

**INTERIM REPORT OF THE JOINT SUBCOMMITTEE  
STUDYING**

**STATE GOVERNMENT  
PROCUREMENT PRACTICES AND  
PROCEDURES**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 55**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2000**



## MEMBERS OF THE JOINT SUBCOMMITTEE

The Honorable Benjamin Lambert, III, *Chair*  
The Honorable Robert H. Brink, *Vice-Chair*  
The Honorable William T. Bolling  
The Honorable Mary Margaret Whipple  
The Honorable Glenn R. Croshaw  
The Honorable Robert F. McDonnell  
The Honorable Harry B. Blevins  
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## EXECUTIVE SUMMARY

Adopted by the 1999 Session of the General Assembly, Senate Joint Resolution No. 474 established a nine-member joint subcommittee to study state government procurement practices and procedures. In particular, the joint subcommittee was charged with reviewing the state's policies concerning minority business participation in the state procurement process. The resolution provides for the study to be conducted in two phases. In the first phase, the joint subcommittee was required to i) perform a thorough review of relevant court decisions and state laws and policies relative to programs encouraging minority participation in the state contracting process, ii) identify independent experts or firms which perform disparity studies, and iii) confer with other states that have conducted disparity studies. At completion of the first phase, the joint subcommittee was required to recommend to the General Assembly the funding necessary to conduct the disparity study. The second phase of the study involved the joint subcommittee securing an independent expert or firm to conduct the disparity study and oversee the work of that expert.

While Virginia does not include preferences, set-asides, quotas or firm goals in its policies to promote minority participation in state procurement, some localities in the state and several other states do use such policies. The Supreme Court's decision in City of Richmond v. Croson in 1989, placed these programs under stricter scrutiny when challenged. After Croson, state and local governments began to commission studies to assess the existence and extent of discrimination in their contracting processes. These studies help to determine if a significant statistical disparity exists between the number of available qualified minority and women-owned firms willing and able to perform or fulfill government contracts for goods and services and the number of such firms actually being awarded state contracts.

The joint subcommittee developed a study plan providing for completion of the tasks required by the resolution. To assist in completing the objectives of the study, the joint subcommittee heard from representatives of state and local agencies. The joint subcommittee also analyzed disparity study activity in eight states with emphasis on the scope, cost and duration of such studies. To gain a clearer understanding of costs in relation to the disparity study proposed by the resolution, the joint subcommittee studied specific information involving the (i) method to be used for selecting the independent consultant to conduct the study, (ii) availability of firms to perform the study, (iii) anticipated cost of the study, and (iv) the time needed for completing the study.

In addition to analyzing information relative to disparity studies, the joint subcommittee also received public comment. Those providing public comment included experts in the field, individuals representing professional associations,

various business interests and both minority and majority business owners. Collectively, public comment represented a variety of views relative to the need for a disparity study and the reliability of the data that would be derived from such a study. The joint subcommittee was careful to include the information derived from public comment sessions in its deliberations.

After reviewing the information developed over the course of the first year of the study, the joint subcommittee was unable to reach unanimous agreement on the funding recommendation. The joint subcommittee voted, however to make the following recommendation:

1. That a budget amendment requesting up to \$950,000 be offered for conducting the disparity study to be overseen by the Joint Subcommittee Studying State Government Procurement Practices and Procedures pursuant to Senate Joint Resolution 474; and
2. That, in carrying out the disparity study, the joint subcommittee shall ensure that state colleges and universities and other state entities be requested to participate wherever possible to conduct the disparity study.

**INTERIM REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING  
STATE GOVERNMENT PROCUREMENT PROCEDURES**

To: The Honorable James C. Gilmore, III, Governor of Virginia  
and  
The General Assembly of Virginia

Richmond, Virginia  
January 2000

**I. STUDY AUTHORITY AND OBJECTIVES**

Senate Joint Resolution No. 474 (Appendix A), agreed to during the 1999 Session of the General Assembly, established a joint subcommittee to study state government procurement practices and procedures. The resolution contemplates that the joint subcommittee will conduct its study in two phases. During the first phase of the study, the joint subcommittee was required to:

1. Review the work of the Joint Subcommittee Studying State Government Procurement Practices and Procedures, pursuant to SJR 12 (1996);
2. Review the Supreme Court's decisions in City of Richmond v. J.A. Croson Co. and Adarand Constructors v. Frederico Pena;
3. Examine commodities, contractual services, architectural and engineering services, and construction contracts relative to state government procurement practices and procedures;
4. Ascertain information regarding the costs of conducting a disparity study;
5. Identify independent experts or firms which perform such studies as required in Croson;
6. Confer with other states which have conducted such disparity studies; and
7. Recommend sufficient funding necessary to conduct the disparity study, and apprise the General Assembly accordingly.

During the second phase of the study, the joint subcommittee was required to employ an independent body to conduct a disparity study. Additionally, the resolution sets forth the parameters of the disparity study including:

1. Establishment of a market area for each business category;
2. Identification of the vendor population of contractors and suppliers within the market area;
3. Identification of the vendor population of minority business in the market area;
4. Determination of the percentage of each agency's minority and non-minority business contracts;
5. Procurement of evidence of discriminatory practices, barriers, and constraints, if any, to the participation of minority businesses in the market area;
6. Identification of existing race-neutral programs that are available to assist minority businesses;
7. Assessment of the overall impact of the minority business utilization practices of each state agency in terms of remedying effects of past discrimination, if any, in awarding contracts, emergency contracts, sole source contracts, subcontracts, purchase orders, and blank purchase orders, and in other procurement practices; and
8. Development of a process and methodology for minority business participation consistent with the review standards established by the Croson and Adarand decisions, as applicable.

The joint subcommittee was required by the resolution to complete its work and submit its findings and recommendations to the Governor and the 2001 Session of the General Assembly.

The joint subcommittee is comprised of nine members: four members of the House of Delegates, appointed by the Speaker of the House; three members of the Senate, appointed by the Senate Committee on Privileges and Elections; the Director of the Department of Minority Business Enterprise; and the Director of the Department of Economic Development.



## II. BACKGROUND

### A. Overview of the Virginia Public Procurement Act

The Virginia Public Procurement Act (§ 11-35 et seq.), which became effective in January 1983, contains the public policies of the Commonwealth pertaining to governmental procurement from nongovernmental sources. Section 11-35 expresses the intent of the General Assembly:

*§ 11-35. Title; purpose; applicability.*

*To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.*

To achieve these purposes, the Virginia Public Procurement Act (VPPA) establishes a procedure for awarding public contracts based on competitive principles and provides that all public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, or for construction, be awarded after *competitive sealed bidding* or *competitive negotiation*, unless otherwise provided by law.

*Competitive sealed bidding* is the method of procurement preferred when a public body acquires goods, printing and nonprofessional services and the estimated cost is more than \$30,000. This method requires the item or service sought be described in specific terms to be included in an Invitation for Bid. It commences with the issuance of a written Invitation to Bid setting forth the specifications and contract terms and conditions applicable to the procurement. The public body is then able to evaluate any bids submitted by potential contractors against the descriptions provided in the Invitation for Bid. After the deadline provided in the Invitation to Bid, there is a public opening and announcement of all bids received, with an award to the lowest responsive and responsible bidder. A *responsive bidder* is one who has submitted a bid conforming in all material respects to the Invitation to Bid and a *responsible bidder* is one who is capable of fully performing the contract requirements. The important elements of competitive sealed bidding are:

(i) price is the bottom line, (ii) vendors or contractors submit bids on specifications provided by the public body, (iii) all bidders are bidding on the same contract terms and conditions, and (iv) the contract is awarded to the lowest responsible and responsive bidder.

*Competitive negotiation* is required whenever a public body acquires professional services. The procurement process under this method begins with the issuance of a written Request for Proposal containing in general terms the services sought by the public body. Proposals may be solicited directly from potential vendors. In the case of professional services, the public body engages in individual discussions with two or more offerors deemed to be fully qualified, responsible and suitable, with an emphasis on professional competence. The public body then selects in order of preference two or more offerors and commences negotiations beginning with the offeror ranked first. If the public body can negotiate a satisfactory contract at a fair and reasonable price, the award is made to that offeror. If the public body is unable to negotiate a satisfactory contract, it must terminate negotiations with the top-ranked offeror and move to the next ranked offeror, continuing until a contract is negotiated at a fair and reasonable price. Competitive negotiation may also be used for goods and nonprofessional services when it is neither practicable nor financially beneficial for the public body to use competitive sealed bidding. The advantage of competitive negotiation is the flexibility it allows the public body to describe in general terms what is being sought and the factors that will be used to evaluate responses. Elements of competitive negotiation are (i) price is one of many factors to be considered and not the sole determining factor, (ii) the "concept" of the needed service is provided by the public body, and (iii) the qualifications of potential contractors are critical.

The VPPA allows for exceptions from competitive bidding and competitive negotiation (i) for emergencies, (ii) where a determination has been made in writing that there is only one practicable source available for what is to be purchased (sole source exception), and (iii) for purchases not expected to exceed \$30,000.

## **B. State Minority-Owned Business Participation Policies**

Provisions of the Code of Virginia prohibit discrimination on the basis of race, religion, color, sex and national origin. Preferences, set-asides, quotas or firm goals for minority-owned businesses do not exist in the Commonwealth. The state does have, however, several policies aimed at promoting nondiscrimination in the procurement process, promoting participation by minority-owned businesses in the procurement process and encouraging the development of small businesses and businesses owned by women and minorities. None of these policies provide for preferences, set-asides, quotas or firm goals for minority-owned businesses. These policies have the combined effect of requiring public bodies to facilitate the participation of minority-owned businesses in the state's procurement process and

to document such participation. In the end, to be awarded state contracts, a minority-owned firm must still prevail in the regular competitive procurement process.

The state's policies regarding minority-owned business participation in government procurement are found primarily in the VPPA. Section 11-44 of the VPPA provides that "no public body shall discriminate because of race, religion, color, sex or national origin of the bidder or offeror." That section also requires public bodies to include businesses selected from a list made available by the Department of Minority Business Enterprise. Under § 11-48, all public bodies must establish written programs to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The Act also prohibits employment discrimination by a contractor (§ 11-51).

In addition to the VPPA, references to provisions prohibiting discriminating in contracting are also found in FECA, the Virginia Fair Employment Contracting Act (§ 2.1-374 et seq.). Enacted in 1975, FECA prohibits a contractor from discriminating against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The law specifically provides that nothing contained in FECA shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin "on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin in any community or in the Commonwealth" (§ 2.1-376).

The Department of General Services (DGS) is the state's lead agency over procurement practices and policies, and provides assistance and training to state agencies regarding these practices and policies. Under the authority of § 2.1-442, DGS publishes the *Agency Procurement and Surplus Property Manual*, which establishes policies and procedures to be followed by state agencies and institutions in fulfilling procurement responsibilities. In addition, the Division of Purchases and Supply (DPS) of DGS is authorized to issue Procurement Information Memoranda, which are effective until they have been included in a revision of the *Manual* or rescinded by DGS. The *Manual* contains provisions for the inclusion of minority-owned businesses in the procurement solicitation process as required by the VPPA. Section 3.10 of the *Manual* states that agencies are required to establish internal procedures to facilitate the participation of small businesses and businesses owned by women and minorities. A listing of minority and female vendors must be maintained by each agency for solicitation purposes. In addition, sealed bids or proposals must include businesses selected from a list made available by the Department of Minority Business Enterprise. State agencies are also

provided with recommended guidelines on the number of minority firms that should be included in the solicitation process based on set dollar amounts and whether there is adequate registration of minority-owned businesses in the commodity. Solicitations over \$5,000 and up to \$15,000 are recommended to be expanded to include a minimum of two minority and/or women-owned businesses. Solicitations over \$15,000 to \$30,000 are recommended to be expanded to include a minimum of four minority and/or women-owned businesses. In addition, it is recommended that solicitations over \$15,000 provide for subcontracting with minority and women-owned businesses.

Section 3.10(d) of the *Manual* provides that all procurements of goods, professional and nonprofessional services, construction and insurance by competitive negotiation that are expected to result in contracts exceeding \$100,000 in value over the term of the contract must comply with the guidelines contained in an August 12, 1991, memorandum of the Secretary of Administration. This memorandum has the stated goal of implementing the policy of the Commonwealth to "contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities." The guidelines for implementation of the memorandum state that the offeror must submit three sets of data for small businesses and businesses owned by women and minorities: (i) ownership, (ii) utilization of such firms for the most recent 12 months, and (iii) planned involvement of such firms in the current procurement.

In addition to the DGS, the Department of Minority Business Enterprise (DMBE) has a role in carrying out the state's policies regarding both the development of minority-owned businesses and the participation of such businesses in state procurement. DMBE is responsible for certifying businesses to participate in the Commonwealth's minority business program and distributing a list of "certified minority enterprises" to all state agencies on an annual basis. Under § 2.1-64.32:1, minority business enterprise (MBE) means a business enterprise that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantages may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts. The term "owned and controlled" means that minorities must own at least 51 percent of the business and that they must control the management and daily operations of the business. As stated above, state agencies are required to include in solicitations businesses selected from the list made available by DMBE. In addition, state agencies are required to submit annual progress reports on minority business procurement to DMBE.

### C. Past Studies

Since becoming effective in 1983, the VPPA has been the subject of two studies reviewing minority-owned business participation in state contracts. The 1995 Session of the General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to study minority-owned business participation in state contracts (HJR 554). The review was undertaken to develop reliable information on the number and magnitude of state contracts with minority owned businesses. JLARC found that accurate and comprehensive data regarding state procurement activities with minority firms had not been available. This problem was addressed during the study by conducting a systematic analysis of records maintained by the Department of Accounts' Commonwealth Accounting and Reporting System. As reported in House Document No. 53, JLARC found that minority participation in agency procurement ranged from less than one percent to 42 percent. (Appendix B) Of the agencies surveyed, only 52 indicated that they had established written programs regarding minority business solicitation, as required by state law. Based on its review of fiscal year 1995 data, JLARC found that the state paid minority-owned businesses more than \$108 million for goods and services, a sum that represented 3.9 percent of the total expenditure base of \$2.78 billion. In addition JLARC found:

- State agency compliance with applicable Code provisions was inconsistent.
- Many agencies did not have minority business lists and reported problems identifying minority businesses.
- The Interdepartmental Board, which had been created to foster and promote the development of minority businesses in Virginia, had been relatively inactive.
- The Department of General Services did not review compliance with requirements of the Code or the Procurement Manual relating to minority procurement.

The 1996 Session of the General Assembly passed Senate Joint Resolution No. 12, which created the Joint Subcommittee Studying State Government Procurement Practices and Procedures (SJR 12 subcommittee). Like SJR 474, SJR 12 contemplated that the joint subcommittee would conduct its study in two phases, with the second phase providing for an independent entity to be employed by the joint subcommittee to conduct a disparity study for the purpose of qualifying and quantifying any past discrimination in state procurement. The SJR 12 subcommittee reviewed JLARC's 1995 study, relevant caselaw, and the state's policies relating to minority participation in state procurement. In addition, 14

state agencies made presentations to the SJR 12 subcommittee concerning their particular agency's policies and procedures as they relate to minority-owned business solicitation and participation in each agency's procurement of goods and services. Agencies invited to participate represented both large and small agencies and agencies both above and below the 3.9 percent average for minority-owned business participation in state contracts, as reported in the JLARC study. Generally, the joint subcommittee heard that many agencies attempted to seek minority-owned business participation in all of their discretionary purchasing. Discretionary purchasing authority was defined to be a purchase where the agency had no restrictions as to which vendor could be awarded the purchase. Excluded from discretionary purchasing were mandatory state contracts established by the Department of General Services and sole source exemptions authorized under the Virginia Public Procurement Act.

The SJR 12 subcommittee also identified other means of increasing minority participation in state procurement, including:

- Linking bonding requirements to the size of the business;
- Mandating that state agencies have a minority business program in place;
- Encouraging joint ventures and strategic alliances between majority and minority business firms;
- Increasing the purview of the Department of Minority Business Enterprise to increase power and responsibility for oversight of state agencies; and
- Promoting increased leadership at state agencies to ensure the state's commitment to minority participation.

While meeting twice during the interim, the SJR 12 subcommittee was unable to complete its work and did not submit a final report.

#### **D. Relevant Supreme Court Decisions**

While Virginia does not include preferences, set-asides, quotas or firm goals in its policies to promote minority participation in state procurement, some localities in the state and several many other states do use such policies. Two U. S. Supreme Court decisions have specific bearing on the legality of preferences and set-asides in the awarding of government contracts. City of Richmond v. J.A. Croson Co., decided by the U.S. Supreme Court in 1989, is significant because it marked the first time that a majority of the Supreme Court held that race-based affirmative action measures are subject to strict scrutiny, the highest level of

constitutional review. Under strict scrutiny, a program that uses race as a basis for contract decision making must be narrowly tailored to serve a compelling government interest. In Croson, the city required prime contractors to whom the city awarded construction contracts to subcontract at least 30 percent of the total dollar amount of the contract to one or more minority business enterprises (MBEs). The purpose of the ordinance was to remedy discrimination against minorities in the local construction industry. The Croson Co., in its bid, did not meet the required 30 percent set-aside and was not awarded the city's construction contract and brought suit alleging that the city's ordinance violated the Equal Protection Clause of the Constitution. The Court held that the city's set-aside program was arbitrary and based loosely on population. The city failed to ascertain how many minority enterprises were present in the local construction market or the level of their participation in city construction projects. In addition, the city pointed to no evidence that qualified minority enterprises had been passed over for the city contracts or subcontracts. Under such circumstances, the court held, it is not possible to conclude that the city had demonstrated a strong basis in evidence for its conclusion that remedial action was necessary. Because the city failed to identify the need for remedial action in the awarding of its public construction contracts, its treatment of its citizens on a racial basis violated the Equal Protection Clause.

Essentially, Croson requires state and local governments to identify with precision the discrimination to be remedied. Evidence of a general societal discrimination history or under-representation of minorities in a particular sector or industry when compared to general population statistics is not sufficient for a remedial affirmative action plan. It must be noted, however, that the Court said that significant statistical disparities between the level of minority participation in a particular field and the percentage of qualified minorities in the applicable pool could permit an inference of discrimination and would support the use of racial and ethnic classifications intended to correct those disparities.

In the second case, Adarand Constructors v. Federico Pena, decided by the U. S. Supreme Court on June 12, 1995, the strict scrutiny standard was extended to federal programs. In Adarand, the federal government awarded the prime contract for a highway construction project in Colorado to Mountain Gravel Co. As required by federal law, the primary contract stated that Mountain Gravel would receive additional compensation if it hired subcontractors certified by the Small Business Administration (SBA) as small businesses controlled by "socially and economically disadvantaged individuals." As is also required by federal law, the contract directed Mountain Gravel to presume that socially and economically disadvantaged individuals included African, Hispanic, Native and Asian-Pacific Americans, other minorities, and individuals found by the SBA to be disadvantaged. Mountain Gravel let out a subcontract for the guardrail portion of the prime contract. Adarand Co., which is not an SBA-certified business, submitted the low bid. The contract was awarded, however, to Gonzales Co., an SBA-certified business. Mountain Gravel testified that it would have accepted Adarand's bid had it not been

for the additional payment it received by hiring Gonzales Co. instead. Adarand filed suit in federal district court, alleging that the presumption set forth in the SBA-certification statute (and, consequently, in the prime contract) discriminated on the basis of race in violation of the federal government's obligation to provide equal protection under the law.

In a 5-4 opinion, the Supreme Court, following the earlier Croson case, held that "all racial classifications, imposed by whatever federal, state, or local entity, must be analyzed under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests."

Because no state programs in Virginia have racial preferences, the Court's decisions in Croson and Adarand have limited impact on state government policies. The cases will, however, serve to limit the range of options available to the state to take in the future relative to preferences or set-asides.

## **E. Disparity Studies**

Croson and the subsequent line of cases decided since have established that before a government may apply minority-owned business goals to contracts or purchases or use preferential programs to promote business with such firms, it must first demonstrate that minority-owned businesses have suffered discrimination by the government and/or private businesses in the marketplace. Further, any race-preferential program must be directed at only the specific group or groups which have suffered the discrimination and only the categories of businesses where the damage occurred. After Croson, state and local governments began to commission studies, typically conducted by an outside consultant, to assess the existence and extent of discrimination in their contracting processes. The objective of these studies, which have come to be known as disparity studies, was to determine if a significant statistical disparity exists between the number of available qualified minority and women-owned firms willing and able to perform or fulfill government contracts for goods and services and the number of such firms actually being awarded state contracts. In addition, the studies were used to help determine what role, if any, discrimination had in causing any disparity.

A key element of a disparity study is a comparison of the *availability* of minority- or women-owned business enterprises and the actual *utilization* of these entities by the state government in its procurement. The existence of significant disparity between these two numbers can give rise to an inference of discrimination, and the documented utilization level helps determine the appropriate goal for any subsequent programs for encouraging minority participation. Disparity studies generally consist of two major components, a quantitative section, which analyzes contract data, and an anecdotal section including facts, opinions and perceptions



about barriers and obstacles faced by minority firms. The methods normally used for collecting anecdotal information include mail surveys, public hearings and personal interviews.

### III. ACTIVITIES OF THE JOINT SUBCOMMITTEE

*July 29, 1999*

The joint subcommittee met five times in its first year with the objective of completing the first phase of the study. The first meeting began with a review of state law and policies concerning minority participation in public procurement and relevant court cases concerning programs instituted by government entities with the intention of increasing minority participation. The joint subcommittee also reviewed the findings of the Joint Legislative Audit and Review Commission (JLARC) study conducted in 1995, *Minority-Owned Business Participation in State Business*, House Document No. 53 (1996). That study found that in FY 1995, the state expended \$2.78 billion in the procurement of goods, services and construction. Of that amount, \$108 million or 3.9 percent of the total FY 1995 state expenditure, went to minority business enterprises. As reported in House Document No. 53, JLARC found that minority participation in agency procurement ranged from less than one percent to 42 percent. Of the 126 state agencies surveyed, only 52 indicated that they had established written programs regarding minority business solicitation, as required by state law.

The joint subcommittee was provided with an overview of the findings of a 1997 study conducted by the Urban Institute titled "*Do Minority Owned Businesses Get a Fair Share of Government Contracts*" by Douglas Wissoker. The study analyzed 58 disparity studies conducted after the Croson decision to determine the use of minority-owned businesses by state and local governments. Mr. Wissoker explained that the central element of most of the disparity studies included in the analysis is a comparison of government *utilization* of minority-owned business and the *availability* of such business to perform government work. The utilization of minority-owned businesses typically is measured as the proportion of government contract dollars awarded or paid to minority-owned businesses. Availability is the minority-owned share of firms available to do government work. Mr. Wisoker stated that the disparity studies typically provide estimates regarding contracts in broad industry groups, with the most common being construction, professional services, other services and goods. The disparity, if any, between government utilization of minority-owned businesses and their availability is expressed as utilization divided by availability or the disparity ratio. A disparity ratio equal to one means that minority contractors are used exactly in proportion to their availability for government work, while a disparity ratio below one means that minority firms are being disproportionately underutilized.

The disparity studies included in the analysis were conducted by state and local governments in 18 states, though none in Virginia. The analysis showed on average that minority owned firms received fewer contract dollars from state and local government than would be expected based on their availability. Mr. Wissoker noted that one-third of the studies included in the analysis did not find any disparity.

There was concern among the members of the joint subcommittee over the high number of state agencies without the written minority business solicitation plan required by state law. Discussion among the joint subcommittee centered on the need to determine the level of compliance by state agencies with all current provisions of the law. It was agreed that agencies failing to comply with the law be required to appear before the joint subcommittee. Chairman Lambert impressed upon the joint subcommittee the need to receive comment from the minority business community and other affected organizations and individuals on the effectiveness of the states policies concerning minority participation in the state procurement process. It was agreed that a portion of the next meeting would be devoted to receiving public comment.

### *September 20, 1999*

For the second meeting, the joint subcommittee reviewed the policies aimed at promoting the participation of minority-owned businesses. The joint subcommittee heard from Donald C. Williams, Director of the Department of General Services (DGS), who reviewed the state's policies and the role the Department plays in implementing them. Mr. Williams stated that DGS is the state's lead agency over procurement practices and policies, and provides assistance and training to state agencies. The *Agency Procurement and Surplus Property Manual*, which is administered by Division of Purchases and Supply, establishes policies and procedures that state agencies and institutions must follow in fulfilling procurement responsibilities. The *Manual* provides a standard for consistency and clarity in understanding statutory requirements for agency procurement including the statutory requirements for the inclusion of minority-owned businesses in the procurement solicitation process. These provisions include the requirement that each state agency establish internal procedures to facilitate the participation of small businesses and businesses owned by women and minorities and recommended guidelines on the number of minority firms that should be included in the solicitation process based on set dollar amounts.

In terms of compliance or enforcement of the state's procurement policies, Mr. Williams indicated that while the DGS does not perform audits of individual agency procurement data, a more general periodic review of agency procurement practices is performed by DGS every three years. He noted that previous procurement reviews found state agencies generally following the guidelines relating to minority

participation. Mr. Williams stressed, however, that the procurement review does not include enforcement activity. Regarding state agency compliance with the requirement for written minority participation plans, Mr. Williams stated that procurement reviews conducted between July 1996 and June 1999 uncovered only 12 agencies and institutions that were not in compliance with the statutory requirement. He further stated that since July 1999, each of the 12 remaining agencies and institutions had documented their participation programs in writing.

Mr. Williams reviewed with the joint subcommittee the outreach efforts taken by DGS to encourage participation by minority-owned firms in the procurement process. The Department's Division of Purchases and Supply spent approximately \$27,000 on outreach and information sharing with minority-owned businesses. Almost \$20,000 of this amount was spent on *Virginia Business Opportunities*, which is published weekly. The publication provides notice of current business opportunities and is designed to assist in addressing the lack of responses from minority-owned firms in the public procurement solicitation process. The remaining funds were spent on trade exhibitions and vendor registration activities. In addition, Mr. Williams stated that the Department is in the process of developing an on-line registration process for its vendors list to replace the current registration process, which is labor intensive.

#### *Public Comment*

The joint subcommittee received public comment regarding the Commonwealth's policies pertaining to minority-owned business participation in state procurement. A representative from the Central Virginia Business and Contractors Association expressed the need for stronger support for the Department of Minority Business Enterprises so that the agency may play a more prominent role in promoting minority participation in the procurement process. In addition, the need for an enforcement mechanism was cited to ensure that the current statutory requirements are being followed by all state agencies. The representative suggested two possible enforcement mechanisms: (i) removal of an agency's procurement authority where noncompliance was found and (ii) including minority business outreach in the personnel evaluation criteria of appropriate state procurement officers. These changes, stated the representative, would not only put in place a clearer enforcement mechanism, but also provide a stronger incentive for compliance.

A representative of the Metropolitan Business League also supported the need for stronger enforcement and suggested that the procurement practices should mirror the population of the community in which the agency is located. Other speakers addressed concerns related to the difficulty faced by minority-owned businesses in participation in the process including:

- the inability of minority subcontractors to interact directly with the end user state agency, preventing the establishment of stronger, more personal business relationships;
- the negative effect that racism and discrimination have on the procurement decision process; and
- the difficulty in effectively measuring minority business participation at the subcontractor level.

After the public comment period, the joint subcommittee discussed what types of enforcement mechanism would be appropriate and whether DGS should play a greater role in enforcing state policies. Chairman Lambert requested that DGS provide the joint subcommittee with an updated status of state agency compliance including a list of the agencies without the required minority business participation plan. It was agreed that the next meeting the joint subcommittee would review disparity study activity from selected states and information concerning the method of selection for the independent consultant and the anticipated costs and time frame for the study.

### *November 30, 1990*

The joint subcommittee reviewed disparity study activity from North Carolina, Maryland, South Carolina, Florida, Colorado, Minnesota, Missouri and Indiana.(Appendix D) The review included identification of the supervising entity for the study and the scope, cost and duration of the study. In addition, the joint subcommittee reviewed information specific to the proposed disparity study for the state concerning the (i) method that would be used for selecting the independent consultant to conduct the study, (ii) availability of firms to perform the study, (iii) anticipated cost of the study, and (iv) time needed for completing the study. Based on the review of disparity studies with a scope similar to that anticipated in Virginia, the cost for conducting a comprehensive statewide disparity study would range between \$500,000 and \$1 million. The actual cost for the study would depend on several factors including the availability of data, the scope of the study, the methodology used to develop data, and the time allotted for completion of the report. The joint subcommittee received information indicating that the time required for a disparity study would range from 8 to 18 months.

The joint subcommittee was provided with a report on minority procurement for fiscal year 1998 compiled by the Department of Minority Business Enterprise.(Appendix C) Comparison between this report and the JLARC report generally revealed an increase in government expenditures between fiscal year 1995 and fiscal year 1998. Discussion among the joint subcommittee centered on whether JLARC had completed a follow-up study of minority procurement that

developed further analysis of minority participation in state government procurement. The joint subcommittee requested staff determine whether a follow-up report existed.

### *Public Comment*

The joint subcommittee heard from representatives of the Virginia Regional Minority Supplier Development Council, the Central Virginia Minority Business and Contracting Association and two individuals expressing support for conducting the disparity study. Prominent in the comments was the need for an independent examination to provide a clear picture of the status of minority participation in the procurement process. Without a clear picture of the level of participation of minority participation, including the level of availability of minority firms to perform state contracts and the actual utilization by the state of these firms, there would be no way to adequately judge or understand where the state stood in its efforts to increase minority participation. George H. Carter, Senior Procurement Officer for the City of Richmond noted that disparity studies do not always have the goal of determining the presence of discrimination. He stated that the reality of the business world, outside of overt discrimination, is that businesses tended to work with other businesses that they knew and with whom they had already established working relationships. A disparity study, stated Mr. Carter, would give all involved an idea of what portion of the population has been excluded from these established business relationships and provide the basis for a plan of action for opening up those established business relationships.

The joint subcommittee also heard from Stephen Humphrey of MGT of America, Inc., a consulting firm that has conducted more than 70 disparity studies. Mr. Humphrey described what he felt were the benefits offered by disparity studies. He also noted the progress that has been made in increasing minority participation citing situations where follow-up studies, conducted after initial studies found disparity in all contracting categories, were actually finding no disparity in several of the categories. Mr. Humphrey also asserted that disparity studies provided direction for outreach activities to be conducted by the state.

The joint subcommittee discussed whether it had sufficient information with which to support a funding request. Some members believed that additional information would be needed before such a request could be made particularly regarding what efforts the state could take to increase minority participation without having a disparity study conducted. Consensus could not be reached on this issue. Senator Bolling suggested that additional speakers be invited to appear before the joint subcommittee and that further examination was needed regarding the effectiveness of disparity studies. Unable to reach a consensus on these issues, it was agreed that the next meeting would include additional public comment and

review of disparity studies and their utility and effectiveness in achieving the goal of a fair and open procurement process.

*December 10, 1999*

The joint subcommittee devoted the majority of this meeting to receiving additional public comment. The joint subcommittee heard from Walter H. Ryland with the law firm of Williams, Mullen, Clark and Dobbins. Mr. Ryland noted that a disparity study is usually undertaken to provide justification for the adoption of a preferential procurement program, which typically creates percentage goals for the use of businesses owned by minorities and women or the disadvantaged. He also asserted that the idea of using a disparity study as a solution to promoting minority business is really one whose time has passed. Mr. Ryland emphasized that vendors who have developed cost effective relationships with minority firms find that they have a competitive advantage in obtaining government contracts, thereby creating an economic incentive for majority firms to develop such relationships. Mr. Ryland further noted that, based on his extensive experience with disparity studies, where an objective procurement system is in established use, such as the Virginia Procurement Act, the kind of disparity that would be indicative of discrimination is not usually found. He cautioned that should the state proceed with a disparity study, the one essential element for its validity is that it must make a credible and definitive finding regarding the presence of discrimination in the state contracting process.

The joint subcommittee also heard from George R. La Noue, Professor of Political Science at the University of Maryland, Baltimore County. Professor La Noue expressed concerns regarding the credibility and legality of disparity studies, citing that to his knowledge no disparity study, after it has been challenged, has been upheld after discovery and trial. He also noted that if the joint subcommittee decided to proceed with a statewide disparity study, it should consider having portions of the study done by state employees rather than a consultant. For instance, current legal staff could complete the portion of the study devoted to legal analysis and state university faculty could do much of the work relating to the history of discrimination affecting procurement. Using existing state resources, stated Professor La Noue, would serve to reduce the cost of the study. Professor La Noue also indicated four issues of concern associated with disparity studies: 1) the possibility that necessary data are not available, 2) the lack of a consensus among consultants about how availability should be measured, 3) the need to ensure that the study clearly identify discrimination as distinct from a statistical disparity of unknown origin, and proffer the source of the discrimination, and 4) the need for verification of anecdotal information that the study uses to allege discrimination as a cause for disparity.

Representatives of the Richmond Area Municipal Contractors Association, Associated General Contractors, the Virginia Road and Transportation Builders Association and the Virginia Utility & Heavy Contractors Council also appeared before the joint subcommittee. These representatives generally expressed opposition to conducting a disparity expressing concern over the time and costs for conducting the study, the reliability of the data generated and the lack of any demonstrated need for having a disparity study conducted. These representatives also expressed concern over the divisiveness and controversy left in the wake of disparity studies done by other states and localities. It was also noted that the inability of minority firms to win state contracts is not always related to discrimination, but rather other things such as bonding and capital requirements and experience. The representative of the Virginia Utility & Heavy Contractors Council suggested that the money that would be used for conducting the disparity study be used instead to encourage strategic alliances between minority and majority contractors, provide educational programs to support and strengthen minority contractors, and promote career opportunities for present and future minority business owners. It was also suggested that an entity consisting of representatives of all affected parties be established to regularly meet and discuss the issues and seek new ways to overcome obstacles and barriers to full minority contractor participation in the procurement process. A representative of Associated General Contractors suggested more funding for the Department of Minority Business Enterprise and the Secretary of Commerce and Trade to establish more basic training and education programs for minority business owners.

The joint subcommittee also heard from representatives of several organizations and businesses supporting the need to conduct a statewide disparity study. These speakers generally expressed the need to conduct the study to get a clearer understanding on whether unlawful discrimination exists in the state procurement process. It was noted that the results of the study would provide the data needed to narrowly tailor and target programs to address any disparities identified while ensuring equitable opportunity for participation of all available firms that are willing and able to do business with the state. One speaker noted that for the state to do nothing would perpetuate the current system, which does not necessarily encourage competition because it resulted in many instances of purchases being made with a relatively small number of businesses. It was the consensus among these speakers that a disparity study would send a clear message that the state is seriously interested in making the playing field level.

Discussion among the joint subcommittee centered around the appropriate enforcement mechanism and the need to improve minority business outreach. Several members expressed great interest in availability and feasibility of instituting programs supporting capital and bonding assistance and other targeted training and education programs that could be done without a disparity study. There were some members who did not feel that the joint subcommittee had enough information upon which to base a recommendation for funding the study and that

more information on the feasibility of race neutral programs was needed before spending money on a study could be advised. In addition, it was pointed out that the public comment raised questions with regard to the reliability of such studies and the high cost. Other members maintained the usefulness of the data that a study would provide in giving a clearer picture of where the state stood in terms of its minority procurement efforts and what more needed to be done. Lacking consensus among the membership, Chairman Lambert suggested that the next meeting of the joint subcommittee be devoted to a work session to determine policy and funding options. The Chairman urged members to submit their thoughts and suggested policy options to staff for inclusion in the work session.

*January 13, 2000*

The joint subcommittee held its final meeting to attempt to reach consensus on the funding and policy recommendations. The joint subcommittee reviewed information indicating a range for the study would be between \$800,000 and \$1 million. Some members of the subcommittee believed that the joint subcommittee should not recommend funding for the disparity study, citing that sufficient need for the study had not been shown, the unreliability of such studies in producing valid data, and the costs associated with conducting the study. Other members supported going forward with the study and the funding recommendations citing the information developed by the study and the lack of a clear picture of how the state's efforts to date have fared in increasing minority participation. It was noted that the data for the study would assist the state in determining the effective remedies and programs to address any problems. Chairman Lambert also noted the strong support expressed in the minority community for the study and the need for the state to send a message that it is serious about addressing the issue of equity and fairness in state contracting.

A consensus could not be reached regarding the issue of going forward with the funding request. A majority of the members present voted to recommend the funding for the study through a budget amendment. There remained some members, however, who could not support the budget amendment. The joint subcommittee also received information from the Director of the Department of Minority Business Enterprise regarding the actions taken by the Department to resolve some of the issues raised by the 1996 JLARC report.



#### IV. RECOMMENDATIONS

Though unanimous agreement could not be reached, a majority of the joint subcommittee voted to proceed with the disparity study and recommended the following:

1. That a budget amendment requesting up to \$950,000 be offered for conducting the disparity study to be overseen by the Joint Subcommittee Studying State Government Procurement Practices and Procedures pursuant to Senate Joint Resolution 474; and
2. That, in carrying out the disparity study, the joint subcommittee shall ensure that state colleges and universities and other state entities be requested to participate wherever possible to conduct the disparity study.

Respectfully Submitted,

Benjamin Lambert, III, *Chair*  
Robert H. Brink, *Vice-Chair*  
William T. Bolling  
Mary Margaret Whipple  
Glenn R. Croshaw  
Robert F. McDonnell  
Harry B. Blevins  
Linda Byrd-Harden  
Mark Kilduff



**SENATE JOINT RESOLUTION 474  
INTERIM REPORT**

**APPENDIX A**

1999 SESSION

991104693

SENATE JOINT RESOLUTION NO. 474  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Rules  
on February 2, 1999)  
(Patron Prior to Substitute-Senator Lambert)

Establishing a joint subcommittee to study state government procurement practices and procedures.

WHEREAS, the Virginia Public Procurement Act (§ 11-35 et seq.) was enacted to ensure that public bodies in the Commonwealth obtain high-quality goods and services at a reasonable cost, and that all procurement procedures are conducted in a fair and impartial manner, avoiding any impropriety or appearance of impropriety; and

WHEREAS, pursuant to the Virginia Public Procurement Act, all qualified vendors have access to public business, no offeror may be arbitrarily or capriciously excluded, competition must be fostered to the maximum feasible degree, individual public bodies enjoy broad flexibility in fashioning details of such competition, and the rules governing contract awards must be made clear in advance of the competition; and

WHEREAS, the Virginia Public Procurement Act ensures that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchasers and vendors freely exchange information concerning what is sought to be procured and what is offered; and

WHEREAS, the Virginia Public Procurement Act further requires that, consistent with its provisions, all public bodies establish programs to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions, and that such programs be in writing and be established in cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies; and

WHEREAS, in accordance with the Virginia Public Procurement Act, state agencies are required to submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise; and

WHEREAS, in a recent study, Minority-Owned Business Participation in State Business, House Joint Resolution 554 (1995), conducted by the Joint Legislative Audit and Review Commission, it was noted that "the \$108 million in State expenditures to minority firms represents 3.9 percent of a FY 1995 expenditure base of \$2.78 billion"; and

WHEREAS, the United States Supreme Court in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989), a case involving the City of Richmond's minority business enterprise program, ruled that certain remedies may be used to address past discrimination; and

WHEREAS, the Supreme Court recognized that disparity studies are tools that seek to qualify and quantify past discrimination and recommend certain corrective measures based on findings; and

WHEREAS, the Supreme Court established in Croson a requirement that a disparity study be conducted by an independent entity to qualify and quantify past discrimination; and

WHEREAS, since Croson, the Supreme Court has ruled in a related case, Adarand Constructors v. Pena, 115 S. Ct. 2097 (1995), which must be considered in conducting the study; and

WHEREAS, due to mitigating circumstances, the joint subcommittee appointed to study this issue under Senate Joint Resolution 12 (1996) was unable to complete its work, and this important task should be completed; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study state government procurement practices and procedures. The joint subcommittee shall consist of nine members as follows: three members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; four members of the House of Delegates, to be appointed by the Speaker of the House; the Director of the Department of Minority Business Enterprise; and the Director of the Department of Economic Development.

During the first phase of the study, the joint subcommittee shall (i) review the work of the Joint Subcommittee Studying State Government Procurement Practices and Procedures, pursuant to SJR 12 (1996); (ii) review the Supreme Court's decisions in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989), and Adarand Constructors v. Pena, 115 S. Ct. 2097 (1995), and determine their relevance to the study; (iii) examine commodities, contractual services, architectural and engineering services,

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1 and construction contracts relative to state government procurement practices and procedures; (iv)  
 2 ascertain information regarding the costs of conducting the disparity study; (v) identify independent  
 3 experts or firms, including their qualifications, which perform such studies as required in Croson; (vi)  
 4 confer with other states which have conducted such disparity studies; and (vii) recommend sufficient  
 5 funding necessary to conduct the disparity study, and apprise the General Assembly accordingly.

6 During the second phase of its study, the joint subcommittee shall oversee the conduct of the  
 7 disparity study, which shall accomplish the following objectives: (i) establishment of a market area for  
 8 each business category; (ii) identification of the vendor population of contractors and suppliers within  
 9 the market area; (iii) identification of the vendor population of minority businesses in the market area;  
 10 (iv) determination of the percentage of each agency's minority and non-minority business contracts;  
 11 (v) procurement of evidence of discriminatory practices, barriers, and constraints, if any, to the  
 12 participation of minority businesses in the market areas; (vi) identification of existing race-neutral  
 13 programs which are available to assist minority businesses; (vii) assessment of the overall impact of  
 14 the minority business utilization practices of each state agency in terms of remedying effects of past  
 15 discrimination, if any, in awarding contracts, emergency contracts, sole source contracts, subcontracts,  
 16 purchase orders, and blank purchase orders, and in other procurement practices; and (viii)  
 17 development of a process and methodology for minority business participation consistent with the  
 18 review standards established by the Croson and Adarand decisions, as applicable.

19 The joint subcommittee shall request funding through the general appropriation act for the disparity  
 20 study required in Croson only upon the completion of objectives (iv) through (vii) in phase one of the  
 21 study.

22 The direct costs of this study shall not exceed \$6,300. An estimated \$2,500 is allocated for  
 23 resources and materials to assist the joint subcommittee in performing phase one of its study. Such  
 24 expenses shall be funded from the operational budget of the Clerk of the Senate.

25 The Division of Legislative Services shall provide staff support for the study. The Department of  
 6 Minority Business Enterprise, the Department of Business Assistance, and the Department of  
 27 Economic Development shall provide technical assistance for the study. The joint subcommittee shall  
 28 also seek the assistance of the state office of the U.S. Department of Business Administration during  
 29 the conduct of the study. All agencies of the Commonwealth shall provide assistance to the joint  
 30 subcommittee, upon request.

31 The joint subcommittee shall complete its work in time to submit its findings and  
 32 recommendations to the Governor and the 2001 Session of the General Assembly as provided in the  
 33 procedures of the Division of Legislative Automated Systems for the processing of legislative  
 34 documents.

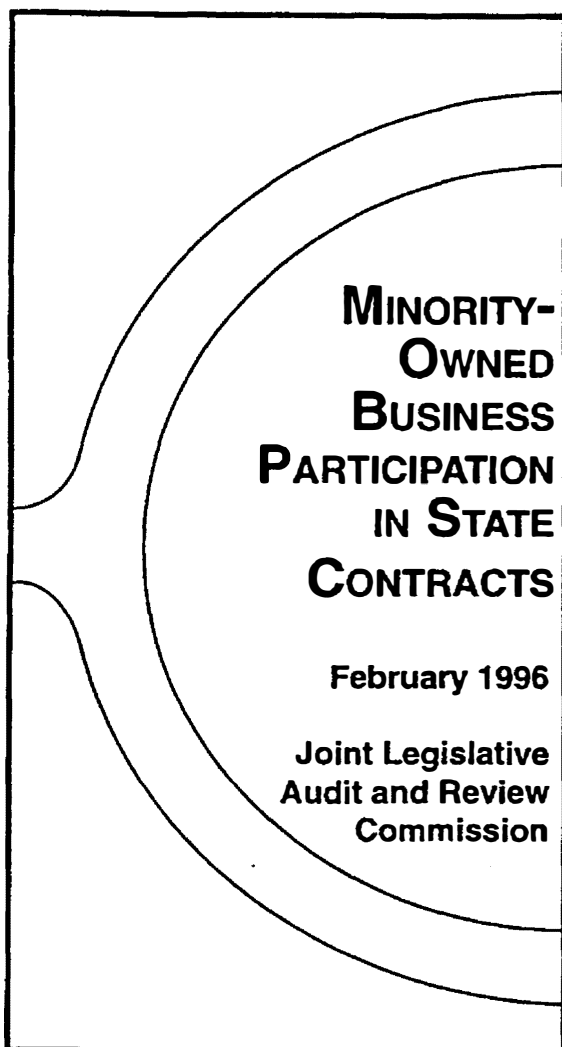
35 Implementation of this resolution is subject to subsequent approval and certification by the Joint  
 36 Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of  
 37 the study.

Official Use By Clerks		Agreed to By	
Agreed to By The Senate		The House of Delegates	
without amendment	<input type="checkbox"/>	without amendment	<input type="checkbox"/>
with amendment	<input type="checkbox"/>	with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>	substitute	<input type="checkbox"/>
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Clerk of the Senate		Clerk of the House of Delegates	

**SENATE JOINT RESOLUTION 474  
INTERIM REPORT**

**APPENDIX B**

# JLARC Report Summary



The State's policies regarding minority-owned business activity in the public procurement process are largely governed by provisions of the Virginia Public Procurement Act. The Act emphasizes promoting competition and acquiring goods and services from the lowest responsible bidder. In addition, the Act prohibits discrimination and promotes the inclusion of minority-owned businesses in the State procurement pro-

cess. However, the State has no set-asides, quotas, or firm goals for minority business participation. While agencies have been encouraged to set voluntary goals and solicit minority bids and proposals, there is little oversight in this area by agencies with responsibility for minority procurement policy.

House Joint Resolution (HJR) 554, passed by the 1995 General Assembly, directed the Joint Legislative Audit and Review Commission (JLARC) to study "minority-owned business participation in State contracts." As a result of the mandate, JLARC researched State laws and policies related to minority-owned business participation in the State procurement process, assessed the amount of agency purchases of goods and services from minority-owned businesses, and identified exemplary programs for promoting minority-owned business participation in State contracts.

Minority-owned firms received over one hundred million dollars from business transactions with the State in FY 1995. Based on JLARC's review of FY 1995 data, the Commonwealth paid 1,235 minority firms more than \$108 million for goods and services. The \$108 million in State expenditures to minority firms represents 3.9 percent of a FY 1995 expenditure base of \$2.78 billion. JLARC's review of FY 1994 data showed \$83 million in State expenditures to minority firms. The \$83 million represents 3.5 percent of a FY 1994 base of \$2.4 billion.

Multiple provisions of the *Code of Virginia* prohibit discrimination on the basis of race, religion, color, sex, or national origin. Further, the State procurement process is open and relatively accessible. Mechanisms are in place to enhance the establishment, preservation, and strengthening of minority-owned businesses. However, a lack

of effective oversight, training, and coordination among State agencies may have limited minority-owned business participation in public procurement.

**Statewide Expenditures for Procurement from Minority-Owned Businesses**

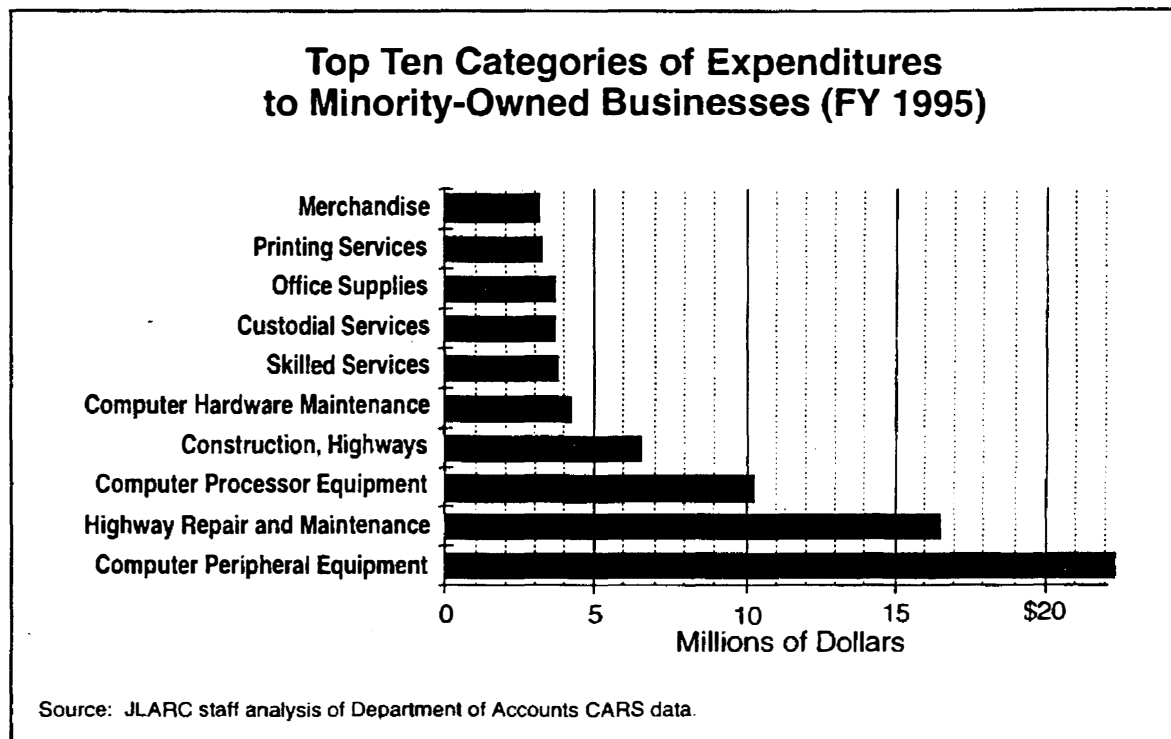
HJR 554 noted that "it is unknown how many [State] contracts are with minority-owned businesses [or] how many minority-owned businesses are aware of such contracts." JLARC staff found that accurate and comprehensive data regarding State procurement activities with minority firms have not been available. To address this problem, JLARC conducted a systematic analysis of records maintained in the Department of Accounts' Commonwealth Accounting and Reporting System (CARS).

Recognizing the limits of existing databases, JLARC acquired databases of minority vendors from a number of public and private sources. These sources provided a total of 4,830 minority-owned firms which

could be used in the analysis.

Federal identification numbers of the 4,830 firms on JLARC's database were matched with 1,920,456 agency vendor transactions for 140 object codes for FY 1995 payments. These payments to vendors totaled \$2,783,537,829. Minority-owned businesses accounted for \$108,256,490 of these expenditures, or 3.9 percent of the total. A similar process was followed for FY 1994.

Most (71 percent) FY 1995 minority expenditures fell into 10 "object codes" or categories of expenditures (See figure below). The largest of these are in the computer area or in highway construction and repair. Moreover, five State agencies accounted for over one-half (52 percent) of State expenditures to minority-owned businesses (See table, opposite). These data represent a substantial improvement in the accuracy of available information on minority procurement. A change in the State's process for reporting minority expenditures





is necessary to provide accurate data in compliance with existing statutory requirements for information on minority participation.

**The Need for an Improved Database and Methodology for Assessing Minority Procurement Activity**

The Department of Minority Business Enterprise (DMBE) is responsible for developing and distributing the Commonwealth's official list of certified minority-owned businesses. State agencies are required by the Code to include in solicitations "businesses selected from a list made available by DMBE." Agencies are also required to report payments to minority firms to DMBE. However, State agencies have encountered problems in both the minority-owned business solicitation and reporting processes.

Thirty-seven of 126 State agencies surveyed by JLARC said they had difficulty identifying minority businesses. In theory, the most accurate source of minority businesses should be the certification records of DMBE. As of July 1, 1995, DMBE had certified 1,752 minority-owned businesses. This number substantially under-represents the number of minority-owned firms available to do business with the State.

Other State agencies also have established lists of minority-owned businesses. Some of these lists, such as the Virginia Department of Transportation's and the University of Virginia's, include over a thousand minority businesses. Consolidation of these and other lists would enhance the ability of State agencies to identify minority-owned businesses, particularly in regions where agencies reported difficulties. Automation of the databases would make the list easier to update and access, making the information more timely and useful to State agencies.

DMBE is authorized by statute to collect, evaluate, and report on data involving minority-owned business activity. State agencies are required by statute to systematically collect data on minority business participation and report to DMBE. Collection of such data by agencies is expensive and time consuming. Data reported by agencies to DMBE have been neither systematically reported nor accurate. The State could increase the accuracy and efficiency of the reporting process by altering existing statutes to permit the collection of the data from an annual CARS analysis, similar to the one used in this study.

**Agencies With the Largest Expenditures to Minority-Owned Businesses (FY 1995)**

<u>Agency</u>	<u>Amount</u>	<u>Percent of Agency's Base<sup>1</sup></u>
Virginia Department of Transportation	\$31,643,352	2.80
University of Virginia	7,395,046	3.20
Department of Social Services	6,175,071	22.00
Virginia Community College System	5,559,758	7.70
Lottery Department	5,377,960	10.00

<sup>1</sup>The agency base is the total dollar value of transactions for the 140 object codes selected for review.

Source: JLARC staff analysis of Department of Account's CARS data.

## Oversight of Minority Procurement Activity

Minority-owned businesses desiring to provide the State with goods and services are subject to the Virginia Public Procurement Act, as are all other businesses. The Commonwealth does not give minority firms preference over non-minority firms competing for business with the State. However, the State has established provisions to ensure that minority-owned businesses have opportunities to participate in the State's procurement activities. Minority-owned businesses rely on State agencies' implementation of these provisions when competing for State contracts.

While the responsibility for implementing minority procurement provisions rests with State agencies, most State agencies do not fully comply with existing statutory provisions. In a survey of State agencies, JLARC learned that only 22 of 126 agencies report compliance with all existing *Code* provisions related to minority business solicitation. Only 52 of 126 surveyed agencies had established written programs regarding minority business solicitation, as required by the *Code of Virginia*.

Procurement policies direct DGS and DMBE to provide oversight in the minority-owned business solicitation process. As part of its oversight responsibilities, DGS provides assistance and training to State agencies procuring goods and services and to vendors competing for State contracts. DGS does not, however, review agency compliance with the minority procurement requirements of either the *Code* or the *Agency Procurement and Surplus Property Manual*. Further, some of the provisions of the procurement manual are unclear. Additional oversight, coordination, and clarity of policy are needed in order to ensure compliance with existing provisions of the *Code of Virginia* and DGS agency and vendor guidelines.

## Best Practices Among State Agencies

A number of State agencies are doing a good job of attempting to incorporate minority-owned businesses into the public procurement process. Four State agency programs were selected as exhibiting best practices in the area of minority business solicitation. The programs selected seek to increase minority business participation while adhering to the State's low bid procurement policy. Best practice programs selected were:

- The University of Virginia's Office of Minority Procurement Programs,
- The Department of General Services' *Virginia Business Opportunities*,
- The Virginia Department of Transportation's Disadvantaged Business Enterprise (DBE) Orientation Program, and
- The Department of Minority Business Enterprise's Second Annual Opportunities for DBEs Information Session.

These best practice programs provide State agencies with examples for use in improving minority-owned business participation in State procurement.

## Recommendations

This report proposes a number of recommendations to enhance compliance with existing statutory provisions related to the participation of minority-owned businesses in the procurement process. The report's recommendations include the following:

- The General Assembly may wish to amend the *Code of Virginia* to remove the responsibility for preparation of minority participation reports from State departments and agen-

cies and transfer the responsibility to the Department of Minority Business Enterprise and the Department of Accounts.

- An inter-agency task force should be convened by the Secretary of Administration to assist the Department of Minority Business Enterprise in the modification of the reporting process in the area of minority-owned business procurement. The task force should address issues of identifying and certifying minority businesses, the compilation and automation of lists, and other reporting issues.
- The task force should identify mechanisms for increasing cooperation between agencies with minority procure-

ment oversight, review, certification, and registration responsibilities.

- The task force should review methods to increase vendor training.
- The Department of General Services' Division of Purchases and Supply should incorporate agency minority business procurement activity into its procurement review process.
- The Department of General Services' Division of Purchases and Supply should clarify minority procurement policies in its *Agency Procurement and Surplus Property Manual*, and agency staff should emphasize compliance with the State's minority solicitation requirements in its training.

**SENATE JOINT RESOLUTION 474  
INTERIM REPORT**

**APPENDIX C**

# **COMMONWEALTH OF VIRGINIA**

**THE VIRGINIA DEPARTMENT OF MINORITY BUSINESS  
ENTERPRISE**

## **1998 Annual Procurement Report**

**The Virginia Department of Minority Business Enterprise  
200-202 North Ninth Street, 11<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804)786-5560 (800)223-0671/Virginia Only (804)371-7359/Fax**

**E-mail address: [dmbe@dmbe.state.va.us](mailto:dmbe@dmbe.state.va.us)**

## Total Procurement By Secretariats, Judicial and Legislative Branches (Fiscal Year, 1998)

Branch Name	Total Expenditures	Total Minority Expenditures	Total Percent of Expenditures to Minorities	Total Percent of Expenditures by all Minorities
Administration	\$124,080,896	\$4,933,214	3.98%	2.43%
Commerce and Trade	\$83,722,930	\$2,531,645	3.02%	1.25%
Education	\$590,963,373	\$22,187,547	3.75%	10.95%
Executive	\$2,811,219	\$211,152	7.51%	0.10%
Finance	\$17,726,962	\$1,557,024	8.78%	0.77%
Health and Human Resources	\$362,771,651	\$15,252,043	4.20%	7.53%
Independent Agencies	\$23,363,454	\$3,350,480	14.34%	1.65%
Natural Resources	\$67,442,684	\$4,235,642	6.28%	2.09%
Public Safety	\$310,327,044	\$8,620,550	2.78%	4.26%
State Lottery Dept.	\$57,313,632	\$5,741,577	10.02%	2.83%
Technology	\$2,749	\$154	5.59%	0.00%
Transportation	\$1,327,711,150	\$132,661,343	9.99%	65.48%
<b>Subtotal</b>	<b>\$2,968,237,743</b>	<b>\$201,282,370</b>	<b>6.63%</b>	<b>99.35%</b>
Judicial	\$58,850,287	\$1,115,218	0.04%	0.55%
Legislative	\$7,319,038	\$200,262	0.01%	0.10%
<b>Subtotal</b>	<b>\$66,169,326</b>	<b>\$1,315,480</b>	<b>0.04%</b>	<b>0.65%</b>
<b>Grand Total</b>	<b>\$3,034,407,069</b>	<b>\$202,597,850</b>	<b>6.68%</b>	<b>100.00%</b>

## Total Procurement by Secretariats And Agencies (Fiscal Year, 1998)

Branch Name	Agency Name	Total	Minority	Percent
Administration	VA Veterans' Care Ctr Bd Trust	\$259,248	\$85	0.03%
	Dept Of Personnel And Training	\$378,425	\$65,683	17.36%
	Department Of Veterans Affairs	\$620,228	\$24,389	3.93%
	State Board Of Elections	\$536,865	\$9,664	1.80%
	Council Of Information Mgmt	\$122,428	\$9,453	7.72%
	Dept Of Information Technology	\$67,088,725	\$2,204,194	3.29%
	Compensation Board	\$104,590	\$14,107	13.49%
	Council On Human Rights	\$46,381	\$12,763	27.52%
	Charitable Gaming Commission	\$216,092	\$22,030	10.19%
	Department Of General Services	\$54,675,750	\$2,566,916	4.69%
	Commission On Local Government	\$32,163	\$3,930	12.22%
<b>Administration Total</b>		<b>\$124,080,896</b>	<b>\$4,933,214</b>	<b>3.98%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

Branch Name	Agency Name	Total	Minority	Percent
Commerce and Trade	Virginia Comm For The Arts	\$57,524	\$3,202	5.57%
	Dept Of Housing And Comm Dev	\$2,276,182	\$86,333	3.79%
	Dept Of Labor And Industry	\$1,481,809	\$519,947	35.09%
	Virginia Employment Commission	\$13,032,311	\$1,291,993	9.91%
	Dept Of Professional & Occ Reg	\$2,702,164	\$84,080	3.11%
	Dept Of Minority Bus Enterpris	\$159,799	\$48,309	30.23%
	Dept Of Agri & Cons Services	\$11,803,017	\$96,159	0.81%
	State Milk Commission	\$18,132	\$85	0.47%
	Chip Oaks Plantation Farm Foundation	\$57,429	\$0	0.00%
	Department Of Business Asst	\$944,282	\$29,056	3.08%
	Virginia Racing Commission	\$401,831	\$19,004	4.73%
	Virginia Port Authority	\$38,190,869	\$148,922	0.39%
	Chesapeake Bay Local Asst Dept	\$317,868	\$1,475	0.46%
	Dept. Mines, Minerals & Energy	\$7,009,687	\$85,903	1.23%
	Department Of Forestry	\$5,092,880	\$114,236	2.24%
Dept Of Emp Rel Counselors	\$177,147	\$2,943	1.66%	
<b>Commerce and Trade Total</b>		<b>\$83,722,930</b>	<b>\$2,531,645</b>	<b>3.02%</b>



## Total Procurement by Secretariats And Agencies (Fiscal Year, 1998)

Branch Name	Agency Name	Total	Minority	Percent
Education	The Science Museum Of Virginia	\$3,445,714	\$20,833	0.60%
	Dept of Education - Direct Aid to Public Education	\$16,919,459	\$0	0.00%
	Agency 200	\$6,815	\$0	0.00%
	Department Of Education	\$16,246,031	\$345,725	2.13%
	Library Of Virginia	\$3,873,764	\$744,667	19.22%
	Virginia Military Institute	\$12,236,629	\$423,003	3.46%
	Virginia State University	\$19,697,669	\$1,578,434	8.01%
	Norfolk State University	\$16,092,392	\$644,008	4.00%
	Longwood College	\$13,696,316	\$111,390	0.81%
	Mary Washington College	\$13,648,995	\$207,445	1.52%
	Radford University	\$217	\$0	0.00%
	VA Sch For Deaf & Blind-Staun	\$1,170,940	\$23,304	1.99%
	VA Sch For Deaf & Bld-Hampton	\$1,800,139	\$195,961	10.89%
	VA Polytechnic Institute	\$145,190,633	\$4,072,570	2.80%
	Melchers' Monroe Memorials	\$93,523	\$6,035	6.45%
	Old Dominion University	\$31,990,045	\$1,222,683	3.82%
	Virginia Museum Of Fine Arts	\$5,035,134	\$130,155	2.58%
	Frontier Cultural Museum Of VA	\$646,364	\$371	0.06%
	Richard Bland College	\$1,552,720	\$422,683	27.22%
	Christopher Newport University	\$9,115,554	\$1,117,731	12.26%
	St Council Of Higher Education	\$556,848	\$88,820	15.95%
	George Mason University	\$79,498,709	\$2,297,537	2.89%
	Virginia Community College Sys	\$8,555,686	\$165,147	1.93%
	VA Commonwealth University	\$111,338,059	\$4,134,621	3.71%
	Va Community Coll Sys- Utility	\$1,024,432	\$24,823	2.42%
	New River Community College	\$2,881,285	\$54,271	1.88%
	Southside VA Community College	\$1,052,501	\$77,774	7.39%
	Paul D. Camp Community College	\$2,860,125	\$59,075	2.07%
	Rappahannock Community College	\$1,303,428	\$54,205	4.16%
	Danville Community College	\$1,867,244	\$38,353	2.05%
	Northern VA Community College	\$15,188,917	\$675,934	4.45%
	Piedmont VA Community College	\$3,706,983	\$30,979	0.84%
	J. Sargeant Reynolds Comm Coll	\$4,112,106	\$233,912	5.69%
Eastern Shore Community Coll	\$448,691	\$1,221	0.27%	
Patrick Henry Comm Coll At Mar	\$1,938,300	\$326,106	16.82%	

Department of Minority Business Enterprise

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## Total Procurement by Secretariats And Agencies (Fiscal Year, 1998)

Branch Name	Agency Name	Total	Minority	Percent
	VA Western Community College	\$3,099,048	\$93,577	3.02%
	Dabney S. Lancaster Comm Coll	\$727,422	\$19,168	2.64%
	Wytheville Community College	\$3,414,443	\$30,945	0.91%
	John Tyler Community College	\$2,888,481	\$112,905	3.91%
	Blue Ridge Community College	\$1,645,163	\$69,013	4.19%
	Central VA Community College	\$1,740,775	\$202,904	11.66%
	Thomas Nelson Comm College	\$2,485,997	\$191,922	7.72%
	Southwest Virginia Comm Coll	\$3,974,602	\$1,143,532	28.77%
	Tidewater Community College	\$10,168,976	\$291,891	2.87%
	VA Highlands Community College	\$752,114	\$27,113	3.60%
	Germanna Community College	\$1,545,156	\$58,734	3.80%
	Lord Fairfax Community College	\$3,245,839	\$188,118	5.80%
	Mountain Empire Community Coll	\$3,544,029	\$47,918	1.35%
	Gunston Hall Plantation	\$235,032	\$12,305	5.24%
	Jamestown-Yorktown Foundation	\$2,703,927	\$167,729	6.20%
<b>Education Total</b>		<b>\$590,963,373</b>	<b>\$22,187,547</b>	<b>3.75%</b>

## Total Procurement by Secretariats And Agencies (Fiscal Year, 1998)

Branch Name	Agency Name	Total	Minority	Percent
Executive	Lieutenant Governor	\$27,171	\$3,120	11.48%
	Office Of The Governor	\$734,704	\$66,582	9.06%
	Attorney General	\$1,391,016	\$63,589	4.57%
	Secretary Of The Commonwealth	\$267,916	\$45,347	16.93%
	Secretary Of Administration	\$135,154	\$23,702	17.54%
	Secretary Of Natural Resources	\$13,222	\$594	4.50%
	Secretary Of Education	\$15,160	\$656	4.32%
	Secretary Of Transportation	\$4,897	\$444	9.07%
	Secretary Of Public Safety	\$5,967	\$1,028	17.22%
	Sec Of Health & Human Resource	\$21,893	\$2,633	12.03%
	Secretary Of Finance	\$7,970	\$1,824	22.88%
	Secretary Of Commerce & Trade	\$87,205	\$1,633	1.87%
	Interstate Organization Contribution	\$6,857	\$0	0.00%
	Virginia Liaison Office	\$92,087	\$0	0.00%
<b>Executive Total</b>		<b>\$2,811,219</b>	<b>\$211,152</b>	<b>7.51%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Finance</b>	Dept Of Planning And Budget	\$419,617	\$48,686	11.60%
	Dept Of The St Internal Audit	\$29,487	\$702	2.38%
	Department Of Accounts	\$4,154,681	\$491,877	11.84%
	Department Of The Treasury	\$2,490,451	\$414,777	16.65%
	Treasury Board	\$429,231	\$405	0.09%
	Department Of Taxation	\$10,185,032	\$599,042	5.88%
	Central Appropriations	\$18,464	\$1,534	8.31%
<b>Finance Total</b>		<b>\$17,726,962</b>	<b>\$1,557,024</b>	<b>8.78%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Health and Human Resources</b>	Admin Of Health Insurance	\$225,248	\$0	0.00%
	Department For The Aging	\$249,192	\$29,151	11.70%
	Woodrow Wilson Rehab Center	\$6,539,089	\$291,152	4.45%
	Dept Of Health Professions	\$2,433,825	\$79,251	3.26%
	Dept Of Rehabilitative Service	\$20,365,979	\$1,041,206	5.11%
	VA Rehab Center For The Blind	\$285,039	\$5,264	1.85%
	Department Of Health	\$165,150,848	\$5,529,326	3.35%
	Dept Of Medical Asst Services	\$32,525,556	\$1,125,190	3.46%
	VA Bd For People With Disabil	\$130,476	\$12,216	9.36%
	VA Dept F/T Visual Handicapped	\$6,765,867	\$178,896	2.64%
	Central State Hospital	\$10,432,527	\$39,125	0.38%
	Eastern State Hospital	\$5,067,051	\$296,001	5.84%
	Southwestern VA Ment Hlth Inst	\$2,849,693	\$32,399	1.14%
	Western State Hospital	\$5,304,287	\$34,348	0.65%
	Central Virginia Training Ctr	\$4,868,344	\$77,276	1.59%
	DeJarnette Center	\$240,259	\$2,053	0.85%
	Dept Ment Hlth & Ment Retard	\$16,264,306	\$787,590	4.84%
	Southeastern VA Tr Ctr For Men	\$2,040,880	\$14,114	0.69%
	Catawba Hospital	\$2,313,389	\$32,203	1.39%
	No VA Trn Ctr For The Ment Ret	\$2,770,392	\$358,383	12.94%
	Southside VA Training Center	\$7,051,656	\$152,588	2.16%
	No VA Mental Health Institute	\$2,622,922	\$75,762	2.89%
	Piedmont Geriatric Hospital	\$4,634,672	\$11,941	0.26%
	Southwestern VA Training Ctr	\$1,209,810	\$86,977	7.19%
	Southern VA Mental Health Inst	\$601,148	\$36,233	6.03%
	Hiram W. Davis Medical Center	\$1,817,890	\$70,062	3.85%
	VA Dep F/T Deaf & Hard Of Hear	\$578,504	\$95,200	16.46%
	Dept F/T Rights Of VA W/Disab	\$206,985	\$13,921	6.73%
	Department Of Social Services	\$56,261,421	\$4,686,833	8.33%
	Gov Employment & Training Dept	\$964,396	\$57,381	5.95%
<b>Health and Human Resources Total</b>		<b>\$362,771,651</b>	<b>\$15,252,043</b>	<b>4.20%</b>

Department of Minority Business Enterprise  
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**Total Procurement by Sponsoring Agencies And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Independent</b>	Virginia Retirement System	\$5,448,149	\$243,418	4.47%
	State Corporation Commission	\$14,694,997	\$2,904,340	19.76%
	Brd Of VA Hig Ed Tuil Trust Fd	\$2,084,878	\$4,397	0.21%
	VA Workers' Compensation Comm	\$1,135,431	\$198,325	17.47%
<b>Independent Total</b>		<b>\$23,363,454</b>	<b>\$3,350,480</b>	<b>14.34%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Natural Resources</b>	Dept Conservation & Recreation	\$32,137,583	\$1,823,288	5.67%
	Marine Resources Commission	\$4,461,451	\$332,825	7.46%
	Dept Game & Inland Fisheries	\$12,515,138	\$623,304	4.98%
	Dept Of Historic Resources	\$1,129,417	\$47,050	4.17%
	Dept Of Environmental Quality	\$16,358,588	\$1,408,182	8.61%
	VA Museum Of Natural History	\$840,506	\$993	0.12%
<b>Natural Resources Total</b>		<b>\$67,442,684</b>	<b>\$4,235,642</b>	<b>6.28%</b>

**Total Procurement by State Departments And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Public Safety</b>	Department Of Military Affairs	\$8,749,807	\$745,169	8.52%
	Dept Of Emergency Services	\$2,282,212	\$81,361	3.56%
	Dept Of Criminal Justice Svcs	\$5,601,574	\$347,738	6.21%
	Virglnia State Crime Comm	\$56,946	\$0	0.00%
	Divlision Of Debt Collection	\$55,768	\$0	0.00%
	Department Of State Police	\$34,203,897	\$1,340,733	3.92%
	VA Crim Sentencing Commllsion	\$95,081	\$6,298	6.62%
	Department Of Corrections	\$7,210,973	\$287,545	3.99%
	Powhatan Correctional Center	\$2,760,972	\$75,128	2.72%
	Virginia Corr Enterprises	\$22,304,693	\$56,002	0.25%
	Virginia Corr Center For Women	\$1,769,064	\$16,019	0.91%
	Southampton Correctional Ctr	\$2,224,992	\$6,430	0.29%
	Bland Correctional Center	\$1,970,393	\$62,144	3.15%
	James River Correctional Ctr	\$3,882,242	\$8,732	0.22%
	Powhatan Recpt And Class Ctr	\$479,304	\$6,530	1.36%
	Brunswick Correctional Center	\$1,399,329	\$37,096	2.65%
	Staunton Correctional Center	\$1,094,980	\$12,703	1.16%
	Sussex 1 Correctional Center	\$2,081,963	\$150,923	7.25%
	Sussex 2 Correctional Center	\$230,158	\$45	0.02%
	Wallen's Rldge Corr Center	\$1,045,774	\$7,297	0.70%
	Southampton Intenslve Treat Ct	\$15,386	\$0	0.00%
	St. Brides Correctional Center	\$1,079,170	\$26,636	2.47%
	Southampton Reception & Class	\$176,786	\$940	0.53%
	Red Onlon Correctional Center	\$2,266,746	\$91,261	4.03%
	Employee Rel & Trg Div	\$1,257,704	\$3,475	0.28%
	Fluvanna Women's Corr Ctr	\$1,132,074	\$12,431	1.10%
	Mecklenburg Correctional Ctr	\$1,234,161	\$24,788	2.01%
	Nottoway Correctional Center	\$2,322,367	\$53,142	2.29%
	Marion Correctional Center	\$519,417	\$13,765	2.65%
	Buckingham Correctional Center	\$1,569,356	\$13,262	0.85%
	Dept Of Correctional Education	\$7,140,146	\$339,867	4.76%
Deep Meadow Correctional Ctr	\$1,582,363	\$309,217	19.54%	
Deerfield Correctional Center	\$526,003	\$11,874	2.26%	
Augusta Correctional Center	\$1,624,891	\$26,967	1.66%	
Division Of Institutions	\$17,017,126	\$63,981	0.38%	

**Department of Minority Business Enterprise  
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**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
	Western Region Corr Fld Units	\$1,530,632	\$30,912	2.02%
	Northern Region Corr Fld Units	\$1,518,909	\$23,541	1.55%
	Central Region Corr Fld Unit	\$1,169,296	\$24,582	2.10%
	Eastern Region Corr Fld Unit	\$129,997	\$2,624	2.02%
	Virginia Parole Board	\$43,817	\$9,266	21.15%
	Div Of Community Corrections	\$6,891,543	\$216,979	3.15%
	Keen Mountain Correctional Ctr	\$1,186,316	\$31,684	2.67%
	Greensville Correctional Ctr	\$11,113,905	\$118,138	1.06%
	Dillwyn Correctional Center	\$1,218,499	\$10,495	0.86%
	Indian Creek Corr Center	\$1,551,613	\$61,450	3.96%
	Haynesville Correctional Ctr	\$1,600,224	\$61,781	3.86%
	Colfeewood Correctional Center	\$1,340,760	\$33,068	2.47%
	Lunenburg Correctional Center	\$1,470,681	\$16,059	1.09%
	Department Of Juvenile Justice	\$42,211,651	\$526,839	1.25%
	DMHMRSAS Grants to Localities	\$53,642	\$0	0.00%
	Dept of Corr Central Activities	\$74,929,537	\$249,990	0.33%
	Commonwealth Alt Serv Council	\$146,477	\$5,823	3.98%
	Department Of Fire Programs	\$727,103	\$22,329	3.07%
	Dept Alcoholic Beverag Control	\$22,528,621	\$2,935,489	13.03%
<b>Public Safety Total</b>		<b>\$310,327,044</b>	<b>\$8,620,550</b>	<b>2.78%</b>

Depart t of Minority Business Enterprise  
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**Total Procurement by Secretariats And Agencies  
(Fiscal Year , 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>State Lottery Dept.</b>		<b>\$57,313,632</b>	<b>\$5,741,577</b>	<b>10.02%</b>
<b>State Lottery Dept. Total</b>		<b>\$57,313,632</b>	<b>\$5,741,577</b>	<b>10.02%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
Secretary of Technology		\$2,749	\$154	5.59%
<b>Technology Total</b>		<b>\$2,749</b>	<b>\$154</b>	<b>5.59%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Transportation</b>	Department Of Motor Vehicles	\$29,942,607	\$4,348,740	14.52%
	Department Of Transportation	\$1,293,155,343	\$128,098,093	9.91%
	Dept Of Rail & Public Trans	\$1,750,317	\$168,583	9.63%
	Motor Vehicle Dealer Board	\$162,913	\$3,457	2.12%
	Department Of Aviation	\$2,699,970	\$42,470	1.57%
<b>Transportation Total</b>		<b>\$1,327,711,150</b>	<b>\$132,681,343</b>	<b>9.99%</b>

## Total Procurement by Secretariats And Agencies (Fiscal Year, 1998)

Branch Name	Agency Name	Total	Minority	Percent
Judicial	Magistrates	\$283,999	\$21,475	7.56%
	Supreme Court Of Virginia	\$2,331,011	\$86,533	3.71%
	Judicial Inquiry And Rev Comm	\$18,232	\$0	0.00%
	Circuit Courts	\$20,991,625	\$269,884	1.29%
	General District Courts	\$12,209,277	\$301,853	2.47%
	Juv And Dom Relations Dist Crt	\$13,002,556	\$154,310	1.19%
	Combined District Courts	\$4,644,393	\$156,649	3.37%
	Virginia State Bar	\$3,158,010	\$25,640	0.81%
	Court Of Appeals Of Virginia	\$432,425	\$38,940	9.00%
	State Board Of Bar Examiners	\$300,076	\$407	0.14%
	Public Defender Commission	\$1,478,683	\$59,528	4.03%
<b>Judicial Total</b>		<b>\$58,850,287</b>	<b>\$1,115,218</b>	<b>1.90%</b>

**Total Procurement by Secretariats And Agencies  
(Fiscal Year, 1998)**

<b>Branch Name</b>	<b>Agency Name</b>	<b>Total</b>	<b>Minority</b>	<b>Percent</b>
<b>Legislative</b>	Senate	\$996,820	\$30,547	3.06%
	House Of Delegates	\$2,066,702	\$25,674	1.24%
	VA Commission on Inter-governmental Cooperation	\$131	\$0	0.00%
	Div Of Legislative Services	\$531,026	\$2,034	0.38%
	Virginia Code Commission	\$199,368	\$0	0.00%
	Div Of Legislative Auto Sys	\$1,731,583	\$33,654	1.94%
	Joint Leg Audit & Review Comm	\$556,671	\$5,963	1.07%
	Auditor Of Public Accounts	\$496,035	\$33,179	6.69%
	Comm On VA Alcohol Saf Act Pro	\$336,009	\$67,348	20.04%
	Advisory Commission Executive Mansion	\$9,178	\$0	0.00%
	Virginia Commission On Youth	\$24,148	\$123	0.51%
	VA Housing Study Commission	\$15,704	\$0	0.00%
	Chesapeake Bay Commission	\$101,759	\$0	0.00%
	Joint Comm On Health Care	\$172,016	\$0	0.00%
	Joint Comm on Techn & Science	\$1,616	\$134	8.31%
Department Of Capitol Police	\$80,273	\$1,605	2.00%	
<b>Legislative Total</b>		<b>\$7,319,038</b>	<b>\$200,262</b>	<b>2.74%</b>

**SENATE JOINT RESOLUTION 474  
INTERIM REPORT**

**APPENDIX D**

**Joint Subcommittee Studying State Government  
Procurement Practices and Procedures  
(SJR 474)**

**Review of Disparity Study Activity  
November 30, 1999**

After the Supreme Court's decision in Croson v. the City of Richmond in 1989, state governments began to commission studies to assess the existence and extent of discrimination in their contracting processes. These studies help to determine if a significant statistical disparity exists between the number of available qualified minority and women-owned firms willing and able to perform or fulfill government contracts for goods and services and the number of such firms actually being awarded state contracts.

A key element of these disparity studies is a comparison of the availability of minority business enterprises and the actual utilization of these entities by state government agencies. The existence of significant disparity between these two numbers can give rise to an inference of discrimination, and the documented utilization level helps determine the appropriate goal for any race conscious program. Disparity studies generally consist of two major components, a quantitative section, which analyzes contract data, and an anecdotal section including facts, opinions, and perceptions about barriers and obstacles faced by minority firms. Methods normally used for collecting anecdotal information include mail surveys, public hearings and personal interviews.

This report will review disparity study activity of selected states, the method that would be used for selecting the independent consultant to conduct the study, the availability of firms to perform the study, and the anticipated cost and time frame.

## **I. Review of Selected States**

Eight states where disparity studies were recently conducted were selected for review. The general review include identification of the supervising entity for the study and the scope, cost and duration of the study. The states selected for review are: North Carolina, Maryland, South Carolina, Florida, Colorado, Minnesota, Missouri and Indiana.



## North Carolina

**Supervising entity:** Department of Administration

**Scope:** All state agencies, the public higher education system, and local school districts. The study examined the availability of minority-owned, women-owned and disadvantaged firms to do business with the state and the utilization of those firms on state construction contracts, purchase orders, and procurement contracts. Contract and purchasing data for the five-year period preceding the study was collected from purchasing offices with each state agency and a sampling from community colleges, public colleges and universities, and a sample of school districts.

**Duration:** 10 months (2/94 - 12/94)

**Cost:** \$ 847,895

## Maryland

**Supervising entity:** Department of Transportation

**Scope:** All state agencies, the state university system and community colleges. The study analyzed contracts awarded over a five year period between 1993 and 1998 by type of contract and dollar value, identifying separately the following types of procurement: a) architectural and engineering services, b) construction and construction-related services, c) maintenance services, d) all other services, e) small procurement and f) commodities and equipment. The study reviewed the state's Minority Business Enterprise Program to determine whether the program remained in compliance with Croson and post-Croson decisions.

**Duration:** 9 months (12/98 - 9/99)

**Cost:** \$ 681,440

## South Carolina

**Supervising entity:** Department of Transportation

**Scope:** Examined the availability of minority- and women-owned firms and the utilization of those firms for the Department's state and federal highway construction contracts over the fourteen year period between January 1, 1980 and December 31, 1993. The study conducted utilization, availability, and disparity analyses of three business categories: i) highway and bridge pre-construction, ii) highway and bridge construction and iii) building construction and renovation.

**Duration:** 6 months (10/94 - 4/95)

**Costs:** \$ 349,991

## Florida

**Supervising entity:** Department of Labor, Minority Business Advocacy and Assistance Office

**Scope:** All state agencies, colleges and universities and state funded transportation projects. The state's community college system was not included. The study analyzed minority and women-owned business enterprise participation in state procurement over the five year period between 1991 and 1996. The Minority Business Advocacy and Assistance Office is required to conduct a disparity study every five years. This was the second study conducted by the MBAAO pursuant to that requirement.

**Duration:** 12 months (1/97 - 12/97)

**Costs:** \$ 597,072

## State of Colorado

**Supervising entity:** Department of Transportation

**Scope:** All state agencies, the Colorado Department of Transportation, and the state's public universities. Two different methods were used to develop procurement data. Analysis of the state agencies was conducted through random sampling. The Department of Transportation analysis was accomplished through a review of available procurement records. Generally, the study provided a statistical analysis of each agency's procurement practices over the four year period preceding the study in the areas of i) bridges and highway construction and design; ii) building construction, iii) professional services, iv) personal services, and v) commodities.

**Duration:** 12 months (12/96 - 12/97)

**Cost:** \$ 631,510.

## Minnesota

**Supervising entity:** Department of Administration

**Scope:** All state agencies and authorities. The study evaluated the purchasing practices of state agencies in the two broad purchasing areas of i) construction and ii) products, equipment and supplies for fiscal years 1991 through 1996. The analysis was divided in two parts: contracts awarded using state agencies' formal advertisement process for contracts over \$5,000 and under \$500,000 and contracts awarded using the informal process for contracts under \$5,000.

**Duration:** 12 months (11/97 - 11/98)

**Costs:** \$ 500,000

## Missouri

**Supervising entity:** Department of Economic Development

**Scope:** All state agencies with the exception of the University of Missouri systems, the Department of Transportation, construction and improvement projects of the Department of Conservation, certain small dollar and special delegation purchases. The study analyzed information and statistics from fiscal years 1989 through 1994 concerning the general purchasing and design and construction spending practices of the included state agencies.

**Duration:** 18 months (8/94 - 2/96)

**Costs:** \$ 350,000

## Indiana

**Supervising entity:** Department of Administration

**Scope:** All state agency procurement. The study analyzed utilization and availability data and evaluated the state's Minority Business and Women-owned Enterprise Program providing recommendations for possible modification.

**Duration:** 12 months (9/97-9/98)

**Costs:** \$ 469,298

## II. Method of Selection

The Virginia Public Procurement Act (VPPA) provides the process for securing the independent consultant to conduct the disparity study. The competitive negotiation procurement method involves three basic steps: i) preparation and issuance of a Request for Proposal (RFP), ii) receipt and evaluation of proposals, and iii) negotiation and award. The advantage of competitive negotiation is the flexibility it allows the contracting entity to describe in general terms what is being sought and the factors that will be used to evaluate responses.

Under this method, the procurement process is commenced with the issuance of a written RFP containing in general terms the services sought.<sup>1</sup> The contracting entity then engages in individual discussions with two or more offerors responding to the RFP that are deemed to be fully qualified, responsible and suitable. Two or more offerors are selected by the contracting entity in order of preference and negotiations are commenced beginning with the offeror ranked first. If a satisfactory contract can be negotiated at a fair and reasonable price, the award is made to that offeror. If unable to negotiate a satisfactory contract, the contracting entity must terminate negotiations with the top-ranked offeror and move to the next ranked offeror, continuing until a contract is negotiated at a fair and reasonable price. The

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<sup>1</sup> Proposals may be solicited directly from potential vendors.

crucial elements of competitive negotiation are (i) price is one of many factors to be considered and not the sole determining factor, (ii) the “concept” of the needed service is provided by the contracting entity, and (iii) the qualifications of potential contractors are critical.

The method of selection used by the states that were reviewed generally involved commencing the process with the issuance of a RFP. In at least two instances, prior to the issuance of an RFP, an attempt was made to obtain either general information regarding the conduct of a disparity study or specific information concerning the qualifications needed to conduct a study. Colorado issued a Request For Information to solicit information from the consultant community to assist in developing its needs and determining the scope of the study. South Carolina issued a Request For Qualifications intended to elicit specific information from prospective offerors relative their knowledge, skill and experience in conducting such studies.

The evaluation or award criteria used to review the RFP's included:

1. Background and demonstrated experience of the firm;
2. Qualifications and experience of the persons to be assigned to the project;
3. Soundness of approach to performing the tasks;
4. Ability to perform the work in the time allotted for the project;
5. The extent to which the work plan incorporates procedures and techniques for assuring the integrity, accuracy and validity of the data collected, the analysis of the data and the quality and reliability of the final product;
6. Independence and objectivity; and
7. Cost

Another important element of the selection processes involved the use of panels to review the proposals. Panels generally consisted of individuals with procurement expertise, legal training and possessing some familiarity with the state's policies or programs for minority business enterprises. In some cases, individuals or entities that were deemed to be “stakeholders” were included on the panel. Oral interviews or presentations by two or more finalist were included in most of the selection processes reviewed.

### **III. Independent Consultants**

Several independent consulting firms have developed expertise in conducting statewide disparity studies since the Croson decision in 1989. As this expertise has developed, so have the qualifications that have been sought by the state entities seeking their services.

In general, the qualifications have included: skill or capability in economic studies and market analysis, statistics, public policy and legal research; knowledge of data processing and information systems; and experience with programs and policies designed for increasing participation of minority or women-owned businesses and an understanding of legal basis and context for such programs. In addition, other qualifications consisted of the intended study approach and work plan; references from previous clients; knowledge of the particular state and region, the racial and ethnic communities located therein; understanding of the state's procurement system; and, cost.

Some independent consulting firms that have either conducted statewide disparity studies or have expressed an interest in working with the state to conduct the study are:

**BBC Research & Consultants**  
Denver, CO

**Farrow and Associate, Inc.**  
Williamsburg, VA

**MGT of America, Inc.**  
Tallahassee, FL

**National Economic Research Associates, Inc. (NERA)**  
Chicago, IL

**New England Research Associates**  
Cambridge, MA

**Mason Tillman Associates, LTD**  
Oakland, CA

**D.J. Miller & Associates, Inc.**  
Atlanta, GA

**Griffin & Strong, P.C.**  
Atlanta, GA

#### **IV. Cost Information**

Based on the review of other disparity studies with a scope similar to that anticipated in Virginia, the cost for conducting a comprehensive statewide disparity study would range between a low of \$500,000 to a high of \$1million. This range is flexible in either direction as several factors must be considered in determining the final cost. The most important factor affecting the cost is the availability of data. The preferable source of data would be an automated contracting database. Hard copy records would also be required for sampling to test the accuracy of an automated database. The consultant would also need access to procurement files as well as sufficient information on the number of contracts awarded annually and the annual dollar volume. A general listing of the type of data needed by the consultant is:

- a) Accounts payable data for as many years as possible including contract totals and commodity codes,
- b) Subcontracting payment data, including subcontractor names addresses and final payment amounts,
- c) Historical MBE utilization reports,
- d) Past and current MBE certification files and directors,
- e) Past and current procurement statutes and policies including methods of soliciting bidders and proposers, and
- f) Information on particular qualifications and/or licenses required to perform work on certain contracts,

Other factors affecting cost include, the scope of the study, the methodology that will be used and the time frame allotted for completion.

The time for conducting a comprehensive study may range from 8 to 18 months. The most important factor affecting the time will be the collection of the procurement data. Elements that would accelerate the collection include the availability of all required data in electronic format that is transferable to microcomputers and state agency responsiveness to the consultant's information needs. In addition, the statewide scope of the study potentially adds time to the process as interviews and public hearings, which are normally included as components of a disparity study, have to be conducted.

**SENATE JOINT RESOLUTION 474  
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**APPENDIX E**

124) How do you define minority-owned businesses?

125) Is there a certification program for minority-owned businesses?

126) Is there a policy, a procedure, or law in your state to assist in balancing the competing interests of preferred sources (workshops for the blind and handicapped and correctional industries) versus resident, small, minority, and women-owned firms?

127) In your state, are there any "Buy American" laws that affect public procurement?

	124) Define minority-owned business.	125) Certification?	126) Balance competing interest?	127) Buy American laws?
Alabama	At least 51% owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of those individuals.		X	
Arizona	n/a			
Arkansas	Black citizens of Arkansas			
California	n/a			(1)
Colorado	1) Must be 51% minority-owned and controlled (African American, Native American, Asian American, Hispanic, Aleut), or 2) Must be 51% woman-owned and controlled, or 3) Certain percentage of subcontractors and/or suppliers minority/woman-owned.			
Connecticut	State firm in business one year or more, sales less than \$10,000,000 per year, actively managed and owned by minority member. Minority members are specified by statute and include women.	X		X (1)
Delaware	We do not define minority business except where required to by a federal program, for which we use federal guidelines.		X	
Florida	Must be certified by office of minority business	X		
Georgia	(a) Owned by a member of a minority race or (b) a partnership of which a majority of interest is owned by one or more members of a minority race or (C) a public corporation of which a majority of the common stock is owned by one or more members of a minority race. A member of a minority is a member of a race which comprises less than 50% of the total population of the State of Georgia.	X	X	
Hawaii	n/a		X	
Idaho	n/a			
Illinois	At least 51% owned and operated by a minority, female or person with a disability	X	X	
Indiana	Minority business enterprise or "minority business" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one or more persons who are: (1) United States citizens; and (2) members of a racial minority group.	X	X (1)	X
Iowa	Women/minority/disabled, for-profit companies with specific number of employees and income	X		
Kansas	Do not define			X
Louisiana	n/a			X
Maine				
Maryland	Any legal entity, other than a joint venture organized to engage in commercial transactions which is at least 51% owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.	X	X	X (1)
Massachusetts	51% ownership by a certified minority (certification is done by the state office for minority and woman-owned business)	X		
Michigan	Business that is at least 51% owned by a minority who makes policy decisions and is actively involved in the day-to-day management of the business	X	X	
Minnesota	We use the term "targeted-group business." It is desired as a certified business designated by the Commissioner of Administration for businesses that are majority owned and operated by women, people with disabilities, or specific minorities, and provide goods or services within purchasing categories designated by the commissioner.	X		
Mississippi	Asian, Black, Hispanic, or Native American	X (1)		
Missouri	51% owned and controlled by African American, Asian American, Hispanic American, or Native American	X		X
Montana	n/a			
Nebraska	51% of ownership is declared women, historically underutilized or multi-cultural		X	
Nevada				X (1)
New Jersey	"Minority business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent of which is owned and controlled by persons who are African Americans, Latinos, or Asian Americans.	X	X	
New Mexico	Policy is to encourage small businesses to do business with state agencies and local public bodies. Minority-owned means 51% owned and operated on a daily basis defined by USSBA.	(1)	X (2)	X

Source: Survey of State & Local Government Purchasing Practices, National Association of State Procurement Officials, 5th Edition Revised



**Preference Policies continued**

		125) Certification?	126) Balance competing interest?	127) Buy American laws?
	<b>124) Define minority-owned business.</b>			
<b>New York</b>	Any business enterprise which is at least fifty-one per centum owned by citizens who are: a) black persons, b) Hispanic persons, c) Asian and Pacific Islander persons, and d) American Indian or Alaskan native persons; and such ownership is real, substantial, and continuing.	X		
<b>North Carolina</b>	51 percent ownership/control	X	X	
<b>North Dakota</b>			X	
<b>Ohio</b>	An individual, partnership, corporation or joint venture that is owned and controlled by Ohio residents who are members of one of the following disadvantaged groups: Black, American Indians, Hispanics, and Orientals.	X		X
<b>Oklahoma</b>	Oklahoma state domiciled firms which are owned and daily operational controlled by designated minority (Native American, Black, Asian, and/or Hispanic).	X	X	
<b>Oregon</b>		X		
<b>Pennsylvania</b>	51% minority owned and controlled	X		X
<b>Rhode Island</b>	51 percent of the ownership is minority	X		
<b>South Carolina</b>	51% owned	X		X
<b>South Dakota</b>	n/a			
<b>Tennessee</b>	A business that is solely owned, or at least 51% of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of A) Past practices of discrimination based on race, religion, ethnic background, or sex; B) A disability as defined in 4-26-102(13); or C) Past practices of racial discrimination against African-Americans.	X (1)	X	
<b>Texas</b>	See web site ( <a href="http://www.gsc.state.tx.us">www.gsc.state.tx.us</a> )	X		
<b>Utah</b>			X	
<b>Vermont</b>	Over 51% owned and managed	X		
<b>Virginia</b>	51% owned and operated by minority	X	X	
<b>Washington</b>	A small business concern organized for profit performing a commercially useful function which is legitimately owned and controlled by one or more minority individuals certified by Washington State (OMWBE).	X		
<b>West Virginia</b>				X
<b>Wisconsin</b>	See 560.036, Wis. Stats.	X	X	X
<b>Wyoming</b>				X
<b>Total</b>		27	18	15

**Footnotes:**

- California (1):** No. (Answer applies to state only. Local governments may have such laws. State "buy American" laws exist but have been held unconstitutional).
- Connecticut (1):** All things being equal (price).
- Indiana (1):** With exception of WBE's.
- Illinois (1):** US steel only; also Illinois coal.
- Maryland (1):** Steel.
- Mississippi (1):** Administered by Department of Economic and Community Development.
- Nevada (1):** Vehicles must be constructed in U.S.A or be built with 50% US-manufactured parts.
- New Mexico (1):** Except for federally-funded projects i.e. NM State Highway Department. (2) 5% resident preference.
- Tennessee (1):** Through economic and community development.

122) Are there any product preferences? If yes, do these product preferences apply to commodities? If yes, please list.  
 123) Please indicate if you have the following price preferences or set asides in your state:

	122) Product Preferences?			123) Price Preferences and Set Asides					
	Year/No	Apply to commodities?	Please list:	Women-owned businesses	Minority-owned businesses	Work Centers	Prison Industries	Small Businesses	Other
Alabama				Must be low bid	Must be low bid			Must be low bid	
Arizona	X	X	Furniture					Price preferences; Set-asides	
Arkansas					10% goal				
California	X	X	Recycled tire products (5%), fine printing and writing paper (5-10%), other paper products (5-10%)			Competition not required	Competition not required	Price preferences	Target Area Contract Preference ACT (TACPA); Price preferences; Enterprise Zone Act: Price preferences; Disabled Veteran Business Enterprise: 3% goal
Colorado				Evaluation points	Evaluation points	Statutory preference		Statutory preference	
Connecticut	X	X	Recycled paper products, motor oils, antifreeze	Set-asides	Set-asides	Fair market value		Set-asides	
Delaware				Fair market value	Fair market value	Set-asides	Fair market value	Fair market value	
Florida				Set-asides	Set-asides	Fair market value	Fair market value		
Georgia									
Hawaii	X	X	Recycled paper.				Fair market value		
Idaho									Rehabilitation workshops: within 25% of FMV
Illinois							Set-asides	Set-asides	State Use Workshops: Set-asides
Indiana	X	X	Recycled content, US manufactured preference		Participation goal	Fair market value	Fair market value	Set-asides	Recycled content: Price preference
Iowa	X	X	Coal	Fair market value	Fair market value		Set-asides	Fair market value	
Kansas						Set-asides	Set-asides		
Louisiana	X	X	Products which are manufactured or grown in Louisiana			Fair market value	Fair market value		
Maine	X	X	Recycled paper meeting CPA guidelines - 10% price preference.			Set-asides	Set-asides		
Maryland	X	X		14% participation goal	14% participation goal	Fair market value	Set-asides	Price preferences	
Massachusetts									
Michigan	X	(1)				Set-asides; Fair-market value	Set-asides		
Minnesota	X	X		Price preferences; Set-asides	Price preferences; Set-asides	Price preferences (1)			

Source: Survey of State & Local Government Purchasing Practices, National Association of State Procurement Officials, 5th Edition Revised

	122) Product Preferences?			123) Price Preferences and Set Asides					
	Yes/No	Apply to commodity	Please list:	Women-owned businesses	Minority-owned businesses	Work Centers	Prison Industries	Small Businesses	Other
Mississippi	X	X	Recycled products if within 10% of the lowest bid and equal in quality and availability.		(1)		(2)		(3)
Missouri	X	X	Buy American - 10% preference. Organization for the Blind and Sheltered Workshops - 5% preference				Set-asides		Buy American: Price preferences; Organizations for the Blind and Sheltered Workshops: Price Preferences
Montana	X	X	3-5% preference for supplies for MT residents and MT-made products						Resident: 3-5% MT resident and MT-made
Nebraska	X	X					Set-asides; Required to purchase prison		
Nevada	X	NR					All wood furniture must be purchased thru prison industries.		
New Jersey	X	X	Plastics with recycled content, prefer other products with recycled content	Set-asides	Set-asides		Set-asides	Set-asides	Set aside subcontracting for MBE/WBE
New Mexico	X	X	Any state agency shall purchase only cars and trucks assembled in North America.	Fair market value	Fair market value	Fair market value	Fair market value	Fair market value	
New York	X	X	Food			Set-asides (1)	Set-asides		Recycled products: Price preferences; NYS Grown or Processed Food: Price preferences
North Carolina									
North Dakota									
Ohio	X	X			Set-asides	Set-asides; Fair market value	Set-asides		
Oklahoma	X	X	Furniture		Price preferences	Set asides	Prices preferences; Mandatory usage		
Oregon	X	X	Certain ISO and other standards for hardware and software. Established by Information Resources Division.				Set-asides		Disabled Individuals Quality Rehab Facility Set-asides
Pennsylvania	X	X	Steel						Handicapped: Fair market value
Rhode Island				Price preferences	Price preferences	Price preferences	Price preferences		
South Carolina									
South Dakota									
Tennessee									

	122) Product Preferences		123) Price Preferences and Set Asides					
	Yes/No	Apply to modified?	Please list:	Women-owned businesses	Minority-owned businesses	Work Centers	Prison Industries	Small Businesses
Texas	X	X				Set-asides	Fair market value	
Utah	X	X				Price preferences	Set-asides	
Vermont								
Virginia	X	X	Coal					
Washington	X	X		Price preferences	Price preferences		(1)	Community Rehabilitation Programs: Fair market value
West Virginia							Set-asides	Sheltered workshop: Fair market value
Wisconsin					Price preferences (5%)	Set-asides, Fair market value	Set-asides, Fair market value	U.S. Made: if tie bid, award is made to U.S. made product
Wyoming								
<b>Total</b>	<b>27</b>	<b>25</b>		<b>12</b>	<b>18</b>	<b>20</b>	<b>28</b>	<b>12</b>

**Footnotes:**

Michigan (1): Printing only.

Minnesota (1): If certified as an economically advantaged business.

Mississippi (1): MS law allows agencies and governing authorities to set aside up to 20% of commodity purchases for minority vendors, but requires that award goes to lowest and best bid. This means: with small purchases (\$0-1500) and informal quotes (\$1500-10000) purchasing entities may get prices from preferred sources and thus increase minority participation. This is a voluntary program. (2): Purchases from Correctional Industries and Industries for the Blind are exempt from the bid requirements. (3) If everything else is equal, award to Mississippi vendor. MS has a reciprocal preference law which requires that we treat non-resident vendors in the same manner and the same way that the non-resident vendor's state would treat a MS vendor.

New York (1): Assume this means sheltered workshops - blind, disabled.

Washington (1): Agencies must purchase certain goods from correctional industries unless WAC requirements are met.



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**APPENDIX F**

## **Meetings of the Joint Subcommittee Studying State Government Procurement Practices and Procedures (SJR 474)**

**Initial Meeting--2:00 p.m., Thursday, July 29, 1999**

**Senate Room A, General Assembly Building, Richmond, Virginia**

*Review of initial staff briefing report:* Amigo R. Wade, *Senior Attorney*, Division of Legislative Services

*Presentation:* Douglas Wissoker, *Senior Research Associate*, Human Resources Policy Center, The Urban Institute

**Second Meeting -- 10:00 a.m., Monday, September 20, 1999**

**Senate Room A, General Assembly Building, Richmond, Virginia**

*Presentation:* Donald C. Williams, *Director*, Department of General Services

*Public Comment:* Robert Poindexter, *President*, HealthCare Concepts; Sherri Richardson, *Secretary*, Central Virginia Minority Contractors Association; Bill Cooper, *President*, Choice Communications, Inc.; Linda Sharp-Anderson, *President*, Metropolitan Business League (Richmond); LeMar Williams, *Compliance Officer*, Department of Economic Development, City of Richmond; Roberta Brown, Faithful Temporary Services.

**Third Meeting -- 10:00 a.m., Tuesday, November 30, 1999**

**Senate Room A, General Assembly Building, Richmond, Virginia**

*Presentation:* Amigo R. Wade, *Senior Attorney*, Division of Legislative Services

*Public Comment:* Helen Vango, *Events Director*, Virginia Regional Minority Supplier Development Council; Marty Jewel, *President*, Central Virginia Minority Business and Construction Association; Stephen Humphrey, MGT of America, Inc.; George H. Carter, *Senior Procurement Officer*, City of Richmond; Kent Ruffin; Bruce Williams.

**Fourth Meeting -- 10:00 a.m., Friday, December 10, 1999**

**Senate Room A, General Assembly Building, Richmond, Virginia**

*Public Comment:* Walter Ryland, Williams, Mullen, Clark and Dobbins; Dr. George La Noue, *Professor of Political Science*, University of Maryland, Baltimore County; Marc Singer, Richmond Association of Municipal Contractors and Virginia Utility & Heavy Contractors Council; Steven Vermillion, *Executive Director*, Associated General Contractors; Richard Daugherity, Virginia Road and Transportation Builders Association; Adele Johnson, *President*, Virginia Regional Minority Supplier Development Council; Linda Sharp-Anderson, *President*, Metropolitan Business League (Richmond); Robert Easter, Kelsor & Easter Architects; Tommy Davis, *Vice-President*, Davis Brothers Construction Company; Stephen Humphrey, MGT of America, Inc.; LeMar Williams, *Compliance Officer*, Department of Economic Development, City of Richmond; The Honorable S'aad El Amin, City of Richmond Council

**Fifth Meeting -- 10:00 a.m., Thursday, January 13, 2000**

**Senate Room A, General Assembly Building, Richmond, Virginia**



