

A Disparity Study for Indiana's Riverboat Casinos

Introduction

In response to the Supreme Court findings in *City of Richmond v. J.A. Croson Company* (1989), many cities and states have studied the disparity of public sector contracting and purchasing practices. In general terms, a disparity study defines an expected or predicted level of public expenditures with minority-owned businesses (MBE) and women-owned businesses (WBE). Once the expected level of minority business is determined, it is compared with the public agency's actual MBE and WBE expenditures. The difference between the expected and actual expenditures is the disparity.

A study of disparity for Indiana's river boat casinos is unique in that it seeks to estimate capacity, measure utilization, and calculate disparity (or lack thereof) the contracting and purchasing practices of ten privately owned and publicly licensed riverboat casinos in Indiana. Because the privately owned riverboat casinos purchase a widely different set of goods and services than does state government, the methods used to define capacity as well as the estimated measure of capacity is likely to differ from any disparity study undertaken to evaluate the contracting and spending patterns of state or local government.

There are a variety of commonly used methods to estimate capacity and measure utilization. Additionally, the methodology used to estimate capacity and measure utilization affect the calculation or determination of disparity. While the primary purpose of this study is to define disparity, a second and equally important outcome is to establish a consistent method of disparity analysis that can be replicated over time. A consistent and replicable methodology will enable the monitoring of capacity, utilization and disparity over time. We suggest that increasing capacity and utilization are as important a goal as decreasing disparity. Therefore, the definitions of capacity and utilization that will be used in this study must be replicable by any potential future vendor. Thus the measures should consist of the best information with the least amount of judgment or interpretation. Consistent measures with minimal interpretation enable the opportunity for different vendors to undertake the study, while still providing an opportunity to measure changes in capacity and utilization over time and multiple studies.

Cursory research has found no evidence that disparity studies have been completed for riverboat casinos in other states. As a result this proposal describes a generalized approach to addressing the specific research question of riverboat casino disparity. Final determination of the accepted measures of capacity, utilization, and disparity are subject to input from the project advisory board which will consist of members of the gaming commission and staff, current riverboat casino vendors, previous suppliers to riverboat casinos, representatives of the casinos and members of local chambers of commerce, including local black and Hispanic chambers.

The remaining seven sections of the report will in order address:

1. The organization and role of the advisory group
2. The study period
3. A proposed method to estimate capacity
4. A proposed method to measure utilization
5. An overview of the disparity methodology

6. The proposed post disparity investigation
7. A description of deliverables, tentative timeline, and project cost.

The Organization and Role of the Advisory Group

The advisory group's principal responsibility will be to provide oversight and guidance as the researchers seek to define and estimate capacity, utilization, and disparity. As previously described in the introduction, the potential advisory group members might consist of representatives from the gaming commission and staff, current riverboat casino vendors, previous suppliers to riverboat casinos, representatives of the casinos, members of local chambers of commerce, including local black and Hispanic chambers, and any others recommended by the Gaming Commission or advisory group members. There will be three geographic subdivisions of the advisory group, one sub-group representing the riverboat casinos in Northwest Indiana, another subgroup representing the riverboat casinos located along the Ohio River. The third subgroup will be in Central Indiana. This subgroup will consist of interested parties located in the Central part of the state and also be open to any interested group that was unable to attend the northern or southern meetings. Each sub-group will meet least twice and may choose to meet a third time.

The first meeting will be held immediately after the project begins. At this meeting the researchers will present an overview of disparity studies and review its purpose. Next, the researchers will present members with the five most common measures of capacity and recommend a measure and methodology to be used in this study. The advisory group will then accept this recommendation or make amendments. The advisory group will also be present with a recommendation for measuring utilization and asked to approve or amend the methodology used to define utilization. These decisions will then serve as the basis for the research and measuring effort.

A second meeting in each region maybe held at the midway portion of the project and will review the previous decisions made by the advisory group and provide the group with a progress report. Additionally, the second meeting will be used to address any new issues that have arisen during the project that will benefit from the insight and experience of the advisory group.

The third meeting will be held upon completion of the quantitative portion of the disparity study. The researchers will present the findings, and the advisory group will be asked for their feedback (comments and questions). If disparities are found to exist the advisory panel also will be asked to suggest individuals that could be interviewed to provide the anecdotal evidence required to support the quantitative portion of the disparity study.

The Study Period

Richmond v. J.A. Croson Company suggests that the most recent two or three years of data is the appropriate time frame for disparity studies. We suggest that the riverboat casino disparity study include the years 2003, 2004, and 2005.

A Proposed Method to Estimate Capacity

Capacity represents the estimated or expected measure of the total number of MBE and WBE firms that are ready, willing, and able to compete for contracts with in this case the riverboat casinos. In December 1997, the Urban Institute released a study summarizing the methodologies and findings of 58 disparity studies, all of which were related to government related purchasing practices. The Urban Institute determined that "Different studies employ different, and sometimes multiple measures of availability. ... there is no 'best' way to define which firms are available to perform government contracting work, although the choice of measure can affect the findings."¹

The Urban Institute's review of capacity studies determined that the five most common methods of defining capacity or availability are:

- Firms that have previously contracted with government
- Firms that have previously bid on government contracts
- Firms that have been certified by government units
- Firms that have responded to surveys conducted for the study
- All firms²

Each of these methods has strengths and weaknesses. The most important issue is the trade-off between the precision necessary to identify firms that are ready, willing and able to compete and the broadness needed to be inclusive enough to account for any past and present discrimination that may have affected the ability and willingness of MBE and WBE firms to compete for government contracts. "The more narrowly a measure screens for capacity the more prior discrimination it builds in."³

The Urban Institute researchers suggest that if capacity is defined as all firms (using census data), then, while there is the broadest effort to address past and present discrimination, there is also the likelihood that an unknown number of firms are not ready, willing, or able to compete for a government contract. The survey data includes all who file a tax return indicating that they are self-employed, regardless of the share of income earned while self-employed. Many of these self-employed individuals are unlikely to have the desire or capacity to compete for public-sector contracts. Thus, using the Census measure would overstate the capacity or availability of MBE and WBE firms to compete for government contracts and result in an overstated degree of disparity. Conversely, the method of using only firms registered and certified by the government is likely to under represent the number of MBE and WBE businesses that are ready, willing, and able to do business.

¹ The Urban Institute. (1997, December). *Do Minority-Owned Businesses Get a Fair Share of Government Contracts?* Washington DC. p. 11.

² The Urban Institute. (1997, December). *Do Minority-Owned Businesses Get a Fair Share of Government Contracts?* The Urban Institute, Washington DC. p. 12.

³ The Urban Institute. (1997, December). *Do Minority-Owned Businesses Get a Fair Share of Government Contracts?* Washington DC. p. 12.

While, as indicated in the Urban Institute study, there is no perfect measure of capacity. That said it is important that the measure of capacity be inclusive enough to address not only those firms that have directly expressed interest in doing business with a riverboat casino by notifying the casino of its interest (including bid for but not received contracts as well as those who are currently under contract and those previously contracted with) but also take into account those firms that are ready, willing, and able but for discriminatory or other reasons have not directly notified the riverboat casinos of their interest.

As was stated earlier, a primary goal of this study is to identify the methodology that provides the best information with the least amount of judgment or interpretation. A key factor in enabling consistent replication is that the method for judging capacity requires the least possible amount of human interpretation. This provides an opportunity for different vendors to undertake the study, while still providing an opportunity to measure changes in capacity and utilization over time.

The method identified by the Urban Land Institute as the most commonly used measure is measure is the number of vendors who have asked the contracting governmental unit to notify them of contractual opportunities. This would include both registered/certified MBE/WBE firms as well as MBE/WBE firms that have not made the effort to become registered/certified., supplemented by an effort to determine MBE and WBE firms. **After careful consideration of the riverboat casino contracting environment, we suggest that the riverboat casino capacity be defined as firms that are currently contracted to provide services or goods to the riverboat casinos, firms that have in the past provided goods or services to the riverboat casinos, firms that have bid for but failed to win riverboat casino contracts, and firms that have asked to be notified by riverboat casinos of contracting opportunities. In addition to these groups we recommend, that the Gaming Commission provide other Indiana based firms the opportunity to express that they are ready, willing, and able by notifying the Gaming commission of their interest.**

We suggest that the Gaming Commission runs a series of notices in local newspapers, including any local minority owned newspapers. Additionally, the state and local chambers of commerce, as well as any black, Hispanic or other minority chambers should be asked to inform their members of the opportunity to notify the state of their interest. The Indiana Casino Association should be asked to notify its members as well and the study advisory groups shall be asked to identify other trade associations that should be notified

All firms that express being ready willing and able will be asked to provide their state tax identification number, address, phone contact, total employees, and types of services they provide (professional services, other services, construction, and procurement). While the outreach effort is directed to all types of firms, including non-MBE/WBE ,all that express being ready will and able will be asked to self-disclose if they have minority or women ownership.

A Proposed Method to Measure Utilization

Utilization is typically defined as the MBE and WBE expenditures made by or contracts entered into by the governmental unit for whom the disparity is being completed. The advantage of using contracts is that the sample size is smaller; the disadvantage is that occasionally contractual commitments do not match actual expenditures. The advantage of using expenditure data is that it

represents a real expenditures, rather than intended expenditures. The primary disadvantage is the size of the sample that must be audited and confirmed.

We suggest that the utilization measure be based on expenditures rather than contracts. Specifically, the study will include all expenditures made by the riverboat casino in 2003, 2004, and 2005.

Over the years, disparity studies have categorized expenditures into either 3 categories (construction, procurement, and services) or 4 categories (construction, procurement, professional services, and other services). We suggest this disparity study use the 4 categories. There are two reasons for this. The first is that the separation of services into professional and other service categories provide policy makers with a greater level of detail and monitoring. The second reason is that the spending patterns of riverboat casinos are not well understood and thus using the distinct service should enable a greater understanding of how service expenditures are allocated and if disparity exists allow for a more precise suggested remedy.

The expenditure data will be provided by the Gaming Commission to the Center. The Gaming commission will have audited and certified the data reported by the individual riverboat casinos as accurate. The data provided will consist of each transaction made during the study period. The transaction record included the identification of the broad industry group (construction, procurement of goods, professional services, and other services), vendor name, transaction amount, and MBE/WBE status. The Center will randomly check the data provided by the Gaming Commission, the review of data will be primarily focused on reviewing the MBE/WBE identification process and being certain that all MBE/WBE identified are accurate and assuring that all MBE/WBEs have been identified.

An overview of the disparity methodology

The difference between capacity and utilization is called **disparity**. A statistical will be used to determine whether the disparity is within an acceptable margin of error or is likely a result of practices that prevent minority- and women-owned businesses from gaining their expected share of local business.

As previously stated, with the variety of ways to define capacity and utilization, the most critical part of any disparity analysis is the methodology used to define utilization and capacity. Each utilization and capacity definition has strengths and weakness, and most require a degree of interpretation or judgment on the part of those doing the analysis. Most important, the methodology used to define utilization and capacity will impact the disparity findings of the study.

In an ideal environment, capacity and utilization would be identical and the disparity measure would be zero. For the purposes of a disparity study, a disparity measure of less than zero suggests underutilization of MBE or WBE firms, and a disparity measure of greater than zero suggests over utilization.

The analysis for the Gaming Commission will estimate disparity in terms of dollars expected to be expended (estimated capacity) and actual dollars spent (utilization), as well as the expected number of firms (estimated capacity) and the actual number of firms contracting with the riverboat

casinos (utilization). As with measures of utilization and capacity, the capacity estimates will be presented by category: construction, procurement, professional services, and other services.

The proposed post statistical disparity investigation

If disparity is found and proven to be outside a statistical margin of error, then the Corson findings require additional investigation to demonstrate systemic discriminatory exclusion on the basis of race. The primary component of the post statistical disparity investigation is the key informant interview. We suggest that 12-20 key informants be identified with the help of the advisory group. These key informants will be interviewed and asked to identify the institutional and societal barriers to a less disparate MBE/WBE participation, to identify the effective and ineffective elements of the existing MBE/WBE programs at the riverboat casinos, and to provide recommendations regarding improving both capacity building and utilization efforts.

A description of deliverables, tentative timeline, and project cost.

The primary deliverable will be 20 copies of the final report as well as an electronic version in pdf format. Other deliverables include a draft report due by June 1 and the presentations and facilitation of the advisory group meeting. The initial advisory groups meetings shall be convened in January or February of 2006 and the final meetings will be held in May or June 2006. The project will begin December 1, 2005 and be completed by July 31, 2006.