

**REPORT OF THE  
VIRGINIA DEPARTMENT OF  
MINORITY BUSINESS ENTERPRISE**

**Disparity Assessment on the  
Status of Minority and Women  
Owned Business Participation  
in the Commonwealth's  
Procurement Transactions**

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



**SENATE DOCUMENT NO. 7**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2004**





Mark R. Warner  
Governor

# COMMONWEALTH of VIRGINIA

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Director

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Michael Schewel  
Secretary of Commerce and Trade

January 14, 2004

The Honorable Mark R. Warner  
Members of the General Assembly

Dear Governor Warner and General Assembly Members,

Senate Joint Resolution No. 359, approved unanimously in the 2003 Session of the General Assembly, requested the Department of Minority Business Enterprise (DMBE) in conjunction with the Department of General Services, the Virginia Employment Commission, and the Department of Transportation, to direct the development of a disparity assessment to determine the status of the participation of minority-owned businesses in the Commonwealth's procurement transactions.

This request, prompted by the 1996 report of the Joint Legislative Audit and Review Commission and the subsequent findings of two joint subcommittees, created in 1996 and 1999, attesting that reasonable participation by minority-owned firms may not have been achieved, prompted the state to seek an independent assessment of the actual level of minority business participation in state procurement transactions and a determination of the effectiveness of its efforts to facilitate the participation of these businesses in the Commonwealth's purchasing program.

Disparity studies of the kind envisioned for the Commonwealth have typically costed upwards of \$1 million and can take more than a year to conclude. Working with MGT of America (MGT), a leader in this field of study, DMBE was able to negotiate the cost to about half that amount and to, at the same time, expand its study to include women-owned businesses. The study covers the five-year period from 1998-2002 and includes Virginia Department of Transportation highway construction, which will be reported separately.

In April 2003, MGT began work on the first-ever disparity study undertaken for the Commonwealth. A summary of the findings and recommendations resulting from this study can be found in this Report to the Governor and General Assembly. The full study report (consisting of several hundred pages) is accessible on DMBE's Web site.

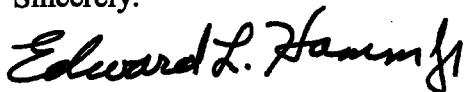
The study documents the extremely low levels of both minority and women-owned businesses in the State's procurement transactions. Indeed, the study reports that our Commonwealth is behind where both Maryland and North Carolina were ten years ago. The study revealed extremely low availability and utilization of these businesses; and it details the substantial disparity that now diminishes our efforts and potentially leaves us with troubling exposure. Of note is that the number of minority and women-owned firms available to perform state work, is extremely low. And, the utilization of these firms was also extremely low at 1.27 percent.

The study, though, provides us with recommendations and gives us the opportunity to began remedial efforts to address our weaknesses and to build policies and programs that will encourage the full participation of minority and women owned businesses in future procurement transactions in Virginia. It also provides us with the opportunity to realize, as Governor Warner has stated, "the vision of one Virginia – shared by all its citizens - and one future – filled with hope and opportunity."

The Department wishes to express its appreciation and thanks to the many business owners who participated in this study. It also is appreciative of the dedication and support of the Governor's Advisory Commission on Minority Business Enterprise; along with the Department of Transportation, the Virginia Employment Commission, the Department of General Services, the Department of Social Services and the Department of Business Assistance. Technical and management personnel from these agencies have reviewed and addressed the methodologies utilized and results reported. No exceptions were noted.

On behalf of the agencies, I thank you for the opportunity to support this significant study.

Sincerely.



Edward L. Hamm, Jr.  
Director

## A DISPARITY STUDY OF THE COMMONWEALTH OF VIRGINIA

In April 2003, MGT of America, Inc. (MGT) began work on the first disparity study ever conducted for the Commonwealth of Virginia. While charged with assessing the participation of minority owned businesses in the State's procurement transactions, the study also included, as a separate analysis and at no additional cost, the participation of women-owned businesses. The Study covered five fiscal years, beginning July 1, 1998, through June 30, 2002, and is a second-generation study. A summary of the results of the Study is found in this Report to the Governor and General Assembly of Virginia.

The Study also presents MGT's findings, analyses, and recommendations. These are being reviewed by the affected agencies to determine what implications they may have for the Commonwealth. The findings, conclusions, and recommendations contained within the Disparity Study relate to the procurement of construction, architecture and engineering services, professional services, other services, and goods and supplies.

### **Scope of Services**

The scope of services required by the Commonwealth in conducting the Study included:

- conducting a detailed legal review of relevant court cases with emphasis on program and methodological requirements;
- reviewing the State's procurement policies, procedures, and programs;
- analyzing the effectiveness of race-and gender-based and race- and gender-neutral programs;
- conducting market area analyses of the Commonwealth's procurement of goods and services;
- determining the availability of qualified minority and women-owned firms;
- analyzing the utilization and availability data for determination of disparity;
- analyzing the results of a telephone survey, personal interviews, and focus groups;
- conducting a multivariate (regression) analysis; and
- identifying narrowly tailored race-and gender-based and race-and gender-neutral remedies.

### **Major Tasks**

In conducting the Study and preparing its recommendations, MGT followed a carefully designed work plan that allowed study team members to fully analyze availability, utilization, and disparity with regard to minority, women, and nonminority firms. The final work plan consisted of 15 major tasks:

Conduct Detailed Legal Review  
Finalize Work Plan  
Review Policies, Procedures, and Programs  
Conduct Data Collection  
Conduct Market Area Analyses  
Conduct Utilization Analyses  
Determine the Availability of Qualified Firms  
Analyze the Utilization and Availability Data  
Conduct a Telephone Survey of Vendors  
Conduct the Regression Analysis  
Conduct Disparity Analyses  
Collect and Analyze Anecdotal Information  
Review Race- and Gender-Neutral Remedies  
Identify Narrowly Tailored Remedies  
Prepare a Final Report

The study team used a variety of procedures to collect data, which included: review and analysis of the Commonwealth's records and databases; review and analysis of documents and reports; interviews with members from a broad spectrum of the business community; and interviews with the Commonwealth's staff.

### **Organization of the Report**

MGT organized the report to give the reader a comprehensive overview of the Commonwealth's procurement practices, past and present patterns of minority, women, and nonminority availability and utilization, and a broad understanding of the environment in which the Commonwealth operates. The report contains, in addition to the findings, conclusions, and recommendations presented in this Report to the Governor and General Assembly, the following:

an in-depth legal analysis of relevant court cases,

a review of procurement policies and procedures, and programs,

the methodology employed in conducting and analyzing the utilization and availability of minority, women, and nonminority businesses in procurement,

an analysis of the levels of disparity for minority, women, and nonminority prime contractors and subcontractors, a multivariate analysis,

an analysis of anecdotal data collected from a telephone survey, personal interviews, and focus groups, and

an analysis of private sector utilization and disparity.

## FINDINGS AND CONCLUSIONS

What follows are the findings and conclusions resulting from the disparity study conducted for the Commonwealth of Virginia related to procurement of construction, architecture and engineering services, professional services, other services, and goods and supplies. MGT was careful to always remain cognizant of the applicable case law in this evolving area of jurisprudence. As such, the overriding concern of MGT during the study was strict adherence to the specific dictates the courts have required where racial, ethnic, or gender preferences are used by state and local governments in their decision-making process. In the *City of Richmond v. J. A. Croson Co.*, the United States Supreme Court extended judicial scrutiny to state and local affirmative action programs that use racial or ethnic criteria as a basis for decision-making.

More important, the courts have also indicated that for a race-based or gender-based preference program to be maintained there must be a clear evidentiary foundation established for the continuation of the programs. Generally, this evidence should also have been reviewed as part of the implementing jurisdiction's decision-making process in order for it to be relevant in any subsequent legal action.

### **FINDING: Disparity in M/WBE Utilization**

M/WBE utilization by the Commonwealth was very low at 1.27% of total spending over the study period. By way of comparison,

the State of Maryland spent 17 percent with M/WBEs in 2001;

the State of Texas spent 13 percent with M/WBEs in 2003;

the State of North Carolina spent 7.4 percent with M/WBEs in construction from 1998 to 2002; and

the State of Florida spent 11.8 percent with M/WBEs from FY 1997 to FY 2001.<sup>1</sup>

Moreover, a significant portion of M/WBE spending was with firms owned by nonminority women. Total Commonwealth spending with minority owned firms outside Construction was less than 0.25 percent of total spending (about \$28.3 million); total Commonwealth spending with minority owned firms in the construction payments data was less than 0.5 percent of total spending (about \$34.8 million).

Some local agencies spent considerably more with MBEs than did the Commonwealth of Virginia. For example, from 1998 to 2002 the city of Charlotte spent \$91.8 million with MBE prime contractors in construction alone while Virginia spent \$38.8 million with MBE prime

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<sup>1</sup> Maryland: NERA, Utilization of Minority Business Enterprises by the State of Maryland, 2001; Texas HUB office, Historically Underutilized Business (HUB) Annual Report received for Fiscal year 2003; North Carolina: MGT, Disparity study for the North Carolina department of Administration, 2003; Florida: State of Florida, Office of Supplier Diversity, Annual report FY 2001

contractors over the same period.<sup>2</sup> The Port Authority of New York and New Jersey awarded \$284 million in contracts with small and M/WBE firms in 2001.<sup>3</sup>

The Commonwealth utilized only 237 minority firms outside of construction over the study period, at an average of about \$23,000 per firm per year. This low M/WBE utilization by the Commonwealth in turn contributed to low M/WBE availability, as measured by the number of M/WBE vendors registered and utilized by the Commonwealth. Relative M/WBE availability ranged between 1.54 percent and 7.13 percent, depending on procurement category (see Exhibit 1). By way of contrast, a study of construction for the state of North Carolina found M/WBE availability in construction of 14.36 percent.<sup>4</sup> A study of the state of Maryland found overall M/WBE availability of 26.9 percent.<sup>5</sup>

Substantial disparity exists for the following underutilized groups in the Commonwealth work type categories (see Exhibit 1):

Construction prime contracting – African American, Asian American, Native American, and nonminority women.

Construction subcontracting – African American, Hispanic American, Asian American, Native American, and nonminority women.

Architecture and engineering services – African American, Hispanic American, Asian American, Native American, and nonminority women.

Professional services – African American, Hispanic American, Asian American, Native American, and nonminority women.

Other services – Native American.

Goods and Supplies- African American, Hispanic American, Asian American, Native American, and nonminority women.

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<sup>2</sup> MGT, City of Charlotte Disparity Study, 2003.

<sup>3</sup> Port Authority of New York and New Jersey, Press Release No. 48-2002, Port Authority Announces 17 Percent Increase In Contracts Awarded to Minority/women-owned and Small Businesses, April 23, 2003

<sup>4</sup> MGT, North Carolina Department of Administration, Disparity Study, 2003.

<sup>5</sup> MGT, North Carolina Department of Administration, Disparity Study, 2003. NERA, Utilization of Minority Business Enterprises By the State of Maryland, 2001.



**EXHIBIT 1**  
**COMMONWEALTH OF VIRGINIA**  
**SUMMARY OF DISPARITY ANALYSIS FOR EACH**  
**BUSINESS CATEGORY BY RACE/ETHNICITY/GENDER CLASSIFICATIONS**

Business Category by M/WBE Classification	% of Dollars <sup>1</sup>	% of Available Firms <sup>2</sup>	Disparity Index <sup>3</sup>	Disparate Impact of Utilization	Significance of Proportions <sup>4</sup>
<b>Construction Prime Contractors</b>					
African Americans	0.03%	1.07%	3.12	* Underutilization	-70.73 *
Hispanic Americans	0.29%	0.26%	113.27	Overutilization	0.79
Asian Americans	0.00%	0.28%	0.00	* Underutilization	0.00
Native Americans	0.00%	0.10%	0.00	* Underutilization	0.00
Nonminority Women	1.17%	2.70%	43.26	* Underutilization	-17.76 *
Nonminority Firms	98.51%	95.60%	103.04	Overutilization	29.93 *
<b>Construction Sub Contractors</b>					
African Americans	0.22%	5.03%	4.37	* Underutilization	-241.64 *
Hispanic Americans	1.21%	3.73%	32.38	* Underutilization	-54.32 *
Asian Americans	0.03%	2.02%	1.38	* Underutilization	-280.73 *
Native Americans	0.00%	0.82%	0.00	* Underutilization	0.00
Nonminority Women	1.07%	5.95%	17.96	* Underutilization	-111.73 *
Nonminority Firms	97.48%	82.46%	118.22	Overutilization	225.33 *
<b>Architecture &amp; Engineering Prime Consultants</b>					
African Americans	0.01%	0.98%	0.62	* Underutilization	-71.14 *
Hispanic Americans	0.01%	0.64%	1.05	* Underutilization	-44.33 *
Asian Americans	0.06%	2.01%	2.93	* Underutilization	-46.10 *
Native Americans	0.00%	0.21%	0.00	* Underutilization	0.00
Nonminority Women	0.45%	4.30%	10.42	* Underutilization	-33.02 *
Nonminority Firms	99.48%	91.85%	108.30	Overutilization	60.70 *
<b>Professional Services Prime Consultants</b>					
African Americans	0.30%	0.33%	91.51	Underutilization	-0.87
Hispanic Americans	0.00%	0.12%	2.69	* Underutilization	-35.61 *
Asian Americans	0.28%	0.39%	72.09	* Underutilization	-3.50 *
Native Americans	0.00%	0.03%	0.61	* Underutilization	-38.14 *
Nonminority Women	0.12%	1.54%	7.99	* Underutilization	-69.09 *
Nonminority Firms	99.30%	97.60%	101.74	Overutilization	34.77 *
<b>Other Services Prime Contractors</b>					
African Americans	0.48%	0.27%	176.53	Overutilization	6.68 *
Hispanic Americans	0.25%	0.06%	419.24	Overutilization	8.55 *
Asian Americans	0.13%	0.09%	145.74	Overutilization	2.54 *
Native Americans	0.00%	0.02%	4.12	* Underutilization	-14.94 *
Nonminority Women	1.29%	1.07%	121.42	Overutilization	4.50 *
Nonminority Firms	97.84%	98.49%	99.34	Underutilization	-9.97 *
<b>Goods &amp; Supplies Prime Contractors</b>					
African Americans	0.04%	0.17%	23.34	* Underutilization	-14.97 *
Hispanic Americans	0.05%	0.06%	79.21	* Underutilization	-1.28
Asian Americans	0.15%	0.13%	108.25	Overutilization	0.66
Native Americans	0.01%	0.03%	35.48	* Underutilization	-4.33 *
Nonminority Women	0.99%	1.05%	93.61	Underutilization	-1.54
Nonminority Firms	98.77%	98.55%	100.22	Overutilization	4.55 *

<sup>1</sup> The percentage of dollars is taken from the prime utilization exhibit previously shown in Chapter 4.0.

<sup>2</sup> The percentage of available contractors is taken from the availability exhibit previously shown in Chapter 4.0.

<sup>3</sup> The disparity index is the ratio of % utilization to % availability times 100. An asterisk is used to indicate a substantial level of disparity - index below 80.00.

<sup>4</sup> The significance of proportions test examines if there is a statistical difference between utilization and availability. The test statistics are computed by taking the difference between utilization and availability and dividing by the square root of availability, times one minus availability divided by the available firms. If the test statistics are greater than two, overutilization is assumed. Conversely, if the test statistics are less than -2, underutilization is assumed.

### **FINDING: Private Sector Utilization and Disparity**

Using records from Reed Construction Data, low levels of M/WBE utilization were found in the private sector commercial construction in Virginia (**Exhibit 2**). From 1998 to 2002, one nonminority woman-owned firm was awarded two prime commercial construction contracts worth \$641,717 (0.24%). Over the same time period, seven M/WBE construction firms were awarded nine prime construction contracts worth \$15.9 million (1.49%) by the Commonwealth.

Substantial disparity existed for all M/WBEs in commercial private sector construction from 1998 to 2002.

### ***Anecdotal Evidence Findings***

#### **FINDING: Experience with Prime Contractors**

Some subcontractors reported having been pressured to lower bids (24% of M/WBEs) and many reported delays in payment from primes (26% of M/WBEs). These findings from the survey were also supported by anecdotal comments made in the personal interviews and focus groups.

#### **FINDING: Using M/WBEs as “shell”**

During the interviews and focus groups there were allegations that prime contractors utilize M/WBE firms as a “shell” or “pass through.” There were examples given of utilizing a graphics design M/WBE firm as subcontractor for a construction project. Another example given was utilizing an M/WBE as a pass-through to get money to the subcontractor the prime wanted to hire.

#### **FINDING: Barriers to doing work with the Commonwealth**

The five most common factors that affected a firm’s ability to contract with the Commonwealth included “limited time to prepare a bid or quote” (M/WBEs as a group, 8%; nonminority male-owned firms, 4%); “limited information received on pending projects” (M/WBEs as a group, 6%; nonminority male-owned firms, 4%); eVA system (M/WBEs as a group, 4%; nonminority male-owned firms, 6%); “contract too expensive to bid” (M/WBEs as a group, 6%; nonminority male-owned firms, 1%); and the size of the contract (M/WBEs as a group, 6%; nonminority male-owned firms, 1%). These findings were all supported with comments made in the personal interviews and focus group participants.

### **Conclusions**

Utilization of minority firms by the Commonwealth was very low during the study period both in relative and absolute terms. Utilization of minority firms was low relative to conservative estimate of minority business availability, and relative to utilization by other states and public agencies. Disparities were also evident after controlling for the size of contract and firm characteristics. Utilization of minority firms in private sector commercial construction was even lower. These facts stand out more sharply given that the mid-Atlantic region of the United States

is one of the strongest areas in the country for minority firms, a market characteristic driven primarily by federal procurement and strong M/WBE programs in neighboring states and local governments.

## **RECOMMENDATIONS and COMMENDATIONS**

This section presents recommendations and commendations resulting from the Disparity Study conducted for the Commonwealth of Virginia related to procurement of construction, architecture and engineering services, professional services, other services, and goods. The following recommendations are grounded in an exhaustive review of other M/WBE programs around the United States and the extensive case reviewing of these programs and their accompanying statutes and regulations. The recommendations are crafted to simultaneously address the substantial shortfalls in M/WBE utilization by the Commonwealth while employing insights from other M/WBE programs around the country and satisfying the constraints imposed by recent case law governing M/WBE programs. The commendations acknowledge those positive efforts by the Commonwealth towards inclusion of M/WBEs in Commonwealth spending with outside vendors.

### **PURCHASING RECOMMENDATIONS**

#### **RECOMMENDATION: Contract Sizing**

Contract size and performance bonds were the issues mentioned most in surveys of and interviews with M/WBEs as barriers to utilization by the Commonwealth. The Commonwealth should concentrate its efforts on issuing contracts in smaller dollar amounts, thus expanding the opportunities that smaller M/WBE firms have to do business with Virginia. As recommended in the OMB Contract Bundling Report, the Commonwealth should consider limiting the use of contract bundling to those instances where there are considerable and measurable benefits such as decreased time in acquisition, at least 10 percent in cost savings, or improved contract terms and conditions.<sup>6</sup>

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<sup>6</sup> Office of Management and Budget "Contract Bundling – A Strategy for Including Federal Contracting Opportunities for Small Business (October 2002)

**EXHIBIT 2**  
**M/WBE CONSTRUCTION**  
**UTILIZATION PERCENTAGE OF DOLLARS**  
**VIRGINIA PRIVATE SECTOR**  
**CALENDAR YEARS 1998 THROUGH 2002**

<b>Business Category/Data Source</b>	<b>African American</b>	<b>Hispanic American</b>	<b>Asian American</b>	<b>Native American</b>	<b>Subtotal MBEs</b>	<b>Non minority Women</b>	<b>Non minority Firms</b>
<b>Prime Contractors</b>							
Commonwealth of Virginia Construction Prime Contractors	0.03%	0.29%	0.00%	0.00%	0.32%	1.17%	98.51%
Private Construction Prime Contractors (Reed Construction)	0.00%	0.00%	0.00%	0.00%	0.00%	0.24 %	99.76%

**RECOMMENDATION: Construction Management and Request for Proposals**

One method of debundling in construction is through the use of multiprime construction contracts in which a construction project is divided into several prime contracts that are then managed by a construction manager at risk. For example, this approach has been used on projects where each prime contractor is responsible for installation and repair in particular areas. The construction manager is responsible for obtaining materials at volume discounts based upon total agency purchases. If one contractor defaults, a change order is issued to another prime contractor working in an adjacent area. The construction manager at risk is responsible for cost overruns that result from prime contractor default.

Construction management also facilitates the rotation of contracts within an area of work. For example, if several subcontractors have the capacity of bidding on an extended work activity (e.g., concrete flat work, traffic control, hauling), the construction manager can rotate contracting opportunities over the duration of the activity.

Using a request for proposal process can provide the flexibility for including M/WBE participation in prime contractor requirements and selection. One of the nonfinancial criteria can be the proposer's approach and past history with M/WBE subcontractor utilization as well as women and minority workforce participation. A number of universities around the country, the Charlotte-Mecklenburg School System, and the Tri-County Metropolitan Transportation District of Oregon have had a successful experience with this approach.<sup>7</sup>

**RECOMMENDATION: Term Contracts**

The Commonwealth should consider instituting a policy of encouraging purchasing staff to use M/WBEs that are on Commonwealth state contracts and identified as such when the

<sup>7</sup> Federal Transit Administration, Lessons Learned #45, May 2002)  
[www.fta.dot.gov/library/program/11/man/1145.html](http://www.fta.dot.gov/library/program/11/man/1145.html)

Commonwealth uses state term contracts in purchasing. A number of states (Florida, New York, and North Carolina) indicate the M/WBE status of firms holding term contracts.

#### **COMMENDATION AND RECOMMENDATION: eVA**

eVA has been an important step in the technical evolution of e-procurement in the Commonwealth. However, eVA is potentially a two-edged sword for M/WBE vendors. On the one hand it opens up wider markets to M/WBE firms. On the other hand, eVA fees can discourage participation by newer and smaller firms in the eVA system. The survey did not, however, find strong sentiment from M/WBEs that eVA constituted a barrier to M/WBE utilization. The Commonwealth should be commended for its outreach and training sessions on eVA targeting small and M/WBE firms. At the same time, the Commonwealth should consider an alternative fee structure or fee moratoria for small and M/WBE firms.

#### **COMMENDATION and RECOMMENDATION: Small Purchases**

Securing small purchases through informal procurement methods is an area in which buyers can become particularly comfortable with incumbent vendors. The Commonwealth should be commended for provisions requiring the solicitation of small and M/WBE firms for small purchases. Additional measures can be taken to increase M/WBE participation in informal purchases. First, the use of new M/WBE vendors can be an element in buyer evaluations. Second, taking a cue from "social norm marketing," the Commonwealth should publish data on buyer use of M/WBE vendors in informal purchases. These data should include statistics on median M/WBE dollar utilization by individual buyers, high levels of M/WBE utilization by individual buyers, and the number of M/WBEs utilized by buyers. Many buyers may think they are performing adequately and may not realize the possibilities and acceptable norms of buyer behavior in the area of small informal purchases.

#### **COMMENDATION and RECOMMENDATION: Prompt Payment**

Virginia should be commended for having a prompt payment statute. Nevertheless, small and M/WBE vendors still have problems with prompt payment. Certain subcontractors that work on an early phase in a project, such as grading, can suffer from retainage withheld on long-lasting projects. Prompt payment policy should be adjusted for these concerns. Mobilization payments is one vehicle to address this issue. For example, in 2000, the city of Chicago revised its M/WBE ordinance to allow the city to make advance payments of 10 percent of the total contract value, up to a maximum of \$200,000.

### **M/WBE PROGRAM RECOMMENDATIONS**

#### **RECOMMENDATION: M/WBE Certification**

The Commonwealth should move towards a unified certification application with other agencies in Virginia and the Mid-Atlantic area. Different agencies may maintain different criteria for certification. Nevertheless, one package of materials should be sufficient for a certification application. A unified certification application has been developed among agencies in New York, Dallas, Memphis, Chicago, Jacksonville, and other areas.

The automation of Commonwealth procurement should be paralleled by automation of M/WBE certification. The M/WBE certification application is available on-line at the DMBE Web site, but this is still not an automated process. The city of Chicago, for example, utilizes on-line certification to reduce paper work. The Chicago system allows the flagging of applicants who have not submitted all of their paperwork. The M/WBE department also provides a 60-day guarantee of certification if all the paperwork is submitted.

The other area of certification that merits additional attention by the Commonwealth is the anecdotal testimony from vendors and Commonwealth staff about the persistence of “fronts” (firms representing themselves as M/WBEs without satisfying the necessary requirements). In response to these concerns the M/WBE Office should increase the number of site visits as supplements to desk audits in the M/WBE certification process. Enforcement is also essential. In the city of Chicago, for example, vendors who misrepresent M/WBE participation are prevented from doing business with the city for up to three years.

**RECOMMENDATION: Narrowly Tailored S/M/WBE Program**

Recent developments in court cases involving federal DBE programs provide important insight on the design of local M/WBE programs. In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). In the latest round of the DBE litigation, the courts found the new DBE regulations to be narrowly tailored. The federal DBE program has the features in **Exhibit 3** that contribute to this characterization as being narrowly tailored remedial procurement preference program. As can be seen from **Exhibit 3**, the DOT regulations provide a variety of measures that put race- and gender-neutral techniques first and then use race- and gender-conscious project goals as a supplemental device when race- and gender-neutral techniques are found inadequate to reduce disparity in DBE (or M/WBE) utilization. The Commonwealth should consider the adoption of these features in any new narrowly tailored M/WBE program.

**EXHIBIT 3**  
**RECOMMENDED RACE- AND GENDER-SPECIFIC AND NEUTRAL GOALS FOR EACH**  
**BUSINESS CATEGORY BY RACE/ETHNIC/GENDER CLASSIFICATION**  
**BASED ON CENSUS AVAILABILITY**

Business Category by MWBE Classification	% of Dollars <sup>1</sup>	% of Available Firms <sup>2</sup>	Disparity Index Goal - 80.0	Race/Gender Neutral Results	Race/Gender Conscious Goal
<b>Construction Prime Contractors</b>					
African Americans	0.03%	3.56%	2.85%	0.03%	2.82%
Hispanic Americans	0.29%	1.47%	1.18%	0.29%	0.89%
Asian Americans	0.00%	0.64%	0.51%	0.00%	0.51%
Native Americans	0.00%	0.27%	0.22%	0.00%	0.22%
Nonminority Women	1.17%	5.56%	4.44%	1.17%	3.28%
<b>Construction Sub Contractors</b>					
African Americans	0.22%	5.03%	4.02%	0.22%	3.80%
Hispanic Americans	1.21%	3.73%	2.98%	1.21%	1.78%
Asian Americans	0.03%	2.02%	1.62%	0.03%	1.59%
Native Americans	0.00%	0.82%	0.65%	0.00%	0.65%
Nonminority Women	1.07%	5.95%	4.76%	1.07%	3.69%
<b>Architecture &amp; Engineering and Professional Services Prime Consultants<sup>3</sup></b>					
African Americans	0.30%	4.97%	3.97%	0.30%	3.67%
Hispanic Americans	0.00%	2.48%	1.98%	0.00%	1.98%
Asian Americans	0.28%	4.97%	3.98%	0.28%	3.70%
Native Americans	0.00%	0.22%	0.17%	0.00%	0.17%
Nonminority Women	0.12%	16.04%	12.83%	0.12%	12.71%
<b>Other Services Prime Contractors</b>					
African Americans	0.48%	8.52%	6.82%	0.48%	6.34%
Hispanic Americans	0.25%	2.51%	2.01%	0.25%	1.76%
Asian Americans	0.13%	4.30%	3.44%	0.13%	3.31%
Native Americans	0.00%	0.25%	0.20%	0.00%	0.20%
Nonminority Women	1.29%	21.72%	17.38%	1.29%	16.09%
<b>Goods &amp; Supplies Prime Contractors</b>					
African Americans	0.04%	4.23%	3.38%	0.04%	3.34%
Hispanic Americans	0.05%	1.51%	1.21%	0.05%	1.17%
Asian Americans	0.15%	5.08%	4.06%	0.15%	3.92%
Native Americans	0.01%	0.32%	0.26%	0.01%	0.25%
Nonminority Women	0.99%	17.33%	13.86%	0.99%	12.88%

<sup>1</sup> The percentage of dollars is taken from the prime utilization exhibit previously shown in Chapter 4.0.

<sup>2</sup> The percentage of available contractors was taken from census data.

<sup>3</sup> Due to census availability not being disaggregated by A & E and Professional Services, they are combined.

The program should be time limited, and graduation criteria established for each participant.

**RECOMMENDATION: M/WBE Goals**

The Study provides evidence supporting the establishment of a moderate program to promote M/WBE utilization. This conclusion is based on disparity in current M/WBE utilization,

significant disparities in private sector utilization in construction, and evidence of discrimination in business formation and compensation from self-employment. The Commonwealth should tailor its minority participation programs to remedy the specific disparity determined above. These aspirational goals should be addressed primarily by good faith efforts requirements, breaking up large contracts, M/WBE participation in a Small Business Enterprise (SBE) program (discussed below), and similar techniques. Any race-conscious program elements should be implemented along the lines suggested by the USDOT DBE program (**Exhibit 3** above).

**Exhibit 4** provides guidance on setting initial annual goals for M/WBE programs. These M/WBE goals by business category are annual goals, not rigidly set project goals. Each project should be reviewed individually for establishing project-specific M/WBE goals. Each year the goals should be adjusted according to the utilization of M/WBEs by business category by race- and gender-neutral means, gradually reducing the race and/or gender conscious goal and increasing the race- and gender-neutral goal. The ultimate objective is to eliminate the need for a race- and/or gender-based program and replace it completely with the race- and gender-neutral options.

These goals are based on census measures of relative M/WBE availability. The motivation for the use of census data, as opposed to the vendor data used to measure disparity, is that the significant differences in the measure of relative availability may reflect the fact that M/WBEs are dissuaded from pursuing opportunities with the Commonwealth because of perceptions of Commonwealth procurement as a relatively closed system. These census-based M/WBE goals are arguably still conservative.<sup>8</sup>

In the course of implementing such a race-conscious goal program, the following should be considered:

On an annual basis, the Commonwealth should review its budget and establish annual goals, in dollars and percentages, consistent with M/WBE availability, for each M/WBE group that has demonstrated significant disparity.

Annual goals for each ethnic group and women should reflect M/WBE availability as referenced in this Study. The purpose of annual participation goals is to assist the Commonwealth in monitoring the success of the remedial program. Currently, the Commonwealth does not have a method of measuring where the M/WBE participation level is on the continuum between the current level of disparity and full participation (disparity index of 100).

The program should be time limited, and graduation criteria established for each participant.

The Commonwealth should continue to concentrate primarily on the scope of all race- and gender-specific programs to firms that are located in the relevant market area for specific business categories.

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<sup>8</sup> For example, a study of construction for the State of North Carolina found M/WBE availability in construction of 14.36%. MGT, North Carolina Department of Administration, Disparity Study, 2003. A study of the State of Maryland found overall M/WBE availability of 26.9 percent. NERA, Utilization of Minority Business Enterprises by State of Maryland, 2001.



The burden of compliance with M/WBE goals should not fall disproportionately on a few departments, absent some business reason for uneven distribution of M/WBE spending by department.

**RECOMMENDATION: Good Faith Efforts and M/WBE Construction Subcontracting**

The Commonwealth should develop detailed guides for good faith efforts to be undertaken by prime contractors in dealing with M/WBE subcontractors in construction. One example is that developed by the state of North Carolina in **Exhibit 9-3** below. North Carolina requires a minimum of 50 points in good faith efforts, although 10 of these points are met by attending mandatory pre-bid conferences.

**RECOMMENDATION: Bid Preferences and Set-Asides**

M/WBE utilization by the Commonwealth is low both in comparison to availability and to other states. Because of the very low levels of utilization in state procurement, the Commonwealth should consider the occasional use of M/WBE bid preferences and set- asides. At present the Commonwealth does not have any laws providing for bid preferences or set-asides for M/WBEs. These more aggressive techniques should be used as a supplement to the other programmatic initiatives discussed in these recommendations. Some types of aggressive procurement measures that have been used by other agencies include:

**Quick Bid Program.** A Quick Bid program is typically for contracts less than \$500,000. In this program the agency solicits bids via telephone and fax from a minimum of six contractors on a rotating basis. The period between bid, award, and contract start is generally not more than six weeks.

**Mandatory Joint Ventures.** Mandatory joint ventures are a procurement method in which there is a special set-aside for a joint venture in which the MBE/WBE interest is no less than 20 percent of either participation or risk/profit of the project.

**Direct Sole Source M/WBE Negotiation.** This is a sole source negotiation in instances where there is a very small group of pre-qualified M/WBEs in the specific professional service specialty being procured.

**Price Preferences.** In this procurement method the agency provides a price preference of up to 10 percent to M/WBEs for commodity and service procurements of less than a certain dollar figure.

**EXHIBIT 5  
STATE OF NORTH CAROLINA  
POINT VALUES FOR GOOD FAITH EFFORTS UNDERTAKEN TO PROMOTE M/WBE  
UTILIZATION**

<b>Good Faith Efforts</b>	<b>Point Values</b>
Attending any pre-bid meetings scheduled by the public owner.	10
Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.	10
Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.	10
Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.	10
Breaking down or combining elements of work into economically feasible units to facilitate minority participation.	15
Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.	15
Providing assistance in getting required bonding or insurance, or providing alternatives to bonding or insurance for subcontractors.	20
Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.	20
<b>Good Faith Efforts</b>	<b>Point Values</b>
Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.	20
Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.	25

Source: Official North Carolina Administrative Code, 301.0102—Good Faith Efforts

## **RECOMMENDATION: Promoting M/WBE Collaboration**

M/WBE capacity can be increased by joint ventures among M/WBEs. For example, in Oregon the Northeast Urban Trucking Consortium, a consortium of seven M/WBE independent trucking firms with 15 trucks, joined together to win a \$2 million trucking contract.

## **RECOMMENDATION: Small Business Enterprise (SBE) Program**

The Commonwealth should institute an SBE program. A strong SBE program is at the center of maintaining a narrowly tailored program to promote M/WBE utilization. As the first element of a new SBE program, the Commonwealth should establish a consistent SBE definition. At present the definition of small business differs between the VBA, the model supplier diversity program, and eVA. A starting point for an SBE definition is to use a percentage of the Small Business Administration's (SBA) definition of a small business. A considerable amount of analysis has gone into the SBA definition, but the SBA small business enterprise definition tends to be large because of the size of the federal contracts. The city and county of Denver and the city of Charlotte, among other agencies, have adopted the percentage of SBA definition as their definition of an SBE.

Further guidance on SBE programs can come from features of the city of Charlotte SBE program, including:

- setting SBE goals on formal and informal contracts;
- setting department goals for SBE utilization;
- requiring good faith negotiations by bidders with SBEs;
- mandating SBE outreach and good faith efforts by bidders;
- making SBE utilization part of department performance review;
- rejecting bids for bidder noncompliance with the SBE program;
- encouraging the female and minority participation in the SBE program; and
- imposing mandatory subcontracting clauses where such clauses would be Consistent with industry practice and would promote SBE utilization.<sup>9</sup>

The Commonwealth should also consider race-neutral small business set-asides as are used by the federal government, New Jersey, Florida, and other government agencies. For the federal government every acquisition of goods and services anticipated to be between \$2,500 and

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<sup>9</sup> San Diego as part of its Subcontractor Outreach Program (SCOPE) has mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has subcontracting is determined by the engineer on the project.

\$100,000 is set aside exclusively for small businesses unless the contracting officer has a reasonable expectation of less than two bids by small businesses.<sup>10</sup>

Another variant of an SBE program is incentives for SBEs located in distressed areas. For example, under the 1997 Small Business Reauthorization Act, the federal government started the federal HUBZone program. A HUBZone firm is a small business that is: (1) owned and controlled by U.S. citizens; (2) has at least 35 percent of its employees who reside in a HUBZone; and (3) has its principal place of business located in a HUBZone.<sup>11</sup> HUBZone programs can serve as a vehicle for encouraging M/WBE contract utilization. Nationally there are 4,743 female and minority HUBZone firms, 58.2 percent of total HUBZone firms.<sup>12</sup> In Virginia there are 202 women and minority HUBZone firms, 59.7 percent of total HUBZone firms in the Commonwealth. Of those women and minority HUBZone firms, 109 are in construction. In the Virginia, Washington, D.C., and Maryland areas there are 527 women and minority HUBZone firms, 65.3 percent of the total number of HUBZone firms.

### **COMMENDATION AND RECOMMENDATION: Commercial Antidiscrimination Rules**

The Commonwealth should be commended for having a general commercial nondiscrimination statute. Some courts have noted that putting in place antidiscrimination rules is an important element of race-neutral alternatives.<sup>13</sup> Nationally, some agencies have adopted requirements to ensure that their procurement and their prime contractor procurement were not discriminatory (e.g., San Diego, CA; Seattle, WA; Columbia, SC; and Charlotte, NC).

A complete antidiscrimination policy would provide for:

- a mechanism whereby complaints may be filed against firms that have discriminated in the marketplace;

- due process, in terms of an investigation by agency staff;

- a hearing process before an independent hearing examiner;

- an appeals process to the agency manager and ultimately to a court;

- a mechanism whereby complaints may be filed against firms that have discriminated in the marketplace; and

- imposition of sanctions, including:

- disqualification for up to five years from bidding with the agency

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<sup>10</sup> Federal Acquisition Regulations 19.502-2.

<sup>11</sup> 13.C.F.R. 126.200 (1999). The State of California provides a 5 percent preference for a business worksite located in state enterprise zones and an additional 1-4 percent preference (not to exceed \$50,000 on goods and services contracts in excess of \$100,000) for hiring from within the enterprise zone. California Code Sec 4530 et seq. Minnesota's bid preferences are limited to small businesses operating in high unemployment areas.

<sup>12</sup> Based on the SBA pro-net database located at <http://pro-net.sba.gov/pro-net/seach.htm/>.

<sup>13</sup> *Engineering Contractors v Dade County*, 943 F. Supp 1546 (SD Fla 1996)

- termination of all existing contracts; and
- referral for prosecution for fraud.

### **RECOMMENDATION: Bonding**

Lack of bonding is often cited by small construction firms as the reason for not pursuing government contracting opportunities. Many M/WBEs have worked in residential or private construction that does not always require bonding, or as subcontractors who were bonded under the prime contractor. A small business surety assistance program should provide technical assistance to small firms, track subcontractor utilization by ethnicity, coordinate existing financial as well as management and technical assistance resources, and provide for quality surety companies to participate in the bonding program.

Some examples of bonding programs from other agencies include:

The state of Maryland, through its Surety Bonding Program, assists small contractors in bonding with government and public utility contracts that require bid, performance, and payment bonds. Maryland Small Business Development Financing Authority (MSBDFA) has the authority to directly issue bid, performance, or payment bonds up to \$750,000. MSBDFA can also guarantee up to 90 percent of a surety's losses on bid, performance, or payment bonds up to \$900,000. This assistance is available to firms that have been denied bonds, but have not defaulted on loans or financial assistance from MSBDFA.

The North Carolina Department of Transportation (NCDOT), through its supportive services contract, has funded a DBE Pilot Bonding Assistance Program since 2000. The bonding program is open to any DBE that holds or is in the process of obtaining a NCDOT contract. The program is for bid, payment, and performance bonds of up to \$1 million. The program is administered through the US DOT Office of Small and Disadvantaged Business Utilization, the Minority Business Resource Center, and participating sureties.

The Contractor Assistance Program (CAP) in the Lambert Airport Expansion in St. Louis assesses bonding readiness by evaluating the company's bond history, recent gross receipts, financial wherewithal, banking ties, and past job performance. CAP's bonding specialist then focuses assistance in areas of company weaknesses as well as bond applications, a firm's financial controls, and reporting tools.

Allegheny County, Pennsylvania, has a bonding program in which participants are preapproved for up to \$100,000 in bonding on a maximum of two projects within the County. Approved firms must attend monthly business development sessions covering financial management, taxes, marketing, and credit management. Firms are allowed to participate in the program for up to 18 months. Amwest Surety Insurance Company issues the bonds. Allegheny County guarantees the bonds through the Industrial Development Authority and Community Development Block Grant funds.

One element in the Commonwealth crafting such a bonding program would simply be to encourage and coordinate contractor use of the U.S. Small Business Administration Office of

Surety Guarantees, which can guarantee bid, performance, and payment bonds for contracts up to \$2 Million for small contractors who cannot obtain surety bonds through normal commercial channels.

### **COMMENDATION AND RECOMMENDATION: Access to Capital**

The Commonwealth should be commended for its efforts to improve access to capital to Small, Women-Owned, and Minority-Owned businesses. These efforts include the PACE program of the Department of Minority Business Enterprise and the efforts of the Department of Business Assistance.

Some examples of lending assistance programs from other agencies follow.

There are a number of areas where local government bodies participate in linked deposit programs. Linked deposit programs are essentially a vehicle for providing lower interest rates on loans for small and minority business, nonprofits, and housing development. Agencies use linked deposit programs to subsidize lower rates for business and housing loans by accepting a lower rate on their deposits with participating financial institutions. For example, the New York State Linked Deposit program provides two-year financing at reduced rates to small and minority businesses. It makes loans of up to \$10 million to certified M/WBEs and SBEs that have been awarded agency contracts. To participate, services businesses must have fewer than 100 employees and not be dominant in their field of operation. Businesses in economic development zones, highly distressed areas, and defense and certified M/WBEs are eligible for 3 percent interest rate reduction. The program has been in place for ten years.<sup>14</sup>

The Maryland Small Business Development Financing Authority (MSBDF) provides financing for M/WBEs in the form of a:

Contract Financing Program, which provides loan guarantees and direct working capital and equipment loans to socially or economically disadvantaged businesses that have been awarded public contracts.

Equity Participation Investment Program, which provides direct loans, equity investments and loan guarantees to socially or economically disadvantaged-owned businesses in franchising, in technology-based industries, and for business acquisition; and

Long-Term Guaranty Program, which provides loan guarantees and interest rate subsidies.

The state of Florida has a loan mobilization program in which minority firms that land a state contract can qualify for a state-backed loan of between \$5,000 and \$250,000 to be used on the project. Florida also has a program to aid franchise ownership. Agencies have collaborated with the Emerging Market program in the International Franchise Association to assist minority franchise ownership.

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<sup>14</sup> Montgomery County, Maryland, and Chicago are other agencies with notable linked deposit programs.

The Port Authority of New York and New Jersey uses a Contractor Insurance Program (CIP), a form of wrap-up insurance under which the Port Authority provides various insurance coverage to approved on-site contractors and subcontractors for construction contracts. In particular, the Port Authority buys and pays the premiums on public liability insurance (\$25 million per occurrence), builders risk insurance (\$50 million per occurrence), and workers' compensation and employees liability insurance. In general, the CIP can reduce an owner's project costs by an average of 1 to 2 percent compared to traditional contractor procured insurance programs. The Port Authority CIP does help alleviate barriers from insurance costs to M/WBE participation in Port Authority construction projects.

### **RECOMMENDATION: Management and Technical Services**

The Commonwealth should be commended for its current attempts to strengthen its efforts in providing management and technical services to M/WBE firms in securing contracts with Virginia agencies through the Department of Minority Business Enterprise and the Department of Business Assistance.

These efforts could be strengthened by contracting with an outside management and technical assistance provider to provide needed technical services, particularly in the area of loans and bonding. Such a contract should be structured to include providing incentives to produce results, such as the number of M/WBEs being registered as qualified vendors with the Commonwealth and the number of M/WBEs graduating from subcontract work to prime contracts. For example, the Port Authority of New York and New Jersey has a three-year fee-for-service contract with the Regional Alliance capped at \$275,000.<sup>15</sup> Previously, the contract was a flat grant, but it was changed to a fee-for-service arrangement to reward creativity with money. The Regional Alliance also supports the Loaned Executive Assistance Program (LEAP) that provides hands-on consultants to evaluate the ability of small firms to undertake agency contracts and recommend needed changes. Similarly, the city of Phoenix tracks its management and technical assistance to determine if training results in contract award.

### **COMMENDATION and RECOMMENDATION: M/WBE Program Data Management**

It is imperative for the Commonwealth to closely monitor the utilization of all businesses by race, ethnicity, and gender to determine whether the small contractors program over time has the potential to eliminate race and gender disparities without specific race and gender goals.

The Commonwealth is still behind in its tracking of M/WBE spending. Virginia should review the development of the Web-based HUBSCO system in North Carolina to track spending with M/WBEs across all state agencies, colleges, and universities.

The Commonwealth should require that all contractors maintain data on all subcontractors utilized on a Virginia project. This list includes all subcontractors utilized (minority, women, and nonminority), the total amount paid, and the race/ethnicity/gender of the owner. These data

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<sup>15</sup> The Regional Alliance was started in 1989. For general background on the Regional Alliance see Timothy Bates, "Case Studies of State Minority Business Assistance Programs," report for the U.S. MBDA, September 1993.

should be submitted to the Commonwealth before the prime contractor's final payment for services.

It is also equally important to identify, for future availability analysis, the number of construction subcontractors available. Because the Commonwealth does not collect these data, it is limited in the type of availability analysis it can conduct. In order for the Commonwealth to accurately monitor a small contractors program and assist in future availability analyses, the Commonwealth should require all contractors to submit a list of all subcontractors contacted in preparation of their bid package. The list of potential subcontractors should include the proposed service, bid amount, and the race/ethnicity/gender of the business owner(s). The data will allow the Commonwealth to accurately identify the number of actual subcontractors available. These data should be analyzed and reviewed periodically (at least annually), and the SBE program adjusted accordingly.

### **COMMENDATION and RECOMMENDATION: M/WBE/SBE Outreach**

The Commonwealth should be commended for workshops and seminars, newsletters, MBE media alert, the networking calendar, and placing the M/WBE list on the Commonwealth Web site to assist prime contractors in identifying potential M/WBE subcontractors.

Nevertheless, there are a significant number of large M/WBEs in Virginia and neighboring states. According to census data there were 14,323 minority firms and 20,794 women-owned firms with paid employees in Virginia alone in 1997, 11.1 percent and 16.1 percent of all firms in the state, respectively. In construction there were 1,591 woman-owned firms paid employees, and 1,171 minority-owned firms with paid employees, 8.0 percent and 8.6 percent of total construction firms. The Commonwealth used only 283 M/WBEs in the construction payments data, about 1.8 percent of the total number of firms utilized by the Commonwealth. Moreover, the Mid-Atlantic states constitute one of the largest pools of M/WBEs in the country. In Region III of the SBA (Virginia, Maryland, Delaware, West Virginia, and Washington, D.C.) there were 1,655 8(a) firms that had over \$1.2 billion in contract actions in FY 2000.<sup>16</sup>

There are several vehicles by which Commonwealth outreach efforts can be strengthened.

DMBE should partner with federal procurement efforts to market to M/WBE firms in the region.

Agencies can feature M/WBEs in employee newsletters to promote firm awareness.

The effectiveness of M/WBE outreach can be improved by classifying businesses into three categories:

Category A: Firms that are new to government contracting. These firms should be directed to the Procurement Technical Assistance Center (PTAC), the Small

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<sup>16</sup> SBA, "The Report to the U.S. Congress on Minority Small Business and Capital Ownership Development Program for the Fiscal Year 2000" (2001).



Business Development Center (SBDC), and the Minority Business Development Center (MBDC). DMBE should not duplicate PTAC, SBDC, or MBDC services.

Category B: Firms that are familiar with government contracting in general but not with the particular agency. These firms should be handled via an enhanced Web site that answers routine questions and quarterly group seminars.

Category C. Firms that already have government contracts and are looking for more specific assistance. Some agencies allow for new businesses to have 15-minute presentations of corporate capabilities to program managers. The Commonwealth can also provide unsuccessful bidders with feedback and brief M/WBEs on quality assurance standards.

### **COMMENDATION and RECOMMENDATION: DMBE Web site**

DMBE should be commended for the information that is on the Web site, including agency description, certification and recertification applications, information on the PACE program, and a database of M/WBE vendors. Other agencies have put the following information on their M/WBE Web sites: bid tabulations, status of certification applications, how to do business data, direct links to on-line purchasing manuals, capacity and experience data on certified firms, and forecasts of business opportunities to M/WBE vendors. More detail should also be provided in the FAQ section of the DMBE Web site to answer routine vendor questions.

The DMBE should review some of the novel forms of outreach on the Internet employed by other agencies across the nation. For example, the Illinois Department of Transportation (IDOT) established a *Contractor Marketplace* electronic bulletin board that allows prime and subcontractors to post information on bid opportunities and solicitations of M/WBE subcontractors.<sup>17</sup> IDOT is planning to give subcontractors and suppliers the ability to transmit quotes to prime contractors in specific work categories. The IDOT *Contracting Marketplace* also posts a *Small Contracts List and Pay Items* on-line. This procedure facilitates contractor identification of bid opportunities from the detailed Pay Item reports. Likewise, the Regional Alliance of Small Contractors Opportunities Clearinghouse in New York provides a Web-based forum for small contractors to interact with large construction firms and public development agencies.

### **RECOMMENDATION: DMBE Office**

A revised M/WBE program is a more complex and challenging program than the prior M/WBE program, for several reasons. First, the Commonwealth should reject bids for noncompliance with the new M/WBE program, indicating that the program does have “teeth.” Second, the new M/WBE program will require training of staff in procurement. Third, the Commonwealth should add several new business development initiatives. Fourth, certification audits should be increased. The DMBE Office should be staffed to meet these new responsibilities.

Thus far the DMBE Office has been funded primarily by the supportive services contract for VDOT. The supportive services contract should be a separate function; contracted out to an

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<sup>17</sup> <http://www.dot.state.il.us/cpmst/wrkat.html>.

outside vendor, and the DMBE should receive adequate and independent funding, at least equal to its current budget.

Finally, the DMBE Office should develop measures to gauge the effectiveness of efforts. Possible measures include:

- number of new certified firms;
- growth in percentage utilization by the Commonwealth;
- number of firms that receive bonding;
- number of firms that successfully graduate from the M/WBE program;
- percentage of M/WBE utilization in informal contracts;
- growth in the number of M/WBE utilized by the Commonwealth;
- number of joint ventures involving M/WBEs;
- procurement card utilization of M/WBEs; and
- largest contract won by an M/WBE.

These measures should be integrated into a “balanced scorecard.” The balanced scorecard model of management engineering seeks to align an organization with the strategy by identifying key initiatives necessary to realize that strategy and mobilize the organization’s staff. Using measures and targets, the scorecard creates feedback loops that evaluate an agency’s progress against that strategy.

The scorecard for the public sector is composed of five perspectives: the value/benefit perspective, the customer perspective, the financial perspective, the internal process perspective, and the human resource/learning perspective. A scorecard can then be constructed as follows in Exhibit 9-4.

**EXHIBIT 5  
SAMPLE BALANCED SCORECARD**

<b>Perspective</b>	<b>Goal</b>	<b>Measure</b>	<b>Target</b>	<b>Initiative</b>
Value/Benefit				
Customer				
Financial				
Internal Process				
HR/Learning				

## SENATE JOINT RESOLUTION NO. 359

*Requesting the Department of Minority Business Enterprise, in conjunction with the Department of General Services, the Virginia Employment Commission and the Department of Transportation, to direct the development of a disparity assessment to determine the status of the participation of minority-owned businesses in the Commonwealth's procurement transactions. Report.*

Agreed to by the Senate, January 31, 2003

Agreed to by the House of Delegates, February 19, 2003

WHEREAS, the growth and stability of the minority-owned business community is critical to the entire Commonwealth's economic well-being; and

WHEREAS, the Commonwealth plays an important role in supporting the establishment, preservation, and strengthening of minority-owned businesses through policies that encourage the participation of such businesses in the state's procurement transactions; and

WHEREAS, these policies include the requirement for all state entities to establish programs to facilitate the participation of minority-owned businesses and to submit annual reports on minority-owned business procurement to the Department of Minority Business Enterprise; and

WHEREAS, despite the existence of these programs at the state level for several years, previous studies have concluded that full participation in the state's procurement transactions by minority-owned businesses has not been achieved; and

WHEREAS, in a 1995 study, the Joint Legislative Audit and Review Commission, reviewing fiscal year 1995 data, found that state contracts with minority-owned businesses only amounted to 3.9 percent of the total state contracts for the year; and

WHEREAS, a joint subcommittee created pursuant to Senate Joint Resolution No. 12 (1996) further studied the issue of the participation of minority-owned businesses and found that state agency adherence to minority-owned business participation policies was inconsistent; and

WHEREAS, a second joint subcommittee created pursuant to Senate Joint Resolution No. 474 (1999) concluded that the Commonwealth should conduct a disparity assessment to obtain an independent examination that would provide a clear picture of the status of minority-owned business participation in the procurement process, including the number of minority-owned businesses available to compete for state contracts and the actual utilization of minority-owned businesses in the Commonwealth's procurement process; and

WHEREAS, since the recommendation from the SJR 474 (1999) joint subcommittee, successive annual reports on minority-owned business procurement submitted by state agencies to the Department of Minority Business Enterprise reflect a decrease in the participation of minority-owned businesses; and

WHEREAS, a disparity assessment would provide a clear and unbiased comparison of the availability of minority-owned businesses and the actual utilization of these entities by state government agencies; and

WHEREAS, such an independent examination would allow the Commonwealth to adequately judge the effectiveness of its efforts to increase minority-owned business participation in state procurement transactions; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Minority Business Enterprise, in conjunction with the Department of General Services, the Virginia Employment Commission, and the Department of Transportation, be requested to direct the development of a disparity assessment to determine the status of the participation of minority-owned businesses in the Commonwealth's procurement transactions. All agencies of the Commonwealth shall provide assistance for this study, upon request, as may be available.

In conducting the disparity assessment, the Department of Minority Business Enterprise shall seek, receive, and expend gifts, grants, donations or other funds from public and private sources, including the United States government and its agencies, to provide financial support for the disparity assessment.

The Department of Minority Business Enterprise, in conjunction with the Department of General Services, the Virginia Employment Commission, and the Department of Transportation shall complete their meetings by November 30, 2003, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2004 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

