

# DISPARITY STUDY EXECUTIVE SUMMARY



# STATE OF RHODE ISLAND

SUBMITTED JULY 2021



MASON TILLMAN  
ASSOCIATES, LTD

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# ***Executive Summary***

## ***I. Disparity Study Overview***

### ***A. Study Team***

Mason Tillman Associates, Ltd., a public policy consulting firm in Oakland, California, performed the 2021 Disparity Study for the State of Rhode Island, University of Rhode Island, Rhode Island College, and the Rhode Island Community College (collectively referred to as State Agencies<sup>1</sup>). Local subconsultants Regina Villa Associates, Inc. and Sandra Grymes assisted Mason Tillman in the performance of the Study. The subconsultant collected data, performed surveys, conducted interviews, and helped facilitate two virtual business community meetings.

The State Agencies' Office of Diversity, Equity and Inclusion managed the Study. The Director, Ms. Cheryl Burrell, was instrumental in facilitating Mason Tillman's access to the procurement and contract data needed to perform the Study and the Acting Associate Director, Ms. Dorinda Keene, assisted in completing the Study. Under their leadership, Mason Tillman was able to complete the Study in a timely manner.

### ***B. Study Purpose***

The purpose of the Study was to determine if minority and women-owned business enterprises (M/WBEs) were underutilized in the award of the State Agencies' prime contracts and subcontracts during the July 1, 2014 to June 30, 2017 study period. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the proportion of available M/WBEs in the relevant market area. If either the available M/WBE prime contractors or the available M/WBE subcontractors are underutilized, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event that is less probable. Thus, the test performed determines if a finding of underutilization is statistically significant.

### ***C. Study Methodology***

Mason Tillman's disparity study methodology is grounded in a thorough legal review. Its constitutionality has been upheld in two federal circuit courts without a legal challenge.<sup>2</sup>

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<sup>1</sup> State Agencies include the offices of the Governor (Executive Department), Lieutenant Governor, Secretary of State, Attorney General, and General Treasurer; the Department of Administration; Department of Behavioral Healthcare, Developmental Disabilities and Hospitals; Department of Business Regulations; Department of Children, Youth and Families; Department of Corrections; Department of Education; Department of Environmental Management; Department of Health; Department of Human Services; Department of Transportation; Department of Revenue; Department of Public Safety; Executive Office of Commerce; Department of Labor and Training; Division of Public Utilities and Carriers; Rhode Island Executive Military Staff; Rhode Island Emergency Management Agency; University of Rhode Island; Rhode Island College; Community College of Rhode Island; and, Office of the Post-Secondary Commissioner.

<sup>2</sup> *Kossman Contr. Co. v. City of Houston*, 128 Fed. Appx. 376 (2005).  
*Midwest Fence Corp. v. United States Dep't of Transp.*, 84 F. Supp. 3d 705 (2015).

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## 1. Legal Framework

The United States Supreme Court ruling in *City of Richmond v. J.A. Croson Co.*<sup>3</sup> (*Croson*) and related case law provide the legal framework for conducting the disparity study. Specifically, *Croson* set the standard by which federal courts review both local and state government minority business enterprise programs. The Court affirmed the longstanding legal precedent that programs employing racial classification would be subject to “strict scrutiny,” which is the highest legal standard. Under *Croson*, government agencies, such as the State of Rhode Island, may adopt race-conscious programs only as a remedy for discrimination identified as statistically significant, and the remedy must impose a minimal burden on unprotected classes. The Court held that an inference of discrimination can be made *prima facie* if the disparity is statistically significant.<sup>4</sup> For this Disparity Study, this analysis was applied to M/WBEs by ethnicity and gender within the three industries.

## 2. Critical Components

Eight critical components were performed for the State Agencies’ Disparity Study:

- Legal review to define the evidentiary standard.
- Review of procurement policies to determine the contracting processes employed during the study period.
- Collection of contract records to determine the extent to which the State Agencies and their prime contractors procured construction, professional services, and goods and services from M/WBEs and non-M/WBEs.
- Identification of the market area in which the State Agencies spent their dollars.
- Availability analysis to identify businesses in the market area that were willing and able to provide construction, professional services, and goods and services procured by the State Agencies and their prime contractors.
- Disparity analysis to determine if a statistically significant underutilization of M/WBEs existed within each of the industries.
- Anecdotal analysis to describe the contemporary experiences of business owners in the market area.
- Recommendations to enhance current business practices and strategies to remedy any identified disparity.

## D. Industries Studied

The analyzed contracts were classified into four industries:

- Construction
- Construction-related Services

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<sup>3</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>4</sup> *Id.*

- Services (including Professional Services)
- Goods, Commodities, and Supplies

**E. Ethnic and Gender Groups Studied**

The data in the Study are disaggregated into nine ethnic and gender groups, which are listed in Table 1.

**Table 1: Business Ethnic and Gender Groups**

Ethnicity and Gender Category	Definition
Black American	Businesses owned by male or female Black Americans
Asian American	Businesses owned by male or female Asian Americans
Hispanic American	Businesses owned by male or female Hispanic Americans
American Indian/Alaskan Native	Businesses owned by male or female American Indians or Alaskan Natives
Portuguese American	Businesses owned by male or female Portuguese Americans
Caucasian Female	Businesses owned by Caucasian females
Non-minority Male-owned Businesses	Businesses owned by Caucasian males and businesses that could not be identified as Portuguese Americans, minority, or female-owned <sup>5</sup>
Minority-owned Businesses	Businesses owned by male or female Black Americans, Asian Americans, Hispanic Americans, American Indians/Alaskan Natives, or Portuguese Americans
Woman-owned Businesses	Businesses owned by females

**F. Prime Contract Data Sources**

The prime contract data (hereinafter referred to as purchase orders) consists of purchase orders issued under master purchase orders and Master Price Agreements (MPAs) extracted from the State Agencies’ financial management systems. The purchase order payments were issued during the July 1, 2014 to June 30, 2017 study period.

<sup>5</sup> See Section II: Prime Contract Data Sources for the methodology employed to identify the ethnicity and gender of the State’s utilized prime contractors.

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Each purchase order was classified into one of the four industries—construction, construction-related services, services (including professional services), and goods, commodities, and supplies. The industry classification assignments were reviewed and approved by the State Agencies. Several steps were taken to determine the ethnicity and gender of each prime contractor.

### **G. Subcontract Data Sources**

The State Agencies did not maintain comprehensive data on the subcontracts awarded by the prime contractors. Consequently, extensive research was undertaken to reconstruct the subcontracts that the prime contractors issued for construction, architecture and engineering services, and professional services. Mason Tillman compiled the subcontract data with assistance from the State Agencies.

State Agencies provided some electronic files containing subcontract award and payment records. Prime contractors were surveyed requesting subcontractors from their records. The subcontract data were extracted from forms submitted by the prime contractor. Subcontract records were also requested directly from the State Agencies’ departments. Twenty-six departments from four agencies were contacted. Nineteen departments provided subcontract records for one or more of their prime contractors. Seven departments did not provide any subcontract records.

### **H. Contract Thresholds**

The State Agencies’ purchase orders awarded in each industry were analyzed at three size thresholds: (1) all purchase orders, (2) informal purchase orders, as defined by the *State of Rhode Island Procurement Regulations*, amended June 20, 2011, and (3) formal purchase orders with the outliers removed (Tables 2 and 3). Outliers are atypical contract amounts that are notably different from the other contract amounts in the dataset. Excluding outliers increases the reliability of the statistical findings.

<b>Industry</b>	<b>Informal Purchase Order Threshold</b>
Construction	\$10,000 and Less
Construction-related Services	\$5,000 and Less
Services	\$5,000 and Less
Goods, Commodities, and Supplies	\$5,000 and Less

**Table 3: Formal Purchase Order Threshold by Industry**

<b>Industry</b>	<b>Formal Purchase Order Threshold</b>
Construction	Between \$10,000 and \$1,120,000
Construction-related Services	Between \$5,000 and \$430,000
Services	Between \$5,000 and \$130,000
Goods, Commodities, and Supplies	Between \$5,000 and \$80,000

## **II. Notable Findings**

### **A. Utilization Analysis**

Mason Tillman documented the State Agencies' utilization of Minority and Woman Business Enterprise (M/WBE) and non-minority male-owned business enterprises by ethnicity, gender, and industry during the July 1, 2014 to June 30, 2017 study period at both the prime contractor and subcontractor levels. The purchase orders were classified into four industries—construction, construction-related services, services, and goods, commodities, and supplies.

#### **1. Prime Contractor Utilization Analysis**

Purchase orders awarded by the State Agencies during the July 1, 2014 to June 30, 2017 study period totaled \$1,674,521,813, with \$917,562,643 for construction, \$201,234,137 for construction-related services, \$336,660,239 for services, and \$219,064,794 for goods, commodities, and supplies. A total of 57,479 purchase orders were analyzed, including 2,913 for construction, 474 for construction-related services, 14,116 for services, and 39,976 for goods, commodities, and supplies.

The utilization analysis was performed for purchase orders in the four industries at three-dollar thresholds: (1) all purchase orders regardless of award amount, (2) all informal purchase orders valued at \$10,000 and less for construction, \$5,000 and less for construction-related services, \$5,000 and less for services, and \$5,000 and less for good, commodities, and supplies, and (3) formal purchase orders, as defined by the *State of Rhode Island Procurement Regulations*, with the formal thresholds defined by the removal of the outliers.

Table 4 presents a summary of prime contractor utilization by industry and percent of dollars awarded by ethnicity and gender.



**Table 4: Prime Contractor Utilization Summary by Industry, Ethnicity, and Gender**

<b>Ethnicity</b>	<b>Construction</b>	<b>Construction-related Services</b>	<b>Services</b>	<b>Goods, Commodities, and Supplies</b>
Black Americans	0.16%	0.02%	0.59%	0.72%
Asian Americans	0.00%	2.76%	0.64%	2.01%
Portuguese Americans	1.12%	0.00%	0.16%	0.06%
Hispanic Americans	0.96%	0.30%	0.87%	0.17%
American Indian/Alaskan Natives	0.02%	0.00%	0.02%	0.01%
Caucasian Females	3.81%	1.87%	7.78%	4.58%
Non-minority Males	93.94%	95.05%	89.95%	92.44%

**2. Subcontractor Utilization Analysis**

The subcontracts awarded by the State Agencies’ prime contractors had to be reconstructed using several research methods because the State Agencies did not maintain comprehensive records. Only the reconstructed construction subcontracts were sufficient to conduct an analysis. There were 858 reconstructed construction subcontracts awarded by the State Agencies’ prime contractors from July 1, 2014 to June 30, 2017. These subcontracts were valued at \$261,738,581. Table 5 presents a summary of construction subcontractor utilization.

**Table 5: Construction Subcontractor Utilization Summary**

<b>Ethnicity</b>	<b>Construction</b>
Black Americans	4.36%
Asian Americans	0.17%
Portuguese Americans	2.98%
Hispanic Americans	0.90%
American Indian/Alaskan Natives	0.17%
Caucasian Females	9.13%
Non-minority Males	82.88%

**B. Market Area Analysis**

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, taken collectively, the case law supports a definition of the market area as the geographical boundaries of the government entity. Given the State Agencies’ jurisdiction, the Study’s market area is determined to be the geographical boundaries of the State of Rhode Island.

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Mason Tillman conducted a cluster analysis to define the number of construction, construction-related services, services, and goods, commodities, and supplies purchase orders that the State Agencies awarded, and the dollars spent by geographic area:

*Construction Purchase Orders:* 2,743, or 94.16%, of construction purchase orders were awarded to market area businesses. Construction purchase orders in the market area accounted for \$812,209,282, or 88.52%, of the total construction purchase order dollars.

*Construction-related Services Purchase Orders:* 425, or 89.66%, of construction-related services purchase orders were awarded to market area businesses. Construction-related services purchase orders in the market area accounted for \$142,100,526, or 70.61%, of the total construction-related services purchase order dollars.

*Services Purchase Orders:* 9,616, or 68.12%, of services purchase orders were awarded to market area businesses. Services purchase orders in the market area accounted for \$188,530,731, or 56.00%, of the total services purchase order dollars.

*Goods, Commodities, and Supplies Purchase Orders:* 22,098, or 55.28%, of goods, commodities, and supplies purchase orders were awarded to market area businesses. Goods, commodities, and supplies purchase orders in the market area accounted for \$66,762,424, or 30.48%, of the total goods, commodities, and supplies purchase order dollars.

### **C. Prime Contract and Subcontract Availability Analysis**

The availability analysis presented the enumeration of willing and able market area businesses by ethnicity, gender, and industry. The capacity of the enumerated businesses was assessed using five methods: (1) review of the State Agencies' purchase order size distribution to identify the capacity needed to perform most of the State Agencies' purchase orders, (2) determination of the largest purchase orders the State Agencies awarded to MBE/WBEs, (3) frequency distribution that defined the median size of purchase orders awarded to both MBE/WBE and non-minority male-owned businesses, (4) threshold analysis that defined the purchase orders that were outliers in order to increase the reliability of the statistical findings, and (5) business capacity analysis that described the socio-economic profile of the available MBE/WBE businesses compared to similarly situated non-minority male-owned businesses.

The findings from the capacity analyses illustrate that most purchase orders that the State Agencies awarded during the study period were relatively small. In addition, MBE/WBEs received some of the largest purchase orders and had a business profile comparable to similarly situated non-minority male-owned businesses. Minority business enterprises account for 13.41% of construction, construction-related services, services, and goods, commodities, and supplies prime contractors, while woman business enterprises account for 21.83% and non-minority male-owned businesses account for 67.44%. Minority businesses enterprises account for 19.52% of construction subcontractors, woman business enterprises account for 21.81%, and non-minority male-owned businesses account for 58.67%.

Table 6 presents prime contractor availability according to ethnicity, gender, and industry. The prime contractor availability analysis is based on the 1,342 willing market area businesses enumerated from four availability sources: State Agencies' contract records, government certification lists, business community meetings, and business association membership lists.

**Table 6: Prime Contractor Availability Analysis**

<b>Ethnicity</b>	<b>Construction</b>	<b>Construction-related Services</b>	<b>Services</b>	<b>Goods, Commodities, and Supplies</b>
Black Americans	8.45%	3.97%	5.50%	2.15%
Asian Americans	0.68%	4.76%	1.10%	0.95%
Portuguese Americans	9.12%	0.00%	1.22%	2.15%
Hispanic Americans	9.46%	3.17%	2.20%	0.48%
American Indians/Alaskan Natives	1.01%	0.79%	0.37%	0.00%
Caucasian Females	12.50%	27.78%	21.39%	14.80%
Non-minority Males	58.78%	59.52%	68.22%	79.47%

Table 7 presents the construction subcontractor availability according to ethnicity and gender. Subcontractor availability was not calculated for services or construction-related services, since the reconstructed subcontracts awarded in these industries were insufficient to perform an analysis.

**Table 7: Subcontractor Availability Analysis**

<b>Ethnicity</b>	<b>Construction</b>
Black Americans	7.12%
Asian Americans	1.49%
Portuguese Americans	4.82%
Hispanic Americans	5.40%
American Indians/Alaskan Natives	0.69%
Caucasian Females	21.81%
Non-minority Males	58.67%

**D. Disparity Analysis**

A purchase order disparity analysis was performed on the prime contracts and subcontracts awarded during the study period. Disparity was found at both the prime contract and subcontract levels for several ethnic and gender groups.

**1. Prime Contracts**

**a) Informal and Formal Construction Prime Contracts**

As indicated in Table 8, disparity was found for Black American, Hispanic American, American Indian/Alaskan Native, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on construction purchase orders valued \$10,000 and under. Disparity was also found for Black American, Portuguese American, Hispanic American, American Indian/Alaskan Native, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on construction purchase orders valued between \$10,000 and \$1,120,000.

**Table 8: Disparity Summary: Construction Prime Purchase Order Dollars  
July 1, 2014 to June 30, 2017**

Ethnicity/Gender	Construction	
	Purchase Orders Valued \$10,000 and Less	Purchase Orders Valued Between \$10,000 and \$1,120,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	----	----
Portuguese Americans	No Disparity	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
American Indian/Alaskan Natives	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with no purchase orders awarded, too few purchase orders awarded, or too few available firms to test statistical significance.

**b) Construction-related Services Purchase Orders**

As indicated in Table 9, disparity was found for Black American, Asian American, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on construction-related services purchase orders valued \$5,000 and less. Disparity was found for Black American, Caucasian female, minority business enterprise, and woman business enterprise

prime contractors on construction-related services purchase orders valued between \$5,000 and \$430,000.

**Table 9: Disparity Summary: Construction-related Services Purchase Order Dollars  
July 1, 2014 to June 30, 2017**

Ethnicity/Gender	Construction-related Services	
	Purchase Orders Valued \$5,000 and Less	Purchase Orders Valued Between \$5,000 and \$430,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	<i>Disparity</i>	No Disparity
Portuguese Americans	----	----
Hispanic Americans	No Disparity	No Disparity
American Indian/Alaskan Natives	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with no purchase orders awarded, too few purchase orders awarded, or too few available firms to test statistical significance.

**c) Services Purchase Orders**

As indicated in Table 10, disparity was found for Black American, Portuguese American, Hispanic American, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on services purchase orders valued \$5,000 and less. Disparity was also found for Black American, Portuguese American, Hispanic American, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on services purchase orders valued between \$5,000 and \$130,000.

**Table 10: Disparity Summary: Services Purchase Order Dollars  
July 1, 2014 to June 30, 2017**

Ethnicity/Gender	Services	
	Purchase Orders Valued \$5,000 and Less	Purchase Orders Valued Between \$5,000 and \$130,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Portuguese Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
American Indian/Alaskan Natives	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with no purchase orders awarded, too few purchase orders awarded, or too few available firms to test statistical significance.

**d) Goods, Commodities, and Supplies Purchase Orders**

As indicated in Table 11, disparity was found for Black American, Portuguese American, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on goods, commodities, and supplies purchase orders valued \$5,000 and less. Disparity was also found for Black American, Portuguese American, Caucasian female, minority business enterprise, and woman business enterprise prime contractors on goods, commodities, and supplies purchase orders valued between \$5,000 and \$80,000.

**Table 11: Disparity Summary: Goods, Commodities, and Supplies Purchase Order Dollars, July 1, 2014 to June 30, 2017**

Ethnicity/Gender	Goods, Commodities, and Supplies	
	Purchase Orders Valued \$5,000 and Under	Purchase Orders Valued Between \$5,000 and \$80,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	----	No Disparity
Portuguese Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	----	----
American Indian/Alaskan Natives	No Disparity	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Woman Business Enterprises	<i>Disparity</i>	<i>Disparity</i>

(----) Denotes an underutilized group with no purchase orders awarded, too few purchase orders awarded, or too few available firms to test statistical significance.

## 2. Subcontracts

As indicated in Table 12, disparity was found for Black American, Asian American, Hispanic American, Caucasian female, minority business enterprise, and woman business enterprise construction subcontractors.

**Table 12: Subcontract Disparity Summary  
July 1, 2014 to June 30, 2017**

Ethnicity / Gender	Construction
Black Americans	Disparity
Asian Americans	Disparity
Portuguese Americans	No Disparity
Hispanic Americans	Disparity
American Indian/Alaskan Natives	No Disparity
Caucasian Females	Disparity
Minority Business Enterprises	Disparity
Woman Business Enterprises	Disparity

***E. Anecdotal Analysis***

The importance of anecdotal evidence in assessing the presence of discrimination in a geographic market area was identified in the landmark *Croson* case.<sup>6</sup> The Court held that a pattern of individual discriminatory acts can explain the statistical disparity findings.<sup>7</sup> However, such acts cannot be used to determine the presence of discrimination in a government’s contracting process. The anecdotal testimony collected from business owners describing their perceptions of barriers in the market area were used to define best management practices to improve M/WBEs’ access to State Agencies’ contracts.

An e-Survey was distributed to the dataset of the 857 available businesses compiled for the statistical analysis. Respondents represented the ethnic and gender distribution of the businesses surveyed. Most of the respondents were Caucasian Americans, representing 57.50% of the businesses that responded. Black Americans were the second largest ethnic group, representing 20.00% of respondents. Male-owned businesses accounted for 52.50% of respondents. Additionally, 52.50% of all respondents had an MBE/WBE certification and 22.50% had a Small Business Enterprise certification.

When describing issues navigating the State’s procurement process, 62.50% of respondents reported insufficient time for submitting bids to the State. When bids were rejected by the State,

<sup>6</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>7</sup> *Id.*



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20.00% of respondents who pursued a debriefing found the meeting with the State to be helpful, while 10.00% of respondents did not find the debriefing meeting to be helpful. Respondents also detailed the types of treatment preferred contractors received. The findings revealed that 40.00% of the respondents believe that preferred contractors receive advance bid and proposal notifications, 42.50% believe the State approves multiple change orders or amendments for preferred contractors, and 55.00% believe the State's bid and proposal requirements favor large businesses.

## **F. Regression Analysis**

The regression analyses of the two outcome variables document disparities that could adversely affect the formation and growth of MBE/WBEs within the construction, construction-related services, services, and goods, commodities, and supplies industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings point to racial and gender discrimination that depressed business ownership and business earnings. Such discrimination is a manifestation of economic conditions in the private sector that impede minorities and Caucasian females' efforts to own, expand, and sustain businesses. It can reasonably be inferred that these private sector conditions are manifested in the current MBE/WBEs' experiences and likely contributed to lower levels of willing and able MBE/WBEs.

It is important to note that there are limitations to using the regression findings in order to assess disparity between the utilization and availability of businesses. No matter how discriminatory the private sector may be, the findings cannot be used as the factual basis for a government-sponsored, race-conscious MBE/WBE program. Therefore, caution must be exercised in the interpretation and application of the regression findings in a disparity study. Nevertheless, the findings can be used to enhance the race-neutral recommendations to eliminate identified statistically significant disparities in the State's use of available MBE/WBEs.

## **G. Recommendations**

The Disparity Study documented a statistical disparity in both the prime contracts and subcontracts the State Agencies awarded during the study period. Race and gender-specific and race and gender-neutral recommendations are offered to remedy the documented statistically significant disparity in the utilization of the available Minority and Women Business Enterprises.

### **1. Race and Gender-Specific Recommendations**

Race and gender-specific requirements should be considered to address the disparity in the award of prime contracts and subcontracts to the available minority and woman-owned businesses.

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### **a. Prime Contract Remedies**

The following remedies were offered to address the disparity in the award of prime contracts:

- Bid discounts on construction contracts.
- Bid discounts on goods, commodities, and supplies contracts.
- Incentive credits for construction-related services contracts.
- Incentive credits for services (including professional services) contracts.

### **b. Subcontract Remedies**

The following remedy was offered to address the disparity in the award of subcontracts:

- MBE/WBE subcontract goals on construction contracts.
- Goal attainment at bid opening.

### **c. Implementation of MBE/WBE Utilization Plan**

An MBE/WBE Subcontracting Utilization Plan should be submitted with the bid and opened with the bid. The plan should stipulate the eligible MBE/WBEs listed to meet the contract MBE/WBE subcontract goals and it should provide evidence the listed MBE/WBE shall perform a commercially useful function. A prime contractor who fails to meet the subcontract goal must submit good faith effort documentation with the bid to quantify the effort made to meet the subcontracting goal. If the good faith effort documentation is not submitted with the bid or the documentation is not approved, the submittal should be considered non-responsive. If no responsive bids are received, the solicitation should be cancelled and re-advertised.

## **2. Enhancements to the State's MBE/WBE Program**

In 2014, Executive Order 13-05 authorized the implementation of the Office of Diversity, Equity and Opportunity (ODEO), a division within the Department of Administration. The State Equal Opportunity Office, the Human Resources Outreach & Diversity Office, the Minority Business Enterprise Compliance Office, and the Supplier Diversity Office (SDO) are under the auspices of the ODEO. The following recommendations are offered to enhance the State Agencies' efforts within this division.

- Augment ODEO Program staff.
- Require agency-specific MBE/WBE Liaison Officer.
- Verify MBE/WBE commercially useful function.
- Revamp the master pricing agreement procurement method.
- Require MBE/WBE subcontract goals on master pricing agreements.
- Implement a Sheltered Market Program.
- Establish formal MBE/WBE substitution provisions.
- Implement MBE/WBE tracking and monitoring standards.

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- Establish an MBE/WBE quarterly utilization review.
  - Implement prompt payment provisions.
  - Establish dispute resolution standards.
  - Impose penalties for non-compliance.
  - Develop an MBE/WBE Program Manual.
  - Implement statewide MBE/WBE Program training.
  - Enhance MBE/WBE Program outreach strategies.

### **3. Race and Gender-Neutral Recommendations**

Administrative recommendations are offered to address the barriers that market area MBE/WBEs and other small businesses encounter when trying to do business with the State.

#### **a. Pre-Award Recommendations**

- Implement an owner-controlled insurance program.
- Expand solicitation notification criteria.
- Establish Listserv to communicate with certified businesses.
- Expand the selection committee for Architectural, Engineering, and Consultant Services.

#### **b. Post-Award Recommendations**

- Pay mobilization to subcontractors.
- Enhance data management system.

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## ***Appendix A: Structure of the Final Report***

The Disparity Study findings are presented in 11 chapters, as briefly described below.

- *Chapter 1: Legal Review* presents the case law applicable to business affirmative action programs and the required methodology based on the relevant law.
- *Chapter 2: Procurement Practices and Procedures Analysis* summarizes the State Agencies' procurement policies and practices.
- *Chapter 3: Prime Contractor Utilization Analysis* presents the distribution of prime contractor purchase orders by industry, ethnicity, and gender.
- *Chapter 4: Subcontractor Utilization Analysis* presents the distribution of subcontracts by industry, ethnicity, and gender.
- *Chapter 5: Market Area Analysis* presents the legal basis for determining the geographic market area and defines the State Agencies' market area.
- *Chapter 6: Prime Contractor and Subcontractor Availability Analysis* presents the distribution of available businesses in the State Agencies' market area.
- *Chapter 7: Prime Contract Disparity Analysis* presents prime contractor utilization as compared to prime contractor availability by industry, ethnicity, and gender, and evaluates the statistical significance of any underutilization.
- *Chapter 8: Subcontract Disparity Analysis* presents subcontractor utilization compared to subcontractor availability by industry, ethnicity, and gender, and evaluates the statistical significance of any underutilization.
- *Chapter 9: Regression Analysis* examined two outcome variables to determine whether the State Agencies are passively participating in ethnic and gender discrimination.
- *Chapter 10: Anecdotal Analysis* presents the business community's perceptions of barriers and exemplary practices encountered in contracting or attempting to contract with the State Agencies.
- *Chapter 11: Recommendations* presents race and gender-conscious and race and gender-neutral remedies to enhance the State Agencies' procurement policies and procedures, as well as its contracting with M/WBEs and other small businesses.