

| | | | |
|--|--|---|-----------|
| 1. Report No. TX-96/980-2 | 2. Government Accession No. | 3. Recipient's Catalog No. | |
| 4. Title and Subtitle STATE AND NATIONAL REVIEW OF DISADVANTAGED BUSINESS ENTERPRISE LEGISLATION, PROGRAMS, AND AVAILABILITY-DISPARITY STUDIES | | 5. Report Date November 1993 | |
| | | 6. Performing Organization Code | |
| 7. Author(s) Ray Marshall, Naomi Ledé, J. Jorge Anchondo, and Jon Wainwright | | 8. Performing Organization Report No. Research Report 980-2 | |
| 9. Performing Organization Name and Address Center for Transportation Research The University of Texas at Austin Austin, Texas 78712-1075 | | 10. Work Unit No. (TRAIS) | |
| | | 11. Contract or Grant No. Research Study 3-14-92/3-980 | |
| | | 13. Type of Report and Period Covered Interim | |
| 12. Sponsoring Agency Name and Address Texas Department of Transportation Research and Technology Transfer Office P.O. Box 5080 Austin, TX 78763-5080 | | 14. Sponsoring Agency Code | |
| | | 15. Supplementary Notes Study conducted in cooperation with the Texas Department of Transportation Research study title: "Disadvantaged Business Enterprise (DBE) Capacity Study" | |
| 16. Abstract <p>This study was undertaken at the request of the Texas Department of Transportation in response to its obligations under Senate Bill 352, 72nd Texas State Legislature (Texas Revised Statutes, Article 6669C) to conduct a fact-finding study in support of a state-funds contracting and procurement program for businesses owned by minorities and women.</p> <p>We have had joint responsibility for this Study. To assist in carrying out the assignment, we recruited a number of economic, financial, business, legal, and policy experts from both the public and private sectors. This draft report is a consolidation of three separate research reports prepared under our supervision. Part One was prepared by Mr. Clayton E. Curtis, Staff Research Assistant. He was assisted by Ms. Janine Berg, Staff Research Assistant. Part Two was prepared by Dr. James E. Jarrett, Director of Research, Center for Legal and Regulatory Studies. He was assisted by Ms. Kathy Halliman, Staff Research Assistant. Part Three was prepared by Dr. Peter Balash, Research Fellow, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin.</p> <p>This review combines three reports which, taken together, provide the Texas Department of Transportation the means to appreciate the local, state, and national contexts in which the current Project 7-980 has proceeded. The first part determines the extent of utilization efforts and legislation currently in place across Texas, at local and regional levels of government. Part Two details the state-funds DBE programs in existence nationwide and also includes an exploratory analysis focusing on DBE efforts aimed at persons with disabilities. Part three surveys the efforts in other states to undertake an availability/disparity study, discussing relevant issues in detail.</p> | | | |
| 17. Key Words Disadvantaged businesses, federal and state DBE programs, Senate Bill No. 352, | | 18. Distribution Statement No restrictions. This document is available to the public through the National Technical Information Service, Springfield, Virginia 22161. | |
| 19. Security Classif. (of this report) Unclassified | 20. Security Classif. (of this page) Unclassified | 21. No. of Pages 86 | 22. Price |

**STATE AND NATIONAL REVIEW OF DISADVANTAGED BUSINESS
ENTERPRISE LEGISLATION, PROGRAMS, AND AVAILABILITY-DISPARITY
STUDIES**

by
Ray Marshall,
Naomi Ledé,
J. Jorge Anchondo,
and
Jon Wainwright

Research Report 980-2

Research Project 3-14-92/3-980
Disadvantaged Business Enterprise (DBE) Capacity Study

conducted for the

Texas Department of Transportation

by the

LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS
CENTER FOR TRANSPORTATION RESEARCH
GRADUATE SCHOOL OF BUSINESS

THE UNIVERSITY OF TEXAS AT AUSTIN

November 1993

This page replaces an intentionally blank page in the original.

-- CTR Library Digitization Team

PREFACE

This report, entitled "State and National Review of Disadvantaged Business Enterprise Legislation, Programs, and Availability-Disparity Studies," is the second report of the seven-volume "Disadvantaged Business Enterprise Capacity Study." The study was undertaken at the request of the Texas Department of Transportation in response to its obligations under Senate Bill 352, 72nd Texas State Legislature (Texas Revised Statutes, Article 6669C) to conduct a fact-finding study in support of a state-funds contracting and procurement program for businesses owned by minorities and women.

We have had joint responsibility for this Study. To assist in carrying out the assignment, we recruited a number of economic, financial, business, legal, and policy experts from both the public and private sectors. This draft report is a consolidation of three separate research reports prepared under our supervision. Part One was prepared by Mr. Clayton E. Curtis, Staff Research Assistant. He was assisted by Ms. Janine Berg, Staff Research Assistant. Part Two was prepared by Dr. James E. Jarrett, Director of Research, Center for Legal and Regulatory Studies. He was assisted by Ms. Kathy Halliman, Staff Research Assistant. Part Three was prepared by Dr. Peter Balash, Research Fellow, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin.

This review combines three reports which, taken together, provide the Texas Department of Transportation the means to appreciate the local, state, and national contexts in which the current Project 7-980 has proceeded. The first part determines the extent of utilization efforts and legislation currently in place across Texas, at local and regional levels of government. Part Two details the state-funds DBE programs in existence nationwide and also includes an exploratory analysis focusing on DBE efforts aimed at persons with disabilities. Part three surveys the efforts in other states to undertake an availability/disparity study, discussing relevant issues in detail.

Ray Marshall, Co-Principal Investigator, Project 7-980, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin

Naomi Ledé, Co-Principal Investigator, Project 7-980, Center for Transportation Training and Research, Texas Southern University

J. Jorge Anchondo, Co-Principal Investigator, Project 7-980, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin

Jon Wainwright, Research Director, Project 7-980, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin

Prepared in cooperation with the Texas Department of Transportation.

DISCLAIMER

The contents of this report reflect the views of the co-principal investigators, the research director, and the authors of this volume, who are solely responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Texas Department of Transportation. This report should be regarded strictly as preliminary and/or exploratory.

TABLE OF CONTENTS

| | |
|---|-----|
| PREFACE | iii |
| INTRODUCTION..... | 1 |
| PART ONE: THE SURVEY OF TEXAS LOCAL GOVERNMENT | |
| DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAMS | 3 |
| Scope of Work | 3 |
| Research Methods..... | 3 |
| Results | 4 |
| Cities..... | 7 |
| Counties..... | 15 |
| School Districts | 17 |
| Water Districts..... | 18 |
| Miscellaneous | 19 |
| Conclusion | 20 |
| References..... | 22 |
| PART TWO: NATIONWIDE SURVEY OF STATE-OPERATED DBE | |
| PROGRAMS (WITH AN EXPLORATORY ANALYSIS REGARDING | |
| BUSINESSES OWNED BY PERSONS WITH DISABILITIES)..... | 23 |
| Summary of Findings and Recommendations..... | 23 |
| Scope of Analysis..... | 24 |
| Purchasing Policies Recognizing Individuals With Disabilities | 24 |
| Overall Survey Results..... | 25 |
| State Profiles | 30 |
| Systematic Data On Businesses Owned By, And Employment | |
| Characteristics Of, Persons with Disabilities..... | 40 |
| Training And Other Types Of Assistance For Current Or Future | |
| Entrepreneurs with Disabilities..... | 43 |
| Texas Businesses Owned By Individuals With Disabilities | 43 |
| First Steps on Outreach | 44 |
| Summary | 45 |
| References..... | 46 |
| PART THREE: A REVIEW OF STATE-OPERATED | |
| AVAILABILITY/DISPARITY STUDIES..... | 47 |
| Legal analysis..... | 47 |
| Historical analysis..... | 48 |
| Availability | 49 |
| Federal Census Data..... | 50 |
| Contractor/Vendor Lists..... | 51 |
| Utilization..... | 52 |
| Disparity | 54 |
| Disparity ratios..... | 54 |
| Other Disparity Measures..... | 55 |
| Anecdotal Evidence..... | 56 |
| Other Statistical Experiments..... | 58 |
| Analysis of Policies and Procedures..... | 59 |

| | |
|----------------------------|----|
| Race Neutral Policies..... | 60 |
| Observations | 60 |
| References..... | 68 |
| APPENDIX A..... | 69 |
| APPENDIX B..... | 74 |

INTRODUCTION

The three following chapters represent the completion of substantial components of tasks two and six - a national review of Disadvantaged Business Enterprise (DBE) legislation, programs, and disparity studies, as well as a survey of Texas local governments' DBE policies. Covering distinct if related subject areas, these reports present a wide spectrum of policies and proscriptions, ranging from ignorance of DBE issues outside major urban areas in Texas, timidity upon the part of state and city procurement policies in the aftermath of *Croson*, and a sometimes confused if rather standard approach to disparity studies.

The first part, entitled "Results from the Government Agency Survey," presents the findings of a extensive survey of local government agencies in Texas. This survey was undertaken to gather information on DBE legislation (such as local ordinances) and programs, to collect minority- and women-owned business utilization reports, and to assess the extent of the demand for the services of DBE's among these public agencies.

868 public entities were contacted, including 192 cities, 252 counties, 70 school districts, and 356 water districts. The survey and telephone follow-up generated a 75% response rate. Of these 868 agencies, 32 or 3.7% had DBE programs in place. Eighteen (2.1%) of the 32 were local, non-federal-aid programs. The remaining fourteen entities operated programs that received joint funding from the federal government, usually the United States Department of Transportation. Twenty cities had programs, but only eleven passed legislation pertaining to non-federal aid projects. Moreover, only the seven largest cities in Texas - Houston, Dallas, San Antonio, El Paso, Austin, Fort Worth, and Beaumont applied specific goals to the program. These cities generally have larger goals assigned to DBE procurement than the normal, federal benchmark of 10%. However, outside of these seven cities, along with some school districts, counties and scattered other authorities in contiguous areas, no enforceable goals programs operate in Texas for non-federal-aid contracts. That is, the most notable result of this survey is the general lack of local and regional public sector DBE programs in Texas.

The second part, "Nationwide Survey of State-Operated DBE Programs (with an Exploratory Analysis Regarding Businesses Owned by Persons with Disabilities)"

collected basic information about DBE programs nationwide while focusing on particular aspects of these programs for the disabled entrepreneur. All 50 states and Guam were sent questionnaires, 39 of which were returned - 76.4% response rate. Twenty-three of the 39 had in place some type of DBE or M/WBE program. Missouri, though, administers only a partial program since it excludes state highway construction from goal setting. Further, six of the 23 states have operated voluntary programs since the promulgation of *Croson*.- that is, goals are not enforceable. One of the six, Michigan, lost a court challenge and is loath to take the necessary steps to implement a valid program. The reluctance of state officials to run afoul of the Court is amply demonstrated by the fact that only three states - California, and Washington and perhaps Mississippi- have dared to set overall M/WBE goals over the 10% benchmark (Mississippi's statute states 20% *or less*, casting doubt upon the vigor of its efforts). Of course, no overall percentage goal for state procurement can withstand a court challenge unless the state has taken steps to constitutionally justify its program. This report notes as well that seven states attempt to include disabled entrepreneurs in the definition of a DBE, and suggests a variety of outreach methods for TxDOT to undertake in order to contact members of this increasingly recognized community.

The third part, "A Review of State-Operated Availability/Disparity Studies," analyzes this form of investigation that has become increasingly common since *Croson*. Only selected statewide studies are reviewed. Municipal, county, school district, and other locally-sponsored studies were omitted in order to maximize the usefulness of the report to the TxDOT. A fairly standard structure of legal analysis, availability, utilization, and disparity analyses, and anecdotal evidence collection obscures widely varying research methods, within both these categories and also other components of a complete, "*Croson*-proofed" study. This review describes the studies, critiques the methods employed, and discusses methodological issues as they relate to questions of discrimination and employment. Although most studies at least adequately handle availability, utilization, and disparity issues, all avoid attempting to demonstrate the dynamic effects of social and economic forces upon the relatively narrow topic of government procurement. The risk thus grows that the state may implement a program that both will be immediately challenged and will fail to accomplish its long-run purpose.

PART ONE: THE SURVEY OF TEXAS LOCAL GOVERNMENT DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAMS

SCOPE OF WORK

This chapter presents the results of a combination mail and telephone survey effort designed to systematically collect information on government sponsored contracting and procurement preference programs for minority-owned and women-owned business enterprises in the State of Texas. Included in the scope of the survey were counties, cities, water districts, and school districts. The survey gathered information on 1) contracting and procurement preference program legislation and 2) minority and female business utilization reports. The information collected helps us to assess the absolute and relative demand for DBE's by other public agencies in Texas.

RESEARCH METHODS

One-hundred-ninety city officials, 254 counties, 70 school districts, and 356 water districts in Texas were contacted regarding their policies, if any, toward DBE's (See Appendix A). The official was first sent a questionnaire by mail along with a self-addressed, stamped envelope. After two weeks, those agencies that had not yet responded were called and interviewed by phone.

All counties were contacted. The eight most populated cities per highway district were contacted. With regard to special districts, all of the water districts were contacted and the ten school districts that had the most students enrolled in each of the seven research regions were contacted.

There were a few exceptions to the method described above. The study team responsible for highway districts 13, 15, and 16 assembled their sample in a slightly different fashion. The most populated city in each county was contacted plus three of the bigger cities in the surrounding San Antonio area. With regard to special districts, two water districts, five school districts, seven colleges, five military installations, and several other various entities such as San Antonio's VIA Metropolitan Transit were contacted.

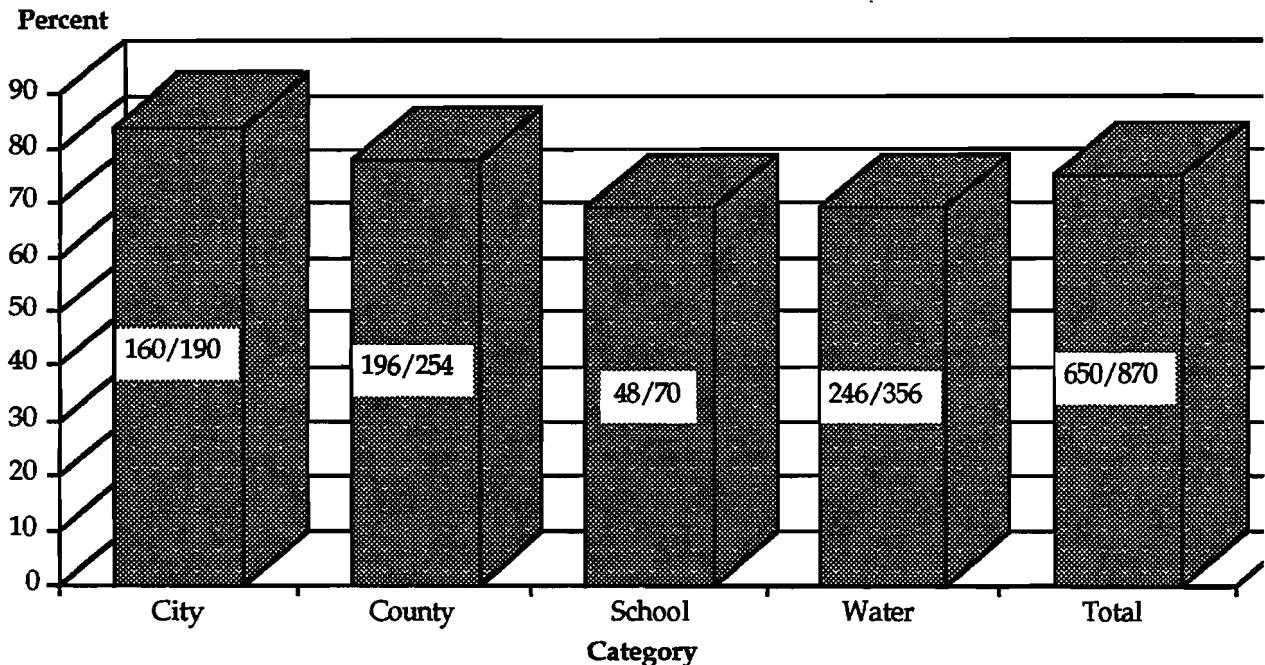
Since there are over 600 water districts in highway districts 11, 12, 17, and 20, a sample of 95 water districts in the Houston area was selected. In attempts to include districts that were most likely to have a DBE program, the sample was composed of water districts that had the largest assessed valuation, bond outstanding, general fund revenue, and general fund taxes.

The actual questions asked are contained in the survey instrument (See Appendix A in this report).

RESULTS

1. Out of the 870 government agencies that were contacted or sent questionnaires, information was collected from 650 of them (75%).
2. Information was received from 84% (160/190) of the city officials, 77% (196/254) of the counties, 69% (48/70) of the school districts, and 73% (246/356) of the water districts. (See Figure 1.1).

FIGURE 1.1: Government Agency Questionnaire Response Rate



3. Thirty-two government agencies in Texas that have DBE programs were identified (See DBE Summary below in section 6 and Table 1). However, twelve of these programs were instituted because of federal contract compliance and do not apply to non-federally funded contracts or purchases.

4. The following nine government agencies reported that they are currently working on developing a DBE program: Hays County, Commanche County, City of Presidio, El Paso County Water Authority, Conroe ISD, Katy ISD, City of Cleburne, City of Grand Prairie, and the City of Mineral Wells.
5. Several cities that did not have a DBE program nonetheless compiled a DBE vendor list. Many cities in North Texas are members of the North Central Texas Regional Certification Agency (NCTRCA), located in Arlington. The NCTRCA continually provides members with updated vendor lists and information for certified DBE's. In turn, all DBE's are sent notices for bids in their respective commodity/service categories that are let from member governments. Also, DBE's that participate have the advantage of only having to be certified from one agency, the NCTRCA, and not from several governments with which they are interested in doing business.
6. Each of the 32 DBE programs that were identified in the government agency survey is described below. See Table 1.1 for a brief breakdown of the DBE programs found in Texas.

TABLE 1.1. DBE Programs in Texas at a Glance

| Government Agency | Date Passed | Type of Legislation | Goals/ Percents | Disparity/ Capacity Study | Program Legally Challenged | Compiles DBE Vendor List | Requires Certification of DBE's |
|--------------------------|--------------------|--------------------------------------|---|----------------------------------|-----------------------------------|---------------------------------|--|
| Beaumont ISD | 3/85 | Policy Statement | 10% DBE ¹ | No | No | Yes | No; but have application |
| Brazoria County | 10/90 | Policy Statement (DOT ⁶) | 10% DBE | No | No | Yes | Yes |
| City of Amarillo | Prior to 1988 | Resolution (DOT) | 12% DBE | No | No | No | Yes |
| City of Austin | 8/89 | Ordinance | 10% MBE ² 5% WBE ³ | In Progress | No | Yes | Yes |
| City of Beaumont | Between 89-91 | Administrative Regulations | 10% - construction 20% - professional services | No | No | Yes | Yes |
| City of Bonham | 9/92 | Resolution (TDHCA ⁷) | 10% DBE | No | No | No | No |

| Table 1.1, cont'd | | | | | | | |
|-----------------------|---------------|---------------------------|---|---------------------------|----------------------------|----------------------------|---------------------------------|
| Government Agency | Date Passed | Type of Legislation | Goals/ Percents | Disparity/ Capacity Study | Program Legally Challenged | Compiles DBE Vendor List | Requires Certification of DBE's |
| City of Dallas | 10/92 | Resolution | 0-23% depending on type of DBE | Yes | No | NCTRCA ⁸ Member | Yes |
| City of El Paso | 2/92 | Ordinance | 20% DBE | No | No | Yes | Optional |
| City of Fort Worth | 7/86 | Resolution | 15% DBE | In Progress | No | NCTRCA Member | Yes |
| City of Galveston | 1/92 | Policy Statement (DOT) | 5% DBE | No | No | Yes | Yes |
| City of Garland | 6/93 | Administrative Regulation | None | No | No | Yes | No; use questionnaire |
| City of Houston | 2/88 | Two Ordinances | 14-16% DBE | Yes | No | Yes | Yes |
| City of Irving | Between 91-92 | Administrative Regulation | None | No | No | No | No |
| City of Lubbock | 12/80 | Resolution | None | No | No | Yes | Yes |
| City of McAllen | Prior to 1980 | Resolution (DOT) | 13% | No | No | No | Yes |
| City of Plano | 11/89 | Resolution | None | No | No | NCTRCA Member | Yes |
| City of Port Arthur | 8/92 | Resolution (DOT) | 10% DBE | No | No | Yes | Yes |
| City of San Antonio | 4/93 | Ordinance | 5% DBE | Yes | No | Yes | Yes |
| City of Sherman | 9/92 | Resolution (TDHCA) | 10% DBE | No | No | No | No |
| City of Sweetwater | Prior to 1988 | Resolution (DOT) | 15% DBE | No | No | Yes | Yes |
| City of Tyler | ?/92 | Policy Statement (DOT) | 10% DBE | No | No | Yes | Yes |
| City of Wichita Falls | 3/79 | Policy Statement (DOT) | 10% MBE 2% WBE | No | No | Yes | No |
| Dallas County | 8/86 | Executive Order | None | No | No | Yes | No |
| Dallas ISD | 4/88 | Board Resolution | 25% DBE | No | No | NCTRCA Member | Yes |
| Houston ISD | ?/88 | Board Resolution | 15% DBE professional services; 20% DBE overall | No | No | Yes | Yes |

| Table 1.1, cont'd | | | | | | | |
|------------------------------------|-------------|---|---|----------------------------------|----------------------------|--------------------------|-------------------------------------|
| Government Agency | Date Passed | Type of Legislation | Goals/ Percents | Disparity/ Capacity Study | Program Legally Challenged | Compiles DBE Vendor List | Requires Certification of DBE's |
| Lower Colorado River Authority | 4/92 | Administrative Regulation (Federal Asst.) | 40% SBE ⁴ (2% is for SDBE ⁵) | No | No | No | No; uses 4pg. questionnaire instead |
| Orange County | 10/90 | Resolution | None | No | No | No | No |
| Tarrant County | 8/86 | City Council Policy | 15% DBE | No | No | NCTRCA Member | Yes |
| Travis County | 3/93 | Interim Resolution | No goals or preference | No | No | No | Yes |
| University of Houston/Victoria | 6/92 | Administrative Regulation | No goals | No | No | Yes | Yes |
| University of Texas at San Antonio | ?/92 | Administrative Regulation | 20% DBE | References City of San Antonio's | No | Yes | Yes |
| VIA Metropolitan Transit | 3/90 | Ordinance & Executive Order | 29.8% DBE | Yes | No | Yes | Yes |

Notes:

¹ Disadvantaged Business Enterprise

² Minority Business Enterprise

³ Woman-owned Business Enterprise

⁴ Small Business Enterprise

⁵ Small Disadvantaged Business Enterprise

⁶ U.S. Department of Transportation

⁷ Texas Department of Housing & Community Affairs

⁸ North Central Texas Regional Certification Agency

Cities

Twenty cities were found to have legislation that pertains to DBE's. Nine of these apply only to federally-funded projects.

A. *City of Amarillo.* Amarillo has a resolution pertaining to Disadvantaged Business Enterprises in cases where Federal Department of Transportation (DOT) money is used to fund or partially fund the contract or purchase. A DBE goal of 12% of total dollars has been set. The program only applies when federal money is used. The City of Amarillo reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;

- they do compile a DBE vendor list of about 100-200 businesses;
- certification is mandatory.

B. City of Austin. The City of Austin has an ordinance that pertains to DBE's that was passed in August of 1989. Their DBE program establishes a Minority Business Enterprise (MBE) goal of 10% and a Woman Business Enterprise (WBE) goal of 5%. The City of Austin reported that:

- no one has legally challenged their DBE program;
- they are in the process of conducting a disparity/availability study;
- they have compiled a 500 plus DBE vendor list;
- they do require certification of DBE's.

C. City of Beaumont. The City of Beaumont has administrative regulations that pertain to DBE's that was passed two to five years ago. Their DBE program establishes a goal of 10% for construction contracts over \$50,000 and 20% for professional services over \$25,000. The program also stipulates that the city will arrange solicitations, time for presentations of bids and proposals, quantities, specifications, and delivery of schedules to facilitate the participation of DBE's. The City of Beaumont reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list;
- they require minority and women owned businesses to be certified.

D. City of Bonham. The City of Bonham has a resolution that pertains to DBE's that was passed in September of 1992, because the city receives Home Program funds from the Texas Department of Housing and Community Affairs. However, Bonham does not have a program when only city-funds are used. The resolution states:

...[t]he City [of Bonham] shall have a ten percent (10%) minority participation goal; meaning that at least ten percent of the program dollars will be earmarked for minority and women-owned businesses.

The City of Bonham reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do not compile a DBE vendor list;
- they do not require DBE's to be certified.

E. *City of Dallas*. Section 106.001 (c) 2 of the Texas Civil Practice and Remedies Code mandates that an availability study be done before new goals are established and the Supreme Court decision in *City of Richmond v. J.A. Croson* mandates that a disparity study be done to show that specific groups have been underutilized. Because of these two mandates the City of Dallas conducted an availability/disparity study in 1992. This study resulted in a resolution passed October 14, 1992. Table 1.2 below details the goals that have been set.

TABLE 1.2: Percentage Goals for DBE's by Work Category: Dallas

| | Construction | Professional Services | Other Services | Goods |
|------------------|--------------|-----------------------|----------------|-------|
| African American | 23 | 14 | 13 | 8 |
| Hispanic | 9 | 7 | N/A | 3 |
| Asian | N/A | 3 | 1 | N/A |
| Native American | N/A | N/A | N/A | N/A |
| White Female | N/A | 12 | 5 | 5 |

SOURCE: City of Dallas Office of Minority Business Opportunity, 1992.

The City of Dallas reported that:

- they are a NCTRCA member
- they do require certification of DBE's
- no one has legally challenged their DBE program.

F. *City of El Paso.* El Paso has an ordinance, first passed in 1985 (Notice P.O. 41013) that pertains to Disadvantaged Business Enterprises that was last revised in February of 1992. Their DBE program establishes a 20% DBE goal in the areas of construction, supplies, and services. On January 28, 1992 an ordinance was passed that established a system for tracking the number of city-let contracts, bids, and purchases that are made with several categories of DBE's. The City of El Paso reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/ availability study;
- they do compile a DBE vendor list of about 250-300 businesses;
- certification is optional.

G. *City of Fort Worth.* Fort Worth had a resolution passed July 8, 1986 aimed at increasing the participation of DBE's in the city's contracting. The city stated in a policy proposal in 1990:

In comparing the MBE and WBE participation on City-let, City-funded projects . . . it became readily apparent that the level of participation was extremely low and in some areas non-existent. [I]n order to address this passive discrimination, the City Council adopted C.P. 123, instituting a program aimed at increasing the level of MBE and WBE participation in all City funded procurement activities. The participation by MBE and WBE firms has increased each year the program has been in existence.

However, because of *Croson*, the city repealed C.P. 123 in March, 1990. The city choose to replace the resolution with a narrowly tailored DBE program until completion of an availability/dispairity study which is underway. The program now in place establishes an overall goal of 15% of the total dollar value of city's procurement activities for DBE's. Fort Worth reported that:

- no one has legally challenged their DBE program;
- they are a member of NCTRCA;
- they require DBE's to be certified.

H. City of Galveston. The City of Galveston has a policy statement based on a DOT contract that pertains to Disadvantaged Business Enterprises. It establishes an overall goal of 5% of their contracting. The legislation states that the city “will insure” equal contracting opportunities, will make information available to DBE’s on procurements through newspapers, minority organizations, and direct contact. The city gives special assistance to DBE’s, especially in preparing bid specification, giving instructions on procurement policies and bid requirements. DBE’s are provided assistance in overcoming barriers such as the inability to obtain bonding, financing or technical matters. Also, the City of Galveston encourages joint ventures between DBE’s and majority and minority firms bidding. The City of Galveston reported that:

- they do compile a DBE directory or approximately 100 firms;
- they do require certification of DBE’s;
- no one has legally challenged their DBE program.

I. City of Garland. Garland has an administrative regulation pertaining to DBE’s that was passed June 1, 1993. It does not set goals or give preferences, but requires, for purchases greater than \$1,000, that the buyer obtain at least one quote from (1) a local business, (2) a historically underutilized business, and (3) a business of the department’s discretion. Garland reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they compile a DBE vendor list of approximately 500 firms;
- instead of certification, they require DBE’s to complete a *DBE Questionnaire* and a *Bidder’s List Application*.

J. City of Houston. Houston has two ordinances that pertain to Disadvantaged Business Enterprises. Ordinance No. 89-226 relates to federally-funded contracts and No. 84-1309 relates to minority and women-owned business enterprises in general in the areas of goods and services procurement, construction, and professional services. The program establishes a contracting goal of 14-16% depending on the type of contract. Houston reported that:

- no one has legally challenged their DBE program;
- they have conducted a disparity/availability utilization study;
- they compile a large DBE vendor list composed of 1278 vendors as of February 1993;
- they require DBE's to be certified.

K. City of Irving. Irving has an administrative regulation that encourages DBE's to bid on city-let contracts by recruiting DBE's for their vendor list, publishing and distributing information on how to do business with the city, and making bid specifications available to the broadest range of businesses. The program, however, sets no goals and gives no preferences. Irving reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do not compile a DBE vendor list;
- they do not require DBE's to be certified.

L. City of Lubbock. Lubbock has a resolution that pertains to Disadvantaged Business Enterprises that was passed in 1982. The resolution, however, establishes no goals and gives no preferences. The program calls for the purchasing department to compile and maintain a DBE vendor list and to "actively pursue ways and means to facilitate participation of minority and small businesses by informing them on solicitations, quantities, specifications and bonding requirements." Lubbock reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list of approximately 450 vendors;
- they require minority and women owned businesses to be certified.

M. City of McAllen. McAllen has a resolution that pertains to DBE's that was passed prior to 1980. The resolution establishes a 13% DBE contracting goal. The program applies only to DOT-funded projects; it does not apply to city-let contracts or purchases. McAllen reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they compile a small DBE vendor list;
- they require minority and women owned businesses to be certified.

N. *City of Plano*. Plano passed a resolution November 30, 1989 pertaining to DBE's. Their program establishes no goal and lends no preferences. The city will make sure that DBE's "have knowledge of and access and equal opportunity to compete for goods and services required by the City of Plano." They also support the development of DBE's "through outreach programs that will allow them to participate equitably in the City's economic growth and development." Plano reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they are a NCTRCA member;
- they do require DBE's to be certified.

O. *City of Port Arthur*. Port Arthur has a resolution first passed in 1982 that established a DBE contracting goal of 10%. In 1992, this goal was raised to 13%. The program, however, only applies to DOT-funded projects. Port Arthur reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they compile a DBE vendor list composed of 71 vendors;
- they require DBE's to be certified.

P. *City of San Antonio*. San Antonio has passed Ordinance #51954 in 1980 (MBELDEF, 1988, p.12) and last revised it on April 8, 1993 allowing for a DBE program that establishes percentage goals that depend on the category of the vendor (See Table 1.3 below).

TABLE 1.3: Percentage Goals for DBE's by Work Category: San Antonio

| Type of Work | Type of DBE | Percent Utilization |
|-----------------------|-------------|---------------------|
| Construction | MBE | 24.0 |
| | WBE | 14.0 |
| | SBE | 40.0 |
| Procurement | MBE | 20.0 |
| | WBE | 10.6 |
| | SBE | 40.0 |
| Professional Services | MBE | 27.3 |
| | WBE | 12.5 |
| | SBE | 40.0 |

SOURCE: City of San Antonio, 1992.

San Antonio also reported that:

- no one has legally challenged this program;
- they have conducted a disparity/availability study;
- they compile a 1,200 plus DBE vendor list ;
- certification is required.

Q. City of Sherman. Sherman receives Home Program funds from the Texas Department of Housing and Community Affairs. This contract requires the city to earmark at least 10% of these funds for DBE's. The city does not have a DBE program when only city-funds are used. Sherman reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do not compile a DBE vendor list;
- they do not require DBE's to be certified.

R. City of Sweetwater. Sweetwater has legislation that sets a 15% goal for Disadvantaged Business Enterprise participation in contracts that are federally

funded. The program does not apply to city-funded contracts however. The City of Sweetwater reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list;
- they do require certification of DBE's.

S. City of Tyler. Tyler has a contract with the Federal Aviation Administration (FAA) which calls for a 10% DBE participation goal. The program does not apply when federal money is not used. Tyler reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list;
- they do require DBE's to be certified.

T. City of Wichita Falls. Wichita Falls has a resolution based on DOT funds that they receive. It sets a 10% MBE goal and a 2% WBE goal. The resolution does not apply to contracts when federal money is not involved. Wichita Falls reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list;
- they do not require DBE's to be certified.

Counties

Five counties were found to have legislation that pertains to DBE's. One of these (Brazoria County's) only applies to federally-funded projects.

A. Brazoria County. Since Brazoria County is a recipient of funding from the DOT, a DBE contract goal of 10% was established in October of 1990 to comply with DOT standards. Brazoria County reported that:

- no one has legally challenged their DBE program;

- they have not conducted a disparity/availability study;
- they compile a DBE vendor list;
- they require DBE's to be certified.

B. Dallas County. Dallas County has an executive order dated August 25, 1986, that does not establish any goals and gives no preference to DBE's. To encourage participation in the county's procurement efforts they have established a database of vendors, tried to increase communication between M/WBEs, suppliers, professionals, and contractors, and advertised bid submittals in newspapers. The county also tries to get at least 1/3 of the vendor solicitations for goods, equipment, and services costing less than \$5,000 to come from DBE's. Dallas County reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do compile a DBE vendor list with more than 500 vendors;
- they do require DBE's to be certified.

C. Orange County. Orange County passed a resolution in October of 1990 pertaining to DBE's. The program establishes no goal and lends no preferences. It states, "Orange County purchasing will aggressively aid and promote qualified minority, female owned, and/or small businesses in whatever ways allowed by current bid laws and policies."

For example, small businesses and DBE's are to be included on bid lists and solicited when they are a potential source. Also, the county encourages the breaking-up of contracts and purchases to permit greater small and DBE participation. Orange County reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do not compile a DBE vendor list;
- they do not require DBE's to be certified.

D. Tarrant County. Tarrant County has a city council policy dated August of 1986, that establishes a 15% overall DBE procurement goal. The county is in the process of conducting a disparity/availability study. Tarrant County reported that:

- no one has legally challenged their DBE program;
- they are a NCTRCA member;
- they do require DBE's to be certified.

E. Travis County. Travis County has an "interim" resolution that pertains to Disadvantaged Business Enterprises that was passed March 1993. Their DBE program does not establish percentage goals nor does it give contracting preference to DBE's. Travis County's interim purchasing rules and procedures states: It will be the policy of Travis County that economically disadvantaged and/or historically under-utilized firms are provided the maximum opportunity to participate in the performance of County contracts and subcontracts.

Travis County reported that:

- no one has legally challenged their DBE program;
- they have conducted a disparity/ availability utilization study but reported that its findings are not valid and cannot be used;
- they do not compile a DBE vendor list; they use the City of Austin's and the Capital Metropolitan Transportation Authority's vendor lists;
- they require DBE's to be certified, using the City of Austin's or the Capital Metropolitan Transportation Authority's certification form.

School Districts

Three school districts were found to have legislation that pertains to DBE's.

A. Beaumont Independent School District. Beaumont ISD has a statement of policy passed in March, 1985 that establishes a 10% contracting goal with DBE's. The district works with local and minority business council to obtain membership listings and they attend seminars to identify DBE's. Beaumont ISD reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;

- they compile a DBE vendor list composed of more than 50 vendors;
- they do not require DBE's to be certified but use another application process to determine DBE status.

B. Dallas Independent School District. DISD has a "Minority/Woman Business Enterprise Contracting and Purchasing Program" which was established by the Board of Trustees on April 28, 1988. For all construction and purchasing over \$25,000 the school district sets a 25% DBE participation goal. DISD also compiles a MWBE Annual Report which lists the MWBE's that have been awarded contracts with the district each year. Between September 1, 1990 and August 31, 1991, 23.5% of the overall expenditures were spent with DBE's (\$12,420,203/\$52,791,328). DISD reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they are a NCTRCA member;
- they do require DBE's to be certified.

C. Houston Independent School District. HISD has a board resolution passed in 1988 that establishes goals for DBE contracting and purchasing participation. It establishes a 15% goal in professional services and a 20% overall DBE participation goal. Bi-yearly, the school district presents a report to the board of education detailing the cumulative statistics of DBE participation broken down by several relevant categories. Houston ISD reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they compile a DBE vendor list composed of more than 1000 vendors;
- they require DBE's to be certified.

Water Districts

Of the 246 water districts contacted there were no independent (non-federally based) programs identified. Water districts most commonly told us that they followed the policies of the Texas Water Commission in the area of HUB

procurement and had little or no legislative authority. The Lower Colorado River Authority was the only water district that had any policy/legislation at all that pertains to DBE's.

The Lower Colorado River Authority (LCRA). The LCRA has an administrative regulation based on a federal contract that pertains to Disadvantaged Business Enterprises. It was last revised in April of 1992. Their DBE program establishes a "Small Business" goal of 40%; included in that 40% is a 2% goal for "Small Disadvantaged Businesses." The LCRA reported that:

- no one has legally challenged their DBE program;
- they have not conducted a disparity/availability study;
- they do not compile a DBE vendor list;
- they estimate that if they did have a DBE vendor list it would include 50 - 100 businesses;
- they do not require minority and women owned businesses to be certified, but rather to complete a four-page information questionnaire.

Miscellaneous

A. University of Houston-Victoria has administrative regulations that passed in June, 1992 of which we have a copy. No percentage goals are established nor has anyone legally challenged the program. They have not conducted a disparity/availability utilization study. They do compile a DBE vendor list of 50-100 vendors. They do require certification of the minority and women-owned businesses that do business with them.

B. University of Texas at San Antonio has administrative regulations passed less than two years ago allowing for a DBE program that establishes a 20% goal for contracting with DBE's. No one has legally challenged the program. They also compile a 500 plus DBE vendor list. Certification is required of DBE's.

C. VIA Metropolitan Transit has a resolution and an executive order that relates to DBE's. This legislation was passed March, 1980. It establishes a goal for contracting with DBE's at 29.8%. No one has legally challenged the program. Between 1991 and 1992, VIA conducted a disparity/ availability utilization study. VIA also compiles a 25,000 business list of DBE vendors. Certification is required.

To get an idea of the location and spread of DBE programs in Texas, the frequency of DBE programs in each highway district was examined. In doing this it is important to note the distinction between a local, independent program and the federally-based program. Table 1.4 gives the number of DBE programs, both local and federal, in each of the 24 highway districts in Texas.

As expected, most of the DBE programs in Texas lie in the highway districts that have the largest cities. For example, almost one-half (8/18) of all independent DBE programs lie in highway districts 12 and 18, which include Dallas and Houston.

TABLE 1.4: DBE Program (Local and Federal) Frequency by Texas Highway District

| Highway District | City | | County | | School District | | Water District | | Total | |
|------------------|-------|---------|--------|---------|-----------------|---------|----------------|---------|-------|---------|
| | Local | Federal | Local | Federal | Local | Federal | Local | Federal | Local | Federal |
| 1 | | 2 | | | | | | | | 2 |
| 2 | 1 | | 1 | | | | | | 2 | |
| 3 | | 1 | | | | | | | | 1 |
| 4 | | 1 | | | | | | | | 1 |
| 5 | 1 | | | | | | | | 1 | |
| 6 | | | | | | | | | | |
| 7 | | | | | | | | | | |
| 8 | | 1 | | | | | | | | 1 |
| 9 | | | | | | | | | | |
| 10 | | 1 | | | | | | | | 1 |
| 11 | | | | | | | | | | |
| 12 | 1 | 1 | | 1 | 1 | | | | 2 | 2 |
| 13 | | | | | | | | | | |
| 14 | 1 | | 1 | | | | | 1 | 2 | 1 |
| 15 | 1 | | | | | | | | 1 | |
| 16 | | | | | | | | | | |
| 17 | | | | | | | | | | |
| 18 | 4 | | 1 | | 1 | | | | 6 | |
| 19 | | | | | | | | | | |
| 20 | 1 | 1 | 1 | | 1 | | | | 3 | 1 |
| 21 | | 1 | | | | | | | | 1 |
| 23 | | | | | | | | | | |
| 24 | 1 | | | | | | | | 1 | |
| 25 | | | | | | | | | | |

CONCLUSION

The present study conducted a survey of 650 of the largest cities, all counties, and selected school districts and water districts in Texas. The survey revealed that there is very little legislation regarding Disadvantaged Business Enterprises in Texas at these levels of local and regional government. There were only 32 government entities that had legislation regarding DBE's. Many of these were due to federal

contract compliance alone and did not apply to the government's locally-funded contracts and purchases. Indeed, many of the representatives from governments without pertinent legislation whom we contacted told us they did not even know what a DBE or Historically Underutilized Business (HUB) was.

Of the 160 large cities responding to our survey, only 20, or slightly less than 13%, had any type of DBE legislation or program. Extrapolating this figure to the entire universe of large cities included in the survey (190), we estimate there are approximately 23 such programs operating in larger cities in Texas. Of the 20 programs identified in our survey, almost half (9/20) exist strictly due to federal contract compliance requirements.

Of the 196 county governments responding to our survey, only 5, or less than 3 percent, reported some type of DBE legislation or program. In contrast to large city sponsored programs however, 4 of the 5 programs found were locally initiated rather than being initiated in response to federal contract compliance requirements. Based on these results, we estimate that a total of only 6 county-sponsored DBE programs exist in the state.

Of the 48 large ISD's contacted in our survey, only 3 (slightly more than 6%) reported any type of DBE legislation or program. All three programs identified were locally, rather than federally, initiated. Based on these results, we estimate that of the 70 ISD's surveyed (the ten largest from each of the seven study regions), a total of only programs exist. If we assume that the smaller ISD's have programs at the same rate as the larger ones (which, for reasons given below, is unlikely), we could extrapolate these results further to estimate a *maximum* of 65 ISD programs currently operating in the state, with the actual number probably being much lower, perhaps in the 10-25 range.¹

It is important to keep in mind that the cities and school districts contacted are the largest in Texas, and therefore, we believe², the most likely to have legislation pertaining to DBE's. Given this, and given the dearth of programs and legislation found among even the larger city governments and ISD's, it is likely that the smaller governments that were not contacted have only very few such programs or legislation.

Moreover, if any of the smaller city governments in Texas actually do have DBE programs, it is possible that in about half of the cases the effort will be due to federal contract compliance rather than to that government's independent efforts to

increase DBE participation in procurement and contracting. On the other hand, given that federal funds flowing to entities such as counties and ISD's—as opposed to cities—is relatively more limited, to the extent that DBE programs actually *do* exist in these smaller governments, they are likely to be locally-initiated.

Several governments have legislation which is very limited, having no goals or preferences and taking no active steps to increase DBE participation. Some of these government agencies just have a policy statement or a short paragraph generally stating that minority and women-owned firms will be given the maximum opportunity to compete for contracts and purchases.

It is also suspected that several these entities at one time probably had more active DBE legislation but because of the *Croson* decision it had to be narrowed or repealed. The historical information to confirm this was not systematically collected for this report; the questionnaire only addressed the government's current policy.

However, a few examples are available for discussion. As mentioned above, the City of Fort Worth had to repeal their program until they meet the *Croson* requirements. Another example is Travis County, which had a program that had DBE contracting/purchasing goals but was repealed and replaced with a very limited "interim" resolution that does not set any goals. The City of Abilene reported to us that they do not currently have any DBE legislation or programs. However, they passed legislation in 1984 regarding minority procurement (City of Abilene, Resolution 12-1984) (MBELDEF, 1988, p.12).

Overall, the information collected from the government agency survey indicates that very few governments in Texas are making affirmative efforts to increase the participation of DBE's in their contracting and purchasing. It shows that there is a general lack of interest and attention to this matter at the local level, perhaps due to a lack of knowledge and understanding of minority and women's issues in business.

REFERENCES

- Gibson, Jr., L. Tucker and Clay Robison. 1993. *Government and Politics in the Lone Star State: Theory and Practice*. Prentice Hall, Englewood Cliffs, N.J.
- Minority Business Enterprise Legal Defense and Education Fund (MBELDEF), January 1988, "Report on the Minority Business Enterprise Programs of State and Local Governments," Washington, D.C.

**PART TWO: NATIONWIDE SURVEY OF STATE-OPERATED DBE PROGRAMS
(WITH AN EXPLORATORY ANALYSIS REGARDING BUSINESSES OWNED BY
PERSONS WITH DISABILITIES)**

SUMMARY OF FINDINGS AND RECOMMENDATIONS

There is ample precedent that businesses owned by persons with disabilities could participate in TxDOT's state procurements. Opportunities for disabled entrepreneurs currently, or will soon, exist in the following state departments of transportation: California, Connecticut, Illinois, Maryland, Michigan, Minnesota, and North Carolina. In addition, firms owned by persons with disabilities are participating in the federal DBE programs of state departments of transportation in Florida, Montana, New York, and Wisconsin. In Texas, no jurisdictions were identified which enable disabled-owned firms to qualify under their MBE/WBE programs. Likewise, in a very limited nationwide search, no local government jurisdictions could be located which allowed participation. A number of state governments are providing training and/or meaningful financial assistance to encourage the development of well-run firms owned by persons with disabilities. Based on the information collected, it is recommended that TxDOT:

- Enable businesses owned by persons with disabilities to participate in state procurements;
- Set a target of no less than 2 percent, and no more than 4 percent, for non-construction procurements;
- Include businesses owned by persons with disabilities in all current outreach projects and activities being conducted by TxDOT and its contractors; and
- Undertake a review of current minority training activities to determine if changes, in either content or the delivery and presentation, are needed to accommodate persons with disabilities.

Two alternatives should be considered on state funded construction procurements. First, TxDOT could establish a goal of 2 percent or less for disabled-owned firms. According to nationwide data for all types of construction, 3.8 percent of non-minority male firms are owned by persons with disabilities. Second, a more passive alternative would be to defer establishment of a goal for the next biennium,

and then reconsider the issue after disabled-owned construction firms have been identified through outreach efforts.

No changes are recommended in TxDOT procurements under the statewide program with the Texas Industries for the Blind and Handicapped (TIBH).

If TxDOT adopts the above recommendations, the Department would be in the forefront, along with a small number of other states. TxDOT would be a leader in opening procurement opportunities to persons who have yet to participate fully in this state's economic mainstream.

SCOPE OF ANALYSIS

During this phase of the DBE study, the main priority was placed on searching for information about minority procurement programs and about businesses owned by persons with disabilities. Several different searches were conducted. By far, the most resources were devoted to locating state and local government agencies, inside and outside Texas, with targeted goals or specific purchasing practices which provide opportunities for disabled entrepreneurs. Lesser amounts of attention were devoted to finding (1) previously compiled information on businesses owned by people with disabilities; (2) entrepreneurial training and other types of assistance for current or hopeful owners of businesses who have disabilities; and (3) Texas businesses owned by individuals with disabilities, particularly businesses capable of providing services and goods to TxDOT.

PURCHASING POLICIES RECOGNIZING INDIVIDUALS WITH DISABILITIES

Early in the exploratory phase, staff concentrated on following up leads provided by staff of the Governor's Committee on People with Disabilities and The Institute for Rehabilitation and Research in Houston. Those leads eventually led to the identification of two states, Michigan and California, as having minority procurement goals which included businesses owned by individuals with disabilities.

In conjunction with the very targeted search process, a 50-state mail survey was conducted. Directors of offices with responsibility for disadvantaged purchasing policies and small business assistance received a brief questionnaire in late November 1992. The questionnaire is presented at the end of this section. Responses were received from 39 states, with generally one response per state. Despite at least

three staff contacts via telephone or facsimile, responses were not received from: Alaska; Arizona; Colorado; Georgia; Indiana; New Hampshire; North Dakota; Tennessee; Vermont; or Virginia. Follow-up calls were made to those state governments where there is a targeted goal for disabled-owned businesses or where the information on the returned survey needed clarification.

General results will be presented initially, and then more detailed information will be given in a series of state profiles.

Overall Survey Results

The following states and territories responded that they did not have currently a statute pertaining to minority- or women-owned or historically-underutilized business procurement:

| | | |
|----------|----------|---------------|
| Alabama | Kentucky | New Mexico |
| Delaware | Maine | South Dakota |
| Hawaii | Michigan | Utah |
| Idaho | Montana | West Virginia |
| Guam | Nebraska | Wyoming |
| Kansas | Nevada | |

None of these states ever had a program, except for Michigan. In response to question 12 on the survey, regarding activities undertaken to involve minority- and women-owned businesses, officials reported (to the extent possible, language from the survey respondent was used) the following:

- Alabama: Certifies minority and women owned businesses; established the Governor's Advisory Board on Minority Business Enterprise; bidders registration booklet; regional "Plan Rooms" in which copies of all bid and solicitation notices may be viewed. Variety of activities are described in a brochure.
- Delaware: Minority Trade Fair, education programs through the Department of Transportation.
- Guam: Allows contracts to be awarded without competition to contractors that are a nonprofit corporation employing sheltered or handicapped workers.

- Hawaii: Program not needed since population and business ownership demographics show more than 65% non-white, especially Asian American and Pacific Islanders, including Native Hawaiians.
- Idaho: Department of Transportation directory; executive order continuing the Idaho Council for Purchases from Severely Disabled People (in rehabilitation facilities).
- Kansas: Office of Minority Business advocates and encourages state agencies to purchase goods and services from MBE, WBEs.
- Kentucky: State has voluntary program which promotes use of minority firms. Conduct workshops on doing business with state government; meetings with buyers to keep them aware of sub-contracting opportunities for contracts over \$250,000; publish a minority business directory annually.
- Maine: We participate, when funds allow, in seminars for small and disadvantaged businesses, to offer support in applying for certification and successfully bidding.
- Montana: We compile a DBE Directory of all Montana certified DBE, DWBE, and WBE firms. This Directory is mailed semi-annually, with monthly updates. Persons with a disability are looked at on a case-by-case basis according to guidelines in 49 CFR Part 23. We currently have only one firm certified which falls in this category.
- Nebraska: Omaha Chamber of Commerce has a DBE list.
- Nevada: Directory of DBE Vendors and Purchasing Executives.
- New Mexico: Technical procurement assistance to aforementioned businesses through a Cooperative Agreement with the Department of Defense's Logistics Agency.
- South Dakota: Awards are made to lowest bid.
- Utah: We are active in outreach programs to assist these groups in understanding how to effectively compete for contracts. On small (informal) purchases we encourage agencies to solicit quotations from these groups as well.
- West Virginia: Two percent preference on West Virginia businesses, not designated for MBE/WBEs.
- Wyoming: Department of Transportation has DBE directory.

States which indicated they currently have some type of MBE/WBE procurement program included:

| | | | |
|-------------------------|---------------|----------------|----------------|
| Arkansas | Maryland | New York | Rhode Island |
| California ¹ | Massachusetts | North Carolina | South Carolina |
| Connecticut | Minnesota | Ohio | Washington |
| Florida | Mississippi | Oklahoma | Wisconsin |
| Illinois | Missouri | Oregon | |
| Iowa | New Jersey | Pennsylvania | |

Additionally, Louisiana officials indicated they would be issuing for comment proposed rules on DBE procurement in the near future, and that, barring legal delays, their program would become effective July 1, 1993.

Unless otherwise noted, the following material is based on state-funded transportation procurements or in some cases, statewide (non-federal) procurement provisions. All information was reported by officials in each of the respective states. However, not all the data could be verified, and some information was submitted by non-DOT offices. Caution, therefore, should be exercised with regard to the numerical goal data presented below. In contrast, all data has been double-checked in the individual state narrative profiles to be presented later.

Question 2 pertained to numerical goals, and the large majority of states have established such goals. These include:

| | |
|--------------|---|
| Arkansas: | Annual procurement goal of 10%. |
| California: | On contracts greater than \$10,000 there are goals of 15% MBE, 5% WBE, and 3% DVBE (Disabled Veteran Business Enterprise). |
| Connecticut: | 25% of state funded projects for small business and 25% of 25% for minority, women, and disabled firms. State DOT goals are identical. |
| Florida: | State-funded program has been suspended for more than two years because of court challenge; Based upon a disparity analysis, goals may be established in 1993. Two firms owned by persons with disabilities have been certified under the federal DBE guidelines: a trucking company and an attorney. |
| Illinois: | Five percent minorities (African-American, Hispanic, Asian American, Indian); Five percent women; Two percent persons with disabilities. |
| Iowa: | Targeted small business program has 10% goal for minority and women businesses. |

| | |
|----------------------------|---|
| Louisiana: | Goals will be established each year. |
| Maryland: | Overall goal of 10% in number of contracts and dollar value. |
| Massachusetts ² | |
| Minnesota: | No goals. |
| Mississippi: | 20% or less. |
| Missouri: | On state building construction contracts exceeding \$100,000, in the St. Louis and Kansas City metro areas, there is a goal of 10% MBE/WBE(s). Outside those two metro areas the goal is 5% MBE/WBE(s). On state highway construction there are no MBE or WBE goals, although the Department of Transportation allows joint ventures and promotes a mentor-protege arrangement. |
| New Jersey: | Procurements: Female 3%; Minority Male 5%; Construction: Female 4%; Minority Male 10%. |
| New York: | Varies substantially agency by agency with some contract-specific goals; state DOT goals will be set in 1993. |
| North Carolina: | State highway construction: 10% MBE, 5% WBE on voluntary basis. |
| Ohio: | Construction: 5%; Goods and Services: 15%; MBE only--no WBE goals; Ohio Department of Transportation has mandatory 7% set-aside on every state project. |
| Oklahoma ³ | |
| Oregon: | No goals. |
| Pennsylvania: | No goals on goods or services. State funded-construction "minimum participation levels" of 8% MBE, 2% WBE. |
| Rhode Island: | 10% of total procurement activity. |
| South Carolina: | Varies agency by agency and changes annually. |
| Washington: | A combined goal of 16% is used by State Department of Transportation. Goals are set by class of contract: (1) Construction/Public Works: Minorities 10%; Women 6%; (2) Architect/Engineering: Minorities 10%; Women 6%; (3) Purchased Goods/Services: Minorities 8%; Women 4%; (4) Other Consultants: Minorities 10%; Women 4%. |
| Wisconsin: | 5% minority. |

A more detailed review of the other survey questions and responses is provided below.

On the third question, 20 of the 24 states responding said they require certification of disadvantaged businesses or have some type of qualifying procedure.

On the fourth question, every state with a minority procurement program said they have a vendor list or directory.

Responses to question five, regarding explicit provisions for businesses owned by a person with a disability, are outlined in more detail later. Overall, at least the following states have some type of explicit provision involving state procurements with the transportation department: California, Illinois, Maryland, Michigan, Minnesota, and North Carolina. Connecticut is currently developing rules to enable disabled-owned firms to participate.

Seven states responded that they permit a disabled-owned business to apply for certification under the general category of disadvantaged business or socially and economically disadvantaged business. Most states indicated they used the SBA criteria for socially and economically disadvantaged businesses on federal projects. Caution must be exercised on this question, however, as it appears that some state officials may have responded with regard to the federal DBE guidelines.

Numerous reasons were given by state officials regarding why businesses owned by persons with disabilities are not participating in the state's procurement process. Officials from eight states said such firms were not permitted under current state law. Officials in three states said no firms had asked to be certified. Two state officials responded that no disabled-owned firms had yet met their purchasing and contracting standards. Officials in two states didn't know of any disabled-owned firms. Officials in six states said this was the first time such participation had ever been raised with them. And officials in three states indicated they would consider adding disabled-owned firms to their social procurement program.

Few responses were obtained regarding local governments or private firms which allow disabled-firms to participate or which might be considered exemplary. In fact, only three private firms were mentioned: Proctor and Gamble, Ford, and General Motors. A number of local governments, or local government consortia, were identified by state officials. To the extent possible, these jurisdictions and organizations were contacted by phone. None currently has a provision for participation by disabled-owned businesses.

There was considerable interest among the state officials in learning more about current procurement policies in other jurisdictions. A majority of the respondents are interested in finding out about programs elsewhere. All but six of the states wanted a tabulation of the survey results. Thirty-one of the 39 states

wanted a summary of recommendations presented to TxDOT, and 29 of 39 states wanted the summary of recommendations pertaining to disabled-owned business enterprises. During the course of seeking information by telephone, approximately 15 additional individuals from state and local governments and non-profit associations also asked to receive the results.

State Profiles

During the course of compiling and verifying information from numerous telephone conversations and the mail survey, it became clear that a number of states' efforts should be described in more detail. These are presented primarily to illustrate the diversity of initiatives throughout the country and to offer possible activities which could be adapted to the particular needs of Texas and TxDOT. Profiles are presented on California, Connecticut, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Wisconsin.

California. The State of California has established the following participation goals for all state contracts greater than \$10,000:

15% MBE

5% WBE

3% DVBE (Disabled Veteran Business Enterprise).

On federal projects the current goal is 20% DBE. The Disabled Veteran Business Enterprise provision has been in effect since mid-1991. Approximately 300 firms have been certified. The majority are service firms, with smaller numbers of firms in construction and commodities. Also represented are data processing firms, consultant engineers, design and drafting firms, printing and publishing firms, advertising and public relations firms, and miscellaneous services such as meeting planning, financial planning, landscaping, and training.

The Office of Small and Minority Business (OSMB) offers free monthly workshops in Sacramento on state programs available for small, minority, women, and disabled veteran business enterprises. OSMB certifies DVBEs as well. The program is restricted to individuals with military service connected disabilities.

Applicants must submit an award of entitlement from the Department of Defense or the Department of Veterans Affairs which certifies a minimum of 10 percent disability. Data on awards to DVBEs is being compiled currently for the OSMB annual report. Anecdotal information from a staff member of OSMB suggests that numerous DVBEs have been successful in securing contracts.

Connecticut. The State of Connecticut has a numerical goal of 25% for small businesses. One quarter of that goal ($.25 \times .25 = .0625$ or 6.25%) is allocated to set asides for women and minority firms. These set asides apply to all state procurements, including both construction and non-construction contracts of the State's DOT. All set aside contracts are limited to an amount no more than 10 percent above the price which could be anticipated in general bidding, based on staff analysis prior to going to bid.

The Connecticut Legislature has mandated that disabled-owned businesses be included under the minority numerical goal. The proposed regulations have been submitted to a legislative oversight body, and it is anticipated that the effective date of implementation will be Fall 1993. The definition of disability conforms to that in the Americans with Disability Act.

No disabled-owned firms have been certified under the DOT's DBE provisions. One inquiry has been received. On a statewide basis, one firm owned by a person with a disability has been certified to date, although that was under the guidelines for small businesses.

Illinois. The State of Illinois amended its Minority Business Act in 1991 to enable persons with disabilities to participate in state-funded procurements. The goal for businesses owned by persons with disabilities (the Illinois acronym is PBEs) is 2 percent of all non-construction procurements. The construction exclusion was required because the Illinois Department of Transportation (IDOT) follows the federal DBE provisions for all construction, even that which is funded solely by state revenues. As a result, a goal for PBEs could not be established on construction contracts. Verification of an individual's disability is made by the Illinois Department of Rehabilitation. Fewer than 50 firms have been certified, although the provision only has been in effect since January 1992. Two outreach workshops have been held for disabled entrepreneurs and would-be entrepreneurs interested in

procurements from state agencies, not just the Illinois Department of Transportation. Approximately 100 firms and individuals attended, but an Illinois state official said many of those in attendance had not yet established their firms.

Illinois DOT officials confirmed that the current goals are 5% MBE, 5% WBE, and 2% PBE. Because the PBE goal became operational during the middle of fiscal year 1992, the real goal was effectively 1%. During that time, 18 different non-construction (operations budget in the language of the Illinois DOT) contracts were awarded to PBEs. At least six different PBEs participated. These included a number in contractual services, repair and maintenance, and building and ground maintenance. No information is yet available about FY 1993 PBE contracts. A DOT staff person said there was little additional work involved in adding the PBE designation, mainly just a reformatting of several forms and minor changes to their reports.

On a statewide level, one official noted that the State of Illinois is authorized to extend bid preferences for MBEs, WBEs, and PBEs. However, these preferences have not been used to date due to intense opposition from the small business community. Instead, officials have chosen to simplify the procurements as much as possible and to focus on planning for a variety of new techniques such as mentoring, joint ventures between certified and non-certified firms, and contract financing alternatives for certified firms. One state official said preferences would not achieve much, because minority firms frequently gave bids 15 to 20 percent higher than the winning bid because of their inability to compete with mass purchasing techniques of non-certified firms.

Maryland. This state's MBE program on state-funded construction projects began in 1978. The current goal on state-funded projects is 10%, the same as on federally-funded projects. Currently, there are between 11 and 49 disabled-owned businesses qualified to participate in state-funded procurements. The Department certifies according to the federal guidelines on socially and economically disadvantaged firms. The definition of disability is based upon Maryland statutes. An official with the Maryland Department of Transportation said that he was aware of two or three disabled-owned that definitely had won contracts from the department.

Michigan. Since March 1989, Michigan's Department of Transportation has had a voluntary program only. Their earlier program had been challenged by the Michigan Road Builders Association, and the U.S. Supreme Court affirmed a 6th Circuit Court of Appeals ruling shortly after the Croson decision. Because of the state's fiscal condition, nearly all state transportation funds are being used as match for federal funds. Because of the very limited construction being undertaken with state funds, a disparity study has not been viewed as a wise use of resources.

As all executive branch agencies in Michigan, the Department of Transportation is subject to Public Act 112, The Handicapper Business Opportunity Act, which establishes a goal of three percent of state procurements to be awarded to Handicapper Owned Businesses (HBOs). The three percent goal has not been challenged legally. Michigan procurement procedures specify that all contracts in excess of \$10,000 other than construction, be awarded by the Michigan Department of Management and Budget. As a result, MDOT lets only those contracts which are less than \$10,000.

Nine HBOs have been certified by MDOT. These include a full-service landscaping firm, two excavating firms, a janitorial supply firm, a construction (buildings) firm, a manufacturing assembly firm, a computer consulting and data processing firm, and a truck hauling company. At least the landscaping firm has been awarded a contract, although that occurred because of its status as a disadvantaged business enterprise on a federally-funded project.

On a statewide basis, 65 Handicapper Business Organizations have been certified as of November 1992. Of these, there are numerous computer and technology-oriented firms, a number of excavation firms, several construction companies, and a variety of other firms such as business supplies and architectural services.

For purposes of certification, a handicap is defined as a determinable physical or mental disability of an individual or the history of a disability which may result from disease, injury, congenital condition of birth, or functional disorder (Sec. 2, Para. (d), P.A. 112 of 1988). As part of the certification process, HBOs must provide the number of employees in their firm and affirm that more than half of their employees are Michigan residents.

According to one state official, no statewide disparity study is likely to be conducted anytime soon. In the most recent legislative session, a bill was enacted

which would provide a 15 percent preference on state procurements for all types of small businesses within Michigan. The Governor vetoed the bill, but is likely to sign a similar bill once certain changes are incorporated.

Minnesota. A series of specialized procurement programs exist in the State of Minnesota. This information is abstracted from Kruger (1991).

Small Businesses In General: There is a statutory requirement that in each fiscal year small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing, construction, consultant, professional, and technical services. The definition of small is described in a set of rules. Size standards vary by industry. The lowest size standard is \$1 million in annual gross sales, averaged over the last three years. For some industries, a firm can have as much as \$26 million in annual gross sales and still be considered small for purposes of the program. The number of employees is not a factor in determining eligibility.

Targeted Group Businesses: These are small businesses which are majority owned and operated by women, persons with a disability, and specific minorities. The Commissioner of Administration must attempt to assure that for each category of goods or services purchased by the State of Minnesota, the percentage of purchasing from each type of targeted group business is proportional to the representation of that targeted group business among all businesses in that purchasing category. To secure proportional utilization of targeted firms, the following procedures may be used:

- The award to a certified targeted group business of up to a six percent preference in the amount bid for specified goods and services over the lowest responsible bid from another vendor.
- Designation of specific purchases for award only to targeted group businesses, if it is determined that at least three targeted group businesses are likely to bid.
- Establishment, as a condition of awarding a contract, of goals that require a prime contractor to subcontract a portion of the contract to targeted group businesses.

To qualify for the targeted group procurement program, the business must file a certification form and supporting documentation with the Materials

Management Division of the Minnesota Department of Administration. Once certified as a target group business, a business becomes eligible to participate in small business procurement programs of the University of Minnesota and the Minnesota Department of Transportation without further certification. A state-certified target business also may participate without further certification in small business procurement programs of the Twin Cities area Metropolitan Council, Regional Transit Board, Metropolitan Transit Commission, Metropolitan Waste Control Commission, Metropolitan Airports Commission, Metropolitan Mosquito Control District, and the Metropolitan Sports Facilities Commission. Preferences used by these entities are the same as outlined above.

Subcontracting With Targeted Group Businesses: For all contracts, goals may be set that require a prime contractor to subcontract a portion of the contract to targeted group businesses. At least 75 percent of the value of subcontracts must be performed by the business to which the subcontract is awarded or by another targeted group business. Minnesota statutes also authorize the Department of Administration to establish financial incentives for prime contractors who exceed goals for use of targeted group subcontractors and financial penalties for prime contractors who fail to meet the goals. Bid documents will specify whether the incentive rule applies for the project being bid. A complex formula for setting incentives and penalties is established in the rule.

Limitations on Program Participation: To reduce the dependency of a business on state awards for a major part of its annual revenues, limitations have been set on eligibility for the targeted group procurement program. Factors include the percentage of gross revenues that is attained through preference or set-aside awards, the number of years the business has participated in the program, and the proportionate share of the market captured by the business.

Department of Transportation: A separate statute established a targeted group procurement program for construction contracts awarded by the Minnesota Department of Transportation. The definitions of businesses and the allowable actions (six percent preference, set-asides, subcontracting, financial incentives and penalties, setting time and other eligibility requirements) are identical to the state program.

Additional Information: Currently, there are approximately 600 certified firms in the targeted group procurement program. Fourteen, or slightly more than 2

percent are disabled-owned businesses. According to a Minnesota state official, the Department of Administration has defined a disabled-owned business as one owned by a person with "substantial physical disabilities." The official noted that the State is currently being challenged in court on the exclusion of persons with other than "substantial physical disabilities."

The State has created a Small Business Procurement Advisory Council which, among its functions, conducts reviews of denied applications and businesses which become ineligible. The Council may recommend that the business be decertified, that it be reinstated, or that the matter be referred as a contested case under the state Administrative Procedure Act. In all cases, the Council's role is advisory.

New Jersey. For the past 18 months, the State of New Jersey has been implementing a state-funded construction program. The current targets for construction are 10% minority male and 4% female. In the first year of operation, both of those targets were achieved. Procurements other than construction are made outside the Department of Transportation. Those targets currently are: 7% small businesses in general, 3% female, and 5% minority male in urban areas. These are set-asides.

According to a state DOT official, the state-funded construction program was redesigned after the Croson decision. Two changes were made. First, goals were replaced by targets. Secondly, the standard of proof was changed from good faith to reasonable effort. These changes together with adoption of procedures which are very similar to those used on federally-funded contracts, solicitation of contractors' input on proposed changes, and an increase in construction spending are the primary reasons why there have been few serious objections raised to the program. At the end of February 1993, a disparity study was released by The New Jersey Governor's Commission on Discrimination in Public Works Procurement and Construction Contracts. It is not anticipated that the report will alter significantly the construction program, although it may change the procedures and targets for state-funded procurements.

Businesses owned by persons with disabilities are not currently eligible to participate in state-funded procurements. Discussion has taken place about their eligibility status but no decision has yet been made.

New York. New York State's DOT minority procurement program has been in a voluntary program status since June 1990 when the goals were challenged in court. A statewide disparity study was completed in late 1992. An initial set of recommendations were expected to be made to the Commissioner of Transportation in February 1993. It is unknown when the goals will become effective.

The State of New York does not allow socially and economically disadvantaged firms to participate in state-funded construction and other state procurement projects. State-funded procurements are restricted solely to women- and minority-owned firms.

In the DBE program for federally-funded projects, New York allows for socially and economically disadvantaged firms to participate, provided they can prove discrimination. Three firms owned by persons with disabilities are certified currently among the 700 DBE firms. (All firms are involved in heavy construction.) One of the three firms had qualified under the SBA's 8A provision, and two firms applied directly for certification to the Department of Transportation. Both firms were originally denied certification. Both appealed, and subsequently, were certified. All three firms have received construction contracts. New York officials would not release additional information.

North Carolina. Since September 1991, North Carolina's Department of Transportation (NC DOT) has been operating with voluntary goals of 10 percent MBE and 5 percent WBE (Anglo) on state highway construction contracts. Under a 1987 gubernatorial executive order (No. 77), the current goal for goods and services from handicapped firms is four percent. That applies on a statewide basis and to goods and services purchased with state funds by the Department of Transportation. According to two state officials, however, enforcement of the four percent goal has been limited.

State officials estimated that between 11 and 49 disabled-owned firms are certified out of a total statewide of 1200.

A disparity study was conducted in late 1992 for a legislative highway oversight committee. The analysis found that several groups had been underutilized in state construction (Native Americans had been overutilized) and that higher numerical goals would be appropriate. In addition, obstacles were found which affected all small businesses. Recommendations were made regarding NC

DOT practices on a variety of fronts, including bonding and separability of contracts. A bill is being drafted currently, and depending upon legislators' preferences, new numerical goals and other policies will become effective in mid-1993.

Oregon. The Oregon Department of Transportation has had no numerical goals since a legal challenge subsequent to Croson. Currently the Department deposits one percent of state highway construction funds in an Emerging Small Business Account for set asides to minority-, women-, and emerging small businesses. (ESBs are firms with fewer than 20 employees and annual gross receipts less than \$1 million for construction and \$300,000 for non-construction firms. They may be certified for no more than seven years.)

Other items of note:

- Several inquiries from disabled-owned firms have been received but none has filed an application to date. They would need to be approved under the federal DBE provisions if an application were filed;
- In the Governor's Office, there is an Advocate for Minority, Women, and Emerging Small Business which conducts outreach, research, planning, and other functions that promote aggressively the economic integration of minorities, women, and emerging small businesses into the business sector; The Advocate's staff provides certification, acts as a resources/referral service for information, and maintains an Oregon Opportunity Register and Clearinghouse for information on contract solicitations in excess of \$1,000 from all state agencies;
- The Economic Development Department, in consultation with the Oregon association of Minority Entrepreneurs, approves written plans for mentor relationships.

Pennsylvania. On commodities there is no explicit goal. On services, there is an informal goal of 5% of total contracts. The Pennsylvania Department of Transportation (PennDOT) has authority to make awards for services in which the winning bid is less than \$25,000. Contracts for services over \$25,000 are reviewed and approved by the Department of General Services. Bidders must make a good faith effort to involve minority- and women-owned firms in such contracts. In several recent cases, the Department of General Services has asked PennDOT to bypass the low bidders because of their lack of good faith. In a very recent situation, the low bid

was \$34,000, and the Department of General Services recommended that the third lowest bid of \$57,000 be chosen. No final decision has yet been made.

On state construction contracts, the "minimum participation levels" are 8% MBE and 2% WBE. Those levels were established by a gubernatorial executive order in 1987. After Croson, there was a legal challenge. PennDOT won the legal contest, and the levels have remain unchanged.

On a statewide basis the Commonwealth of Pennsylvania has undertaken several programs to assist minority-owned firms. The Pennsylvania Minority Business Development Authority, created in 1974, provides long-term, low-cost loans and guarantees to firms owned by economically disadvantaged people unable to secure financing from traditional sources. PMBDA offers programs in lending, contract procurement, bonding, franchising, and international trade. In 1984, as part of a larger state economic development bond, PMBDA established a \$5 million Surety Bond Guarantee and Working Capital Program. Its objectives are to give capable minority businesses the chance to participate in the state's procurement system and to help them work with surety companies independent of special programs. To qualify for the program, an applicant must apply for funds before a state contract is awarded. The maximum bond is 90 percent of any amount up to \$50,000. Currently, the Pennsylvania Department of Commerce is compiling data for a \$12 million equity venture capital investment fund for minority-owned businesses in Pennsylvania.

Wisconsin. In many state agencies, including the Wisconsin Department of Transportation, there currently is a goal of 5% MBE participation on state procurements. (The state's minority population is approximately 6 percent.) No WBE goal exists. In the past, one disabled-owned firm was certified as a socially and economically disadvantaged firm DBE by the Wisconsin DOT. The firm received a number of contracts for placing temporary concrete barriers, but is no longer certified. A DOT official said they never meet their annual goals although they have raised the actual percentages from less than 1 percent to slightly less than 3 percent last year.

The State of Wisconsin has a unique effort underway to assist disabled-owned firms and soon-to-be entrepreneurs with disabilities. The program provides a variety of training, seed capital, and on-going assistance to businesses during their

formative years. Results to date have been very good. This, however, is a statewide program, not one devoted exclusively to firms doing business with the state department of transportation.

SYSTEMATIC DATA ON BUSINESSES OWNED BY, AND EMPLOYMENT CHARACTERISTICS OF, PERSONS WITH DISABILITIES

Nationwide data on disabled-owned businesses is available in the most recent Economic Census of the U.S. Census Bureau.⁴ According to the 1987 survey, the following percentages of firms are owned by individuals with disabilities:

TABLE 2.1: U. S. Census Bureau Data on Businesses Owned by Persons with Disabilities

| | |
|---|------|
| Hispanic-owned firms, All Categories: | 5.6% |
| Hispanic-owned firms, Construction: | 6.3 |
| Black-owned firms, All Categories: | 7.8 |
| Black-owned firms, Construction: | 9.6 |
| Women-owned firms, All Categories: | 4.0 |
| Women-owned firms, Construction: | 4.6 |
| Nonminority male-owned firms, All Categories: | 4.5 |
| Nonminority male-owned firms, Construction: | 3.8 |

SOURCE: U. S. Bureau of the Census, 1992, p.38

While not presented here, the Census data show that as the number of employees in the firms increase, and as the firms change from sole proprietorships to Subchapter S corporations, the above percentages become lower. Those two trends suggest that a disproportionate number of firms actually may be self-employed individuals (U.S. Bureau of the Census, 1992, p.40–41).

Nationwide data for businesses owned by disabled veterans are available from the 1987 survey as well. Table 2.2 presents the percentages of firms that are owned by individuals with disabilities who are veterans:

TABLE 2.2: U. S. Census Bureau Data on Businesses Owned by Persons with Disabilities who are Veterans

| | |
|---|------|
| Hispanic-owned firms, All Categories: | 1.4% |
| Hispanic-owned firms, Construction: | 1.4 |
| Black-owned firms, All Categories: | 2.9 |
| Black-owned firms, Construction: | 2.8 |
| Women-owned firms, All Categories: | 1.1 |
| Women-owned firms, Construction: | 0.4 |
| Nonminority male-owned firms, All Categories: | 2.4 |
| Nonminority male-owned firms, Construction: | 2.2 |

SOURCE: U. S. Bureau of the Census, 1992, pp.42-43.

Perhaps of equal importance is data about the employment characteristics of persons with disabilities. As pointed out by DBE Study Advisory Committee Members at the December 12, 1992 meeting, minority contractors with TxDOT often have been businesses started by employees who left firms which had been contracting with TxDOT. While the discussion pertained to minorities and women in particular, the same logic may hold with persons with disabilities, that is, contractors with disabilities may be working now disproportionately in majority-owned construction firms. Because funds were unavailable to ascertain those current TxDOT contractors who have employees with disabilities, a less precise approach was necessary.

One nationwide analysis (Drury, 1990) on the employment characteristics of disabled workers found that 67 percent of disabled workers are employed by private sector firms, about 16 percent work in government, and the remaining individuals are self-employed. That pattern is very similar to the general labor force.⁵ The pattern, with some exceptions, is quite similar by types of industries: 3.9 percent of all employed persons with disabilities are working in construction firms, 5 percent of persons with disabilities are working in firms concentrating on personal services and 13.6 percent are working in firms providing professional and related services.

Self-employment rates for workers with disabilities are slightly higher than for the general labor force. The Drury study found that 16 percent of disabled workers are self-employed only, while another three percent work at some type of

self-employment in addition to being employed elsewhere. The disabled self-employed have concentrated their business ventures in lines of business typical of smaller firms: construction, personal services, retail trade, business and repair services, professional and related services, and farming. In fact, fully one of every 8 self-employed persons with a disability reports he/she works in his/her own construction firm, albeit probably a small firm. Half of all self-employed firms are operated solely by the person with a disability; about one of every ten firms has more than five employees (Drury, 1990).

The sector and industry profiles, taken together with occupational profiles of self-employed persons with disabilities, suggest that most disabled-owned businesses belong to individuals who are "craftsman entrepreneurs."⁶ Drury defines such entrepreneurs as persons with disabilities whose main duties are not managerial, but who are directly engaged in the work at hand, be it word processing, repair, selling, or construction.

From this national level employment data, it is impossible to determine how many persons with disabilities have firms which could now, or in the future, provide services to TxDOT. Suffice it to say, however, that the potential pool is relatively large. For the United States, the Drury data indicate that there are 161,204 persons with disabilities who are self-employed in construction. A larger number, 201,400, are employees of some type of construction firms. Even larger numbers of persons of disabilities are in other fields which might provide some type of services or good.

Of course, the large majority of construction companies, and the other types of companies, may not have services or goods which could be purchased by TxDOT, and only a portion of the self-employed firms would be operating in Texas. Nevertheless, the pool of potential contractors who are persons with disabilities could be much larger than commonly assumed. Nationally, there may be over 360,000 disabled individuals working in construction. If one of every 10,000 disabled individuals in construction were in Texas, that would be 35+ potential contractors in construction. That proportion may be too high still, but in other service areas and goods, that proportion may be too low. Nothing definitive can be drawn from this exercise with aggregated national data, but the exercise does suggest that the current and future pool of disabled-owned contractors to TxDOT should not be assumed to be a very small number.

TRAINING AND OTHER TYPES OF ASSISTANCE FOR CURRENT OR FUTURE ENTREPRENEURS WITH DISABILITIES

Several different business training courses for consumer groups and individual disabled entrepreneurs were identified. These include courses at both the state and local government level in Michigan and Massachusetts as well as privately funded, intensive training for ten independent living centers in a project funded by the Robert Wood Johnson Foundation. The national Deaf Entrepreneurs Council provides training as well.

While many states have small business programs in, or sponsored by, the state's rehabilitative agency, at least three states, Michigan, Wisconsin, and New Jersey are actively promoting the creation and development of businesses owned by persons with disabilities. New Jersey has a micro-loan program operated by the New Jersey Developmental Disabilities Council. In Wisconsin, the State Department of Economic Development has a unit which provides business assistance, financial counseling, and financial grants for disabled-run firms. This unit is working to set up similar programs in Illinois and Tennessee.

Within Texas, the Texas School for the Blind currently conducts a series of counseling and training sessions for individuals who are considering self-employment, or who have already decided to establish a business. Since this program's inception, approximately 25 individuals have completed the training.

Because the exploratory analysis was limited in scope, the business training phase was restricted to identification of programs. No in-depth reviews could be undertaken.

TEXAS BUSINESSES OWNED BY INDIVIDUALS WITH DISABILITIES

It was not feasible to determine systematically how many Texas firms are owned by individuals with disabilities. Project staff reviewed data provided by the Texas Rehabilitation Commission (TRC) on 503 clients who successfully completed vocational rehabilitation and who are pursuing self-employment. (TRC provided printouts sorted by occupational code and by city for the past several years.) It was determined, however, that this information provided a very limited perspective on all disabled-owned businesses in Texas. Most of the individuals appeared to be heading toward self-employment as "craftsman entrepreneurs", as has been

described previously. Because of this and because of the limited time which could be devoted to this task, it could not be determined how many businesses could realistically provide services and goods to TxDOT.

FIRST STEPS ON OUTREACH

A vigorous outreach campaign should be undertaken after TxDOT has finalized its goals for businesses owned by persons with disabilities. As with most successful communication campaigns, the effort should involve a variety of communication channels and communication messages. The most important initial activity is to identify the groups who should be involved at the beginning of the campaign.

It will be necessary to involve different types of organizations and groups who have not traditionally had significant interaction with TxDOT personnel. To reach persons with disabilities, TxDOT should convene a working group headed by a staff member of the Governors Committee on People with Disabilities. Representatives from appropriate state agencies that serve persons with disabilities should be asked to participate. Outside state government, there should be representation from several groups that are advocates for individuals with disabilities. Individuals might be invited from other groups such as the regional disability and business accommodation center for Region VI and one or more Mayor's Committees.

To reach current business owners with a disability, TxDOT should work initially with the Texas Department of Commerce, the Bureau of Business Research at the University of Texas, statewide business associations such as the National Federation of Independent Businesses, Texas Association of Business, local Chambers of Commerce, and associations specializing in construction and road-building. If these groups could be contacted in the Fall 1993, the communication outreach project at the Center for Transportation Research might be used for some initial activities. All work should be closely coordinated, also, with that of the Disadvantaged Business Enterprises Training Division of Texas A&M.

Two tasks which the working group should address at the outset are the need for alterations, if any, in (1) TxDOT communication regarding contract procurements; and (2) communication of DBE training activities. Training activities, for instance, might require signers or the use of a FM system which helps the

hearing impaired. Individuals with severe mobility impairments may benefit from having training sessions on audiotapes, even if they attend the session in person. Depending on TxDOT's current and planned procedures in announcing procurements, there may be a need to offer procurements through TDD as well as current channels. The need for, type of, and sequencing of accommodation need not be difficult if the working group consults closely with TxDOT officials. Recommendations could serve as a model for changes by other Texas state departments.

SUMMARY

This exploratory analysis on businesses owned by persons with disabilities has concentrated on identification of several types of information and data. The data suggest that TxDOT should, and likely could, draw upon Texas businesses owned by persons with disabilities in its future procurements. Certainly, there are precedent and prior experiences in other state departments of transportation.

No information was obtained during this series of tasks that inclusion of persons with disabilities caused any new problems to either procurement officials or other minority- and women-owned businesses. Nor should there be any negative impact on TxDOT's procurements with the Texas Industries for the Blind and Handicapped by allowing for-profit, disabled-owned firms to participate.⁷ With sensible, realistic goals and a proper phase-in period, TxDOT and businesses owned by persons with disabilities should both benefit.

REFERENCES

- Drury, David. June 1990. *The Disabled Workforce And Job Retention In Small And Large Firms: Evidence From The SIPP 1984 Panel*. Oakland, California: Berkeley Planning Associates.
- Kruger, Mary J. October, 1991. *Public Procurement in Minnesota*. Minnesota Small Business Assistance Office, Department of Trade and Economic Development.
- U. S. Bureau of the Census. 1992. *1987 Economic Censuses: Characteristics of Business Owners [CBO87-1]*. Washington, D.C.

-
- 1 No survey response was received from California. Materials were forwarded, however, which indicated that minority procurement programs are in effect. That information was confirmed by telephone to the Office of Civil Rights of the California Department of Transportation.
 - 2 The responding state official indicated there was a numerical goal but did not specify the goal. Follow-up could not be performed to obtain more information.
 - 3 The responding state official indicated there was a numerical goal but did not specify the goal. Follow-up could not be performed to obtain more information.
 - 4 A 1993 survey is in progress but results will not become available until at least 1996. The data elements of the 1993 survey are identical to those of the 1987 survey. As of now, the Census Bureau has funding only to conduct a nationwide survey. If additional funding is secured, state and metropolitan area breakdowns may be made. No breakdowns are available on the 1987 survey.
 - 5 This analysis by Drury was based on surveys performed in 1984 and 1985. Disabled workers reported that they were "work-limited"—reporting a health condition which limited the kind or amount of work they could do. People whose disabilities prevented them from working at all were not included in the sample. Disabilities were self-reported in two ways: (1) functional limitations such as an inability or difficulty in seeing, hearing, speaking, lifting or walking; (2) etiological categories such as back and spine problems, heart problems, respiratory condition, arthritis, hypertension, and so forth.
 - 6 Occupational groups include: ; Executive, Administrative, Managerial; Professional Specialty; Technicians and Related; Sales-Related; Administrative Support and Clerical; Service Workers; Farming, Fishing, Forestry; Precision Production, Craft; Machine Operators, Assemblers; Transportation, Materials Movers; Handlers, Cleaners.
 - 7 Written materials about products and services from the Texas Industries for the Blind and Handicapped (TIBH) were examined, and an interview was conducted with the President and a senior staff member at TIBH's Austin offices. Because of the unique status of the TIBH, because its arrangement with the State of Texas is a non-competitive purchasing program, and because TIBH excludes for-profit firms owned by persons with disabilities, it was deemed outside the scope of this study.

PART THREE: A REVIEW OF STATE-OPERATED AVAILABILITY/DISPARITY STUDIES

Several states and state departments of transportation have conducted availability, utilization, and disparity studies since the promulgation of *Croson* in 1989. These studies have been conditioned by time, budget, and scope of work constraints. Most have been contracted out to private consultant firms, while some have been a combination public-private venture. Research methods employed in these studies vary widely within a fairly standard structure: legal analysis, availability and utilization of M/WBE's, disparity, and anecdotal information describing the market and types of discrimination. Usually, the consultants proffer recommendations; often, the studies contain analyses of policies, procedures, and administrations within state agencies and of DBE programs, but only rarely will the study include an historical analysis and documentation of past discrimination. As a result, besides varying in structure, the studies differ as well in terms of their completeness in meeting the standards presumably set by *Croson*. The purpose of this review is to describe the studies that have been attempted, critique the methods employed, and discuss some technical issues as they relate to questions of discrimination and state procurement. We will proceed by discussing the strategies employed by various studies to handle the aforementioned areas of concern. At any time, Table 3.1 "Availability/Disparity Studies at a Glance" may be consulted.

LEGAL ANALYSIS

Volume II of this Study explains the *Croson* decision and post-*Croson* cases thoroughly. Therefore, it should suffice here to say that *Croson* imposed a set of criteria which needs to be met before an enforceable goals program for minority- and women-owned firms may operate. Among these criteria is the need for sufficient documentation, of both statistical and "anecdotal" variety, of past and continuing discrimination in areas related to a jurisdiction's procurement activities. Once patterns of discrimination are established, then a jurisdiction should be able to develop a program whose administration is remedial of such problems.

Accordingly, various types and sizes of jurisdictions have commissioned studies that attempt to determine whether M/WBE or DBE programs are justifiable.

We concentrate on studies done at the state level, whether done for one agency or for all, since the methods employed in these studies relate more easily to those of this project. Questions of relevant market area, for instance, are not as burdensome at the state level as they are at a municipal or county level. The broad consensus is that, while interpretations differ concerning the meaning of discrimination and disparity, such processes must be shown to actually exist and to unfairly limit access to state procurement opportunities. Unlike all of the states mentioned in Table 3.1, Texas did not have a functioning state-funds DBE or M/WBE program before the issuance of *Croson*. As a result, the overall purpose of this project to determine to what extent a state-funds program for TxDOT is justified, as opposed to investigating whether an existing program is valid.

HISTORICAL ANALYSIS

The relevance and scope of an historical analysis to a disparity study has been disputed on several grounds. The broader the scope of the inquiry, the more impatient are those who believe that the well-known past legal structure of discrimination and segregation is no longer relevant. Moreover, local programs have sometimes been justified on the grounds of the legacy of such discrimination, without much of an attempt to document its extent and variety. On the other hand, *Croson* seems to have ruled out reliance on discrimination studies done on a national or even regional basis as not necessarily indicative of the local situation. That interpretation leaves municipalities in a quandary, since often few sources describing discrimination, and marketplace discrimination in particular, exist. However, for a state with the population and history of Texas, historical inquiries are more common, and a historical analysis of discriminatory patterns and the impact upon minorities is more feasible.

It is incumbent upon us to state clearly the relevance of historical forces, especially to those for whom the importance of history is suspect. While it may be true that allusions to long ago problems may seem murky, present society, and by extension the present business world, are products of the past. Before a jurisdiction can institute a program ostensibly remedial of past and/or present discrimination, that jurisdiction must have an accurate and precise idea of the extent and continuing effects of past patterns of exclusion. Otherwise, the jurisdiction may unwittingly continue to "passively participate" in a system of institutionalized

discrimination and racism. Obstacles to the progress of minorities and women, in, say, the fields of education and training, will shape directly the access to entrepreneurial opportunities in areas relevant to state procurement. Of course, it is likely that barriers here have their foundations in general society. Moreover, understanding the historical context properly frames the discussion of issues arising from both the collection of anecdotal evidence and the use of disparity ratios.

Of the studies listed in Table 3.1, only New York's (State of New York, Department of Economic Development, Division of Minority and Women's Business Development, 1992, Appendix D, written by Timothy Bates) and the first Louisiana study (Lunn and Perry, 1990) refer to general patterns of discrimination. While Bates' treatment is summary in nature, an appendix to the latter study attempts a broad overview of discrimination and segregation and its effects in the state's construction industry. Otherwise, New York's (State of New York, 1992, Appendix A, written by Hyman Frankel), the second Louisiana study (D. J. Miller & Associates, 1992) and Maryland's study (Coopers & Lybrand, 1990) have short accounts of legislative actions and mandated programs. Apart from this, histories are not attempted.

AVAILABILITY

Controversy and cross purposes enshroud the concept of availability. For instance, the enumeration of firms does not address the issue of those firms' capability to perform work. Also, different measurement methods result in widely dispersed outcomes and availability ratios. The simplest notion of availability is that of existing M/WBE's in relevant industrial sectors. Difficulties arise when notions of "qualified" and "willing" DBE's are added. "Qualified" may mean the capability to do a certain level of work, or it may imply meeting certain size and/or racial/ethnic/gender standards in order to be considered a DBE. "Willing" may mean ever having bid on a state project, or it may mean being certified as a DBE, et cetera. Even when the definition of the term availability and qualifications to it have been settled, researchers encounter measurement problems. Of all measurement strategies, none are flawless. In the rest of this section we will describe and evaluate various methods.

Federal Census Data

Strategies founded upon the use of federal census data take two general forms: i) use of firm-level data, and ii) use of individual- and household-level data. Under the first rubric, researchers consult the *Survey of Minority Owned Business Enterprises* (SMOBE) and the survey entitled *Women Owned Businesses* (WOB) to estimate the number of M/WBE's in a state, and either *County Business Patterns* or the *Census of Construction Industries* (especially for transportation-dominated studies) to arrive at an overall figure for the number of firms. Some of the problems associated with these sources include:

- The omission of regular (C) corporations from the tallies of firms. While it is true that corporations are the smallest numerical group in most industrial categories, this source allows for no determination for the size of the omission. Further, data derived from the Project 980 survey of TxDOT certified DBE's indicates a large percentage of certified DBE's are indeed corporations. Accordingly, reliance upon the SMOBE alone underestimates the number of minority/women-owned firms by an unknown and probably significant margin. More seriously, this leaves out the firms most likely to become certified by a state agency. The greater the percentage of corporations in relevant 4-digit SIC codes, the greater the degree of the problem. Appeals to the idea that corporations probably are not "disadvantaged" completely ignore the presence of smaller, privately- or family-held corporate firms.
- These data sources are highly aggregated, and thus do not permit identification of individual firms.
- Higher rates of multi-ownership for women, and the inclusion of basically part-time, home-based women-owned businesses in the WOB (See State of New York, Appendix D) would tend to overcount viable WBE's.
- The figures are silent regarding the question of willingness or qualifications to do business with public entities.
- The Surveys come out at discrete, 5-year intervals (and thus are completely static), often forcing researchers to resort to simple extrapolation methods with unknown measurement errors in estimating availability.

Further discussion of these principal federal data sources and their associated strengths and weaknesses can be found in Brimmer & Company, Inc. (1991, p.33-66).

Of the studies listed in Table 3.1, Maryland's, the first Louisiana study, New York State's Appendix D, the Florida DOT study (MGT of America, Inc., 1993a) and North Carolina DOT study (MGT of America, Inc., 1993b) all draw upon these sources to measure "actual availability."

The use of individual or household based data—including *Characteristics of Business Owners*, *Census of Population Public Use Samples*, and the *Survey of Income and Program Participation*—helps to determine, respectively, industrial ownership patterns within a group (racial composition of owners within an industry), rates of self-employment among different groups, as well as myriad personal, household, and business attributes among groups. In essence, however, different populations are being surveyed in these sources than those in the *SMOBE*. Comparisons are therefore problematic.

New York State's Appendix D uses these sources in an effort to establish a measure of expected availability in the absence of discrimination in the marketplace. The second Louisiana study summarizes different types of availability measures before settling upon the "ready, willing, and able model" described below.

Contractor/Vendor Lists

The main alternative to using census data to estimate availability ratios relies upon existing lists of firms who have done, are doing, or are apparently willing to do business with various public entities. Sometimes a group of lists are merged to create a "master file," with an intensive effort to eliminate duplicate and erroneous listings. For M/WBE's, lists of firms certified as such are compiled and then compared to a listing of all firms in order to deduce availability shares.

Such compilations afford the researcher the utmost practical advantage in both measuring availability and creating a sample for future surveys. Justification for the use of these lists is, however, rarely couched in terms of practicality or convenience. More often, a presumption that all firms which are on the list of bidders for a state or for state agencies comprise the totality of those firms which meet the *Crosby* criterion of being "ready, willing, and able" to do business. This presumption relies heavily upon the agency staff for the veracity of the lists. More importantly, however, this usage ignores the important issue of the discouraging effects of discrimination. Not only has discrimination limited the rate of business ownership among women and minorities (the "but-for" component of availability), but it plausibly may discourage existing firms from pursuing state contract work. That is, exclusionary and/or fraudulent practices in the public sector may make it impossible for M/WBE's to compete and survive. In such a scenario, far from

saving taxpayer dollars through "low-bid" procedures, the agency in question may raise its costs by encouraging industry concentration.

On the other hand, the use of lists of certified firms may tend to increase the availability ratios for minorities, compared to census data-based methods. To the extent that goals are based on availability ratios, then these lists may represent the best case for higher goals, as discovered (but not argued) by D. J. Miller in the second Louisiana study. This last study, New York State's Appendix B, and New York State's Appendix E defined the market in terms of a merged list of contractors.

Lastly, another viable but somewhat costly method of estimation availability is to administer a simple survey of firms within the jurisdiction. For instance, the research team for Minnesota (State of Minnesota, Department of Administration, Management Analysis Division, 1990) sent out a postcard survey to all firms, within relevant SIC codes, listed in tapes held by that state's employment division (that is, the counterpart to the Texas Employment Commission). Presumably, all these firms filed social security forms, and thus the tapes include only such firms as have employees. The post card simply asked for the ethnicity and gender of the ownership and for a general indication of the firm's size. The results could be tabulated in order to formulate estimates of the minority and female shares in the business population, independently of federal census data. Although business enterprises without employees are left out, this undercount seems less serious than the omission of corporations in census data. Moreover, firms with employees are more likely than those without to meet the "qualified" *Croscon* criterion, especially in construction-related fields that usually require intensive use of labor.

Minnesota was unique in employing this method. It should be pointed out, however, that a more elaborate variant of this method was proposed in this study team's original Study 7-980 proposal. Under a scenario of sufficient resources, the researcher could develop all three estimates, lists all caveats regarding data and assumptions, and then recommend which one best serves as a base for overall goal setting.

UTILIZATION

By contrast with availability, utilization is much more straightforward. Among the considerations that arise during the course of a utilization analysis are the length of the time period under consideration, overall procurement totals, and

breakdowns by: i) the type of contacts (prime or sub contracts, federal v. state-aid); ii) race/gender; iii) geography, and iv) central versus district office administration. At the least the researcher needs to be able to identify how many contracts were let, how many dollars were awarded, and the ethnic/gender status of the contractors involved. If such data are available, then decisions to analyze either all contracts or just a sample thereof must be made. Whenever sampling is done, care must be taken to ensure its randomness. It must be emphasized that the quantity and quality of relatively accessible data are the constraints in this type of analysis.

The level of aggregation at which analyses are performed has important implications for goal-setting. Large state agencies typically engage services of firms from several dozen SIC codes, but contracts are more often let under the categories of construction, maintenance, professional services, etc. The level of utilization analysis should thus follow closely the detail of availability estimates (that is, the extent of the categorization of availability estimates). Unfortunately, precision in contract analysis is easier to obtain than is accuracy in determining availability. Lastly, whatever breakdowns are used, results are presented either by the number of contracts awarded, the amount of dollars awarded, or both. Some studies, for instance Minnesota, report both, considering the first measure to be unweighted and the latter weighted. Both indeed should be contemplated, since using the number of contracts often glosses over repeat awards, while strict reliance on dollar amounts may be skewed by a few large awards.

The studies referenced in the Table 3.1 exhibited variation in their approaches to utilization. New York State (in Appendix B) adopted an all-agency approach in its reportage; it did not break down the results by constituent agencies. Despite being a statewide study, the second Louisiana study focused on that state's Department of Transportation and Development, whereas Minnesota attempted as much detail as data would allow. The MGT of America, Inc. studies for the Florida and North Carolina DOT's most completely break down contract records by type and level of administration. Unfortunately, the number of years analyzed was severely limited, creating problems for their disparity analyses. Disturbingly, the sometimes haphazard nature and insufficient quantity of existing data for availability and utilization analyses may preclude the type of rigorous market analysis seemingly demanded by the *Croson* decision. The procurement categories usually reported are highly aggregated. Other than Minnesota, no study attempts extensive

disaggregation; nothing in these studies suggest anything more. While useful for statistical purposes, aggregation offers little help to goal setters, who are more concerned with how individual contracts can be fulfilled.

DISPARITY

Disparity ratios

Disparity ratios (D) are defined either by utilization (U) divided by availability (A), in the relevant category, or by the reciprocal. Utilization as the numerator is more normal. The number 1, then, is defined as "parity." If $D = U/A$, then a $D < 1$ represents underutilization of the group in question and a $D > 1$ represents "overutilization." Three points must be emphasized strongly, however:

- "Parity" and related terms should be used with extreme caution. Most discussions of disparity ratios are couched in terms which assert that the assumptions underpinning availability are correct. However, the disparity ratio is truly a relative concept: over- and underutilization only exist within that particular frame of reference.
- $D = 1$ does not prove that discrimination does not exist. $D > 1$ does not prove that remedial action is no longer needed. Regarding the first assertion, all processes and forces which have shaped "actual availability" are embedded in the disparity ratio. If discrimination is or has been particularly rife, stifling and/or discouraging M/WBE's, then availability ratios will be low, with a possible result that a few large awards would yield the perverse result of overutilization. Even if the result is statistically significant, sole reliance on U/A disregards the dynamic effects of past discrimination. In other words, if, for example, African-American firms make up 5% of the "available" firms in construction, and receive 5% of the contracts or dollars, then are they being overutilized, especially if their population share is 10%, 15%, 20% or more?
- Often the disparity ratios are measured at one, maybe two points in time. Even if we abstract from the problems inherent in measuring availability, to base a goal-setting recommendation on the basis of a reversal in the magnitude of D in two years may prove to be a fundamental mistake. While it is true that the dearth of data precludes a trend analysis of disparity, disparity ratios standing alone tell only a partial story. At least five years of disparity ratios should be constructed before meaningful statements regarding progress, or the lack thereof, can be made, in order to avoid the possibility that the results for the year or two constitute an aberration. More elaborate mechanisms than D attaining 1 should be constructed for determining whether and when a DBE program has accomplished its purpose--business development.

Regarding the second assertion, assume for a moment that utilization of a group rises from 5% to 7%, while measured availability remained at 6%. Does this mean that discrimination has ended, especially if the group's population share is 10%, 15%, 20% or more? Moreover, at low bases of availability, movement from a $D = .3$ to $D = .9$ does not necessarily translate into a vast improvement in the situation facing the group. Contract dollars could flow more easily, but with little development of the group's business community, the effects of such a flow may be ephemeral.

Therefore, the disparity ratio is an inherently conservative statistic. It says nothing about the effects of past discrimination. A deterioration is truly unfortunate for the group in question, but an improvement may be more apparent than real. Worse, irresponsible use--use of D without a discussion of its conservative structure or precision without the benefit of accuracy-- could mislead a reader into accepting with equanimity a situation that may in fact be egregious. The disparity ratio should be considered a lower bound on the extent of discrimination. Further discussion of the conservative nature of the disparity ratio can be found in Brimmer & Company, Inc. (1991, p.2-32).

The second Louisiana study, New York State's Appendix B, Minnesota's study, and the FDOT and NCDOT studies each use disparity ratios. The first two of these studies present some discussion of the concept of a disparity ratio and its conservative nature. Minnesota is silent about the implications of its use, while FDOT and NCDOT use the term and concept in rather cavalier fashion. Most studies found varying degrees of underutilization for the larger minority groups and for women.

Other Disparity Measures

Some studies do not attempt to use the disparity ratio. The first Louisiana study, for instance, runs a regression model with dummy variables assigned to racial classification. No significant racial difference in contracting arose out of these runs, due primarily to the fact that controls (explanatory variables) were used inappropriately--size, classification as highway contractor, years in business, etc., are not necessarily independent--and subregressions should have been run (that is,

analysis of contract letting among highway firms with 5 or 10 years of experience, for instance, is probably more revealing of the situation).¹

New York State's Appendices D and E also do not consider disparity ratios in their determination of discrimination in the marketplace. Broadly speaking, both reports construct models of entrepreneurship or entry into relevant fields based on a set of attributes characteristic of the control group--white males. Having run regressions in order to determine the normal or "white" coefficients, the levels of each attribute are then entered for each group. If no discrimination within the business world exists, then the expected availability should equal actual availability. However, each find the actual to be well below the expected availability for minorities and, in some cases, women. Unfortunately Bates (State of New York, 1992, Appendix D) uses the flawed census data as his measure of actual availability, while Tweedie (State of New York, 1992, Appendix E) uses the "ready, willing and able" approach. Bates excuses himself on the grounds that prediction is his aim, not the erection of the perfect model. Since the *SMOBE* data are known undercounts, he seems safe in this comparison. Both reports are also hampered by reliance upon extrapolation and interpolation methods to make up for missing data. Although such methods are often unavoidable, in Tweedie's case their use is probably excessive. While the comparisons are thus approximate in nature, the levels of reported disparity are nonetheless large enough to warrant serious attention. To the skeptic, we should stress that approximations are the rule in practical applications; ideal data and precise measurements are only as valid as the strength (correctness) of their predictions.

ANECDOTAL EVIDENCE

While in many disciplines the term "anecdotal" conjures up images of mere stories, in the field of *Crosby*-era disparity studies "anecdotal evidence" should refer to the systematic collection of qualitative evidence. Qualitative evidence is meant to bring "cold statistics" to life. We should infer, then, that anecdotal and statistical evidence should always be viewed as complements. If the case for discrimination is strong, then properly-designed anecdotal data gathering should reinforce whatever statistics are produced. In fact, the information gleaned from interviews, public hearings, or focus groups may assist the researcher in the design of questionnaires and surveys. That is, qualitative data should guide the endeavors

of the investigator, identifying types of discrimination to pursue and providing insight into well or poorly-functioning programs.

All availability/disparity studies contain segments devoted to anecdotal information. Most rely on interviews, some conduct public hearings, and a few also make use of focus groups. The minimal approach guaranteeing the collection of the widest spectrum of opinion and experiences would be the interviewing of minority/female and majority male contractors and vendors, state agency procurement officials, and state agency personnel involved in DBE programs. A more comprehensive approach seeks the opinions and/or testimony of trade and professional association representatives, minority advocacy groups, and officials from banking and financial institutions.

Questions of rigor drive the design of instruments for anecdotal evidence gathering. When the purpose of the investigation is just to identify perceived problems or barriers to participation, then an inordinate amount of attention to sample design and representativeness is not required. In this light focus groups should prove sufficient. However, to properly assist in meeting the tough standards of *Croson*, the investigator must ensure, for instance, that the sample drawn for interviews not only represents a broad spectrum of opinion, but also includes a sufficient number of interviewees from targeted groups. If insufficient numbers of people from targeted groups provide evidence, then the data that result are literally anecdotal. The more observations, the stronger the emergent pattern, the heavier is the weight brought to bear. "Sufficient" implies the number necessary to assume certain types of underlying distributions, given that minimal standards of randomness are met. Alternatively, a sufficient number of public hearings must be conducted in order to generate enough testimony conducive to at least summary, if not statistical, analysis.

The more in-depth the investigation, the more expensive is its conduct. Personal interviews of hundreds of people is expensive and time consuming. Telephone interviews can be as costly, if more convenient for the researcher. A series of public hearings, however, provide a bulk of testimony in a relatively short period of time, but do not ensure the veracity of comments usually observed in confidential interviews. Finally, open-ended questions on mail surveys provide an outlet for opinions and experiences. However, time and resources must be

sufficient to allow for following up either allegations or mundane clarifications, if a high level of confidence in the results is to be obtained.

The best effort mounted by a research team for a statewide study to gather anecdotal evidence took place in New York State, as summarized in great detail in New York State's Appendix A. Over a 9-month period, both a series of public hearings and an extensive process of personal interviews of both business people and state officials was conducted. The sheer mass of testimony and information gathered is admirably analyzed and grouped in this volume, providing the most compelling evidence and consequently the strongest support for an enforceable goals program.

A similar process occurred in the MGT of America, Inc.-directed studies. However, while comprehensive, these efforts took place in a much shorter time frame, resulting in only superficial analyses. For instance, evidence is divided into "perceived problems" and "real barriers", a dichotomy that denigrates, albeit unintentionally, the former category. The second Louisiana study and the Maryland study also engaged in personal interviews in a manner conducive to problem identification, but not in sufficient quantity or representativeness to withstand a vigorous critique. Nonetheless, the interviews in the second Louisiana study did cover the gamut of relevant issues. The remaining studies relied upon questionnaires, if they engaged in this activity at all.

OTHER STATISTICAL EXPERIMENTS

Certain studies present statistical experiments which do not fall under the rubrics of disparity or "but-for" analyses. The purpose behind these endeavors is to establish the widespread incidence of discrimination. The two versions of the Louisiana study offer an interesting point-counterpoint. In the first study, regressions are run to determine if there is discrimination in earnings and occupation. Unfortunately, when investigating the earnings gap between white and black workers, the author relied upon pooled data with some observations missing in order to consider the "construction industry," which implies that all inferences are "conditional," that is, not subject to verification by the use of separate regressions for each group and/or year. Moreover, controlling for age, education, occupation, etc., is tantamount to saying that black laborers are paid as much as

white laborers. Simply put, the data do not permit a statistical analysis of racial wage differentials within occupations.

The second study, however, dispenses with a pooled, dummy variable model in favor of running separate regressions for blacks and whites at the state (not industry) level. The authors use a “decomposition” technique to separate the effects of known variables from that of racial considerations upon the *gap* in earnings. This technique indicates that at least some of this gap (and indeed, maybe most of it) is explained by racial discrimination. Unfortunately, the precise technical form of the variables used in these regression is unclear. Sloppy reporting also plagues Appendix E of New York State’s study, making independent validation problematic.

The FDOT report also offers a straightforward regression analysis of firm revenues. Positively related to revenue are the year of establishment, number of employees, and DBE certification. Negatively related are minority ownership status and past FDOT business. Leaving aside the question of the exogeneity or independence of several of the explanatory variables, the claim that minority firms are at a disadvantaged position in the marketplace, in terms of generating revenues, seems merely to imply that M/WBE firms are smaller than white male firms. The question of what cumulative effect racial and/or gender discrimination has had in this regard remains untested.

The FDOT study also investigates the racial composition of the labor force used on FDOT projects (MGT of America, Inc., 1993a, pp.4.1–4.18). While admirable in intent, this analysis engages in glib use of disparity ratios that mislead the reader, as alluded to above.

ANALYSIS OF POLICIES AND PROCEDURES

Assessing the policies of various state agencies and procurement procedures used by their agents is important to understanding whether the existing contracting system is fair and open, whether goals program are well-run, or whether systemic exclusion due to relatively insurmountable barriers is the rule. In this type of review, the second study for Louisiana and the Florida DOT study are excellent. In these two studies, a discussion of statutes is followed by an analysis of the division of labor and of the responsibility for program operation. Presumably the short time frame or a limited scope of work prevented a similar analysis for North Carolina. In this area sensitivities are raw, since the consultant is basically engaging in a

management audit. The mere presence of these reviews is a credit to the groups involved, because the institution countenances potential criticism in its acquiescence to the review. New York State approaches this area from several vantage points: Appendix A recounts the history of the existing program; the in-house study that is Appendix B gives a straightforward account of procedures; Appendix C offers suggestions for future policies; while Appendix D demonstrates how institutionalized problems impinge upon M/WBE participation.

RACE NEUTRAL POLICIES

Croson seems to mandate that existing and/or potential race neutral policies for business development must be evaluated (and presumably found wanting) before race-conscious remedies for past and present discrimination may be put in place. A mistake made by some is to view technical assistance programs for DBE's as race-neutral since no contracts or set-asides are involved. This assumption is incorrect: race-neutral programs are small business development loans, workshops, and technical assistance programs in which race, ethnic, and gender status is immaterial. The second Louisiana study, New York State's Appendix A, and the FDOT and NCDOT studies all analyze these efforts. At best (New York and Louisiana II) these programs are seen as complementary to a goals program; otherwise, the truly race-neutral programs seem to be of little value to M/WBE's.

OBSERVATIONS

The scope of work varied among studies—as much as twelve years of contract data were analyzed in Louisiana I and II, compared to two in New York, Minnesota, Florida, and North Carolina. The time allotted for contract performance also varied, from six months in North Carolina to three years in New York. The others generally took between 12 and 18 months. It is no coincidence that the most comprehensive effort was mounted by New York. Only relatively cursory analyses can be performed in short periods of time.

Recommendations take on similar forms in these studies: 1) some type of bonding help for M/WBE's (some states refuse federal help); 2) division of large projects into several smaller ones; 3) more staff and power to enforcement agencies; 4) re-estimation of availability at periodic intervals; and 5) tailor goals to individual contracts; 5) sensitivity training for agency personnel. Most studies have no notion

of program cost, except in terms of generalities. Only New York State's Appendix C gives serious thought to program implementation, offering serious suggestions for goal implementation, broadening participation, and program termination.

Unfortunately, other than for some superficial remarks about "graduation," for the most part little is said about viewing a goals program as a business incubator rather than a permanent preference. Nor is the dilemma of being certified to do business in an area also being a barrier to branching out into other areas given a thorough discussion. Even the New York effort, while unique among statewide efforts in its analysis of the "but-for" component of availability, still avoids discussing deep-seated problems affecting set-aside programs. It is true that some of these problems are outside the immediate control or even influence of particular state agencies. However, to the extent that education and training issues, for instance, are both relevant to self-employment and under the purview of the state government, then thorough consideration should be given as to how a comprehensive reform effort may be mounted. For example, those who complain that DBE's do not have the capacity to do business often are unwilling to see substandard and inaccessible technical education as relevant to the future supply of qualified M/WBE's. What is needed is a study that analyzes not only the availability, utilization, and disparity, but also attempts to demonstrate (not shy away from) the dynamic effects of social forces upon the relatively narrow topic of government procurement. Otherwise, the risk grows that the state will implement a program that will be immediately challenged, on the one hand, and which fails to accomplish its long-term purpose, on the other.

Table 3.1.a: Availability/Disparity Studies at a Glance, Part 1

| State | Author(s) | Legal analysis | Historical analysis | Policies/procedures | Race neutral |
|---------------------------|--------------------------|---|---|--|---|
| Maryland | Coopers & Lybrand | pre-Croson, Croson | From 1960 in state procurement | none | none |
| Louisiana I | J. Lunn; H. Perry | pre-Croson | Yes, relatively brief, focuses on pre-1965 segregation. Lunn concludes: "some effect on size" | none | none |
| Louisiana II | D.J. Miller & Associates | post-Croson | Relies on above; history of previous programs | Extensive - both DOTD and other agencies | discussion of race-conscious remedies in Appendix |
| New York State Appendix A | Hyman Frankel | Analyzes Croson and United Fence; extensive analysis of strict scrutiny and good faith efforts; context is NYS law. | Discusses previous NYS program; mentions studies in various municipalities, including NYC | Some on operation of Article-15A, NYS minority goals program | Short discussion, race neutral remedies and programs seen as complementary to race conscious ones |
| New York State Appendix B | In-house | none | Negligible | Analysis of procurement practices of NYS gov't by goods, services, consultants, and construction | none |
| New York State Appendix C | Marc Bendick | Goal setting within context of narrow tailoring | none | Annual review of plan, reconsider justifications for each group, type, ethnic, end goal, implementing ratios; done by agency | none |
| New York State Appendix D | Timothy Bates | none | Discusses limited access to credit, education, and training opportunities; easing since 1960; better education, more diversified BBEs; under-capitalization worst problem | Discusses cozy relationship between winning firms and purchasing agents, contract sizing, slow payment | none |

Table 3.1.a cont'd

| State | Author(s) | Legal analysis | Historical analysis | Policies/procedures | Race neutral |
|---------------------------|----------------------|---|---|---|---|
| New York State Appendix E | Jack Tweedie, et al. | none | none | none | none |
| Minnesota | Management Analysis | none | none | With help from agencies, MA standardized state object codes into SIC codes; long discussion of assigning codes to tens of thousands of p.o.'s, contracts, | |
| North Carolina DOT | MGT of America, Inc. | Same basic analysis as in FDOT, more emphasis on <i>King County</i> | Some discussion of national patterns of discrimination, state it would be surprising if those patterns didn't also exist in NC. | Good overview of NCDOT's Ofc of Civil Rights - responsibilities and services; bidding process; monitoring/enforcement only voluntary No analysis of NCDOT mgmt. | Similar to FDOT; analysis of various programs offered by the State |
| Florida DOT | MGT of America, Inc. | Discussion of <i>Croson</i> , emphasis on <i>Hillsborough County</i> case and <i>Milwaukee Pavers</i> | none | Good, lengthy analysis of FDOT's policies and division of labor - identifies responsibilities of various personnel in DBE program. Also, discussion of Florida statutes | Discussion of various programs, Finds financial/technical assistance programs of little value to DBE's. |

Table 3.1.b: Availability/Disparity Studies at a Glance, Part 2

| State | Availability | Utilization | Disparity | Anecdotal | Regressions |
|---------------------------|---|---|--|---|--|
| Maryland | SMOBE and County Business Patterns | By ethnic group/gender | none | Interviews: state officials, employees; MBE's; maj. vendors | none |
| Louisiana .I | SMOBE, CCI, CPS | 1985-89 DOTD lettings - primes; 1979-89 subs, ethnic group; federal and state included | Pre-disparity ratio, instead ran awards regressions, no significance on racial var.; no discrimination | Relies on questionnaire - minorities see system as unfair, as do whites for opposite reasons | Runs earnings and employment regressions, problem with methods, makes improper controls |
| Louisiana .II | "Ready, Willing, and Able" - uses certified lists | Ethnic /gender groups; primes and subs; federal and state where possible | Yes - good discussion of ratio; disparities usually found | Personal interviews; 41 2-3 hour confidential interviews, no white men, AGC refused; identifiable discrimination and corruption discussed | Much better analysis of market conditions - chi-sq. tests for racial differences in variety of financing/bonding questions;- decomposes racial differences in earnings; finds discrimination |
| New York State Appendix A | Summarizes other appendices | Summarizes other appendices | Summarizes other appendices | Excellent, most detailed of all studies; categorizes types and lists instances of complaints; series of public hearings and interviews, discrimination found in all aspects of business world | none |
| New York State Appendix B | Combines bidder/vendor lists from 27 state agencies (30% of agencies, but vastly larger of spending share); included statewide lists, e.g. NYC list | By four procurement categories, NYC and "upstate"; describes Agency utilization reports; compares Agency data to Comptroller direct payment data; State spending only | Three industrial categories; racial ethnic group, regional variation; 19/24 categories show significant disparity, explain away others, state results are conservative | none | none |
| New York State Appendix C | N/A | N/A | N/A | none | none |

Table 3.1.b cont'd

| State | Availability | Utilization | Disparity | Anecdotal | Regressions |
|---------------------------|--|-------------|--|---|---|
| New York State Appendix D | SMOBE, WOBIE for actual availability, some extrapolation; CBO data for racial industry composition; CPPUS data for rates of self-employment, SIPP data for traits of self-employed whites; still ignores problems of SMOBE | N/A | Actually a but-for analysis; uses discriminant function to estimate white parameters - i.e. coefficients on variables deemed important for entry into self-employment - wealth, education, relative age, marital status; purpose is to abstract from "societal discrimination, focus on business discrimination) | none | Entry rates using white (i.e. "normal") coefficients and minority/women attributes; lengthy discussion of differential impact of variables on each group |
| New York State Appendix E | Merged lists of contractors from various agencies; considered NYC area and "Upstate" for "actual availability: then long drawn out process of estimating expected avail. based on transition matrices; census data of group characteristics used, profile developed of different start-up rates for categories of whites, rates applied to minorities/women with their level of same attributes, expected start up rates generated | none | The "but for" component - multiplier is 1.30 for minorities, 3.25 for Women - or increases of 30% and 225%, respectively, to meet expected levels. the matrix multiplication order not clear. | Only to determine estimates of prime/sub status | Telephone survey of construction firms generated the identified attributes used in the estimations. Lots of extrapolation and interpolation needed to produce decade profiles for each group. Heavier weight attached to later decades, linear extrapolation from 1980 to 1990. |

Table 3.1.b cont'd

| State | Availability | Utilization | Disparity | Anecdotal | Regressions |
|--------------------|--|---|---|---|--|
| Minnesota | Unique in surveying 15,000 firms from 41 codes deemed likely to do business with the state. Asked 50% ownership question. Over 7 weeks, 8611 firms returned postcard survey. Results presented by SIC code and revenue range. very small amount of MBE's | Concentrated on state-funded contracts. random sample from agencies with data in reasonable form. For those without good data, summary report only. Otherwise, straightforward, results presented by SIC code, not enough for geographic breakdown. | Presented for primes only. Often no minority presence. Women underutilized. Again, presented by SIC code, with little or no analysis; weighted (dollars) and unweighted (proportion of contracts) ratios derived. - analogous to 980 methods - good reference | Survey of M/WBE's done by Univ. of Minnesota; Used SM/WOBES to determine number of firms, took 1.62% sample size, but then had to use all of lists gathered from state agencies - couldn't be done randomly. Use of "continuous variables" (numbers instead of ranges), | (cont'd from left) and asked about discrimination, No analysis, no summary |
| North Carolina DOT | Same as below, architects/engineering category used instead of maintenance | Prime/subs, by category of funds, and by group 10 years of centralized data, 3 at district level | Their "exact disparity analyses" Mostly underutilization of MBE's | Telephone interviews (too small a sample for majority) interviewed 109 M/WBE's. Also, 10 public hearings, held over 2 weeks; 100 personal interviews of business owners | none (cont'd from left) - divided responses to "perceived problems" and "real barriers." Interviews of NCDOT staff not reported |
| Florida DOT | 1982, 1987 SMOBE; WOBE used to estimate number of M/WBE's, County business patterns and unpublished Census data used for overall. Two data points used to draw line, divide by five, obtain "average annual growth rate, and simply extrapolate from 1987 forward to 1992 for "availability" | Stratified analysis: overall to all firms (construction), centrally let to all firms, primes, and subs, and analogously at district level. | Ratios presented for number of contracts and for dollars, cavalier usage of the term "disparity". Manages to find some disparity towards blacks and women. ratios for only two years - one large contract flips ratio for Hispanics | Compilation of results from interviews point to various problems in all facets of DBE program, similar to TxDOT | Analysis of FDOT contractors labor force a good idea, but marred by using disparity ratios and saying that since, e.g., whites are 82.37% available as supervisors, but used 80.67% of the time - significant underutilization; 2) straight-forward regression analysis which relates variables to firm revenue, and manages to show that M/WBE's are smaller than white firms |

Table 3.1.c: Availability/Disparity Studies at a Glance, Part 3

| State | Time period | Recommendations | Other |
|---------------------------|--|---|---|
| Maryland | 1985-1989 | ? | Small sample for utilization analysis |
| Louisiana I | 1985-1989; 1979-1989 | | Diligence in constructing records; singular lack of imagination; managed to absolve an agency notorious for corruption |
| Louisiana II | Same as above | | Examines other agencies before deciding upon DOTD |
| New York State Appendix A | none (study took three years; interview/public hearing planning, execution, transcription, analysis and summary process took one year) | Set goals only when justified, set by Agency, review by appropriate authority; tailor to contracts; keep small business assistant plans; otherwise, see executive summary | Report serves as summary of others, insofar as purpose is to "marshal and summarize evidence relating to the establishment of enforceable participation goals" |
| New York State Appendix B | FY 1990-91; some comparison to FY 1989-90 | M/WBE's do not receive fair share of contracts | Short section on federal aid; table to compare pre- and post Croson situation - 30-45% decline in M/WBE participation |
| New York State Appendix C | | Consider re-estimation of Availability; adjusting goals for discouraged firms. increase spread of money - dollars to one firm over 10% of overall goal disallowed; or over 10 firms | End goals differ from implementing ratios(either phase in or higher to speed up); set schedule; establish logical stopping point; consideration of contract as progress toward goals (say, 20% of face value) |
| New York State Appendix D | Uses 1980s data to estimate situation in 1990 | Significant problems for blacks and Hispanics; 20% less firms than should be; equivocal about Asians; women not disadvantaged <i>except</i> in construction | Very thorough, a little shy about data problems; states unequivocally that barriers to entry, not cultural differences, account for lower self-employment rates. |
| New York State Appendix E | Generates estimates of expected start-up rates and numbers for 1990, using data on characteristics of firms from 1940 to 1980. | | Interesting methods, not clear on mechanics, request for info has gone unnoticed. |
| Minnesota | Variable, basically 1987-1989 | None in the technical reports, maybe in the executive summary | Some interesting ideas for methods; MA gathered data in line with budget limitations; "statistics deal with correlations and not cause and effect" |
| North Carolina DOT | 1982-1992 for DOT central records; only 6 month study. | Almost identical list of recs as in FDOT; no clear linkage between chapter findings and recs | 6-month period may have precluded discussion of NCDOT administration or effectiveness federal-aid program. No analysis of anecdotal |
| Florida DOT | FY 1989-1990, 1990-91 | Long list of recommendations, including bid preferences, updates of availability, closer monitoring, a compliance division, more outreach and sensitivity training | Analysis of policies, procedures, and contracts very good. Availability methods, context of terms extremely doubtful if not harmful. Regression analysis not meaningful |

REFERENCES

- Brimmer & Company, Inc. 1991. *Discrimination and Disparities in the Market Place: City of St. Louis, Missouri. Part IV: Measurement of Race and Gender Disparities in the Construction Industry.* Washington, D.C.: Brimmer & Company, Inc.
- Coopers & Lybrand. 1990. *State of Maryland Minority Business Utilization Study, Volumes 1 and 2.*
- D. J. Miller & Associates. 1992. *State of Louisiana Study II.*
- Lunn, J. and H. Perry. 1990. *State of Louisiana Study I.*
- MGT of America, Inc. 1993a. *Florida Department of Transportation Disparity Study Final Report.* Tallahassee, FL.
- MGT of America, Inc. 1993b. *State of North Carolina, North Carolina General Assembly, Study of Minority and Women Business Participation in Highway Construction.* Tallahassee, FL.
- State of Minnesota, Department of Administration, Management Analysis Division. 1990. *A Study of Discrimination Against Women- and Minority-owned Businesses and of Other Small-business Topics.* [Final Report, Appendix Book 1, and Appendix Book 2]. St. Paul, MN.
- State of New York, Department of Economic Development, Division of Minority and Women's Business Development. 1992. *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to government contracting in New York State.* [Executive Summary and Appendices A-E]. Albany, N.Y.

¹ In a simple "dummy" variable model, a value of $d = 1$ is assigned if the firm is, say, African-American owned, and 0 otherwise. Say that the dependent variable (left-hand side, or "endogeneous") is the amount of contracting dollars, the number of contracts, etc. The regression generates values for the coefficients of the independent (explanatory, right hand side, or exogeneous) variables which measure their effects upon contracting. Thus we have "controlled" for these effects. Then, if the dummy variable d is significantly negative for blacks, this suggests that black owned firms receive less dollars or contracts due to racial considerations. A criticism of Lunn's method is that he used as explanatory variables measures which could very well depend upon each other - for instance, size and years in business. These variables are no longer independent. If that is the case, then the coefficient values generated no longer measure the effect of that variable upon the dependent variable. The results are indeterminate.

APPENDIX A

GOVERNMENT AGENCY QUESTIONNAIRE

1. Does your government have legislation (official action passed by your governing body) that pertains to Disadvantaged (Minority) Business Enterprises or Historically Under - utilized minority and women owned businesses?

Yes _____ *Go to Question #3*

No _____

Do Not Know _____

2. Does your government plan to develop and pass legislation?

Yes _____

Who is working on developing this legislation?

Staff _____

Consultants (specify) _____

Other (specify) _____

Task Force _____

What is the composition of this Task Force?

Gov't staff _____

Governing body officials _____

Business Representatives _____

Minority Contractors _____

Women Contractors _____ *Go to Question #8*

No _____ *Go to Question #8*

Do Not Know _____ *Go to Question #8*

3. What type of legislation does your government have?

- Ordinance* _____
- Resolution* _____
- Executive Order* _____
- Admin. Regulations* _____

4. When was the legislation passed? Please specify month and year: _____
How long ago?

- Less than 6 mos.* _____
- 6 mos. - 1 year* _____
- 1 year - 2 years* _____
- 2 years- 5 years* _____
- 5 years plus* _____
- Do not want to estimate* _____
- Will Check* _____

5. Can you provide us with a copy of the legislation?

- Yes* _____ (*Attach to completed questionnaire*)
- No* _____
- Will Check* _____

6. Does your DBE program have established (numerical) goals for undertaking contracting with DBE's?

- Yes, what is the goal?* _____ *percent*
- No* _____
- Do Not Know* _____
- Will Check (by when)* _____

7. Has any one legally challenged (filed a lawsuit) contesting your DBE program goals?

Yes _____

When and who filed suit? What is the status of the suit?

Status_____

Do Not Know_____

Will Check (by when)_____

No_____

Do Not Know_____

Will Check_____

8. Has your local government agency conducted a disparity/availability utilization study?

Yes_____

When was this study conducted?_____

May we have a copy?_____ (Attach to completed questionnaire)

No_____

9. Does your government compile a DBE vendor list? (Of special interest is vendors in the field of Heavy Construction, Maintenance, Goods and Services and Spot Purchases).

Yes _____

No _____

Do Not Know _____

Will Check (by when) _____

If yes, may we have a copy of it? When can it be sent? _____

Yes _____

No _____

Will Check _____

Note: If possible please provide a disk copy for IBM Compatible or Macintosh MS Word Program.

10. If your agency does compile a DBE vendor list, how many businesses appear on your list?

Specify Number _____

Please estimate if exact number is not known:

Less than 25 _____

25 - 50 _____

50 - 100 _____

100 - 200 _____

200 - 500 _____

500 plus _____

Do not want to estimate _____

Will Check (by when) _____

11. If you do not have a formal program how does your government involve minority and women owned businesses in purchasing and contracting? Please be specific.

12. Does your government require certification or other documentation of minority and women-owned business?

Yes _____ *Certification* _____ *Other* _____

No _____

Do Not Know _____

13. If so, may we have a copy of the certification form or other documentation required and the list of firms that are certified or qualified?

Yes _____ (*Attach to completed questionnaire*)

No _____

14. Do you know of any private firms or other public agencies in your area that have programs to encourage minority and woman owned businesses to purchase/contract with them?

Yes _____

No _____

Do Not Know _____

If yes, name _____

15. Would you please state your:

NAME _____

TITLE _____

ADDRESS _____

PHONE _____

FAX _____

Thank you for your time. Have a nice day.

APPENDIX B

**NATIONAL SURVEY OF STATE GOVERNMENT OFFICES
AND AGENCIES RESPONSIBLE FOR
DISADVANTAGED PURCHASING POLICIES**

(On Letterhead of the L.B.J. School of Public Affairs)

Date

Inside Address For State Official

Dear :

We are seeking your input and assistance with an analysis of Disadvantaged Business Enterprises (DBE's). Researchers at the University of Texas, under the direction of Professor Ray Marshall of the Lyndon B. Johnson School of Public Affairs and former U.S. Secretary of Labor, are examining options for enhancement of the Texas Department of Transportation's DBE program. We are seeking general information about your state's DBE program and policies which should be easy to provide. In addition, we are attempting to locate jurisdictions which include in their DBE program businesses owned by individuals with disabilities.

Please take several minutes to fill out the enclosed list of questions, and please send your answers back within two weeks, if at all possible. A pre-addressed, pre-stamped envelope is enclosed.

Results of the survey can be made available to you in early 1993, when the research effort will be completed. At that time, we can provide key findings and recommendations from the broader analysis as well. Please let us know if you would like to receive any of this information at no charge.

If you have any questions about the survey, please have a senior staff person call Dr. James Jarrett at (512) 471-6990. Thank you for your help.

Sincerely,

Jon S. Wainwright
Director of Research

Enclosures:

List of Questions

Pre-addressed, pre-stamped envelope

**STATE GOVERNMENT
DISADVANTAGED BUSINESS ENTERPRISE SURVEY**

**LBJ School of Public Affairs/Graduate School of Business
University of Texas at Austin**

1. Does your state have a statute that pertains to procurement of services and goods from Disadvantaged Business Enterprises (DBE's) or historically underutilized minority- and women-owned businesses?

- Yes
- No (Please skip to item 11)

2. Does your state's DBE program have established numerical goals for procurement from, and contracting with, DBE's?

- Yes
- Please specify the current goals for all categories of DBE's:

- No

3. Does your state require certification or some type of approval process of minority- and women-owned businesses if such businesses wish to participate in the state's DBE effort?

- Yes, certification
- No, approval or certification is not required
- Our approval process is unique as stated below

4. Does your state compile a DBE vendor list?

No

Yes

Please estimate in round numbers how many businesses are on the current vendor list:

5. Does your statewide DBE program currently include an **explicit provision** for businesses owned by a person with a disability?

No

Yes

6. Does your DBE program allow or encourage a business owned by a person with a disability to apply for certification under a **general category** of Disadvantaged Business Enterprise or as part of an "Other" category?

Yes

No

7. If a business owned by a person with a disability can participate under the state DBE program, either as part of a specific group or as part of a more general category of DBE, how many disabled-owned businesses are participating currently?

None

Fewer than 5

Between 5 and 10

Between 11 and 49

More than 50

8. Please indicate why firms owned by individuals with disabilities are **not** currently part of your DBE program? Please check as many as apply:

- They are included
- Not permitted or required by law
- No firms have asked to participate
- No disabled-owned firms meet our purchasing or contracting standards

- Unaware of any disabled-owned firms in the state
- This issue has never been raised before
- We would consider adding disabled-owned businesses to the DBE program.
- Other (Please specify) _____

9. Are you aware of any local governments or private firms which enable disabled-owned firms to participate in their DBE procurement program? Please identify the organization and a contact person if possible

10. Do you know of any private firms or other governments in your area which have exemplary or innovative DBE programs?

Please identify the organization and note what is unique about their program:

PLEASE ANSWER ITEMS 11 AND 12 ONLY IF YOUR STATE CURRENTLY HAS NO FORMAL DBE PROGRAM.

11. Did your government ever have a DBE program or statute?

No

Yes

DBE

If Yes, please provide a brief description of when and why the program was eliminated:

12. If your state has no formal program, does your government undertake any activities which are designed to involve minority- and women-owned businesses in state purchases and contracts?

Please specify the activities, if any

13. Please indicate if you would like to receive any of the following:

A tabulation of the survey results from all responding state governments

A summary of all key DBE findings and recommendations to be presented to the Texas Department of Transportation

A summary of recommendations on disabled-owned business enterprises

If you wish to receive any of the summaries, please provide the following information.

Name _____
Mailing Address _____

City _____ Zip Code _____
Tel.: _____ FAX: _____

If you do not wish to receive any information, please indicate what state you are from:

Please return these two sheets and a copy of the most pertinent statute, administrative regulation, or informational brochure which describes your state's DBE program in the enclosed self-addressed stamped envelope to: Dr. James E. Jarrett, Mail Code 46502, Graduate School of Business, University of Texas at Austin, Austin, TX 78712-1175. Or if you prefer, fax the sheets to Dr. Jarrett at (512) 471-0587. If there are questions, please call (512) 471-6990.

THANK YOU AGAIN FOR YOUR ASSISTANCE