tr>
<tr>
<td>Juan Osuna</td>
<td>40</td>
</tr>
<tr>
<td>Justin Peterson</td>
<td>28</td>
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</tbody>
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Completed Projects Within the Past 3 Years

**Budget: $665,135**

The disparity study will thoroughly investigate the existence, extent, and impact of discrimination against MBE/WBE/DOBE/VBE/LGBTQBE firms working on contracting opportunities for the City of Baltimore and then determine if the City should institute race, gender, disabled, Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ), and/or veteran conscious remedial measures. MGT developed several research questions to guide the tasks and activities necessary to complete the study: 1) How does case law inform the research methodology in a particular region for the City? 2) Is there statistical evidence of disparity between the availability and utilization of MBE/WBE/DOBE/VBE/LGBTQBE firms? If so, what are the most relevant causal factors that contribute directly or indirectly to the disparities? 3) Does the City passively engage in practices which result in disparities? 4) Is there qualitative/anecdotal evidence of disparate treatment of MBE/WBE/DOBE/VBE/LGBTQBE firms? These questions shape the legal review, analysis of policies and procedures, all data collection and analyses, collection and analysis of anecdotal information, methodological tools, and all other study elements and components. The study also seeks to determine if there is a need for remedial action to address any effect of past or present discrimination by the City. Our methodologies have been supported by H.B. Rowe and are consistent with recent decisions. Specifically, MGT’s approach addresses these precedents by: -Analyzing prime and subcontract participation. -Decomposing data by business/industry category and specific commodity code. -Examining contracts of a certain size (if contract awards data are used), obtaining capacity information by surveying vendors and Dun and Bradstreet (D&B) registered firms. -Conducting multiple regression analyses. At the conclusion of the study, MGT will present the City with a comprehensive final report that includes an executive summary outlining the methodology, findings, and recommendations.

**Alaska Department of Transportation and Public Facilities | DBE Study - Availability and Disparity**

**Project Dates:** December 2019 - January 2021

**Budget:** $569,907

MGT was retained by the Alaska Department of Transportation and Public Facilities to conduct a Disadvantaged Business Enterprise availability and disparity study. The Ninth Circuit in "Western States..."
Paving” established a two-prong test: 1) the agency must establish the presence of discrimination in its own transportation industry, and 2) the affirmative action program must be “limited to those groups that actually suffered discrimination.” The study analyzed the procurement trends and practices for the State as a whole, as well as by regions, by transportation mode for Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA) between October 2006 and September 2011. The study evaluated the impact of race- and gender-neutral remedial efforts and provided recommendations for future program development including proposed DBE goals by transportation mode.

**Sacramento Municipal Utility District | Market Analysis Study**

**Project Dates:** Current Project

**Budget:** $174,000

MGT is conducting a Small Business and Economic Development Availability Study for Sacramento Municipal Utility District (SMUD) in two phases. The primary focus of the study is to understand the revenue distribution of businesses within the SMUD service area and potentially the Greater Sacramento six county region, by service type, from whom SMUD might procure services. This revenue analysis will then provide SMUD with a basis to target outreach goals for the purpose of growing small business engagement (using DGS definition of small business) throughout the evaluated area.
2. Qualifications of Proposed Project Manager

Disparity Experts

WSDOT Services and Executive Oversight

- **Mr. Andres Bernal J.D.**, Executive Oversight & Disparity Director, has 20 years of experience conducting disparity studies and has played a key role in all MGT’s disparity studies for the past two decades. In his executive oversight role, he will ensure our team fulfill all study requirements and will be the main point of contact and support for project satisfaction. As Project Director he will provide the expertise to ensure MGT’s studies are legally and methodologically sound and satisfy legal and statistical standards required by case law. He will assist with data collection, analysis, and reporting and is also the Principal Researcher.

Skills relevant to this project:
- Conducted over 115 disparity studies during his time with MGT, including 7 in Virginia.

Co-Project Director & Day-to-Day Team Manager

**Ms. Vernetta Mitchell** will be the main point of contact with MGT’s subcontractors and will lead all anecdotal/outreach efforts. Ms. Mitchell is an expert in minority business program development and has developed and managed small, minority, and women business programs for local government entities and private sector companies for over 22 years. As Co-Project Director & Day-to-Day Team Manager, she will ensure that team members are completing tasks as assigned.

Subcontractor Roles

In addition to MGT’s core team members, MGT is partnering with the following subconsultants:

**DONALDSON ENTERPRISES | Suzanne Donaldson** advises her public and private clients on managing their projects efficiently; implementing diversity, equity, and inclusion; providing business coaching for underutilized firms; and ensuring agency contracting compliance. Donaldson Enterprises will provide support for our anecdotal data collection of Washington State Department of Transportation (WSDOT)’s vendors.

**RINCON & ASSOCIATES, LLC | Edward Rincon, Ph.D.**
Dr. has expertise in measuring multicultural consumers, which requires more than just the ability to collect data. He specializes in research and computer applications, including demography, multivariate statistical techniques, survey design, weighting and sampling techniques, focus group interviewing, and SPSS. Dr. Rincon understands the linguistic and
cultural nuances that render traditional measurement activities less useful for today’s marketing decisions. Syndicated research conducted by Dr. Rincon includes:

- DFW Latino Trendline Study.
- Legal Watch Dallas 2014.
- DFW Multicultural Trendline Study.
- DFW Latino Trendline Study.
- DFW Hispanic Consumer Survey.
- Houston Hispanic Consumer Survey.
- A Study of Hispanic Legal Needs.
- Mexico: A Market Profile.

Resumes for our disparity experts & team members will be placed in Package B.
3. Key Team Members Qualifications

Core MGT Team Member Roles

- **Fred Seamon PhD.**, has 30 years of experience conducting disparity studies and has played a key role in all MGT’s disparity studies for over 4 decades. As a technical advisor, Dr. Seamon will provide expert guidance throughout the life of the project and lead the policy and procurement review. He will further lend his expertise to data collection, analysis, and reporting.

- **Mr. Juan Osuna** is a disparity study research analyst with superior research and analytical skills. Since joining MGT he has played a key role in data collection, preparation, and analysis. He will assist with data collection, analysis, and reporting. Aside from his quantitative skills, Mr. Osuna is bilingual in both Spanish and English.

- **Mr. Justin Peterson** assists the disparity team in analyzing private sector data, developing market availability databases, assigning NAICS’s codes to vendors, and survey collection. He will assist with data collection, analysis, and reporting.

- **Ms. Lara Opheim** is skilled with preparing data and analyses for relevant market, availability, utilization, and the private market. She has also conducted benchmark and workforce analyses for studies. She administers and provides analysis of online surveys using Qualtrics.

- **Mr. David Bushnell** is a disparity study research analyst with superior research and analytical skills. He will assist with analyzing qualitative data and research.

Availability of our team

The chart below shows our prime team and key personnel current workload.

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4. Firm’s Project Management System

Project Management Plan

Project management is critical to the successful completion of the study. Based on our experience, a successful study requires detailed and well-organized project initiation, planning, execution, and monitoring. MGT uses proven project management methodologies, including a senior technical advisor with Project Management Professional (PMP) and Prosci Change Management certificates, to ensure we deliver project results that are on time, on budget, and meet or exceed client expectations by identifying long-term, decision-making solutions.

We find the most critical keys to project success are **planning**, **communication**, and **monitoring**.
5. Project Delivery Approach

Project Understanding

We understand that Washington State Department of Transportation (WSDOT) the primary purpose of a disparity study is to determine what, if any, discrimination, and barriers may exist resulting in a quantifiable statistically significant variance of availability versus utilization of businesses that perform contracting for public transportation projects when those businesses are owned by member(s) of presumptive groups. The study will be on cover the period between the WSDOT’s last DBE Availability and Disparity study through state fiscal year-end 2020. We understand that WSDOT has an overall Disadvantaged Business Enterprise DBE Goal of 18% that we will showcase our compliance in section 8.

Methodology

When addressing discrimination in public contracting, governments are obligated to identify and examine evidence from their markets that may indicate discrimination is impacting the ability of firms to compete successfully in contracting opportunities. The most impactful influences regarding how governments should evaluate the need for, and implementation of, a Minority- and Women-Owned Business Enterprise (DBE) program has been two cases: Croson and Adarand.

The Croson decision required local government agencies’ race preference contracting programs be able to withstand strict scrutiny review to avoid violating the Equal Protection Clause of the Fourteenth Amendment. Strict scrutiny must be met by:

- demonstrating a “compelling interest” in the remedial purpose of the DBE program; and,
- ensuring that the program is “narrowly tailored” to meet the remedial goal.¹

The Adarand decision applied the Croson requirement of strict scrutiny to the federal DBE program.

While these cases are clear that evidence must be presented in order to create an affirmative action program, they do not regulate how a government may identify and present this evidence. One option for governments is to conduct what has become known as a disparity study.

A good disparity study will:

- Serve as the basis of a legal defense should the program be challenged.
- Meet all regulatory requirements related to such programs.
- Clearly present evidence to consider in implementing or modifying a program.
- Provide recommendations regarding program administration.

¹ Croson, at 727-28.
Provide education regarding the value and purpose of the study, and the findings and recommendations for procurement and program management.

MGT has developed a methodology that clearly answers the questions that guide such inquiry:

1. What legal guidance and standards must be followed when designing a disparity study?
2. What are the current policies and practices for procurement and the DBE program? What elements are in place, being utilized, effective in the current policies?
3. What does the WSDOT’s contracting records show to be the utilization of firms?
4. What geographic and product markets make up WSDOT’s relevant market area?
5. What is the availability of firms in WSDOT’s relevant geographic market to perform on contracts?
6. Is there a disparity between the utilization of firms and their availability in the WSDOT’s market? If so, is this disparity significant?
7. Is there disparity in the un-remediated market where there are no goals for contracting?
8. Is any disparity identified in WSDOT’s contracting attributable to factors other than discrimination?
9. What are the experiences of DBE firms in working or attempting to work on public and private contracting opportunities?
10. What are the opinions and perceptions of firms regarding WSDOT’s procurement and program practices?
11. What policy options should WSDOT consider in its procurement and contracting to help create a level playing field for all firms?

In response to our guiding research questions, MGT structures its methodology according to these study components, as illustrated in Exhibit 2.
5. PROJECT DELIVERY APPROACH

Exhibit 2. Methodology

Disparity Study Components

In the following section we explain our approach and methodology for each identified component, present a concise list of each component’s task details, and present the timeline we recommend for this study. MGT is committed to robust and unbiased research; independence and objectivity are inherent in our methodology; therefore, our findings will remain unchanged unless the WSDOT or MGT identifies discrepancies or errors in our work.

Purpose: Establish clear work plan, project schedule, roles and responsibilities, and outreach plan.

In the first weeks of the project, MGT will work with the WSDOT and our subcontractors to initiate the project. We have found that this is a very important component to a successful study. We will establish a clear work plan, confirm project deliverables, create an outreach plan for the study, and begin to work on identifying and accessing WSDOT’s data.

The kickoff meeting provides the best opportunity to ensure clarity of purpose, roles, and expectations for the study project.
MGT will facilitate an onsite kickoff meeting at WSDOT’s specified location. The kickoff meeting is a time to introduce MGT, subcontractors, and WSDOT team members, orient everyone to the project, and cultivate a collaborative working relationship. However, depending on COVID-19, we are prepared to conduct the kickoff meeting and related project initiation activities virtually.

MGT will lead a discussion of the project’s goals and present a vision for project success. The study team will review key roles and responsibilities, making sure there is a common understanding of assumptions and expectations and project deliverables and finalize the timeline for the study. The result of these discussions will be a co-created final work plan. This work plan will provide a roadmap which the MGT team and WSDOT will follow.

We will work with our subcontractors and WSDOT to craft an outreach plan for the study. The purpose of the outreach plan is to disseminate information about the study as well as to solicit participation from stakeholders such as WSDOT personnel, firms and local business and professional organizations. MGT will create a Frequently Asked Questions (FAQ) document to share information about the study. We also will create a study website to keep the public informed about the progress of the study, opportunities to participate, and provide a format for individuals to share confidential information, experiences, and opinions with the study team to be included with the anecdotal data.

One of the most challenging and time-consuming tasks in a disparity study is identification and collection of the data we need from WSDOT. Before the kickoff meeting, we will submit a data query form to be completed and discussed at the kickoff meeting. This form will ask WSDOT to identify and locate program and policy documents and vendor and contracting data. This will enable us to begin making progress quickly toward obtaining accurate data for the study. To support efficient access to necessary data, MGT will establish a SharePoint site for safe and quick transference and storage of data.

The initiation of the project in this manner establishes a solid foundation for the project.

**TASK 2.0: LEGAL REVIEW**

**Purpose:** Determine the legal guidance standards that must be followed when designing a disparity study.

To ensure legal sufficiency of our methodology, MGT has conducted a thorough review of the court decisions in cases subsequent to *Croson*. MGT assisted in the defense of several programs at trial, including *H.B. Rowe vs. North Carolina Department of Transportation*, *Gross Seed v Nebraska Department of Roads*, and *Adarand vs. Colorado Department of Transportation*. We will continue to review any new cases that arise during the study period to monitor for any changes pertaining to DBE programs. We will then identify practices or policies in compliance with 49 CFR Part 26 and other federal requirements.

The *Croson* decision required governments race preference contracting programs be able to withstand strict scrutiny review to avoid violating the Equal Protection Clause of the Fourteenth Amendment. Strict
scrutiny review requires that an agency demonstrate a “compelling interest” in the remedial purpose of the MWBE program and that the program itself is “narrowly tailored” to meet the remedial goal.2

Based on our significant experience with studies and with litigation, MGT is confident that our proposed methodology, crafted with appellate court decisions in mind, will result in a legally defensible program based on our recommendations in the study.

Conducting this legal review and analysis at the beginning of the project establishes the framework for this study. The study must comply with the standards required for a constitutionally sound race- and gender-based program as set forth in Croson, Gross Seed, Adarand, Concrete Works, and other relevant opinions. Our legal review will also serve to educate about constitutional strict scrutiny and its application to DBE programs as well as to detail the legal parameters of our methodology to support potential future defense of a program based on this study.

### TASK 3.0: PROCUREMENT AND PROGRAM POLICY REVIEW

**Purpose:** Investigate, document, and evaluate current WSDOT procurement and DBE program policies and DBE program implementation.

MGT will conduct an in-depth review of contracting and program policies and procedures, the degree to which they are practiced, and their impact on firms attempting to do business or doing business with the WSDOT or its prime contractors.

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2 Croson, at 727-28.
MGT will work closely with the WSDOT project manager and other key staff to gather documentation such as procurement regulations, procurement manuals, organization charts, procurement flow diagrams, information on waivers and good faith efforts, and details regarding race-neutral program components.

MGT will conduct a careful examination of these contracting and program policies, legislation, and administrative rules and regulations. We also will conduct in-person or virtual interviews with key internal stakeholders, such as procurement staff, local officials, and diversity business program staff.

**TASK 4.0: DATA ASSESSMENT, COLLECTION, AND PREPARATION**

**Purpose:** To identify the quantitative data necessary analyses required in a disparity study.

Data are the foundation of a reliable, statistically valid, and defensible disparity study. Disparity studies require a large body of information and data on the availability and utilization of vendors collected from many different sources. Proper collection and preparation of these data are essential for an accurate and defensible study. To ensure the availability of robust, statistically valid data for the study, the MGT team will follow a disciplined methodology to identify data sources, build the necessary databases, and prepare the data for analysis.

Collecting relevant and accurate contract data is the most time consuming and most crucial part of a disparity study. The utilization data findings contribute directly to the geographic and product market analysis, availability analysis, and anecdotal data collection. To do it well, it must not be rushed; there must be sufficient time and resources committed to this task from the beginning of the project.

MGT will begin this task by submitting a detailed data query to WSDOT to be completed by relevant staff in preparation for the kickoff meeting. The data query form will ask for descriptive information regarding prime and sub level contracting data. The exhibit below is an example of a prime level data query form.
5. PROJECT DELIVERY APPROACH

Exhibit 3. Data Query Form

We will assess and confirm the WSDOT data that can be used for the purposes of this study. We will assess prime and subcontractor records using awards and payment data, vendor identification, and where the appropriate data are located and the retrieval process.

Based on the findings from the data query process, MGT will develop comprehensive Data Collection Plans that detail the data we will collect, the format of the data, and data limitations. Our team is experienced collecting data from multiple data systems including electronic contract files, financial software systems and hard copy records.

During this evaluation process, we will determine whether WSDOT has sufficient subcontracting records within its own data for the study. It is not unusual for governments to have adequate DBE subcontracting records but lack adequate non-DBE subcontracting records. If WSDOT does not have adequate non-DBE subcontracting records, we will collect the subcontracting data directly from the prime firms. This is the method recommended in the National Cooperative Highway Research Program Report 644 for the national model disparity study.
Final data preparation is a resource intensive task. It requires extensive data enhancement including:

- Creating and/or cleaning variable names and data definitions.
- Updating incorrect or missing addresses, race/gender, and certification information.
- Assigning commodity codes and type of work descriptions.
- Identifying location of firms by county and state.
- Ensuring field values are consistent with regard to firm name, contact information, race/gender, industry code.
- Removing or reconciling duplicate records.
- Eliminating unnecessary records such as payments to other governments, employee reimbursements, utility payments, and other assorted expenditures that are often discovered in contracting and procurement data.

Often a firm’s remittance address, as opposed to the local office, is presented in the vendor-related data we obtain. Therefore, MGT conducts additional research on firms not located within the local area to determine whether there is an office in the local area so that firms that are actually located in the potential geographic area are accurately recorded.

MGT will collect diverse business and/or vendor lists from other governmental agencies, trade associations, and business organizations, and combine those lists into a Master Vendor Database. This database will be used to update race, ethnicity, and/or gender of utilized firms and will be utilized in the anecdotal activities.

**TASK 5.0: UTILIZATION ANALYSIS**

**Purpose:** Identify WSDOT’s prime and subcontracting and purchasing activities to determine the utilization of firms.

MGT will conduct utilization analyses on WSDOT contracts awarded during the study period of FY 2019 and FY 2020, with supplemental disparity study data for FY 2016 to FY 2018. Analysis will include contracts for goods, materials, services and construction. This process involves examining dollars let in the relevant market area for each procurement category during each fiscal year of the study.

We will conduct a prime-only analysis as well as an overall utilization analysis of all contracting and subcontracting records.
MGT will provide the aggregated utilization analysis by:
- Procurement categories: Construction, Services, and Goods.
- NAICS commodity code.
- Year and in summary.
- Dollar amount and percentages.
- DBE Business ownership classification (race/ethnicity and gender)

**TASK 6.0: RELEVANT GEOGRAPHIC MARKET AND PRODUCT MARKET AREA**

Purpose: Identify the WSDOT’s relevant geographic and product markets.

MGT will conduct geographic and product market area analyses of the utilization data to determine the markets to adhere to when identifying available firms. The **geographic market** analysis will be conducted using the agreed upon and most comprehensive sources of procurement data to determine vendor locations (e.g., MSA, counties) that represent a majority of the WSDOT contract expenditures. The courts have accepted the use of counties as standard geographic units in conducting equal employment opportunity and disparity studies and will be used for this study. MGT will adhere to this approach since county boundaries are externally determined, so there are no subjective determinations. The **product market** analysis will use the procurement data to determine which industries (i.e., NAICS commodity codes) represent the majority of WSDOT’s contracts.

**TASK 7.0: AVAILABILITY AND OVER CONCENTRATION ANALYSIS**

Purpose: Provide availability estimates of firms in WSDOT’s relevant markets.

Using the geographic and product market parameters, MGT will calculate availability estimates of ready, willing, and able firms using the true custom census method detailed in the NCHRP report for recommended disparity study procedures.

Many firms use the words “custom census” to describe their availability analysis; however, upon closer review it is evident that they are not following the true custom census guidelines. Typically, departures from the guidelines include:

- Requiring firms to participate in a lengthy survey in order to be included in the availability analysis.

MGT uses the 75 percent standard when determining relevant market areas. In other words, we identify the locations and industries that capture 75 percent of the procurement dollars spent. The 75 percent rule is generally accepted in antitrust cases and has been accepted as precedent in other relevant areas.

MGT is the only firm using the true custom census in its entirety as detailed in the national model disparity study guidelines.
5. PROJECT DELIVERY APPROACH

- Omitting steps, such as not conducting a race/gender misclassification/non-classification survey.
- Failing to conduct a product market analysis to restrict availability of firms to the industries in the top spend of the agencies contracting.

MGT is the only firm following the national model disparity study guidelines for calculating availability recommended in Report 644, “Guidelines for Conducting an Availability and Disparity Study.” This is the only method under Part 26 that has received favorable judicial analysis.3

This report specifies seven specific steps for calculating availability:

1. Create a database of WSDOT’s contracts to identify utilization.
2. Identify the relevant geographic market based on the utilization data.
3. Identify the relevant product markets based on the utilization data.
4. Count all businesses in those relevant markets.
5. Identify listed minority- and women-owned businesses in those markets.
6. Verify the ownership status of listed minority- and women-owned businesses.
7. Verify the ownership status of all other firms.

In previous sections, MGT detailed its methodology for achieving steps 1 through 3 above. To obtain a count of all firms in the relevant markets, MGT will procure a comprehensive download of businesses in the relevant geographic and product markets from Dun & Bradstreet (D&B). As part of our data collection efforts, MGT will identify and obtain lists of minority- and women-owned firms from relevant certifying entities, other local governments, and national directories of DBE firms in order to supplement the D&B data with race and gender data. Once we have a complete and clean database of all available firms in the relevant markets from D&B and WSDOT certification and registered vendor lists, we will create a random stratified sample of firms by ownership category and industry code. We will conduct a survey of the firms in this sample to verify race and gender information for the firm owner. Results of the survey are then extrapolated to the full scale of the applicable universe to arrive at an estimation of available firms by ethnicity/gender classification and procurement category.

MGT will provide availability analysis weighted by NAICS code expenditure and disaggregated by:

- Procurement categories: construction and repair, architecture and engineering, professional services, and goods and services.
- NAICS commodity code.
- Year and in summary.
- Dollar amount and percentages.
- DBE Business ownership classification (race/ethnicity and gender).

3 Sherbrooke, 345 F.3d at 973; see Concrete Works IV, 321 F.3d at 966 (custom census was “more sophisticated” than earlier studies using Census data and bidders lists).
Evaluation of overconcentration of firms.

The custom census does not introduce capacity-like variables (e.g., age of the firm, revenues, etc.) into the availability estimates. As explained in Appendix B, Understanding Capacity, in the National Study Guidelines, this would import the current effects of past discrimination into the analysis. Proper statistical analysis should not control for the variables affected by the behavior sought to be isolated. DBE’s being newer, smaller, and less competitive is potentially a result of the discrimination sought to be remedied. If a methodology eliminates firms based on such “capacity” variables, then it is importing the results of discrimination into the analysis meant to identify discrimination. The courts have rejected the need for attempting to control for firm qualifications such as revenues, employees, experience, etc., because it is wrong to use the outcomes of discrimination as the measure of a race-neutral market.

**TASK 8.0: PUBLIC SECTOR DISPARITY ANALYSIS**

**Purpose:** Establish whether there is there a statistically significant disparity between the utilization of firms and their availability in WSDOT’s markets.

To demonstrate an evidentiary basis for enacting a race-conscious program and to satisfy Croson’s compelling interest prong, governmental entities must present evidence of underutilization of DBE businesses that would give rise to an inference of discrimination in public contracting. If disparity can be shown, a prima facie case may be established if the differences between utilization and availability are large or statistically significant. Appropriate statistical tests must be used to determine if significant differences exist between the estimates of availability and utilization of firms. Therefore, MGT will determine disparity by creating a disparity index, as well as using statistical significance testing.

The disparity analysis compares utilization with availability to determine whether there is a disparity between the utilization and availability of firms. MGT will calculate for disparity for each of the study’s procurement categories and ownership classifications. A disparity index of 100 indicates the levels of utilization and availability are similar. A disparity index of 80 or lower is the threshold for establishing substantial disparity.

This approach is based on the Equal Employment Opportunity Commission’s (EEOC) 80 percent rule used in calculating employment disparity. The 80 percent rule has widespread acceptance in the field and has been accepted by the Supreme Court as an appropriate disparity threshold.

After calculating the various disparity indices, MGT will conduct statistical significance testing to determine whether any disparities seen in WSDOT’s procurement categories are (a) substantial in nature and (b) can be reasonably interpreted as non-random. MGT’s proven analytic and statistical methodologies produce results that are accurate, well-reasoned, and legally defensible.

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4 Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950, 981, 983 (10th Cir. 2003), cert. denied, 124 S.Ct. 556 (2003) ("DBE construction firms are generally smaller and less experienced because of discrimination..."

5 City of Richmond v. Croson, at 509.
5. PROJECT DELIVERY APPROACH

TASK 9.0: PRIVATE MARKET DISPARITY AND NON-GOAL ANALYSIS

Purpose: Identify whether there is disparity in un-remediated markets where there are no goals for contracting.

The goal of these analyses is to determine whether discrimination exists in the private sector contracting market. This helps to identify what occurs in the absence of an affirmative program.

Our private sector model includes:

- **Nongoal Analysis** - MGT will conduct a comparative analysis of prime contractor utilization of DBE firms on project without goals, should the data allow.

- **Disparities in Self-Employment** - MGT will provide a statistical analysis of disparities in entry into and earnings from construction self-employment using data from the Public Use Micro Sample (PUMS) from the U.S. Census Bureau. MGT will present results from a logit model to estimate self-employment disparities for minorities and women.

- **Disparities in the Marketplace** - MGT will examine disparities for minorities in the marketplace by using U.S. Census Bureau’s 2012 Survey of Business Owners (SBO). SBO provides data on economic and demographic characteristics for businesses and business owners by geography (such as WSDOT’s area), industries defined by NAICS codes, firm sales, firm employment size, and business ownership classification. The most recent data, 2012 SBO, was released in 2016 and will be used in this study.

- **Commercial Construction activity based on Permits Data** - MGT will examine the utilization of DBE firms in the private sector using commercial permits data. The value in examining permits is they offer up-to-date records of actual construction activity undertaken in WSDOT’s marketplace.

- **Credit Market Analysis**: MGT will use national data to evaluate issues related to access to and cost of credit for minority and women owned firms as compared to non-minority owned firms. We will also provide analysis for the WSDOT area using information collected in our vendor survey.

TASK 10.0: REGRESSION ANALYSIS

Purpose: Analyze whether disparity identified in WSDOT’s contracting is attributable to factors other than discrimination.

Regression analyses allows us to factor out variables, so we are comparing similarly situated minority-owned and majority-owned firms such that any disparity remaining is likely due to discriminatory practices.

The regression analysis is a critical component in determining the effect of race on a firm’s earnings. We will conduct a regression analysis that controls for factors other than race and gender that may account for disparities in utilization, such as age, education, number of employees, etc. Once these factors are
controlled so that they are all equal among the DBE and non-DBE firms in the analysis, if disparity remains related to earnings, we can infer a potential causal relationship of race on a firm’s earnings.

TASK 11.0: ANECDOTAL DATA COLLECTION AND ANALYSIS

Purpose: Solicit information about experiences of discrimination and impacts of WSDOT’s application of procurement and program practices.

Anecdotal evidence is a crucial component of a defensible disparity study and is important in meeting strict scrutiny. It helps to identify strong evidence of discrimination, demonstrating a compelling interest, and with crafting recommendations that are narrowly tailored to WSDOT and its market. It can be probative of a continuing need for remedial measures when a government that has had a race-conscious program in place for many years and its contracting records reflect the impact of the program and may not show disparity. This does not necessarily mean that discrimination has ended and there is no longer a need for a remedial program. Anecdotal evidence can shed light on deeply imbedded discriminatory practices and on what the market might be like if there was no remedial program. The information obtained in this component provides information about the effectiveness of current programs and policies as well as suggestions for improvements.

Our approach for gathering and analyzing the anecdotal information is an enhanced and collective approach. We use several methods to collect this vital information:
- 3 community meetings
- 50 in-depth interviews with local businesses
- 10 stakeholder interviews
- A survey of vendors

TASK 12.0: RECOMMENDATIONS

Purpose: Identify actions WSDOT can take in its procurement and program policies to create a level playing field for all firms.

MGT will review the data and information gathered and the findings of all analyses and develop recommendations for WSDOT to consider regarding its procurement and program policies and practices that would help to level the playing field for all firms.

The recommendations will detail multiple race/gender neutral initiatives and, if supported by the evidence, a recommendation regarding race/gender conscious measures. Suggestions may be provided for program administration and monitoring; reporting and data record keeping and storage practices; consideration of a small business program; unbundling large contracts; and supportive services.

TASK 13.0: GOAL SETTING

Purpose: To establish an annual aspirational goal for WSDOT.
MGT adheres to the Federal DOT’s recommended method of goal setting. We will provide annual aspirational goals per industry for WSDOT’s contracting. In order to meet the narrow tailoring requirement, the WSDOT must set project-specific goals rather than apply the aspirational goal to all projects. We can provide some guidance regarding this if requested.

**STEP ONE – DETERMINING THE BASE FIGURE**
This calculation can be simply dividing the number of DBE firms by the total number of firms in the relevant market.

However, the DOT recommends weighting the availability estimate based on the percentage of spend for each category or industry code. For the aspirational goal, therefore, we will provide a weighted estimate of availability. The calculation is weight times availability.

We will identify availability for each industry category, weighting the estimate by the spend in the industry category.

**STEP TWO – ADJUSTING THE BASE FIGURE**
The DOT requires consideration of an adjustment to the Step One calculation so that the goals are as accurate as possible. Step Two requires recipients to consider evidence of the effects of the DBE Program and historical and current discrimination on DBE availability and potentially adjust the Step One figure of availability “but for” the effects of discrimination. Evidence we may consider includes past participation; evidence from other disparity studies conducted in the WSDOT’s market area; statistical disparities in observed in the private market; or any other data or information that would help to better measure the percentage of work DBE’s would be likely to obtain in the absence of discrimination.

MGT will fully explain a Step Two adjustment and the sources relied upon or will provide an explanation about why no adjustment is recommended.

**TASK 14.0: DEVELOP DRAFT AND FINAL REPORT**

**Purpose:** Provide WSDOT with documentation regarding disparity in its markets and recommendations to improve its procurement and program practices in an effort to level the playing field for all firms.

MGT’s Disparity Study report will be a comprehensive document that captures all aspects of the study and presents the findings in a well-organized, easily understood format. The report will fully explain all study findings and recommendations. It will present the study’s legal framework and provide complete discussions of the methodologies used, including the regression models and other statistical analytics. We also will provide copies of the data files and anecdotal instruments developed during the study. **Exhibit 4** lists the chapters that will be included in the final report.

*After the Final Disparity Report is accepted, MGT will prepare and facilitate a presentation for the Department.*
5. PROJECT DELIVERY APPROACH

Exhibit 4. Sample Table of Contents

To ensure the report meets WSDOT’s needs and expectations, MGT’s report development process is iterative and collaborative. Throughout the study period, MGT will provide the results of analysis, preliminary findings and other interim work products including draft chapters, to WSDOT for review and comment. As the study concludes, we will compile all draft chapters, incorporating all feedback, and prepare an executive summary to create the final report.

Proposal Assumptions

The work plan and budget for this proposal were developed with several key assumptions about the project. Changes to these assumptions may impact both our methodology and project costs. We welcome the opportunity to meet with WSDOT’s project manager to review these assumptions, validate or adjust these assumptions based on more complete information, and adjust the work plan and/or budget accordingly. Below, we present our assumptions:

1. MGT will work with WSDOT to find the appropriate balance between onsite and virtual work due to the COVID-19 pandemic. MGT can and has successfully performed all tasks virtually.
2. There will be a designated senior manager assigned to the study to resolve any conflicts that may arise.
3. MGT expects to have complete and timely access to necessary documents and personnel.
4. Some tasks will be conducted concurrently, when possible.
5. The WSDOT will make any meetings or interviews a priority.
6. Meeting rooms will be arranged for, and used at, the expense of WSDOT.
7. MGT will receive all requested electronic data either in Microsoft Excel, Access, or comma delimited file or any combination thereof.
8. MGT assumes the project management tools, cost accounting, and time keeping systems selected for this program will be common off-the-shelf software packages (e.g., MS Project) that do not require significant specialized knowledge of the software. More sophisticated applications may require more effort to implement and/or the assistance of a qualified vendor representative.
9. The report will make recommendations to the extent possible; some findings will not result in recommendations.
10. WSDOT has the right to review and reject any MGT staff proposed for or assigned to this engagement.
11. MGT is willing to negotiate adjustments in the proposed cost should the WSDOT and MGT mutually agree upon reduction or increases to the scope of the project.
12. The WSDOT project manager will ensure comments on the draft report from select project stakeholders are consolidated into a single document and any conflicting comments are reconciled before delivering the comments to MGT.
13. Final reports are assumed final, if we do not hear from the WSDOT within two weeks of report delivery (email or hard copy).

**Disparity Study Timeline**

Based on MGT’s vast experience conducting disparity studies and the requirements of the RFP, we anticipate it will take 18 months from project initiation to complete WSDOT’s study. Exhibit 5 illustrates the timeframe associated with each task in our work plan.
### Exhibit 5. Proposed Timeline

<table>
<thead>
<tr>
<th>STUDY COMPONENTS</th>
<th>MONTH</th>
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<tbody>
<tr>
<td>Project Initiation</td>
<td></td>
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<tr>
<td>Legal Review</td>
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<tr>
<td>Procurement and Program Policy Review</td>
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<tr>
<td>Data Assessment, Collection, and Preparation</td>
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<tr>
<td>Geographic and Product Markets</td>
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<td>Utilization Analysis</td>
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<td>Availability Analysis</td>
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<tr>
<td>Public Sector Disparity Analysis</td>
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<td>Private Market and Non-Goals Disparity Analyses</td>
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<tr>
<td>Regression Analysis</td>
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<tr>
<td>Anecdotal Data Collection and Analysis</td>
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<tr>
<td>Recommendations</td>
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<td>Goal Setting</td>
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<tr>
<td>Prepare and Present Final Report</td>
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</table>

The table above illustrates the proposed timeline for the study components, with each component's duration indicated by the shaded bars for each month.
6. Investigation and Analysis

Comparable projects for this study

**Alaska Department of Transportation and Public Facilities | DBE Study - Availability and Disparity**

*Project Dates*: December 2019 - January 2021

MGT recently completed a two-part Availability Analysis and a Disparity Analysis study for DOT&PF. The study was conducted within the legal framework as established by 49 CFR Part 26 and court rulings, to determine the absence or presence of discrimination in federal aid contracting in Alaska, as well as how it related to implementing an affirmative action program in public contracting. MGT completed all necessary investigations and interviews, surveys, and collections of quantitative data, as well as performed the required analyses, and collected all pertinent anecdotal information. MGT provided a complete review of the DOT&PF DBE program and sub-recipients to assist in administering the program and for the establishment of a statewide overall DBE goal. Completed on budget and on schedule.

**North Texas Tollway Authority | Availability and Disparity Study**

*Project Dates*: June 2016 - April 2020

MGT was retained by the North Texas Tollway Authority (NTTA) to conduct an Availability and Disparity Study. This study is analyzing the availability and disparity of disadvantaged, minority, and women-owned firms contracting within the NTTA’s relevant industries of Professional Services, Construction Services, Consulting and Non-professional Services, Goods and Commodities. Study tasks include a legal review; a review of policies, procedures, and programs; data assessment and data collection; identification of geographical market area; utilization, availability, and disparity analyses; anecdotal data collection; private sector analysis; recommendations, draft and final reports. Completed on budget and on schedule. **Note: This study encompassed an additional utilization time period add on; which accounts for the extended timeline period.**

**Oregon Department of Transportation | DBE Goal Setting Review and Technical Assistance**

*Project Dates*: March 2012 - June 2013

MGT conducted a disparity study in 2011 (study period, 2008 to 2010) for ODOT’s DBE Program. MGT was then retained to offer technical assistance to review the disparity study goal setting methodology, data tables, and data collection process and outcomes.

**Oregon Department of Transportation | Availability Study Update**

*Project Dates*: March 2012 - June 2013

MGT conducted an update to the availability data from ODOT’s disparity study update (study period 2008 to 2010). The study assisted ODOT in identifying relative availability of DBE firms and calculating overall DBE goals for 2014 through 2016.
7. Continuous Improvement

All research projects, particularly complex research projects such as disparity studies, encounter risks and challenges that must be mitigated and require mid-course correction. Our proposed process will allow us to identify these issues early on and, more importantly, implement strategies to resolve the issues. MGT’s project team brings a great deal of professional experience in working with such challenges. In addition, this team (MGT staff and partners/subcontractors) of experts bring a wealth of problem resolution experience specifically in the disparity study industry. MGT’s Project Manager will take the lead in problem resolution and course correction. Problem resolution and course correction will not occur in a vacuum and will involve the WSDOT and our team. We operate on the principle that problem resolution and correction should be a transparent and participatory process that results in consensus about resolution strategies and outcomes. Below is a summary of significant challenges and course corrections our team has experienced with some of our previous clients with similar scope.

- **Performing Work in Virtual or Remote Manner.** Covid-19 has had an impact on how much work is done. For disparity studies, the impact has not been significant. It is typical that the bulk of the work conducted for a disparity study is done remotely. We use Microsoft SharePoint, email, Microsoft Teams, and other systems that enable us to work on projects all over the country without imposing costs related to being physically present at the client’s offices to conduct the work. Prior to Covid-19, MGT, and the disparity staff in particular, was operating as a remote workforce and have developed the tools and relationships necessary to manage projects efficiently and effectively. There are two disparity study tasks that have been impacted by Covid-19. The first is the kickoff meeting. We greatly prefer to have this meeting in person; however, currently this is not possible or safe. We have hosted virtual kickoff meetings and they have been successful. We will host a virtual kickoff meeting for the WSDOT study. The second task impacted is our community meetings. Previously, these were conducted as meetings in the client’s jurisdiction. Due to Covid-19, we have altered our process to conduct these meeting as virtual town hall meetings. These have been successful. Seattle can rest assured, MGT has already made the adjustment to post-Covid-19 meeting protocol with success.

- **Managing Communication Among Multiple Departments.** We find we are best able to meet our clients’ expectations when we have continuous and clear communication. Establishing effective lines of communication takes time and commitment. Given the large number of current and potential stakeholders for this project, we propose initiating the project by conducting a project kickoff meeting where we will discuss the roles and responsibilities for ongoing communication. Our single point of contact, MGT’s project director, will be responsible for working with the WSDOT’s project manager in order to mitigate the challenge of managing communication among multiple entities and stakeholders.

- **Reluctance or Resistance to Respond to Participation in the Process.** Stakeholders may view participation in the study as intrusive and/or time consuming. MGT will develop a Community Outreach Plan, which will provide suggested strategies and practices for launching and continuing outreach and participation in this important study. Our clients and our team have found the use of a Community Outreach Plan as a valuable resource which helps to increase, bolster, and sustain the needed commitment level of the stakeholders.
Quality and Availability of Non-DBE Subcontractor Data. MGT begins with a data assessment and evaluation activity. This activity will help identify any data gaps that exists. Many minority, women, and small business programs are diligent in collecting DBE subcontractor data, but are less diligent collecting non-DBE subcontracting data. MGT has retrieved this data from hard copy contract files, payment records, and release of lien records. If necessary, MGT will collect subcontracting data directly from prime firms using the subcontracting data collection process detailed in Appendix A of the National Cooperative Highway Research Program Report 644 that provides national model disparity study guidelines.

Data Management. The necessary data may need to be collected from multiple sources, including WSDOT’s financial/IT systems and their Centralized Vendor Registration system. In addition, it is essential that our team maintain consistent communication with WSDOT staff knowledgeable of each system and processes. Understandably, there will be variation in the content, layout, detail of the data and therefore the necessity for ongoing communication.

In the past, our client staff who handles the data may change and/or new priorities may arise; however, MGT and our clients were able to circumvent these changes as a result of the ongoing communication with key staff MGT will conduct a thorough data evaluation process, which will include data evaluation meetings and surveys, requests for data samples, and ultimately the development of a detailed Data Collection Plan. This plan will present assumptions, data sources and data fields/indicators (for electronic data), and timelines to collect the data at minimum. In addition, MGT will provide technical assistance to all data providers as approved by the WSDOT to ensure reliable information is collected and summarized. Additionally, reviewing and assessing data samples, developing and following a detailed Data Collection Plan, and providing technical assistance have proven to be effective in communicating and directing the data collection process.

Study Completion. Often there is a gap between the completion of the draft report and the final report, due to external factors, which did not impact the content of the report, such as readiness of political or legislative bodies to receive the report.

Although there have been delays in some of our projects, there has been no increase in the final price for the study when compared to our proposed price. The only increase in cost has been when the client requested an increase in the original scope of services.
8. DBE Participation

MGT is a leader in diversity, equity, and inclusion assessments, research, and solutions. Over the years we have established long lasting relationships with firms. The diverse firms MGT has partnered with for this proposal are firms we have worked with before or partnered to secure work.

Good faith effort is a process of demonstrating they efforts were made to provide opportunities for minority and women-owned firms to fairly compete and to be equitably assessed in their ability to perform specific services. MGT’s good faith effort is reflected through the establishment of partnerships with the firms we’ve selected for this proposal. Upon execution of the contract, we will use these methods to identify minority firms best suited to fit this study. As illustrated below, Donaldson Enterprises meets this criteria and is certified as DBE. MGT has achieved the 18 percent DBE participation goal for WSDOT’s Disparity Study.