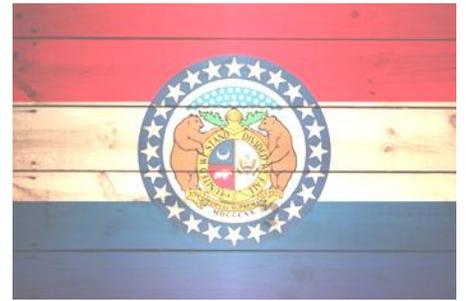


**State of Missouri
Office of Administration**



**OVERSIGHT REVIEW
COMMITTEE REPORT
2014 DISPARITY STUDY**
January 27, 2015

2014

Table of Contents

DISPARITY STUDY OVERSIGHT REVIEW COMMITTEE MESSAGE	3
2014 DISPARITY STUDY OVERSIGHT REVIEW COMMITTEE.....	4
HISTORY AND PURPOSE OF THE 2014 DISPARITY STUDY.....	5
OVERSIGHT REVIEW COMMITTEE EXECUTIVE SUMMARY.....	7
COMMITTEE RECOMMENDATIONS	9
CONCLUSION.....	18
APPENDIX A: EXECUTIVE ORDER 14-07	19
APPENDIX B: EXECUTIVE ORDER 14-16	22
APPENDIX C: CONSULTANT'S EXECUTIVE SUMMARY AND RECOMMENDATIONS	24

Disparity Study Oversight Review Committee Message

January 27, 2015

Governor Jeremiah W. (Jay) Nixon
State Capitol Building, Room 216
Jefferson City, MO 65101

Dear Governor Nixon:

The 2014 Disparity Study Oversight Review Committee, created by Executive Order 14-07 on July 2, 2014 has reviewed the results of the 2014 Disparity Study that was conducted by Colette Holt and Associates on behalf of the State of Missouri. The Disparity Study Oversight Review Committee hereby submits the attached report for your review.

Sincerely,

2014 Disparity Study Oversight Review Committee Members

Rhonda Carter Adams
Lisa Althoff
Dr. Valerie Blackmon
Anna Crosslin
Charlotte Hardin
Redditt Hudson
Dr. Michael Middleton
State Representative Tommie Pierson
Karlos Ramirez
Lyle Randolph
Nia Richardson
Theresa Garza Ruiz
William "Bill" Thornton
Leonard Toenjes
John Truesdell

2014 Disparity Study Oversight Review Committee

The Disparity Study Oversight Review Committee ('Committee') was established by Executive Order 14-07 (Appendix A) issued by Governor Jay Nixon on July 2, 2014. The Committee members appointed by Governor Nixon are:

- **Rhonda Carter Adams**, Executive Director, St. Louis/Eastern Missouri Area Mid-States Minority Supplier Development Council
- **Lisa Althoff**, Executive Director, Missouri Women's Council
- **Dr. Valerie Blackmon**, Management Consultant, Blackmon Consulting
- **Anna Crosslin**, President and Chief Executive Officer, International Institute of St. Louis
- **Charlotte Hardin**, Missouri Legislative Black Caucus Foundation Board
- **Redditt Hudson**
- **Dr. Michael Middleton**, Deputy Chancellor, University of Missouri-Columbia
- **State Representative Tommie Pierson**, Missouri House of Representatives District No. 66, Chairman of the Legislative Black Caucus
- **Karlos Ramirez**, Executive Director, Hispanic Chamber of Commerce of Metropolitan St. Louis
- **Lyle Randolph**, Vice President and General Manager, Isle Casino Cape Girardeau
- **Nia Richardson**, Director of Business Development and Marketing, DuBois Consultants, Inc.
- **Theresa Garza Ruiz**, Political Director, Laborers' Local #264
- **William "Bill" Thornton**, General Counsel, Missouri Department of Higher Education
- **Leonard Toenjes**, President, Associated General Contractors of Missouri
- **John Truesdell**, Vice President, Rose International (Retired)

Executive Order 14-16 (Appendix B) was issued by Governor Jay Nixon on December 24, 2014 whereby extending Executive Order 14-07 through January 31, 2015.

History and Purpose of the 2014 Disparity Study

Diversity, inclusion and equal opportunity are valuable tools in creating and building Missouri's small business base. Small businesses are vital contributors to Missouri's overall economic success. This study will assist the state in engaging small business vendors from all races, regions and backgrounds throughout the state. While progress has been made, there is still much work to be done to eliminate the lingering effects of discrimination and ensure a level playing field for all Missouri business owners, especially minority- and women-owned businesses.

The state's Minority- and Woman-Owned Business Enterprise (M/WBE) Program works to expand Missouri's pool of qualified small businesses. It monitors, promotes and supports the inclusion of socially and economically disadvantaged minority- and women-owned businesses in the state government procurement process. The program is an economic driver; it helps currently disenfranchised small business owners in Missouri improve their access and thereby increase their competitiveness and sustainability.

A periodic disparity study provides essential information and data to determine what barriers may exist. Barriers can include discriminatory practices that impede ready, willing, and able M/WBEs from participating in state contracting opportunities. Updated studies offer valuable updates to assess progress and identify evolving needs. Thus, new M/WBE utilization goals could be established, if still necessary, and the Office of Equal Opportunity (OEO) can advocate for more M/WBE inclusion in the procurement process in the State of Missouri.

In 2013, funding was appropriated by the Missouri General Assembly to support a disparity study during Fiscal Year 2014. The State of Missouri commissioned a disparity study to determine the utilization levels of minority and women-owned business enterprises (M/WBE) in contracts awarded by the state. The last State of Missouri Disparity Study was commissioned in 1994 and completed in 1998. It is common practice for a state to update their disparity study every three to five years.

On August 12, 2013, the Office of Administration (OA) awarded Contract #C313106001 to Colette Holt & Associates to conduct a disparity study for the State of Missouri. The contract required that a comprehensive, effective, legally defensible, and enforceable disparity study be performed that meets the judicial test for constitutional "strict scrutiny."

The consultant (Colette Holt & Associates) was required to recommend remedies which would satisfy the requirements of City of Richmond v. Croson, 488 U.S. 469 (1989). In Croson, the Supreme Court held that race-conscious, minority participation programs established by state and local governments were not permissible unless they could satisfy the "strict scrutiny" requirements of the Fourteenth Amendment of the United States Constitution. This means that race-conscious contracting programs established by a state or local government must have

a “compelling justification.” Additionally, the means chosen to implement such programs must be “narrowly tailored” to achieve the goal of assuring a level of M/WBE participation that is not inhibited by discriminatory practices.

The disparity study sought to examine the procurement practices of certain Missouri state agencies to determine the extent the procurement of construction; construction-related services; goods/supplies; and services should be subject to a race and/or gender conscious remedial program supported by Missouri state law. The study was to review certain contracts from July 1, 2007 to June 30, 2013.

The 2014 State of Missouri Office of Administration Disparity Study¹ was completed on October 24, 2014 by Colette Holt & Associates. The full 2014 Disparity Study Report can be found on the Office of Administration and the Office of Equal Opportunity websites at: <http://oa.mo.gov/disparity-study-information> and <http://oeo.mo.gov/publications/>.

¹ State of Missouri Disparity Study, Colette Holt & Associates, 2014; <http://oa.mo.gov/disparity-study-information>.

Oversight Review Committee Executive Summary

The Disparity Study Oversight Review Committee was established by Executive Order 14-07 issued by Governor Jay Nixon on July 2, 2014. The Committee was charged with reviewing the findings of the 2014 Disparity Study and producing meaningful recommendations to assist the State of Missouri develop a contracting process that is inclusive, promotes diversity and provides greater opportunity for minority and women-owned business enterprises. By engaging in a thorough review and analysis of the 2014 Disparity Study, the Committee was to develop appropriate recommendations designed to increase the participation by socially and economically disadvantaged small business concerns and minority and women-owned business enterprises, directly or indirectly, in state contracting.

To accomplish these charges, the Committee thoroughly reviewed the report and discussed the consultant's Executive Summary and Recommendations which are included in their entirety in this report as Appendix B.

In part, the consultant's main recommendations, as outlined in the 2014 Disparity Study, are as follows:

- Increase access to state contracting information
- Increase outreach to M/WBEs
- Lengthen solicitation times
- Review contract sizes and scopes
- Adopt "quick pay" policies
- Review surety bonding and experience requirements
- Ensure bidder non-discrimination and fairly priced subcontractor quotations
- Adopt a small business setaside
- Create a small contractor bonding and financing program
- Use the study to set the overall, annual M/WBE goals
- Use the study to set M/WBE contract goals
- Partner with other entities to provide technical assistance and supportive services
- Consider adopting a Mentor-Protégé Program
- Narrowly tailor program eligibility standards
- Review M/WBE contract compliance policies and procedures
- Provide training to bidders regarding program compliance
- Implement an electronic contracting data collection and monitoring system

The consultant, Colette Holt, conducted three public meetings to present the findings of the Disparity Study and to answer questions. The meetings were held in St. Louis on October 27, in Jefferson City on October 29, and in Kansas City on October 31, 2014. A majority of the Committee members attended at least one of the three public presentations.

The Committee conducted nine meetings between November 2014 and January 2015 to review the study and report and to formulate the Committee's recommendations to the Governor. Colette Holt presented the findings of the study to the Committee during the November 6 meeting. She explained her recommendations, answered questions from committee members, and provided needed clarifications. She also participated on calls on December 30, 2014 and January 7, 2015 to provide clarification and answer questions prior to finalization of the Committee's recommendations.

The Committee also gathered information regarding various state policies and procedures, sought input from the public via an online input form, and heard directly from some M/WBE entities in the state. Individuals who participated during one of the meetings by sharing their M/WBE experience from their community's perspective were: Phillip Yelder, Director of Kansas City Human Relations Dept. (MWBE Program); Howard Hayes, St. Louis Development Corp.; and John Oke-Thomas, a minority business owner & Chair of Minorities in Business (MIB), a local community organization in Springfield.

Committee members also worked over several meetings to prioritize the study recommendations. Their individual rankings were consolidated and resulted in several in-depth committee discussions about the relative importance of each recommendation, ways in which state initiatives may currently be addressing each recommendation, and gaps. While all of the recommendations have high value, it is evident to committee members that early implementation of some is a priority to achieve measurable program impact.

The Committee believes that while progress has been made in recent years, there is still work to be done to eliminate the lingering effects of discrimination and ensure a level playing-field for all Missouri business owners, especially minority and women-owned businesses. After reviewing and discussing the disparity study report and recommendations, the ORC is pleased to present its recommendations to the Governor.

Committee Recommendations

The 2014 Disparity Study Oversight Review Committee submits the following information and comments in support of each recommendation put forth by the Committee. The order in which the recommendations are stated results from priorities established by the Committee after detailed internal discussions and consultation with external professionals. Progress being made by the state is noted within the appropriate recommendation. All recommendations are “must-do” in importance; however, Adequate Funding for OEO, the first recommendation, is essential and, as such, is the top priority. It would be difficult if not impossible to achieve many of the other recommendations without such adequate funding.

Adequate Funding For the Office of Equal Opportunity (OEO)

The Office of Equal Opportunity has 4.5 FTE to handle the day-to-day operations of the office. OEO has two additional individuals, who are contractors, to assist with performing site inspections. Currently, OEO’s responsibilities include certification, compliance and workforce development. The existing resources available to OEO are not adequate to support the scope of work assigned to them. The Committee strongly encourages the state to consider limiting the focus of OEO solely on the certification of M/WBEs and compliance with the terms of contracts awarded to M/WBEs. Workforce development warrants its own unit.

One of the main takeaways from the study is that the state is not diverse enough in the participation of M/WBEs in all of its NAICS/industry codes, and OEO should focus more energy on increasing certification in codes which are currently lacking and increasing participation.

The Committee urges the state to determine the appropriate number of employees which can adequately address the certification of M/WBEs, while being mindful that it is a goal of the Committee to increase participation and certification of M/WBEs. Providing adequate resources is extremely important to the Committee.

M/WBE Contract Compliance Policies and Procedures

The Committee recommends that OA conduct a thorough review of the M/WBE contract compliance policies and procedures, including policies and procedures as they relate to ‘Pre-Award Compliance’ and ‘Post-Award Compliance.’ The Committee further recommends that the Commissioner of the Office of Administration shall be authorized to hire an additional staff member to oversee and monitor contract compliance policy as it specifically relates to the M/WBE program. This new M/WBE contract compliance officer would work in collaboration with OEO, OA’s Division of Purchasing and Materials Management (DPMM), OA’s Division of Facilities Management, Design & Construction (FMDC) and OA’s Contract Oversight Office (COO). The M/WBE contract compliance officer could be housed in COO. The Commissioner of OA shall be responsible for determining the manner in which this recommendation is implemented.

The Committee also recommends that the M/WBE contract compliance officer become a member and active participant of the Contract Compliance Council (CCC) that exists today. The CCC, which is comprised of designated state agency personnel, should be utilized more frequently as a means for additional education and discussion on contract compliance issues.

The Office of Contract Compliance (OCC) that was created in 1998 under Executive Order 98-21 was abolished by Executive Order 05-30 in 2005. While in existence, the duties of the OCC included assisting with the development of policies, forms and procedures to carry out the requirements of the M/WBE participation program and monitoring contractor compliance with MBE/WBE goals.

In Fiscal Year 2001, DPMM had 56 full-time equivalent (FTE) employees. Due to budget cuts that occurred between Fiscal Year 2001 and Fiscal Year 2010, DPMM's FTEs decreased to 33, which is their current staffing level for Fiscal Year 2015. The OCC was housed in DPMM, and the contract compliance positions were eliminated during the budget cuts.

Narrowly Tailored Program Eligibility Standards

The Committee recommends the state revisit eligibility standards for the M/WBE program with the emphasis on assisting small businesses owned by socially and economically disadvantaged individuals. The Committee recommends the state consider capping program eligibility based on firm size and personal net worth as determined by OA. Rather than immediately disqualifying firms that exceed the new size cap, the Committee recommends a phased-in process. For example, for three years following implementation, the state requires those firms, when serving as a prime vendor, to utilize additional M/WBEs as subcontractors in order to move forward with a contract. After three years, the firms that exceed the new size cap would be considered graduated from the state's M/WBE program, but could consider serving in a new capacity as a mentor/protégé partner. By revisiting the program's eligibility standards and considering implementing a graduation benchmark, the state will be addressing the issue of very large M/WBE firms with significantly higher than average personal net worth being awarded a disproportionate number of contracts with M/WBE goals, thus discouraging small M/WBE business participation.

Regarding specific eligibility standards, the Committee recommends the state research other comparable M/WBE programs and the U.S. Small Business Administration's (SBA) eligibility requirements and consider implementing comparable standards to meet the state's specific needs.

The Office of Equal Opportunity should identify opportunities to work with other certifying entities across the state to streamline the certification process and identify a universal application. OEO, with the help of OA, should review the state's current M/WBE certification policies and procedures and compare those policies and procedures to those used by other

certifying entities to identify best practices. It would also be helpful to determine a method or procedure by which another certifying entity can inform the state/OEO if they have denied certification to a business and the reason for the denial.

The application process should be robust enough to identify firms per North American Industry Classification System (NAICS)/industry codes in which they are capable of providing services. Once certified, a firm will not be able to amend its NAICS/industry certification without obtaining approval from OEO.

Program Compliance Training For Bidders and Vendors

The Committee has three recommendations:

- a) The state should implement some additional means by which vendors and bidders can be educated on program compliance. The state currently provides procurement program compliance training for bidders and vendors mainly through the online Vendor Manual² and outreach activities.
- b) Alternative training should be implemented through the use of webinars, online training surveys and creating two videos on contract compliance (one pre-award and one post-award). And,
- c) OA should consider implementing a process whereby the state has confirmation that a potential bidder/contract awardee has undergone the appropriate training either prior to submitting a bid or within a set timeframe after a contract has been awarded.

Bidder Non-Discrimination and Fairly Priced Subcontractor Quotations

The Committee agrees with the recommendation that OA needs to ensure bidder non-discrimination and fairly priced subcontractor quotations. The Committee recommends that DPMM, COO and the new M/WBE contract compliance officer work together to determine if price gouging and bid shopping are occurring and devise a means by which individuals can confidentially report such activities. DPMM, COO, and the M/WBE contract compliance officer should determine if it is feasible to require bidders to maintain information on pricing and subcontractor quotes as outlined in the consultant's recommendations.

Overall Annual M/WBE Participation Goals

In accordance with the study, the Committee recommends the state set its overall annual participation goals at 10 percent for minority-owned businesses and 10 percent for women-owned businesses. The Committee would like to go on record that the state and Office of Equal

² <http://oa.mo.gov/sites/default/files/vendormanual.pdf>

Opportunity's objective should be to exceed the participation goals of 10/10. One way to accomplish this would be to increase certification and participation of M/WBEs in NAICS/industries where there are currently few, if any, M/WBEs certified.

The state should also use the study to implement specific industry goals based on aggregated availability within the four industries (i.e. construction, construction-related services, goods/services, and services). Setting individual contract goals (as explained in the next recommendation) will help achieve the specific industry goals and ultimately help achieve the state's overall annual 10/10 participation goals.

The Committee recommends that the state reevaluate how minority women-owned businesses are categorized.

M/WBE Contract Goals

The Committee recommends that the state use a contract-by-contract approach to participation. Goals should be set on a contract by contract basis based on the availability of M/WBEs in the marketplace. The program needs to have a firm process in place for businesses to demonstrate they have made a good faith effort if they cannot meet the contract goals.

The Committee recommends that the state use the disparity study to set M/WBE contract goals, starting with the NAICS codes identified in the "Unweighted Availability" (Table 11³) provided in the study as a baseline. Going forward, the state should adopt a method or protocol for developing flexible goals that take into consideration the availability of minority- and women-owned businesses on every contract.

Annual Program Performance Measures

The Committee recommends the state develop a dashboard of program performance measures which should be tracked and evaluated annually. Items to be monitored should include but not be limited to:

- a) The number of good faith waivers requested and awarded by NAICS code;
- b) The number and dollar amounts of bids by NAICS code, rejected as non-responsive for failure to make good faith efforts to meet the M/WBE participation goals;
- c) The number, type and dollar amount of M/WBE substitutions during contract performance by NAICS code;

³ State of Missouri Disparity Study, Colette Holt & Associates, 2014; <http://oa.mo.gov/disparity-study-information>.

- d) Growth in the number and size of certified firms as well as the growth in scope of work awarded to certified firms by NAICS code;
- e) Industries in which M/WBEs are awarded prime contracts and subcontracts; and
- f) Other items deemed appropriate and necessary by the state and OEO.

At the conclusion of each annual program performance evaluation, the state should reevaluate the program and proceed to implement measures designed to improve performance.

Electronic Contracting Data Collection and Monitoring System

The Committee recommends that the state implement an electronic contracting data collection and monitoring system capable of collecting measureable data to document the achievement of M/WBE goals. The state is currently progressing toward acquiring and implementing an eProcurement system. Because the bid proposals for an eProcurement system are currently under review, the state and OEO do not know the full capability of the eProcurement system at this time. Efforts have been made to include features in the new system that will benefit OEO and the M/WBE program.

Committee members also suggest adding another component to the recommendation – functionality. At a minimum, functionality should include:

- a) Full contract information
- b) Access by authorized users
- c) Contract goal setting
- d) Utilization of M/WBEs
- e) Spend analysis of informal contracts and Pcard transactions
- f) Integrated email and fax notifications
- g) Export/Import integration with existing systems (SAM II (Statewide Advantage for Missouri II which is the state's financial system), DPMM, OEO, etc.)
- h) Contract compliance
- i) Online certification application process
- j) Outreach tools

The implementation of an eProcurement system should assist with items (a - g) identified above. In addition, OEO is currently working with OA's Information Technology Services Division (ITSD) to create and/or reformat a report that can provide spend analysis on state contracts that contain M/WBE participation, which should satisfy and/or assist with item (e) above.

OA's Contract Oversight Office should assist with item (h) above. OEO is working closely with ITSD on the development of an online application process which should satisfy and/or assist

with item (i) above. OEO is also currently in the midst of awarding a contract to a vendor that can perform outreach services, which should satisfy and/or assist with item (j) above. After all the pending actions above have been completed or implemented, the state will be in a better position to determine if there are some items that have not been completely addressed.

Regular Reviews

Beginning with Fiscal Year 2016, the Committee recommends that OEO conduct an annual evaluation of the program's administration and processes that includes recommendations for improvement. The annual evaluation should include detailed data on:

- a) Goal attainment;
- b) Program highlights; and
- c) Challenges to be met.

In addition, a full and thorough review of the evidentiary basis for the M/WBE program achievements should be conducted every five years by an independent and external party that includes recommendations for improvement. An outside external source is recommended to ensure an unbiased review.

Contract Sizes and Scopes

To help increase M/WBE participation on contracts, the Committee recommends that the state unbundle contracts (where applicable and where appropriate) by dollars, scopes or locations. Unbundling contracts could facilitate the inclusion of more M/WBE participation in the bidding process and provide an additional means toward the achievement of participation goals. The Committee believes that unbundling contracts would provide more opportunities for underutilized M/WBEs. DPMM should review contract sizes and scopes from an implementation standpoint.

Access to State Contracting Information

The Committee recommends that OA continues to move forward with the electronic advertising and eProcurement system which will improve access to state contracting information. Additionally, the state should monitor departments to ensure they are making an adequate effort to advertise all of the opportunities that are available.

The Committee also recommends the state implement a new requirement for departments to post a forecasting of upcoming bid opportunities well in advance of the publication of a Request for Proposal (RFP). This should be done upon completion of the department's Fiscal Year budget, or as soon as an upcoming opportunity is identified.

When possible, the departments should host a pre-proposal meeting and invite qualified vendors (both primes and subcontractors) to attend and learn about the projects in advance. This will also give the primes and subcontractors an opportunity to network and become familiar with who is interested in and available to bid on upcoming projects.

“Prompt Pay” Policies

The Committee recommends that OA ensures that all state agencies are aware of Sect. 34.055, RSMo⁴ regarding allowable charges that can be assessed on invoices issued to the state for supplies and services. The Committee also recommends that state agencies be encouraged to review their internal fiscal processes for paying invoices for goods and services to ensure invoices are paid promptly.

The Committee also noted that Sect. 34.057, RSMo⁵ was amended by Senate Bill 529 during the 2014 legislative session. The statutory changes regarding prompt payment and bond obligations for public works projects became effective on August 28, 2014. OA should ensure that the appropriate state agencies are aware of the revised statute in order to be in full compliance.

Small Contractor Bonding and Financing Program

The Committee recommends implementation of a small contractor bonding and financing program to benefit the M/WBE program by assisting start-up or small businesses. It is recommended that OA, FMDC, DPMM, OEO and other appropriate agencies identify the most beneficial assistance and feasibility of implementing such a program. The Committee recommends that the state research existing programs to identify a replicable model program if available.

Outreach to M/WBEs

The Committee recommends that OEO seek approval and receive funding to hire an additional staff member to conduct activities and events aimed at reaching and educating minority and women-owned businesses about the benefits of participation in the state’s M/WBE program. OEO should also research and utilize other available resources (such as the Missouri Women’s Council) in efforts to identify additional prospective business owners. The designated ‘outreach’ staff member could potentially also oversee a Mentor/Protégé Program, if implemented.

⁴ Missouri Revised Statutes, <http://www.moga.mo.gov/mostatutes/stathtml/03400000551.html>

⁵ Missouri Revised Statutes, <http://www.moga.mo.gov/mostatutes/stathtml/03400000571.html>

Surety Bonding and Experience Requirements

The Committee recommends that the state review and, if needed, adjust surety bonding requirements to facilitate the inclusion of M/WBE participation in the bidding process and to provide an additional means to achieve participation goals.

The Committee also recommends that the state review experience requirements to facilitate the inclusion of M/WBE participation in the bidding process and again to provide an additional means toward the achievement of participation goals.

The state should review both surety bonding and experience requirements to ensure the requirements are no greater than necessary to protect the interests of the state. The Committee recommends that OA's Division of Accounting review surety bonding requirements and experience requirements.

Solicitation Times

The Committee recommends the state lengthen the solicitation times whenever possible for prime vendors to potentially increase M/WBE participation, thereby increasing the ability for the prime vendors to meet the participation goals.

Partnerships with Entities for Technical Assistance and Supportive Services

The Committee recommends OEO gather and make use of as much information as possible relative to other agencies or organizations, such as colleges and universities, that provide similar services. OEO should approach such programs and partner or work with them closely to prevent duplication and streamline efforts.

Mentor-Protégé Program

The Committee recommends that OA and OEO implement a Mentor-Protégé Program using MoDOT's program as a model including possibly developing a means to incentivize partnerships. If OEO is able to hire a new designated 'outreach' staff member, this individual could possibly also be in charge of the Mentor-Protégé Program, if implemented.

Sunset Date

The Committee recommends that the Governor and the Missouri General Assembly appropriate funding for a disparity study (full program review) to occur in 2019 and every fifth year thereafter. Based on best practices and the consultant's recommendations, the Committee recommends that Missouri's M/WBE Program expire on June 30, 2021 unless prior to such date OEO (the state), after conducting a thorough evidentiary review, finds that the purposes of the program to eliminate disparity have not yet been achieved. In such a case, the

program may be extended in five-year increments until evidence reveals that parity has been achieved.

Accordingly, the Committee recommends that a sunset date for the M/WBE Program, indicating when it will end unless reauthorized, should be adopted to meet the narrow tailoring test that race- and gender-conscious measures be used only when necessary. A new disparity study or other applicable evidentiary review should be commissioned in time to meet the sunset date.

Small Business Program

The Committee recommends that the state adopt a race- and gender-neutral small business program to operate concurrently with the race- and gender-conscious M/WBE program. The state should identify specific contract dollars to set aside exclusively for bidding by Missouri small businesses. Only small businesses in Missouri that meet pre-determined criteria will be allowed to compete on these set aside contract dollars.

In order to define a small business in the state of Missouri, the state should identify businesses of a certain size and personal net worth similar to the federal Disadvantaged Business Enterprise (DBE) program. Further consideration should also be given to the size (number of employees) and (annual gross) revenue limitations used by the SBA.

The state should use some combination of the limitations and requirements identified by these two federal programs as the basis for the development of eligibility requirements necessary to qualify and/or participate in this small business program.

Conclusion

The Committee would like to thank state leadership for securing the funding to produce a valuable disparity study. A disparity study provides the data and sets the tone on which we can build a fairer state procurement process. The enormous amount of time and effort on the part of state leadership and administrative staff is also acknowledged. The recently completed disparity study and implementation recommendations are tremendous steps in the right direction. But there is much still to be accomplished, and it will take sustained leadership commitment and funding to do so.

To reiterate, diversity, inclusion and equal opportunity are valuable tools in creating and building Missouri's small business base. Small businesses are vital contributors to Missouri's overall economic success. This study will assist the state in engaging small business vendors from all races, regions and backgrounds throughout the state. While progress has been made, there is still much work to be done to eliminate the lingering effects of discrimination and ensure a level playing-field for all Missouri business owners, especially minority and women-owned businesses.

And why is a level playing-field essential?

Missouri boasts a multitude of strengths and assets about which our residents can feel justifiably proud. Its agricultural sector is strong and some of our regions are rapidly shifting from a formerly manufacturing to a technological and service-based economy. Our shifting economy presents opportunities and challenges as new and evolving services and products are necessary to meet these changing needs. In this dynamic economic environment, we cannot afford to leave anyone behind, especially those who can offer diverse perspectives and different operational strategies. We must think and act inclusively to ensure a society in which there is shared prosperity for all.

Accordingly, the value of identifying disparities that limit access to the state procurement process is irrefutable. Establishing policies and procedures and then monitoring compliance with those policies ensures that meaningful change will occur. Updated studies are essential to the process as well since they present opportunities to modify policies, procedures, and direction as needed. In this way, forward momentum can be maintained until parity is achieved.

Finally, the Committee is acutely aware that many of the recommendations made in this report cannot be accomplished without additional funding and more staffing for the Office of Equal Opportunity (OEO). It is the strong recommendation of the Committee that the state appropriate additional funds and resources for OEO and authorize future studies on a five-year recurrence until parity is achieved. For Missouri's economy to grow and thrive, there must be fair and inclusive processes that engage all qualified businesses, regardless of gender or ethnicity. It is an economic imperative.

Appendix A: Executive Order 14-07



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
(573) 751-3222

Executive Order 14-07

WHEREAS, the State of Missouri is committed to enhancing the economic health and prosperity of socially and economically disadvantaged small business and women/minority business enterprises; and

WHEREAS, section 37.020.2, RSMo, states that “[t]he office of administration, in consultation with each department, shall establish and implement a plan to increase and maintain the participation of certified socially and economically disadvantaged small business concerns or minority business enterprises, directly or indirectly, in contracts for supplies, services, and construction contracts, consistent with goals determined after an appropriate study conducted to determine the availability of socially and economically disadvantaged small business concerns and minority business enterprises in the marketplace”; and

WHEREAS, the Office of Administration has commissioned a Disparity Study which will be completed by August 15, 2014; and

WHEREAS, analysis of the findings of the Disparity Study and the formulation of recommendations that will promote greater participation in state contracting by women/minority business enterprises is an important endeavor that will be aided by a diverse group of individuals who understand the governmental contracting process and the challenges faced by women/minority businesses in that process; and

WHEREAS, the appointment of a committee to thoughtfully review the findings of the Disparity Study and produce meaningful recommendations will assist the State of Missouri in developing a contracting process that is inclusive, promotes diversity and provides greater opportunity for women/minority business enterprises.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, under the authority vested in me under the constitution and the laws of the State of Missouri, do hereby establish the Disparity Study Oversight Review Committee.

The Disparity Study Oversight Review Committee shall consist of the following individuals:

- **Michael Middleton**, Deputy Chancellor, University of Missouri-Columbia
- **William “Bill” Thornton**, General Counsel, Missouri Department of Higher Education
- **John Truesdell**, Vice President, Rose International (Retired)
- **Dr. Valerie Blackmon**, Management Consultant, Blackmon Consulting
- **Charlotte Hardin**, Missouri Legislative Black Caucus Foundation Board
- **Lyle Randolph**, Vice President and General Manager, Isle Casino Cape Girardeau
- **Lisa Althoff**, Executive Director, Missouri Women’s Council
- **Theresa Garza Ruiz**, Political Director, Laborers’ Local #264
- **Nia Richardson**, Director of Business Development and Marketing, DuBois Consultants, Inc.
- **Rhonda Carter Adams**, Executive Director, St. Louis/Eastern Missouri Area Mid-States Minority Supplier Development Council
- **Anna Crosslin**, President and Chief Executive Officer, International Institute of St. Louis
- **Redditt Hudson**, Regional Field Organizer, NAACP Region IV
- **State Representative Tommie Pierson**, Missouri House of Representatives District No. 66, Chairman of the Legislative Black Caucus
- **Karlos Ramirez**, Executive Director, Hispanic Chamber of Commerce of Metropolitan St. Louis
- **Leonard Toenjes**, President, Associated General Contractors of St. Louis

The Disparity Study Oversight Review Committee is assigned for administrative purposes to the Office of Administration and the Commissioner of Administration is authorized to reimburse such expenses of the Committee as deemed appropriate.

The Disparity Study Oversight Review Committee shall engage in a thorough review and analysis of the Disparity Study and shall develop appropriate recommendations designed to increase the participation of women/minority business enterprises, directly or indirectly, in state contracts. The Commissioner of Administration may assign such additional duties as deemed necessary to accomplish the goals of the Committee.

The Disparity Study Oversight Review Committee shall present to the Governor and Commissioner of Administration by December 31, 2014, a report containing an analysis of the Disparity Study and its recommendations to increase participation by socially and economically disadvantaged small business concerns and women/minority business enterprises in state contracting.

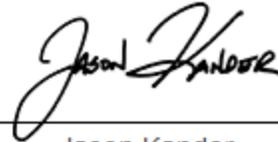
This Executive Order shall expire on December 31, 2014, unless extended by subsequent Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 2nd day of July, 2014.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Jason Kander
Secretary of State



Appendix B: Executive Order 14-16

EXECUTIVE ORDER 14-16

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COMMISSIONS DIVISION

WHEREAS, the Disparity Study Oversight Review Committee was established by Executive Order 14-07; and

WHEREAS, the Disparity Study Oversight Review Committee was tasked with engaging in a thorough review and analysis of the Disparity Study commissioned by the Office of Administration and developing appropriate recommendations designed to increase the participation of women/minority business enterprises in state contracts; and

WHEREAS, the Disparity Study Oversight Review Committee is required to present a report containing an analysis of the Disparity Study and its recommendations to increase participation by socially and economically disadvantaged small business concerns and women/minority business enterprises in state contracting by December 31, 2014; and

WHEREAS, the Disparity Study Oversight Review Committee has been diligently working on this important effort and has held several public hearings; and

WHEREAS, the Disparity Study Oversight Review Committee has requested additional time to prepare its report and recommendations.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, under the authority vested in me under the constitution and the laws of the State of Missouri, do hereby extend Executive Order 14-07 and further order that the Disparity Study Oversight Review Committee present its report to the Governor and Commissioner of Administration by January 31, 2015.

Executive Order 14-07 and this Executive Order shall expire on January 31, 2015, unless extended in whole or in part by subsequent Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 24th day of December, 2014.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Jason Kander
Secretary of State

Appendix C: Consultant's Executive Summary and Recommendations

I. Executive Summary

Colette Holt & Associates was retained by the State of Missouri Office of Administration ("OA") to perform a study of possible disparities in access to state prime contracting and associated subcontracting opportunities on contracts awarded between July 2007 and June 2013 on the basis of race and gender. We explored whether Minority-Owned Business Enterprises ("MBEs") and Woman-Owned Business Enterprises ("WBEs"), collectively, "M/WBEs", have equal access to state contracts, and if not, what remedies might be appropriate to redress the barriers created by race or gender discrimination.

A. Study Methodology and Data

The methodology for this Study embodies the constitutional principles of *City of Richmond v. Croson*, as well as best practices for designing race-and gender-conscious contracting programs. Our approach has been specifically upheld by courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for designing legally defensible disparity studies for state departments of transportation.

The Study addresses the following questions:

- What are the legal standards governing contracting affirmative action programs?
- What are the empirically based geographic and procurement markets in which the state procures goods and services?
- What has been Missouri's utilization of M/WBEs as prime contractors and subcontractors compared to White male-owned firms as prime contractors and subcontractors? What has been the racial, ethnic and gender breakdown of that utilization? In what 6-digit North American Industry Classification ("NAICS") codes do firms operate?
- What is the availability of M/WBEs compared to White male-owned firms in the state's markets?
- Are there disparities between the availability of M/WBEs and their utilization on state contracts? Do any disparities vary based on race, ethnicity or gender, or industry?
- What is the experience of M/WBEs compared to White male-owned firms in the state's markets throughout the wider economy, where affirmative action or diversity goals are rarely employed? Are there disparities in earnings between minorities and women and similar White males? Are

there disparities in the rates at which minorities and women form firms compared to similarly situated White males? Are there disparities in the earnings from firms that do form of minorities and women compared to similarly situated White males?

- What have been the actual experiences of minorities and women in seeking prime contracts and subcontracts in the state's markets? What barriers have they encountered, if any, based on race or gender?
- What are the elements of the state's M/WBE Program? How is the program administered?
- What has been the experience of M/WBEs and non-M/WBEs in seeking state work? What has been the effect of the M/WBE program? What race- and gender-neutral or small business measures have been helpful? What program aspects could be improved?
- Based on the Study's results, what remedies are appropriate and legally supportable? What measures could be implemented to enhance the program and support inclusion?

To address these questions, we examined quantitative and qualitative evidence.

- We determined whether there is a disparity between the availability of M/WBEs in the state's markets, and the utilization of these firms, both in the state's own contracting and throughout the wider economy. Using approved statistical techniques, we also analyzed large Census Bureau databases that provide information on the rates at which M/WBEs form business and their earnings from such businesses compared to similar non-M/WBEs, to shed light on the effects of capacity variables like age of the firm, size, experience, etc. We reviewed existing literature on discrimination in access to business and human capital likely to affect opportunities for M/WBEs in Missouri's markets.
- We gathered anecdotal data on M/WBEs through focus groups with business owners and community leaders, a public hearing and interviews with state agency staff. We also evaluated OA's M/WBE program and race- and gender-neutral policies and procedures for their effectiveness and conformance with constitutional parameters and national standards for M/WBE initiatives.

Based on the results of these extensive analyses, we make recommendations about whether a constitutional basis exists for continuing the use of race- and gender-based contracting efforts, and if so, what those efforts might be.

B. Study Findings

Overall, we found extensive evidence that discrimination on the basis of race and gender continues to operate in Missouri's markets and that disparities exist between the availability of M/WBEs and their utilization on state contracts and associated subcontracts, as well as throughout the wider Missouri economy. In our judgment, the state has a strong basis in evidence to continue its M/WBE program and to employ narrowly tailored remedies to ameliorate discrimination.

1. The State's Industry and Geographic Markets

The courts require that a state or local agency limit its race-based remedial program to firms doing business in its geographic and industry markets. We therefore examined a sample of approximately \$3 billion to empirically determine the market areas.

Thirty-four North American Industry Classification System ("NAICS") codes defined the product or industry market for the state. Table A presents the distribution of the number of contracts and the amount of contract dollars across the 34 NAICS codes.

Table A: NAICS Code Distribution of Contracts and Contract Dollars, All Funding Sources

NAICS Code	Subsector	Share of Total Contracts	Share of Total Contract Dollars
236220	Commercial and Institutional Building Construction	18.7%	1.1%
238110	Poured Concrete Foundation and Structure Contractors	3.7%	0.2%
238140	Masonry Contractors	2.0%	0.2%
238160	Roofing Contractors	7.5%	0.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.9%	0.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	9.1%	0.9%
238910	Site Preparation Contractors	5.6%	0.6%
332312	Fabricated Structural Metal Manufacturing	2.8%	0.2%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.6%	11.6%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.1%	0.0%
424410	General Line Grocery Merchant Wholesalers	1.5%	2.7%

Table A: NAICS Code Distribution of Contracts and Contract Dollars, All Funding Sources, cont'd.

NAICS Code	Subsector	Share of Total Contracts	Share of Total Contract Dollars
441110	New Car Dealers	2.5%	1.5%
446110	Pharmacies and Drug Stores	0.5%	1.8%
485410	School and Employee Bus Transportation	0.3%	1.2%
518210	Data Processing, Hosting, and Related Services	1.0%	1.8%
522120	Savings Institutions	0.1%	0.2%
522220	Sales Financing	0.1%	2.0%
524114	Direct Health and Medical Insurance Carriers	0.9%	36.7%
524292	Third Party Administration of Insurance and Pension Funds	0.1%	0.0%
541110	Offices of Lawyers	0.4%	0.0%
541219	Other Accounting Services	0.4%	6.8%
541330	Engineering Services	11.3%	0.2%
541511	Custom Computer Programming Services	1.4%	1.8%
541512	Computer Systems Design Services	8.1%	6.7%
541611	Administrative Management and General Management Consulting Services	0.9%	0.0%
541618	Other Management Consulting Services	4.4%	6.9%
541810	Advertising Agencies	2.4%	0.8%
561422	Telemarketing Bureaus and Other Contact Centers	0.8%	1.3%
561499	All Other Business Support Services	1.4%	0.3%
621210	Offices of Dentists	0.1%	1.1%
621420	Outpatient Mental Health and Substance Abuse Centers	0.3%	6.2%
623990	Other Residential Care Facilities	1.4%	3.0%
624310	Vocational Rehabilitation Services	0.6%	1.1%
624410	Child Day Care Services	0.3%	0.4%
Total		100.0%	100.0%

Source: CHA analysis of Missouri agency data.

We next determined the locations of firms in those 34 NAICS codes to establish the industries in which the state purchases. Seventy-eight percent of the state's dollars were spent in the State of Missouri. Therefore, we used Missouri as the geographic market. Table B presents those Missouri counties that account for 78 percent of the total spend.

Table B: Geographic Percentage Distribution of Contracts In Missouri

COUNTY	COUNTY PCT	PCT TOTAL
Cole	21.0%	21.0%
St. Louis	18.3%	39.3%
Jackson	10.0%	49.3%
Greene	8.9%	58.2%
Boone	8.2%	66.4%
St. Louis City	5.1%	71.4%
Clay	2.4%	73.8%
Jefferson	1.5%	75.4%
Johnson	1.4%	76.8%
St. Francois	1.4%	78.1%

Source: CHA analysis of Missouri agency data.

2. The State's Utilization of Minority- and Women-Owned Firms

The next step was to determine the dollar value of the state's utilization of M/WBEs in its geographic and product market areas, as measured by payments to prime firms and associated subcontractors and disaggregated by race and gender. Because the state lacked full records for payments to subcontractors other than firms certified as M/WBEs, we contacted the prime vendors to request that they describe in detail their contract and associated subcontracts, including race, gender and dollar amount paid to date. We further developed a Master M/WBE Directory based upon lists solicited from dozens of agencies and organizations. We used the results of this extensive data collection process to assign minority or female status to the ownership of each firm in the analysis.

One finding is that utilization of M/WBEs is highly concentrated by subsector, with a few subsectors accounting for the large majority of utilization. M/WBEs received very few dollars in several subsectors. Table C presents data on the distribution of contract dollars by NAICS code for MBEs, WBEs, M/WBEs, and non-M/WBEs.

Table C: Industry Percentage Distribution of Contract Dollars

NAICS	MBE	WBE	M/WBE	Non-M/WBE	Total
236220	0.6%	22.5%	23.1%	76.9%	100.0%
238110	5.3%	29.0%	34.2%	65.8%	100.0%
238140	1.5%	0.3%	1.8%	98.2%	100.0%
238160	5.2%	15.9%	21.0%	79.0%	100.0%
238210	30.4%	9.9%	40.3%	59.7%	100.0%
238220	0.2%	1.5%	1.7%	98.3%	100.0%
238910	0.6%	2.4%	2.9%	97.1%	100.0%
332312	0.0%	4.9%	4.9%	95.1%	100.0%
423430	100.0%	0.0%	100.0%	0.0%	100.0%
424210	0.0%	0.0%	0.0%	100.0%	100.0%
424410	0.0%	0.1%	0.1%	99.9%	100.0%
441110	0.0%	0.0%	0.0%	100.0%	100.0%
446110	50.5%	0.0%	50.5%	49.5%	100.0%
485410	0.0%	0.0%	0.0%	100.0%	100.0%
518210	0.0%	0.0%	0.0%	100.0%	100.0%
522120	0.0%	0.0%	0.0%	100.0%	100.0%
522220	0.0%	0.0%	0.0%	100.0%	100.0%
524114	0.0%	0.0%	0.0%	100.0%	100.0%
524292	100.0%	0.0%	100.0%	0.0%	100.0%
541110	0.0%	0.0%	0.0%	100.0%	100.0%
541219	0.0%	0.0%	0.0%	100.0%	100.0%
541330	13.4%	4.2%	17.5%	82.5%	100.0%
541511	54.1%	1.5%	55.6%	44.4%	100.0%
541512	55.4%	17.0%	72.4%	27.6%	100.0%
541611	0.0%	0.0%	0.0%	100.0%	100.0%
541618	0.5%	18.4%	18.9%	81.1%	100.0%
541810	3.7%	15.1%	18.9%	81.1%	100.0%
561422	65.5%	0.0%	65.5%	34.5%	100.0%
561499	93.9%	2.2%	96.1%	3.9%	100.0%
621210	100.0%	0.0%	100.0%	0.0%	100.0%
621420	0.0%	0.0%	0.0%	100.0%	100.0%
623990	0.0%	0.0%	0.0%	100.0%	100.0%
624310	0.0%	0.0%	0.0%	100.0%	100.0%
624410	0.0%	0.0%	0.0%	100.0%	100.0%
TOTAL	19.7%	3.0%	22.7%	77.3%	100.0%

Source: CHA analysis of Missouri agency data.

3. Availability of Minority- and Women-Owned Firms in Missouri's Market

Using the “custom census” approach to estimating availability and the further assignment of race and gender using the Master Directory and misclassification surveys, we found the aggregated weighted availability of M/WBEs to be 19.43 percent. Table D presents the weighted availability data for various racial and gender categories.

Table D: Aggregated Weighted Availability

Demographic Group	Weighted Availability
Black	6.23%
Hispanic	1.15%
Asian	0.89%
Native American	0.77%
MBE	9.03%
White Women	10.40%
M/WBE	19.43%
Non-M/WBE	80.18%

Source: CHA analysis of Missouri agency data; Hoovers; CHA Master Directory.

4. Disparity Analysis of Missouri's Utilization of Minority- and Woman-Owned Firms

We next compared the utilization of M/WBEs with the availability of M/WBEs. This is known as the “disparity ratio” or “disparity index.” A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group, and multiplying that result by 100 percent. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied. An index less than 100 percent indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80 percent” rule that a ratio less than 80 percent presents a *prima facie* case of discrimination, referred to as “substantive” significance.¹

¹ 29 C.F.R. § 1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

We determined that the disparity ratios were substantively significant for all groups except Asians,² and statistically significant for non-M/WBEs.³ These results support the inference that barriers based on race and gender continue to impede opportunities on state projects for each racial and ethnic minority group, for White women, for minorities as a whole and for M/WBEs as a whole. Table E presents the results of this disparity analysis by demographic group for state-funded contracts.

Table E: Disparity Ratios by Demographic Group

Demographic Group	Disparity Ratio
Black	60.2%*
Hispanic	6.5%*
Asian	578.6%
Native American	24.3%*
White Women	32.8%*
MBE	101.4%
M/WBE	64.7%*
Non-M/WBE	109.0%**

*Indicates substantive significance below the 0.80 level

**Indicates statistical significance at the 0.05 level

5. Analysis of Race and Gender Disparities in the Missouri Economy

We explored the data and literature relevant to how discrimination in the state’s market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in state contract opportunities. First, we analyzed the earnings of minorities and women relative to White men; the rates at which M/WBEs in Missouri form firms; and their earnings from those firms. Next, we summarized the literature on barriers to equal access to commercial credit. Finally, we summarized the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative interventions. Data and literature analyzed were the following:

² Asians received dollars in only three NAICS codes. They received 55.1 percent of the dollars in codes 541511 and 541512, which accounted for 99.3 percent of all the dollars received by this group. Asians received 0.5 percent of the dollars in 541618.

³ For a discussion of the meaning of statistical significance and its role in the Study’s analysis, see Appendix D.

- Data from the Census Bureau’s Survey of Business Owners indicate very large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms.
- Data from the Census Bureau’s American Community Survey (“ACS”) indicates that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men.
- The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed.

Taken together with other evidence, this is the type of proof that supports the ability of the state to continue to employ narrowly tailored race- and gender-conscious measures to ensure equal opportunities to access its contracts and associated subcontracts.

6. Qualitative Evidence of Race and Gender Disparities in the Missouri Economy

In addition to quantitative data, the courts look to anecdotal evidence of firms’ marketplace experiences to evaluate whether the effects of current or past discrimination continue to impede opportunities for M/WBEs. To collect this evidence, we interviewed 197 individuals to explore their experiences and information regarding attempting to do work on state contracts as prime firms and subcontractors, as well as throughout the wider economy. Most reported that while progress has been made in reducing barriers on the basis of race and gender, inequities remain significant obstacles to full and fair opportunities, including:

- Unequal access to industry and information networks: M/WBEs often felt excluded or were forced to make extra efforts to create networks to connect with key decision makers, industry colleagues and potential clients.
- Discriminatory attitudes and negative perceptions of competency: Minorities and women reported negative perceptions of and attitudes about their capabilities by other firms and government officials. Many M/WBEs had to meet higher performance standards than White-male

owned businesses. Women related the continuing effects of stereotypes about gender roles and sexist behavior from male colleagues and clients. Hispanic owners had experienced additional bias regarding their immigration status and that of their employees' and subcontractors.

- Obtaining public sector work on an equal basis: Most minority and women owners were adamant that inclusion programs remain critical to reduce barriers to equal contracting opportunities and to level the playing field. Firms receive little or no work without the impetus of goals.
- Obtaining private sector or “no goals” work on an equal basis: Most participants had not been very successful in accessing private sector projects without M/WBE goals. Unless the owner or client insists on inclusion, minorities and women were mostly shut out. Some M/WBEs were able to parlay work from contracts with goals into opportunities on non-goals jobs.

7. M/WBE Program Elements and Implementation

OA's first formal efforts to increase opportunities for M/WBEs began in 1990. In 1994, Executive Order 94-03 established a goal of awarding at least 5 percent of contracts to MBEs. A Disparity Study completed in 1996 found significant underrepresentation of M/WBEs, especially those owned by Blacks, White females, and Hispanics. Because of the small number of observations, the disparities for Asian-owned and Native American-owned firms were not large. The Study also presented anecdotal information on discriminatory barriers. Based on these findings, Governor Mel Carnahan signed Executive Order 98-1, which increased the goals for contracts greater than \$100,000 to 10 percent for MBEs and 5 percent for WBEs. In 2005, as the result of a lawsuit successfully challenging the M/WBE program, Governor Matt Blunt signed Executive Order 05-30, which provides for flexible goals of 10 percent for MBEs and 5 percent for WBEs.

The Office of Equal Opportunity (“OEO”) within OA is responsible for the implementation of the M/WBE program. OEO's mission is to promote a diversified workforce within state government and to increase the level of opportunities for M/WBEs seeking to contract with the state. OEO's primary functions include certification of firms seeking to participate in the program and maintenance of the database of certified vendors; advocacy for M/WBEs; education and outreach, including maintenance of the website and publication of the OEO Newsletter; matchmaking activities between certified firms, state agencies and prime contractors; data gathering; and monitoring and reporting activities.

Important program elements include certifying firms that meet specific criteria for ownership, management and control by minorities or women; contract award

procedures, including setting goals on contracts greater than \$25,000; and reporting and monitoring requirements for prime contractors.

To evaluate the implementation of these elements and whether they are narrowly tailored, we interviewed 197 firm owners and representatives, as well as state agency staff members. We solicited input about their experiences and suggestions for changes or improvements. Topics included:

- Access to information about contracting policies and processes, and opportunities: Many participants reported that it is difficult to access information about opportunities on state contracts, especially with the smaller agencies, and requested more assistance with navigating the bureaucracy.
- Contract size and specifications: The size of the contracts was a major barrier for small firms, and experience requirements often shut them out of projects; and;
- Access to bonding and financing: The inability to obtain bonding and financing are major barriers to participation by M/WBEs in state contracts.
- Program administration resources: There was a broad consensus that OEO needs more resources to administer the program and fulfill its remedial objectives.
- Outreach to M/WBEs: Greater efforts to conduct outreach to M/WBEs, by both state agencies and prime vendors, was repeatedly recommended.
- Technical assistance and supportive services: M/WBEs and prime vendors supported more training and assistance to M/WBEs. Several participants suggested partnering with the Missouri Department of Transportation, which provides well-regarded supportive services to minority- and women-owned firms.
- Access to prime contract opportunities: There was broad support for a race- and gender-neutral small business setaside on smaller contracts.
- Mentor-protégé relationships: Many owners generally supported the concept of mentor-protégé programs, where a larger firm provides various types of support to an emerging firm to increase the protégé's skills and capacities.
- M/WBE certification standards and processes: A faster and more streamlined process, perhaps with reciprocal certification by other governments, was suggested. Some participants recommended limiting program participation to firms under a certain size.

- Meeting M/WBE contract goals: Experiences with meeting goals varied. Most prime contractors try to comply with the state’s program and meet the contract goals. Firms in industries with few subcontracting opportunities or those who work on smaller jobs reported it was particularly difficult for them to meet goals. Compliance can be resource intensive, and several general contractors found the process difficult and frustrating. Many also thought it is more expensive and risky to use M/WBEs. Short deadlines for bid submission exacerbated the challenge. Alternative procurement methods such a construction manager, construction manager at risk, design build, or qualifications-based selections offer more flexibility. Some prime vendors reported inconsistent application of the guidelines or lack of feedback. Several participants reported that in their experience, meeting goals on state contracts was optional. Contract-specific goals were urged by many general contractors. Some specialty trade construction contractors stated that they are often shut out of opportunities by the program. Several general contractors deemed contacting affirmative action programs in general to be mostly ineffective. A few general contractors stated that M/WBEs do not want to work on private sector or no-goals projects despite being actively solicited.
- Contract performance monitoring and enforcement: More monitoring of actual utilization of subcontractors was needed. While a prime vendor is permitted to substitute a non-performing M/WBE after contract award, several primes reported that they rarely seek approval.

8. Recommendations

Based on these findings, we make the following recommendations.

- Increase access to state contracting information: Examine each major agency’s current policies and provide best practices regarding vendor outreach and management, and user-friendly access for potential bidders and proposers. Continue and enhance, as needed, OA’s recent procurement system improvements.
- Increase outreach to M/WBEs: Conduct additional events, seminars and training opportunities. Require prime vendors to register their interest in specific solicitations to facilitate contacts with M/WBEs. Focus special outreach on industries with little M/WBE participation.
- Lengthen solicitation times: Longer windows to solicit and M/WBE participation should increase the ability to meet goals.
- Review contract sizes and scopes: “Unbundle” appropriate contracts by dollars, scopes or locations.

- Adopt “quick pay” policies: Payments every two weeks will facilitate M/WBEs to serve as prime contracts and subcontractors.
- Review surety bonding and experience requirements: Consider removing the cost of the bond from the calculation of “as read” low bidder and increasing the dollar threshold below which bonds are not required. Review qualification requirements to ensure that M/WBEs and small firms are not unfairly disadvantaged and that there is adequate competition for state work.
- Ensure bidder non-discrimination and fairly priced subcontractor quotations: To address concerns about price gouging by M/WBEs and bid shopping by prime contractors, require bidders to maintain information on pricing and date of receipt on all subcontractor quotes received on larger projects for a specified minimum time period.
- Adopt a small business setaside: Set aside some smaller contracts for bidding only by certified Small Business Enterprises as a way to create opportunities to work directly with the state.
- Create a small contractor bonding and financing program: Work with a surety to provide bonds for firms that have successfully completed the associated training and mentoring program. Explore working with MoDOT on this initiative.
- Use the Study to set the overall, annual M/WBE goals: Consider setting the state’s aspirational goal at 10 percent for MBEs and 10 percent for WBEs.
- Use the Study to set M/WBE contract goals: The detailed availability estimates in the Study should serve as the starting point for contract goal setting. Consider permitting a flexible approach on particular contracts regarding whether to set a MBE goal and a WBE goal, or a unitary goal that permits MBEs and/or WBEs to be credited towards the goal. Bid some “control contracts” without goals to illuminate whether certified firms are used or even solicited in the absence of goals.
- Partner with other entities to provide technical assistance and supportive services: Serve as an information source or clearinghouse about agencies or organizations that provide services. Provide logistical and financial support to approach programs. Consider working directly with MoDOT to include OEO M/WBEs in MoDOT’s existing efforts.
- Consider adopting a Mentor-Protégé Program: Use MoDOT’s program as a model. Include formal program guidelines; an OEO-approved written development plan; a long term and specific commitment between the parties; extra credit for the mentor’s use of the protégé to meet a contract

goal; a fee schedule to cover the direct and indirect cost for services; and regular review by OEO.

- Narrowly tailor program eligibility standards: Adopt personal net worth and size limits. Certify firms seeking to do business in Missouri. Put controls in place and develop procedures for firms wanting to add industry codes to their certification.
- Review M/WBE contract compliance policies and procedures: Provide training to all departments subject to the program and regular updates on best practices. Ensure that meeting the goals or establishing the bidder's good faith efforts to do so should be a condition of responsiveness. Permit only a very short window after bid or proposal submission to submit the full complement of compliance paperwork. Increase desk and onsite monitoring during contract performance. Review all current program policies, procedures, and documents to ensure they remain narrowly tailored and embody best practices.
- Provide training to bidders regarding program compliance: Conduct regularly scheduled training sessions and provide on-line training materials. Focus on how to meet goals, what constitutes making good faith efforts to do so, how to determine a commercially useful function, and the requirements for contract performance and reporting.
- Implement an electronic contracting data collection and monitoring system: Functionality should include contract compliance; full contact information; utilization plan capture; contract goal setting; online certification applications and processing; outreach tools; spend analysis of informal contracts and pcards; integrated email and fax notifications; access by authorized users; and export/import integration with existing systems.

The State should develop performance measures for Program success such as the number of good faith effort waiver requests; the number and dollar amounts of bids rejected as non-responsive for failure to make good faith efforts to meet the goal; the number, type and dollar amount of M/WBE substitutions during contract performance; growth in the number, size and scopes of work of certified firms; increased variety in the industries in which M/WBEs are awarded prime contracts and subcontracts; and graduation data. Further, regular program reviews should continue, including a sunset date for the State program.