



**EQUIPPING BUSINESSES FOR
SUCCESS INSTITUTE**

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STATEMENT BY GWENDOLYN DAVIS, CHAIR
EQUIPPING BUSINESSES FOR SUCCESS INSTITUTE (EBFSI)

Equipping Businesses For Success Institute is seeking immediate relief, on behalf of Minority and Women-owned Small Businesses, to eliminate the disparity that currently exists in Virginia's procurement contracting system. Information has been gathered and studied internally and externally by state sanctioned independent contractors for the last four Administrations - 12 years - with little to no progress being made for our small businesses, as clearly seen in the attached fact sheet. We trust that the Work Groups and the Special General Laws Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) will support measures that will remedy the inequity in the system as historically documented in the official disparity studies and encourage the new Administration to Issue an Executive Order calling for the same.

Attachment

FINAL REPORT: A DISPARITY STUDY FOR THE COMMONWEALTH OF VIRGINIA

FACT SHEET

- Part II of the procurement disparity study was completed by MGT of America, Incorporated, an independent research consulting firm who has completed over 100 such studies for governmental entities throughout the country, and authorized for release by former Governor Tim Kaine on January 15, 2010.
- **The purpose of the study entitled: A Disparity Study for the Commonwealth of Virginia was to provide an update to Part I, which was completed in 2004, to determine whether there was compelling interest to establish a "narrowly-tailored" Minority-and-Women-Owned Business Enterprises (M/WBE) Program in Virginia.**
- **The fact finding data collected was used (1) to examine the extent to which race and gender neutral remedies enacted by the State have eliminated the ongoing effects of any past discrimination affecting the state procurement process; (2) to analyze trends and practices in this area; and (3) to provide recommendations for improvements to the system.**
- **This research was necessary to establish the foundation from which initiatives can be developed and implemented in Virginia to improve the State procurement contracting program and ensure equal access to it by Minority Business Owners.**
- In order for the State to implement any type of remedial procurement program, the Supreme Court and lower level courts have determined that they must prove that past or present racial discrimination occurred that require the remedial action. The study noted that the existing practices of the governmental entity must pass what is known as the "compelling interest" legal litmus test. Statistical evidence has proven to be the most valuable tool to use in the courts to uphold the use of "narrowly tailored" remedial programs.
- **The Supreme Court ruled that it is beyond dispute that any public entity, state or federal, has a "compelling interest" in assuring that public dollars, drawn from the tax contributions of all citizens do not serve to finance the evil of private prejudice; and these entities can use its spending powers to remedy private discriminatory practices in its marketplace. In this case, its current procurement contracting program.**
- **Race-neutral alternative programs must be used first by governmental entities; and if it can be proven statistically that they do not work then a narrowly tailored remedial program can be implemented.**
- **Virginia has never used a "set aside" program exclusively for M/WBEs. It does however have a small business "set aside" program for Small, Women and Minority Owned Businesses (SWaMs) for contracts less than \$5,000 up to \$50,000. This program is race-**

neutral with contracts being awarded to both Non Minority and M/WBEs for goods and services. However, as the study indicates, it does not favor M/WBEs.

- Availability of M/WBEs surfaced in court rulings as a key determinant for state or local governments to justify the scope of damage or injury to the group challenging their practices. This terminology refers to whether there are enough qualified Minority contractors willing to perform a particular service and whether they are competent to do so.
- **The Study found that substantial disparity exists in Virginia's procurement contracting program; and there are more than enough qualified M/WBEs (currently over 19,000 State Certified) who are competent to perform the services required.**
- **The Study found substantial disparity in every category of services contracted by the State which includes: Construction, Architecture and Engineering, Professional Services (financial, legal, medical, educational, etc), Other Services (landscaping, janitorial, computer services, photography services, etc.), and Goods and Supplies (office supplies, building materials, commodities, etc).**
- **Total discretionary spending for State procurement contracts over the study period (Fiscal Year 2005-2009) is estimated at \$18.9 Billion. Total prime contract dollars spent with M/WBEs was only 1.50% or \$286.2 million compared to 1.26% reported in the 2004 Disparity Study. This shows very little improvement. A breakdown of prime contract dollars expended with M/WBEs is provided below:**

1. Construction	1.87% or \$28.7 million
2. Architecture/Engineering	1.34% or \$6.3 million
3. Professional Services	2.33% or \$74.7 million
4. Other Services	6.09% or \$102 million
5. Goods and Supplies	2.96% or \$74.5 million

- **The following recommendations were provided by MGT of America to address the disparity in Virginia's procurement contracting program:**
 - 1. Establish a program to promote M/WBE utilization;**
 - 2. Implement a complete anti-discrimination policy with criteria for enforcement;**
 - 3. Employ the use of a Selective Vendor Rotation Program to expand the use of M/WBEs;**
 - 4. Institute a construction "set aside" for M/WBEs for projects up to \$500,000;**
 - 5. Establish a "set aside" program for HUB Zone certified businesses (only 377 certified businesses in Virginia - also includes Non Minority Male Firms);**
 - 6. Create a "set aside" program for small consulting projects;**
 - 7. Implement a bid preference program;**
 - 8. Provide access to low cost insurance; and**
 - 9. Create a Mentor Protégé Program for Small Businesses.**