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**A FOOT IN THE DOOR:
ENSURING FAIR MARKET ACCESS
FOR FEMALE- AND MINORITY-OWNED
BUSINESSES**

**REPORT OF THE MINNESOTA LEGISLATIVE COMMISSION
ON SMALL BUSINESS PROCUREMENTS**

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Saint Paul, Minnesota 55155

January 1990

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ON SMALL BUSINESS PROCUREMENTS**

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NOTE: An appendix to this report that contains the summaries of testimony and affidavits received by the Commission has been published under separate cover.

PART I - OPENING THE DOOR:

Minnesota's Small Business Procurement Programs

Minnesota has long recognized that the prosperity of its small businesses owned by minorities and women is vitally important to the social and economic health and development of the entire state. To that end, the state has at various times established programs to benefit these businesses, including purchasing preferences and set asides for socially or economically disadvantaged firms.

The evolution and scope of these procurement programs, the recent Supreme Court decisions that profoundly affected them, and the current program are reviewed in this section of the report.

A. Set-Aside Programs for Socially or Economically Disadvantaged (SED) Businesses

A state purchasing program to benefit small businesses owned and operated by socially or economically disadvantaged persons was first enacted by the Minnesota Legislature in 1975 and administered by the Department of Administration. Similar SED programs followed at the Minnesota Department of Transportation, the University of Minnesota, and the Metropolitan Agencies.

Through this program, the Legislature sought to encourage the development and growth of small businesses owned by disadvantaged Minnesotans by ensuring them an opportunity to do business with the state. It was not intended as a social program, but rather as an economic development initiative that would benefit not only these companies but also the entire state.

SED Definition

The Legislature defined an SED person as one "who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. This disadvantage may arise from cultural, social or economic circumstances or background, physical location if the person resides or is employed in an area declared as a labor surplus area by the United States Department of Commerce, or other similar cause."

This definition was amended in 1980 to include "racial minorities, women, or persons who have suffered a substantial physical disability" and in 1985 to include sheltered workshops and work activity programs. In 1988, persons "employed in a county in which the median income for married couples is less than 70 percent of the state median income for married couples" were also included.

Department of Administration

The Administration Department's set-aside program provided certain advantages in the state purchasing process to eligible businesses. Those businesses had to meet the statutory SED definition, as well as the definition of a small business. A small business is one that has 20 or fewer full-time employees or has \$1 million or less in annual gross sales (\$2.5 million if it is a consultant, professional or technical service provider) and is not a branch, affiliate or subsidiary of a large company.

The department was required to award 9 percent of all purchases to businesses eligible under this program. At least 3 percent had to be set aside for bidding only by eligible businesses, and these businesses had a 5-percent price advantage in bidding on certain purchases.

Administration also required prime contractors on construction contracts exceeding \$200,000 to subcontract 10 percent of the contracts to eligible SED businesses. The same 10-percent subcontracting requirement applied to agencies entering into contracts for consultant or professional or technical services exceeding \$200,000. In addition, agencies that had authority to locally purchase items up to \$1,500 were required to award 10 percent of these purchases to eligible businesses.

Department of Transportation (Mn/DOT)

Mn/DOT's state program, mandated by the Legislature in 1977, was open to businesses qualifying under the Department of Administration's definition. Two percent of the department's road construction projects was set aside for small businesses, SED small businesses or contractors that guaranteed they would use such small businesses as subcontractors. (The department also administers a federally mandated set-aside program for socially and economically disadvantaged businesses.)

University of Minnesota

First mandated in 1979, the University of Minnesota's program required that 3 percent of its purchases made with state appropriations be awarded to eligible SED businesses as defined by the Administration Department.

Metropolitan Agencies

An SED set-aside program was implemented on January 1, 1989, involving the following agencies: the Metropolitan Council, the Metropolitan Airports Commission, the Metropolitan Waste Control Commission, the Metropolitan Transit Commission, the Metropolitan Mosquito Control District, the Metropolitan Sports Facilities Commission, and the Regional Transit Board.

Eligible to participate in this program were all businesses owned and operated by women, racial minorities, and physically disabled persons, rehabilitation facilities and work activity programs. The program was not limited to small businesses and did not include consideration for businesses in labor surplus areas or counties with 70-percent median income.

The agencies were required to attempt to award 9 percent of all purchases to eligible businesses. The agencies were required to award some set-aside contracts and had the authority to make 5-percent preference awards. They also were to attempt to award 6 percent of all consultant, professional or technical services contracts to eligible businesses, and for certain contracts over \$200,000, they were required to attempt to assure that 10 percent of the contract be subcontracted to eligible businesses.

Suspension of Programs

These SED set-aside programs ceased operation in April 1989 and were subsequently replaced with programs directed toward economically disadvantaged businesses only. The impetus for this action was two rulings by the U.S. Supreme Court striking down as unconstitutional similar set-aside programs in Virginia and Michigan that were based on race and gender.

B. U.S. Supreme Court Decisions and Their Effect on Minnesota's Set-Aside Program

On January 23, 1989, the U.S. Supreme Court held unconstitutional a Richmond, Virginia, city ordinance that required prime contractors to subcontract 30 percent of their city construction contracts to minority contractors. In City of Richmond v. J. A. Croson Co., 109 S. Ct. 706 (1989), the Court ruled that the ordinance violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

In striking down the ordinance, the Court used its most restrictive test--"strict scrutiny"--to examine the constitutionality of a legislative enactment.

This test has two parts. The first requires that there be compelling reasons for the enactment. Remedying past discrimination may be a compelling reason if the discrimination is identified with particularity. The discrimination identified may be either active--engaged in by government itself--or passive--that which occurs within an industry and in which government becomes a passive participant by awarding contracts to industry members who engage in discriminatory conduct.

The second part of the strict scrutiny test requires that the remedy selected be "necessary to serve" the compelling government interest. This means it must be narrowly tailored to accomplish its purpose: the degree of preference must fit the discrimination to be remedied, the remedy must not unduly burden nonminorities, and the remedy must be more effective than alternative remedies for accomplishing the goal.

In Croson, the Court found that the Richmond ordinance failed to pass the strict-scrutiny test because the City Council did not articulate compelling reasons for the ordinance through adequate evidence of discrimination and did not narrowly tailor its remedy.

On March 7, 1989, the Supreme Court affirmed a circuit court of appeals decision that held that a gender-based set-aside program must be based on findings of discrimination and substantially related to the achievement of an important governmental objective to be constitutional.

In Milliken v. Michigan Road Builders Association, the court of appeals had applied to a gender-based program an intermediate constitutional test, which is less stringent than the one applied to a race-conscious program in the Croson decision by the Supreme Court.

The intermediate test first requires establishing through findings of discrimination that an important government interest is served by the legislation. These findings presumably need not be as detailed or voluminous as those used to support a race-based program, but some degree of specificity is probably necessary.

Second, the intermediate test requires that the gender-based measure be tailored to fit the discrimination identified, although it need not be as narrowly tailored as a race-based program.

Effect on Minnesota's Set-Aside Programs

These two decisions profoundly affected Minnesota's set-aside programs, resulting ultimately in their suspension and subsequent replacement with programs based not on gender or race but rather on the economic status of the business.

To pass constitutional muster, according to the Supreme Court, race- and gender-based set-aside programs must be based on evidence of discrimination that supports the enactment of remedial measures specific to each racial group and gender and each category of business. They must also be narrowly tailored; that is, they must have flexible goals, be limited by duration and geography, assist only those minorities and/or gender shown to be discriminated against, and adopted only if it appears alternative measures could not effectively remedy the problem.

The state set-aside program, which had not been changed significantly since it was first established in 1976, could not meet those challenges.

After the Court's rulings, a lawsuit was filed against the State of Minnesota by a white male road contractor seeking to overturn the law as unconstitutional.

Before that suit was filed, the state already had recognized the problems with the programs raised by the Croson and Michigan Road Builders decisions, and legislation had been proposed to replace the state set-aside programs with an interim program based on the economic status of a business while efforts were undertaken to determine the need for race- and/or gender-based programs.

This pending legislation became the basis for a settlement in April 1989 of the road contractor's suit that resulted in the immediate suspension of the state program. Two months later, Governor Rudy Perpich signed into law the bill creating the interim program.

C. Interim Program for Economically Disadvantaged Businesses

The legislation enacted in June established an interim program for economically disadvantaged businesses (EDB), along with an 11-member Commission on Small Business Procurements charged with determining the existence and extent of discrimination against minority- and female-owned businesses in Minnesota.

To be eligible for this EDB program, a business must meet the same definition of small business used in the SED program, as well as one of the following criteria: it must be located in a labor surplus area or in a county with less than 70-percent median income; it must be a new small business within its first five years of operation; or it must prove it is otherwise economically disadvantaged as defined in rules promulgated by the Department of Administration. Rehabilitation facilities and work activity programs are also eligible.

Under this program, qualified businesses are awarded a 5-percent preference in the amount bid on state contracts and purchases. While all bidders compete for the bid, the low bid of an eligible business may win the contract if it is within 5 percent of the low bid of an ineligible business. The Department of Administration may also set goals requiring prime contractors to subcontract to EDB contractors portions of contracts exceeding \$200,000.

Businesses certified by the Administration Department are eligible to participate in programs at the Mn/DOT, the University of Minnesota, and certain Metropolitan Agencies. The Mn/DOT program, however, defines new small businesses as those less than 10 years old, and small businesses from labor surplus areas or counties with less than 70 percent median income are not eligible to participate in the Metropolitan Agencies' programs.

Small Business Procurements Commission

The Small Business Procurements Commission was created to undertake three major tasks: determine the need for race- and/or gender-based business assistance programs, recommend appropriate statutory or regulatory changes, and recommend programs targeted to small businesses in need of assistance. The Commission is composed of 11 voting members and a designee of the Attorney General. A list of members is included in the front of this report.

The Commission held public hearings in St. Cloud, Bemidji, Duluth, Minneapolis, and St. Paul at which it took testimony from minority and female business owners and from representatives of such groups as business development organizations, trade associations, and civil rights agencies. It also gathered additional evidence through affidavits and other documentation of discrimination.

The Commission's recommendations for legislative and regulatory changes are based on this evidence, along with other sources, such as the Department of Administration study.

Department of Administration Study

As part of the interim program legislation, the Legislature also directed the Department of Administration to study and make recommendations on four questions:

1. Is there sufficient justification under a strict-scrutiny standard to establish a narrowly tailored purchasing program for the benefit of any socially disadvantaged groups?
2. Should the definition of small business contained in Minnesota Statutes 645.445 be revised?
3. Are there alternative programs to stimulate growth opportunities for small businesses?
4. Is it feasible to establish a preference program incorporating urban and rural areas of high unemployment?

The results of this study are reviewed in Part II-B of this report.

PART II - DENIED OPPORTUNITIES:

Discrimination and the Need for a Set-Aside Program

Discrimination is an insidious and pervasive fact of life in Minnesota for the female and minority business owners and others who shared their experiences with the Commission.

This part of the report reviews this testimony; highlights the results of the Department of Administration statistical study showing discernible patterns of discrimination and significant disparities in the participation of female- and minority-owned firms in state purchasing; and considers other evidence of societal experiences and conditions that bear on the ability of women and minorities to form and run business enterprises.

A. Anecdotal Evidence

More than 75 individuals testified before or submitted affidavits to the Small Business Procurements Commission on the existence and extent of discrimination in Minnesota. These people represented African-Americans, Indians, Aleuts, Asians, Hispanics, and women, and almost all of them spoke of direct, personal experiences with bigotry and denied opportunities.

"Discrimination is still alive and well," said Warren McLean, executive vice president of the Metropolitan Economic Development Association (MEDA), which provides business consulting services to minority-owned businesses.

His organization continues to see a lack of participation and inclusion of minorities in the free enterprise system, conditions which led to MEDA's founding. McLean cited two examples in the last year in which MEDA helped clients reverse discriminatory decisions in which government agencies were involved.

Women face the same obstacle of discrimination, according to Jan Morlock, vice president of business development for Chart/Wedco, an organization providing business consulting, education, and loan packaging to women.

"The greatest limiting factor to the success of woman-owned businesses is expectations: theirs of what they can achieve and others of what is acceptable behavior for women," Morlock testified.

Discrimination is a consistent problem, particularly in lending. She said many of Chart/Wedco's clients never get a chance for a serious hearing of their loan proposals because they are not taken seriously. Morlock related the experience of one client who went with her male financial advisor to meet her banker. The banker dealt only with the male and in fact phoned the advisor, not the female owner of the business, to convey his loan decision.

This situation is worse in rural areas, where the small-town banker may have more personal relationships but also has greater permission to discrimination, she said. One rural Chart/Wedco client sought a loan to start a sheep herd. She had the appropriate experience for such a venture and access to family collateral. Nevertheless, her loan request was turned down. A few months later, however, her son got a loan for a mushroom growing venture using the same family collateral. This was blatantly discriminatory, Morlock said.

Minority women face even greater problems, she said. They have barriers of color and not as much collateral.

Women are also disadvantaged in access to opportunities because "networking is not as open to them," Morlock testified.

She believes set-aside programs can help women entrepreneurs significantly. In many markets, she said, government contracts have been the only viable opportunities for women. However, she added, it would help female-owned businesses, 80 percent of which gross less than \$100,000 a year, if government contracts were broken down into smaller pieces. Morlock also recommended that government provide more information on contracting opportunities, especially those that fall below the current thresholds for publication.

The manager of a business complex on the Leech Lake Reservation told the Commission that the small size of many minority-owned businesses is a hinderance for them, since their lack of volume and cash flow make it difficult for them to obtain competitive prices on goods and materials. Additional problems they face are slow payment on contracts and the redtape and time involved in bidding on government contracts.

Discrimination is seldom blatant, according to Dorothy Lovejoy, manager of Customer and Vendor Services in the Materials Management Division of the Department of Administration. Rarely does anyone come forward to say they won't give someone a contract or a loan or

do business with them because of the color of their skin or their gender, she said. Prime contractors, bank officers, purchasing agents, and others are all too sophisticated for that approach. Instead, less obvious discrimination occurs through the imposition of restrictions or standards that place unequal demands on minorities and women. At the same time, she added, minorities and women often hesitate to identify the source of discrimination, fearing reprisals.

The following review of the testimony received by the Commission regarding the existence and extent of discrimination is structured by general industry type--construction, commodities, services--within which the experiences of minorities and women are identified.

Construction

Discrimination continues to be a problem facing female and minority owners of construction-related businesses. In the testimony received by the Commission, prime contractors are the most often cited source of discriminatory treatment, while other sources include government agencies, suppliers, lending institutions, and bonding agents. Witnesses also testified to being excluded because of their race or gender from the informal but vital networks to which white, male-owned businesses have access and through which they obtain work opportunities.

Some people perceived problems in combining female- and minority-owned firms in the same program. Claude Washington, purchasing agent for the city of Duluth, testified that when the state combined these two groups in the set-aside program, contractors stopped using minorities and used women to meet the goals.

Women "mix more freely with white males," Washington said, which gives them an advantage. In addition, he said he has seen a lot of women contractors spinning off their husbands' businesses. A few minority contractors testified to losing business when female-owned businesses were included in the set-aside program.

Dorothy Lovejoy, manager of Customer and Vendor Services for the Department of Administration, told the Commission that the many female and minority business owners believe that the requirement that 10 percent of all construction contracts exceeding \$200,000 be awarded to eligible SED businesses is useless. They have told her of being listed as subcontractors on prime contractors' proposals even though they had never bid to the prime contractor and of having no contact with the prime contractor after the award of the bid. These subcontractors were unwilling to provide any details of these incidents to Lovejoy because, she said, they feared losing an opportunity for other contracts with those prime contractors on which they would actually be used or because they feared they would be blackballed by other prime contractors.

A prime contractor who would not identify himself complained to her about being required to give SED small businesses 10 percent of the

subcontracting on a contract he was bidding. The project was in northern Minnesota and apparently involved a substantial amount of specialized work. The prime contractor told Lovejoy that there was only one minority-owned business in the area that could perform any of the work of the contract and concluded the conversation by saying, "I'll pay that (expletive deleted) Indian 10 percent of the contract just to stay off my job."

Discrimination in construction employment also was highlighted by several witnesses. While their testimony does not go directly to the experience of minority- or female-owned businesses, it does reflect on the link between the opportunity to learn a business or a trade and the potential for entrepreneurial action in that field.

Construction: The African-American Experience

Prime contractors were the source of discriminatory actions, according to the African-American president of a mechanical contracting firm who cited two specific instances of these actions.

In the first case, in bidding on a high-rise apartment complex being financed in part with federal money, he was told by one of the subcontractors that he would not get the job because it was earmarked by the prime contractor for a white-owned firm. He bid on the job anyway, but it was five months and several phone calls before he was able to learn that the low bidder was in fact the white-owned contractor. The prime contractor said he had failed to include certain elements in his bid, which this minority contractor said was not true. After he corrected this perception, the prime contractor asked him to rebid. Although he was still lower than the white-owned firm, he did not get the job and feels he was discriminated against.

The second case cited by this contractor involved a new sports facility on which the prime contractor who won the bid used a female-owned firm to meet the minority subcontracting goal by giving that firm two contracts, including one for steel erection even though the firm does not do that work. That also is discriminatory in the view of this contractor.

This metropolitan-area contractor also maintained that unions are a source of discrimination. He testified that the pipefitters local he deals with, 90 percent of the minority members are unemployed compared to only 6 percent of the white members. The same situation occurs within the carpenters and laborers, he maintained.

A set-aside program for SED firms is necessary in the view of this contractor, who said majority contractors would not have recognized him without it. Two elements of the program, however, presented difficulties for him. The \$1 million limit on annual gross sales for contractors is unrealistically low, he said, as is the five-year participation ceiling. He said it takes a firm like his five to six years just to get established for bonding purposes.

An African-American demolition and bridge construction contractor told the Commission that discrimination is very prevalent in the highway and heavy construction industry. His firm, which got about 75 percent of its business through set-aside or preference contracts, has seldom been awarded contracts where there was no minority goal set.

This contractor believes he was discriminated against because of his race in early 1989 when a prime contractor set different bid requirements for his firm than for others, requirements which caused him to come in several thousand dollars over the low bidder. He believes the contractor did this simply so he could show good faith in attempting to use a minority contractor.

He feels that "good faith" postcards and phone calls from prime contractors are too often only facades on the reality that the contractor intends to discriminate and exclude minority contractors.

Discrimination by prime contractors was also cited by the African-American owner of an 11-year-old firm that rents traffic control devices.

Most recently, this subcontractor was solicited by a prime contractor to bid on a Mn/DOT project. After he submitted a written quotation and called to follow up, he was told that they never looked at his prices because they were going to do business with his competition, a nonminority-owned firm. He believes this was discriminatory.

In another case, he was told that even though his bid was low, he wasn't going to get the job. He believes the contractor had no intent of using his firm and only wanted a record of the long-distance phone call to him to demonstrate a good-faith effort to use an SED firm.

The third instance occurred when he received complaints that many warning lights on a particular project were not working. These lights were operated by photo cells and shut off automatically in daylight. After he clarified this fact and that it was daytime when they were observed to be not working, he received an apology from the contractor. He believes the complaints about the nonworking lights had been generated by his nonminority competitor and were based on his race.

This contractor cited another situation he felt was discriminatory when a prime contractor with whom he had worked refused to pay him in full for another job. The prime alleged that it had overpaid him on the first job, but he denies this and believes the failure to pay was motivated by his race.

He also testified that a majority-owned subcontractor attempted to set up a pass-through of funds through his firm so the prime contractor could meet the minority goals.

Since the suspension of the set-aside programs, he said, he doesn't get returned calls from some of the contractors he used to work with.

"They just go back to the good old boys they did business with before," he said. The Croson decision "sent a message that they don't even have to look at minority firms any more. A whole attitude change has taken place."

If set-aside programs are not reinstated, he said, his company will have to declare bankruptcy. In the past 12 months, he has bid on 185 jobs and has won 3, only one of which was a Mn/DOT project. In the past, he had a success rate of 20 to 25 percent on all bids.

Another African-American contractor who has worked in construction for 20 years as a landscaper, demolition contractor, and hauler, testified to problems with collections that he feels are rooted in racism.

Although the state guarantees prompt payments to prime contractors, he said, that doesn't mean that prime contractors will pay their subcontractors promptly. This failure to pay may be an attempt to eliminate minorities as competitors.

He also maintained that nonminority business owners try to keep work for themselves and their friends by disqualifying SED firms. At the same time, the proliferation of application processes in various SED programs has discouraged minorities, he said.

Without SED programs, though, there will be far fewer opportunities for minority business people, said a African-American drywall contractor. "The future for my children now seems bleaker than mine," he said.

Half of his business came from SED contracts, he said, and he seldom got contracts on which no SED goals had been set.

He also has experienced what he believes was racial discrimination at the hands of a prime contractor. In 1987, he was the low bidder on a project in Minneapolis with one of the state's largest contractors, but his firm was denied the job because, he said, "the project manager felt we weren't able to fast-track the job." This was in spite of the fact that he has been in business for more than 44 years, he said.

Construction: The Indian Experience

Being Indian was a distinct disadvantage for one former construction company owner who believed that stereotypes about Indians were ascribed to his business by suppliers and the government. Leaving construction, however, did not mean leaving discrimination. Now the owner of a retail business in Bemidji, which is the hub city for three major reservations in Minnesota, this businessman has found that a lot of people don't want to buy from him because of his race.

As a contractor who employed almost entirely Indians, about 90 percent of his work came through the Mn/DOT set-aside program. Had

it been an open market when he started his business, he would never have gotten a job, he said. General contractors would never have sent out notices to him without the program.

Even so, many times the notices were too late for him to bid on the job, sometimes arriving only three or four days before the bid was to be let. A couple of prime contractors habitually sent their notices out late, he said.

Contractors also would tell him that his bids were too high, that they could get bids from nonminorities for 10 percent less. Then, he said, they would argue that their good-faith effort to find a minority contractor had failed.

He believes that if the set-aside programs had stayed the way they were, he would still be in construction. Small minority-owned businesses need them to survive, he said. "The free market is not going to take care of small minority businesses, not unless they have a lot of money in their pockets," he said.

Without set asides, according to the Indian owner of a trucking firm in northern Minnesota, prime contractors will not look to minority-owned subcontractors. There are now about six minority-owned contracting companies in his area, he said, and there would be more if there were no discrimination.

The program was an incentive for him to go into business six years ago and without it, his business would not have survived. It opened the door for him, he said. In the early years of his business, set-aside contracts made up the majority of his work. Mn/DOT contracts now make up about 15 percent of his business.

He attributed some of this drop to the inclusion of women into the set-aside program in 1987, a sentiment echoed by a few other minority male business owners. When that happened, he said, he stopped getting calls for trucking.

Another Indian contractor in northern Minnesota believes that he and other minority contractors are discriminated against by suppliers who quote them higher prices than those given to large contractors.

He cited a situation in which his firm was one of three bidders on a culvert project set aside for minority contractors. Because he had mistakenly submitted an incomplete proposal package, however, his bid was thrown out. The other two bids were rejected for exceeding the engineer's estimate, and the project then went on the open market. When it was finally let, it went for a total less than his firm's pipe price alone--the same pipe price the other two minority-owned firms had received. He said the pipe supplier knew the contract had been set aside for a minority contractor and believes this may have influenced the price quoted for the pipe.

He believes that using set asides is the only way minority contractors are going to succeed. Without it, he said, "we'll never make it."

Since the state set-aside program was suspended, the Indian owner of a 13-year-old steel construction company in the northeast part of the state saw the number of solicitations he got for state work almost disappear. His firm, which does bridge work, has received only one solicitation since April, although it got at least one or two a month before then.

Neither the Minnesota Department of Transportation's bid letting schedules nor dollar volume of contracts has changed significantly since the set-asides suspension. Thus, this business owner believes that the precipitous drop in contract opportunities for his company is the result of racial discrimination.

This sentiment was echoed by another Indian contractor from the same area who testified that his trucking company has not received a single solicitation since the suspension of the set-aside program.

"The difference has been black and white," he said. "I had about 25 trucks running last year and only 12 this year."

Discrimination contributed to the failure of a construction company run by the Mille Lacs Lake Band of Chippewa Indians, according to the band's chief executive. The company, which operated for less than five years as a general contractor both on public and private projects, did not get bids and encountered criticisms of its work because of racism.

Untimely bid solicitations constitute a serious barrier for minority and female subcontractors, according to Diane Morey, a Commission member and project director of the Indian Business Development Center of the Minnesota Chippewa Tribe. The center, which provides management and technical assistance to all minority businesses, produces a weekly newsletter containing bid solicitation information that goes to about 70 minority and female contractors.

Of all solicitation letters received by the center from October 27, 1989, to December 5, 1989, only 44 percent arrived 15 or more days before bid opening. A sampling of letters received by the center last spring revealed that 66 percent of these letters arrived within eight days or less of the bid letting. This has been the pattern over the past four years, Morey testified.

"Late letters mean a contractor is automatically at a disadvantage," she said. The additional pressure of trying to develop a proposal in less than adequate time can lead to costly mistakes.

She has pointed out this problem to contractors, but that has helped only slightly. In some cases, contractors have responded hostilely to her requests that they follow the 14-day advance notice requirement.

She encountered similar hostility when she was gathering information for her testimony before the Commission and called engineers to check

subcontracting policies on projects for which bid solicitations had been received by the business development center. The first engineer she spoke with professed not to know what she was asking for, didn't want to take time to look for the information, and hung up on her. The next engineer knew what she wanted but gave her the incorrect information. She was finally able to learn that compliance with this requirement is required only of the general contractor who is awarded the contract.

Morey believes that racial discrimination often motivates late bid notices and these hostile attitudes.

Construction: The Asian Experience

Discrimination is a pervasive fact of life for Asian contractors, according to testimony before the Commission.

The Asian president of a metropolitan-area construction company blamed discrimination for his firm's failure to win a bid on a Minneapolis project and for a situation in St. Paul that nearly cost it another job. He was the low bidder in the latter case, but after the bid opening, his bid packet disappeared, which disqualified him. He believes someone threw it out because of his race. He was eventually awarded the contract, but only after he took steps to initiate legal action.

The state needs a set-aside program for minorities because discrimination makes it very hard for them to do business in this country, this contractor said.

"Why are we always in the basement?" he asked. "Why can't we be the prime contractors?"

Racial discrimination is a daily occurrence, according to another Asian mechanical contractor who cited this bias as the cause of his failure to win a contract in November, even though he was the low bidder.

The SED program helped to counteract discrimination and encouraged his company's growth. In fact, he noted, his firm got work with general contractors only after it was certified as an SED firm.

This contractor also cited the \$1-million limit on contractors' revenues as problematic and unrealistic. "This is not very much in this business," he said, and seems inequitable compared to the \$2.5-million limit on consultants' revenues.

The owner of a construction-related trucking firm cited two incidents of what he believes was discrimination against his firm because of his Asian ancestry.

The first occurred a year after he started his firm with three nonminority people in what he called a "mentor relationship" that was

to last for one year. During the first year, the firm "had good response" from all contractors, he said. But when the mentor relationship ended after one year, he said, "the mood definitely changed from the inviting, trusting, respected relationship" to one in which prime contractors attempted to discourage his firm from bidding on their projects.

The second incident happened after his firm won a subcontract to perform hauling on a large highway project in St. Paul. When he was called in to start work, he found that the work was already being done by a nonminority-owned trucking company that the prime contractor had used for years. After his firm started the job, this nonminority-owned company sent representatives to the job site to attempt to run his trucks off the job, he said. The harassment included threats and ethnic slurs. In addition, this minority contractor was "taken for a ride in a car" with the job foreman, project superintendent, and an official of the prime contractor and was told that "prime contractors were not nice people" and that the moment his firm failed to perform adequately, the nonminority-owned trucker would take over the work.

This contractor also said that his firm has three times sought authority to haul farther than 50 miles in the state, but each time lawsuits against the firm by majority-owned firms have blocked the authority.

He said that discrimination has caused major problems in establishing a banking relationship, securing bonding, finding qualified managers and executives, finding qualified employees, pricing his services, and gaining access to employees. His firm has been discriminated against by private sector firms, subcontractors, lending institutions, and bonding agents.

This contractor also said that without an SED program, his business would lose important depth and scope of bidding and work opportunities. Eighty percent of his business were SED contracts, and he seldom got a contract on which there were no SED goals.

Construction: The Hispanic Experience

The construction industry is dominated "by the 'good old boys' network"--they are the ones who obtain the work," said the Hispanic president of a commercial roofing and sheet metal company. This network is a source of discrimination, but it is hard to prove, he said, because "the perpetrators protect themselves and each other very well."

His firm has been discriminated against by prime contractors, private sector firms, and government agencies. He cited one contractor in particular for shopping his firm's bid and using other bids when his was the lowest because, an agent of the contractor told this business owner, the contractor did "not feel comfortable with your company."

Similar comments have been made to him, he said, including a common one from major regional companies that they would not consider doing business with him until he had been around for five years.

Without a set-aside or preference program, this owner said, "The doors to many working opportunities would be closed."

The Hispanic owner of a Wisconsin trucking and excavating firm that works in Minnesota says he has experienced racial discrimination from prime contractors and other private-sector firms, as well as bonding agents.

One prime contractor is using his firm's name without his permission or knowledge, he said, citing the listing of his firm in the St. Paul phone book with the number of the prime contractor, which he only recently discovered.

He also said that prime contractors have discriminated against him through late notice of bidding opportunities, not accepting his bids, and using other bids when his were the lowest. One prime contractor refused to pay him for work performed because he is a minority, he alleged.

Discrimination has also caused problems for this minority contractor in pricing his services, obtaining equity, debt, and start-up financing and in securing liability insurance and bonding.

The Hispanic owner of a concrete supplier said discrimination caused him major problems in securing start-up financing, obtaining liability insurance, securing bonding, coping with government regulations, developing good relationships with unions, pricing his product, and obtaining access to suppliers and employees. He said his firm was discriminated against by subcontractors, prime contractors, and trade associations.

A government agency discriminated against an Hispanic-owned engineering firm by awarding contracts to its larger competitors, according to the firm's president. He said that out of 42 firms awarded consulting engineering contracts by the Minnesota Department of Transportation during 1987-88, only two were minority-owned, and his was one of these. These two firms got less than 0.8 percent of the total dollar amount of all those contracts, while 60 percent of the awards went to four large multistate firms.

Racial discrimination has also caused the firm major problems in finding qualified professional employees and in analyzing its competition, according to this businessman.

He also said that firm has participated in the state preference program and has received contracts through it. Without a preference program, he believes, his firm would be less financially viable.

Construction: The Aleut Experience

The Aleut owner of an electrical company believes his firm will go bankrupt without a state set-aside or preference program.

He also believes that racial discrimination is rife in the construction industry. One of his own experiences involved bidding on work on a building for a manufacturer. Because the manufacturer received contracts from the U.S. Defense Department, it was required to use reasonable effort to award 10 percent of the construction work to SED contractors. The main electrical contractor used this man's firm to meet the goal when it entered its bid and won the contract. However, this nonminority-owned contractor completed the job without giving any of the work to the minority contractor.

Construction: The Female Experience

A female contractor is apparently an oxymoron in the world of hard hats, blueprints, and I-beams. Many of the women owning construction-related businesses who spoke to the Commission told of encountering this sort of perception in dealing with prime contractors, suppliers, and lending institutions, among others.

One female electrical contractor said general contractors did not take her seriously when she first started her business a little over a year ago, an experience to which other women in the industry attested.

While this attitude is beginning to change because of her own persistence in pursuing work, this contractor said, what hasn't changed is the major contractors' expectation that she will be content with the small jobs and leave the big ones to them.

She related a recent situation illustrating this kind of barrier that involved a major school building project. She had sought another fairly large contract earlier in the same community but had been unable to get bonding for it. At that time, she said, she had been told that she could not just go into business and get big jobs. But she felt that as long as she was qualified, she should be able to bid on such projects, which is what she did with the school contract.

Her bid on this project was quite low, but she knew her competition and felt it was reasonable and workable. Immediately after the bid opening, however, a school district representative asked her if she was "comfortable" with the bid. The architect on the project also called and asked if she realized that this was a big project. The construction manager called her sometimes twice a day to ask if she could handle the job.

This manager also informed her that she had three days in which to obtain the necessary performance bond, although the bid book said she had ten days. She went everywhere she could and called everyone she could think of trying to find a bond. Meanwhile, the architect called her every day to ask if she was bonded yet.

At the end of the three days she had still not found bonding, which meant that she could lose her cashier's check for \$17,000 that she had deposited as bid security. She was told, however, that the check would be returned to her if she would sign a statement that she was withdrawing her bid. The architect and the construction manager told her that "it was only fair to the next bidder" that she withdraw.

She believes she was pressured into withdrawing her bid and wishes she would have sought legal assistance in resisting this duress. However, she said, she also recognized that if she had pursued it, her "name would be mud in the community."

She feels she was being told through what happened to her that "you don't make waves--you can have the small jobs but don't step in their territory." If she stays small, she said, "they'll leave me alone." But that leaves her no room to grow, she added. She has been trying to become part of the contracting network in her area, but it's very insular and will be a long time in opening up for her, she said.

She also stated that her gender has influenced negatively the prices she gets from suppliers, her access to capital, and her access to employees. Some suppliers may be getting pressure not to give her good prices, she said. They want to know exactly what she's bidding on, and at least one company has quoted her prices above those it was charging others. She was able to get start-up financing for her business only because her father co-signed on the loan, and she has trouble getting electricians to work for her because she is a woman.

Being a woman means she has to work twice as hard as a man to prove that she can do the job, she believes. Even when she was an apprentice electrician, she was expected to carry a ladder by herself that normally would be carried by two people. When she got her journeyman's license before some of the men she was working with did, they resented it and told her that she must have gotten it because she was a woman.

"One man said someone must have been helping me," she said. "I've heard the same thing about my bidding."

The female owner of a general contracting company detailed several incidents of what she felt was discrimination. Although these all occurred within the past six months, she said, they are typical of the problems she has encountered since she went into construction.

In the first incident she cited, which involved a bid on a post office project, she was not given the bid addenda, although all the other contractors got it. After she complained, the bid was cancelled and relet.

In another case, her firm was the only bidder on a job but was asked to wait until another bid could be obtained from someone else. When that bid came in, it was \$100 lower than hers on a \$21,000 total.

On another project, she was told her bid was low but "not quite right," so she rebid it. When she came in low again, the bid was cancelled.

On one federal project, she bid \$12,000 less than the second-lowest contractor, but that firm got the award because it proposed to do the job in fewer days than she estimated. Nothing in the bid specifications, however, tied the award to the number of days, she testified.

The final example she gave involved a Minneapolis hospital project that had a minority-employment goal. Her bid met that goal, she said, but her competitor, who didn't use minorities, got the contract because his bid was \$200 lower on a contract worth over \$60,000.

Other incidents of what she described as discriminatory treatment or harassment include receiving incomplete plans from bid holders, being told by architects and engineers that it is an invited bid list when it is not, and having nine people go through a completion inspection, when normally it would be just the architect or the architect and the job superintendent.

This contractor also believes she experienced discrimination in attempting to obtain financing. Her bank has refused to give her a loan on commercial property she owns or to lend to her from her line of credit. In addition, she said, it has asked for her husband's cosignature on loans.

An officer of the Minnesota chapter of the National Association of Women in Construction (NAWIC) testified to her own experience with discrimination as a materials supplier.

One contractor told her that he didn't want to talk to or deal with a woman. This is not unusual, according to this contractor. She feels she is not respected and is talked down to because of her sex. In one case, she said, a bid from her firm was rejected when it was discovered that she owned the company. She also suspects that difficulties she has encountered in getting paid stem from discrimination.

She is a member of the Associated General Contractors of Minnesota (AGC), the largest prime contractors' association in the state. This membership, which she said benefits her by getting her name out and keeping her informed about construction-related issues, came through a scholarship program offered by the association to minority- and female-owned businesses. She feels, however, that the AGC has hurt these businesses by publishing negative articles about preference programs.

She also implied that other NAWIC members may feel inhibited about providing information to the Commission because the AGC and NAWIC have recently formed a relationship in an effort to encourage women to enter the construction industry, and she expressed concern that the AGC might withdraw its support of the women's group if its members come forward to testify.

A female insulation contractor from the metropolitan area told the Commission that women have more requirements placed on them than men do. Not only do they have to do better, she said, but they also have to overcome a basic prejudice. One prime contractor "had a fit," she said, when he found out that the person he had contracted with to do his insulation work was a woman.

Prime contractors have discriminated against the female owner of a metropolitan area electrical contracting company by shopping her bids. This has occurred several times, the owner said, but she assumed she could do nothing about it. She has also been asked more than once to "provide material" to another electrical contractor so the prime contractor could meet minority goals.

"They don't want to sub out a portion of the job," she said. "They only want me to run material through my account."

Discrimination has caused major problems in securing bonding and developing good relationships with unions, she said. It is very difficult to obtain bid and performance bonds, which all government jobs seem to require, she said. She can't get performance bonds unless she has the full amount of the bond in the bank to back it up, and she usually ends up depleting her cash flow to provide a certified check for the bid bond.

She believes her firm has been discriminated against by private sector firms, prime contractors, trade associations and bonding agencies and would be less financially viable without a set-aside program.

The female president of a civil and structural engineering consulting company complained that the University of Minnesota does not include design professionals in its program for economically disadvantaged businesses and did not include them in the former SED program. The university's program has applied to construction contracts only, even though design contracts may go as high as \$4 million, she said.

About 80 percent of this firm's 1988 and 1989 contracts were the result of the state's set-aside program. The suspension of the program adversely affected the firm, the owner said, because "our clients no longer found it necessary to use our services." A set-aside program is essential to the existence of this company because of discrimination, she declared.

The female owner of a general construction company believes she was discriminated against in attempting to buy property from a government agency. Because the woman's bid was \$10,000 higher than the next one for the property, the agency didn't take it seriously and accepted the second-highest bid, according to Stephanie Smith, small business coordinator for the Minnesota Department of Administration, who related to the commission what the businesswoman had told her. The woman believed this was discriminatory because the agency did not investigate or confirm her ability to pay the amount she bid.

Not having a set-aside program would be a deterrent for women and minorities, according to the female owner of a construction company in northern Minnesota.

The set-aside program was a "foot in the door" for her company, which does most of its work with government agencies. Without the program, she doubts she would even have an opportunity to bid because there is a lot of discrimination against women. On a very basic level, she testified, she has a hard time getting people to accept her as her own person, not as the wife of her husband.

Other people in the industry do not like to work with women, she said. This bias has cost her some jobs on which she was certain she had the low bid, she believes.

While this contractor has continued to get about the same number of solicitations for work as before the set-aside program was suspended, she has not been doing as much business with the state and local governments. The program improves her chances of getting jobs, she said; without it, contractors could just ignore her quotes.

Echoing this support for the set-aside program was another female contractor from northern Minnesota. Set asides have helped people realize that female- and minority-owned firms are out there, she said.

"Contractors get to know you and ask you back," said a female electrical contractor. She also spoke to difficulties she has had in finding female and minority apprentices. "As soon as they're in the program, they're gone" to other employers, she said. "There's a big demand."

Responding to these comments, the purchasing agent for the city of Duluth, Claude Washington, told the Commission he personally tried to assist two black men who completed the required vocational-technical education but still could not get into the apprenticeship program. He has asked contractors to help because "minorities get the door slammed in their faces."

Minorities and women apparently face continuing barriers to entering apprenticeship programs and the construction industry. This kind of discrimination has a direct bearing on entrepreneurship and business ownership. No leap of faith is needed to understand that a person denied the opportunity to learn a particular trade or skill is not very likely to start up and run a firm in that trade or skill area.

Construction: Employment Discrimination

Employment opportunities and minority- and female-owned businesses are linked, testified Gary Cunningham, deputy director of the Minneapolis Civil Rights Department and co-author of an August 1989 report on this issue, "Barriers to Progress: People of Color and Women and Minneapolis Construction Occupations."

The findings of this report show that women and minorities have been systematically excluded from construction opportunities in the city of Minneapolis, and this affects their ability to form businesses, he said.

The issues of discrimination examined in the report are not confined to construction, Cunningham added. "Discrimination is pervasive in all industries."

The following findings of the report were highlighted for the Commission:

- o Historical patterns of exclusion and denied opportunities have contributed to under-representation and occupational segregation in construction craft occupations. Numerous efforts to correct these problems have had little or no effect on integrating union membership and/or desegregation of skilled crafts.
- o Standard deviation analysis of union memberships and state-sponsored apprenticeships reveals that the underrepresentation of women and minorities is statistically significant and that the disparities are gross and the result of patterns and practices within the construction industry. The Minnesota director of the U.S. Department of Labor's Bureau of Apprenticeship and Training said that nothing is being done to implement affirmative action provisions on joint apprenticeship programs by the Minnesota Division of Voluntary Apprenticeship Programs.
- o Of the 118 minorities and females interviewed for the study on which the "Barriers to Progress" is based, over 90 percent indicated that they experienced racism and sexism as employees in the construction industry.
- o Research also found that city of Minneapolis actually participated in denying opportunities to women and minorities.

Other testimony supports these findings and suggests that the discrimination found is, in fact, not contained within the city limits of Minneapolis.

Educational opportunities and occupational choices are not the same for women and minorities as they are for men, said Dawn Addy, director of women's programming for the University of Minnesota Labor Education Service.

And once within the trades, they are terribly isolated. Trade union officials contribute to this isolation because "they don't listen to women or minorities until there is a legal ramification or they are

so many in number that they (the union officers) can't ignore them," she said.

Addy said that women and minorities can be tossed out of apprenticeship programs if they complain about abuse or harassment, so they are "placed in a situation of great battering." She presented to the Commission a draft statement from the Coalition of Labor Union Women saying that sexual harassment is the most prevalent problem in male-dominated industries. To counteract these problems, Addy said, one Minneapolis union is assigning female apprentices to work in teams for support and to ensure a witness to any harassment.

Recruitment of minorities and women is fraught with difficulties, according to Addy. She cited the case of an Hispanic electrician who sought the assistance of local building trade unions to make a videotape to be used in recruiting minority high school students into the trades. "But no one would give any money for the project," Addy said. "They told him to go to the affirmative action agencies."

"It wasn't a lack of money," she continued. "It was a lack of desire to listen. This results in a lack of women and minorities in the trades."

Another problem Addy cited is that minorities are hired almost exclusively to fill minority quotas. For minority or female apprentices, this may mean that they only learn one skill area and therefore are not adaptable or are not perceived to be as a good hire possibility for other jobs.

Ray Hamer, trade specialist with the Minneapolis Urban League's Leap Program, confirmed this negative result of minority quotas.

"Lots of companies actively seek women and minorities because they have goals to reach," he said, "but as soon as they've done that or have to lay off, it's the minorities and women who have to go."

Hamer also cited examples of bigotry and harassment minorities and women face on the job. One foreman was "looking to break minorities and women," Hamer said. "He was making one woman who was five-foot-four stack cans up to six feet high."

Quotas created a serious for one Indian woman who worked as a carpenter for six years. This woman, who is now a trade specialist for an American Indian job development program, said she would get her "4 percent female" hours, then be laid off. This hurt her in looking for other jobs, because potential employers would question this work record. Another problem was that contractors would fill the female quota with white women, not minorities.

Discrimination and harassment was a fact of life on the job. She was refused one job because, she was told, she would be "too much of a distraction." Remarks about her race were made by other employees, she said, and she could not depend on her local union for help because its secretary-treasurer made sexist comments to her. She

eventually sued a major construction company because of discrimination on the job. After she had complained about denegrating comments and harassment, she was told that "things happen on the job--working eight floors up, hammers do fall."

As trade specialist, she hears all kinds of excuses from contractors who don't meet their goals. They send good faith letters about available jobs, she testified, but when she calls them, they say they do not have any openings.

Another female carpenter told the Commission that she currently is involved in litigation against her local union over discriminatory referral practices.

Affirmative action in the trades is a myth, according to the president of Women in the Trades, a local organization of women in nontraditional jobs. Last winter, she said, three out of every five journeymen laid off were women. The union said there were no jobs, but government agencies told her they were having trouble finding women or minorities to fulfill affirmative action requirements.

She confirmed what other women had said about discrimination and harassment on the job and presented nine photographs to the Commission of sexist and racist graffiti at various job sites. She also submitted a report of discrimination and harassment problems faced by women construction workers in Chicago and said that the same conditions exist here.

Fear of reprisals and harassment prevent many from speaking up about discrimination, she said, adding that she was withholding evidence for fear of more harassment in her daily work and future employment.

Commodities and Services

For minority- and female-owned firms dealing in commodities and services, discrimination remains a barrier that takes forms both the same and different from those identified by contractors.

Compared to contractors, bidding procedures and requirements seem to present greater problems to product and service providers--along with apparently greater opportunities for discrimination by government and private-sector buyers.

Commodities: The African-American Experience

The African-American owner of a paper-products supply company testified to discrimination against minorities by purchasing agents in government and the private sector.

Buyers are not interested in buying from minorities, he said. Minorities in business are not considered to be up to par, and favoritism is a problem. Contracts go to friends, fellow club

members, and so on, he said. He believes favoritism also occurs in government set-aside programs. He was in the state set-aside program for five years, but he never got a contract.

Minority-owned firms are at a disadvantage because their lack of purchasing power prohibits competing with the volume discounts offered by large majority-owned suppliers, he said.

Among bidding procedures he cited as problems were what he called "no competitive bids" on specific items already being supplied by someone else. If "or equivalent" was listed on the bid for the item, he said, it was not honored because the end user wanted that particular item. Another problem arises when some state agencies let the end user, rather than a purchasing agent, do the buying. This does not allow for competitive bidding, he maintained.

Another African-American supplier testified that he faced discrimination from a bank when he sought start-up financing for his firm. The only reason the bank gave him for refusing the loan was that it didn't think his business idea was good, he said. It offered no further explanation and refused to document the refusal. He believes this kind of treatment is prevalent for minority-owned businesses.

He also spoke to the need for a set-aside program to assist minority-owned firms. His company's participation in the state program for about five years enabled it to grow, he said.

Discrimination by state officials was alleged by the African-American owner of a chemical supply company. He complained that the set-aside program was not implemented as it should have been and that state officials involved in the program refused to talk to him because of his race. He also cited what he feels were subjective rejections because purchasing agencies did not think he could handle the work.

A state agency's refusal to accept his bid, even though it was the lowest, stemmed from racial discrimination because the agency wanted to use another nonminority vendor, according to the African-American textile supplier who has 12 years of experience.

Discrimination also has come from private-sector firms, subcontractors and prime contractors, lending institutions, and bonding agents, he said. He has had problems he believes are linked to discrimination in obtaining financial support, marketing, and locating his business. Prime contractors have discriminated against him through late notice of bid opportunities, not accepting his bids, and using other bids when his was the lowest.

Commodities: The Asian Experience

The Asian owner of a computer systems and services provider cited problems with discrimination from government officials. He said that government officials have refused to accept his bids, are reluctant

to work with him, refuse to share information, offer no encouragement, and impose regulations and paperwork that discourage his participation.

He also said he has been discouraged from owning a business because of his race and has encountered discrimination in obtaining financing, finding qualified employees, and in gaining access to customers and suppliers.

This business owner believes that set-aside or preference programs are necessary. "There's no way that equality can be the same for all when we have to deal with human beings," he said. "Only laws and rules can ease the problems."

A reluctance to buy high technology products from a minority-owned firm is a major source of discrimination to an Asian owner of a computer software products and services firm in the Twin Cities area.

"Marketing problems have arisen despite prospects' enthusiasm" for his firm's products and services because of this reluctance to buy from a minority, even though he has 18 years of experience in the industry, he said.

The firm has also had major problems in obtaining financing because of his minority status. "We were unable to obtain even asset-based financing," he said. "We have been forced to purchase all our computer equipment from our cash flow, which is hampering our growth and job creation."

He also has been discriminated against by private-sector firms, prime contractors and lending institutions. In one incident, a nonminority firm refused to accept his bids and shopped a bid. A Fortune 500 firm located in the Twin Cities questioned his firm's qualifications to perform certain work even though he and two other founders of his company did the same work as senior managers for the corporation before they left to form their own firm.

Commodities: The Indian Experience

An electronics assembly plant owned and run by the Mille Lacs Lake Band of Chippewa Indians experienced discrimination by the federal government, according to the band's chief executive. The plant, which was assisted by IBM and operated for ten years, had a contract with the federal government to make harnesses for tanks. These parts were approved by a federal inspector, but another inspector in Chicago rejected them. The chief executive believes racial discrimination motivated the rejection.

The chief operating officer of the band's firm that owned the electronics plant told the commission that the business enterprise was discriminated against by private sector firms, lending institutions, bonding agents, and suppliers because it was owned by Indians. One supplier delivered parts so late that the plant missed

two contract dates; the officer said he was told that the reason for the late deliveries was, "We don't know who you are but because of who you are, you will have to wait."

When the plant needed 220-volt power to obtain a contract with a major electronics company, the local utility said it would not provide it to the reservation because, he was told, "what would the Indians need it for, anyway?" The utility finally agreed to run the necessary line only if the reservation would pay the total cost of it, which was in the hundreds of thousands of dollars, the officer said. Only when he threatened to seek state help because this was discriminatory did the power company's engineers find a less costly way to transmit the power.

The firm had problems getting contracts to bid on at all, he said. Despite all the electronics businesses in Minnesota, the plant's main customers were IBM in Rochester, NY, and General Motors in Ohio and Michigan. He frequently had to explain to potential prime contractors that Indian work habits were no different than others'.

Bankers also seemed to watch the reservation company closer than they did other businesses, he said, and bonding was "a joke." He knows of firms that were denied bonding because of their owner's race or gender and of others that were given bid bonds and then refused performance bonds because the agents had not expected the firms to get the contracts. Agents took bid bond fees with no intention of providing the performance bonds, he said.

Commodities: The Female Experience

The female owner of a lighting systems company described what she believes to be discriminatory treatment because of her gender in the public sector.

She said she was rejected twice for certification in the state set-aside program because of an erroneous and discriminatory assumption that she did not have majority ownership and control of her business.

"I made the mistake of hiring my husband as the vice president of sales," she testified. "They assumed he was in control because he was the man and my husband."

During this process, state officials refused to return her calls or acknowledge her initial request for an appeal of the rejection. Finally, with the assistance of her state senator, her application was reviewed again and certification was granted.

While in the program, she did receive a couple of bid solicitations, she said but none she could be competitive with. One was to house grain. In February, she responded to an ad placed by a local college for bids on a lighting project. Despite two telephone calls and a letter, she never received the specifications for the project. She believes the college already knew from whom it was going to buy and discriminated against her.

Regarding loans, she said got her first one from the bank with no problem, but it inexplicably required her husband's cosignature for the second set of loans.

Discrimination by lending institutions has also been a significant problem for the female owner of a Twin Cities company that sells computer hardware, software, and supplies.

She applied for line of credit after being courted by officers for a large regional bank. She had an established line at another bank for \$35,000, which had been secured with accounts receivable. She sought to secure this second line in the same way, but the second bank offered line only if it were secured with a second mortgage on her home, which she owned with her husband. She was told that this was necessary for any dollar level, even as low as \$2,000, and that if she was confident in her business, this should not be a problem. She had been in business profitably for over five years when this occurred. A few days later, she learned that a manufacturer with whom she had done business for five years had a \$100,000 line of credit at that bank, secured only by its accounts receivable and the two white males who owned this company were never asked to put up personal property against this line.

She believes the bank's demands of her were discriminatory, as were similar problems she encountered with her first bank when establishing the credit line there. On borrower's certificate she was required to fill out every month, the "90" in the space for reporting the amount of receivables less than 90 days old had been scratched out and "30" substituted. When she objected to this as unrealistic, the bank changed it to 60 days. It also requires that she pay the line in full for one month each year, which is difficult to do when she uses the line for operating expenses.

Government agencies have also been a source of discrimination, this businesswoman said. One state agency denied her firm a contract, even though it had the low bid, because it "didn't feel we could handle the service," she said.

In another case involving a state agency, problems arose in screen integrity with some equipment her firm delivered to the agency. After much testing, it was determined that outside interference was causing the problem and the solution would be a color monitor that had more shielding. The agency insisted her firm supply the more expensive monitor without additional charge. When she refused to do that, the agency demanded she remove the equipment her firm had supplied and refund its money. Since then, a check in that agency has revealed that a competitor has supplied replacement equipment, including a color monitor. The agency had wanted to buy from that competitor in the first place, she said.

A department head at the University of Minnesota made discriminatory and disparaging remarks to one of her employees who was setting up equipment there. The head asked who owned the computer company and

upon learning it was a woman, said, "What does she do? Sit in her kitchen, bake cookies, and solder computers together?" This company owner doubts the same comments would have been made about a male in the same position.

She believes her firm is less financially viable without the state set-aside program. After it was suspended in June 1989, she experienced a marked decrease in bid communications from the 75 to 100 per month her firm had been receiving. Suspecting there might be a change because of the suspension, she picked up all bid requests under \$15,000--125--for which the firm was qualified during the month of July; from these, her firm got \$55,000 worth of business. During the same month, the firm was sent 10 requests, all for advertised bids over the \$15,000 limit, none of which it won. "This is not surprising," she said, "since small businesses do not fare as well against the larger companies on larger dollar-volume contracts." However, after July, the Department of Administration would no longer allow her to pick up the unadvertised bids, and her business fell considerably, she said.

The female owner of a company that supplies cleaning agents testified to inequities caused by being required to bid on specific brands. She cited an incident in which she was the low bidder on a detergent and bus wash for the Metropolitan Transit Commission but was told her product was not one of the approved brands. She maintained it was as good, if not better, so the agency took some of her product for testing but awarded the contract to the same vendor who had held it before. She felt this was discriminatory and denied her a fair chance at the contract.

Similar problems with name brands create barriers for the female distributor of chemicals and solvents. The lack of specifications on certain items and/or name brands makes it impossible for her to bid, she said. In one \$140,000 contract, bidding was required on all six categories of products, but the sixth was in a manufacturer's name and specifications were not available to her, despite her request for them. If she had the specifications, she said, she could have a comparable product made to fit. She believes this is discriminatory, as is being required to put up nonrefundable money to bid--a requirement she said makes her noncompetitive with larger companies that can afford such investments.

A lighting-products manufacturer's representative claimed that her firm was discriminated against by a government agency that refused to accept her bid, despite it being low, because it supposedly could not meet the bid specifications. She said that it was "proven soon after," however, that her competitor, who was awarded the contract, could not meet the specifications either. She believes her product did meet the requirements and would have saved the agency almost \$9,000 in energy costs.

Discrimination like this has caused her major problems in analyzing her competition and finding the competitive advantage, she said.

Services: The African-American Experience

"There is a preference out there," said the African-American president of a commercial insurance and risk-management consulting firm, and "it's 'I prefer to do business with my white friends.'

"Croson has made it open season," he said. "If there was a bad attitude before, Croson has now made it okay."

He cited two incidents of what he felt was discrimination because of his race. The first involved his work as a broker on a project in Minneapolis that had an affirmative action goal. This would have been the first major construction project in which professional services qualified for the affirmative action goal, he said. After he had spent hours working with the prime contractor to identify costs, the contractor decided to provide the insurance itself. He felt the contractor and the developer did not recognize the true insurance costs and that he was cut out unfairly.

In the other case, he was given less than a week to propose insurance for the roofing of the Timberwolves arena. Nevertheless, the job was awarded to a majority broker. When he asked why he did not get it, he said, he was told that "they really didn't know what to expect when they called him."

In neither of these cases does he believe he was given a fair opportunity for the work.

Although he has never received business from set asides (he is ineligible for certification because he is a broker), he feels his firm would have been a lot more successful and more quickly if there had been set asides available to him. Without set asides, he said, a lot of minority firms are not going to survive.

The African-American owner of a trucking company that has handled office relocations, household moves, and freight dispersements for 27 years said that his firm would suffer "irreversible damage" if SED programs are not reinstated. He seldom won an award that did not have SED goals, and he doubts there would be sufficient private-sector business to sustain his firm.

He cited two incidents of what he feels was discrimination because of his race. In the first, he learned that a major Minnesota communications firm for which he had done some office relocations was going to let a five-year contract for all its hauling. Five months before the bidding deadline, he requested an opportunity to bid but did not receive an invitation to do so until less than two weeks before the deadline. He submitted his bid in time, but when he called a contact at the company to learn who the low bidder was, he was told that all of the bids had been misplaced. The employee told him at that time that "something fishy is going on." Three days later, he was told that the bids had mysteriously reappeared and one of his competitors, a nonminority firm that had been doing most of

the contracting firm's hauling for the previous ten years, had underbid him by one half of 1 percent on all bid items in a contract worth \$750,000. He believes the bid was rigged against him because of his race.

In the second incident he cited, he submitted the low bid on a hauling contract to a large Defense Department contractor based in the Twin Cities. After the bid was let, he sent a confirmation letter to the corporation and then met with its representatives. At that meeting, he was told to raise his prices so he would assure his company's success. He did so, but then a week later told that his prices were too high. He said he later learned that a key person in the corporation felt "uneasy" in hiring a minority firm, so he never showed upper management this hauler's first rate sheet and expressed to the executives his concerns that the minority firm could not handle a contract of this size. The trucking company owner said that his firm has handled several contracts as big as that one with no problems.

Discrimination in not accepting bids was addressed by an African-American businessman who owns a commercial cleaning service and once owned a car towing firm.

When he owned the latter business, he bid for a towing and starting services contract with the University of Minnesota. Although he had the low bid, he said, he did not get the contract. Believing the award was denied because of his race, he retained an attorney and eventually got the contract.

As a minority business owner, he has experienced discrimination in the following areas: establishing a banking relationship, securing start-up financing, obtaining liability insurance and bonding, coping with government regulation, finding competitive advantages, pricing services, and gaining access to customers. He said his firm has been discriminated against by private-sector companies, government agencies or employees, lending institutions, and bonding agents.

He sees much discrimination against minorities when they try to get financing, bonding, and insurance, he said. In his own experience, when he takes a contract or purchase order to a bank to ask for a loan to obtain bonding or workers' compensation insurance, he is told that he has to put up his house or car or take out life insurance. He does not believe this is demanded of everyone else, just minorities.

He has participated in set-aside programs and has received contracts through them. Without them, he said, his firm would be less financially viable.

The African-American owners of a maintenance service believe they have been discriminated against in several ways because of their race, according to Stephanie Smith, Administration Department small business coordinator, who related to the commission what these people had told her. Several companies have told the owners of this service

that they do not want to do business with minority-owned firms. On more than one occasion, the service has been invited to do bid walks, but when the prime contractors saw that the owners were minorities, they said they had decided not to go out for bids. One of the firm's owners was at a premeeting for a contract with a county when the man in charge of the meeting turned his back on the owner and did not include him in the conversation. The firm has also had problems with receiving bid proposals only two or three days before the bid is due, problems the owners attribute to discrimination.

The African-American owner of another Twin Cities-based cleaning service believes racial discrimination has directly cost him opportunities. This businessman said he knows his color, not his experience, was the reason he was turned down for jobs.

The set-aside program, however, gave him a chance. Without it, he said, "I will not be judged as a man who knows his business but as a black man, and I will be turned away as a black man and not as a businessman."

Services: The Indian Experience

Difficulties encountered by an Indian businessman in obtaining financing were directly the result of racial discrimination, according to his testimony before the Commission.

When he first started his business, he got a loan approved with no trouble. Three years later, however, he went back to the same bank for a loan to expand his business through the acquisition of an AT&T franchise. The banker he had first worked with had left the bank, and the bank president kept putting off appointments and then saw him only for five minutes. After that, the president would not return his calls. Eventually, the bank president said that if this man could get the Minneapolis Community Development Agency to guarantee the loan, he would grant it. The agency agreed to guarantee 75 percent of it, but the business owner still could not get a commitment from the bank. His wife, who is white, then went into the bank, where she was warmly received until she revealed she was there for her husband's business. Finally, the bank president said he could not give the loan but never gave a clear explanation for the refusal, even though this businessman had requested a reason in writing. He feels he was discriminated against because of his race, and he said AT&T also thought it was a racial problem.

Problems with obtaining financing because of racial discrimination also were cited by another Indian who attempted to start a business in northern Minnesota. A wealthy non-Indian was willing to cosign a loan for him, he testified, but the bank would not accept that; saying he could only use a cosignature to establish credit.

Start-up money is particularly difficult for Indians to come by, according to another Indian, because there is no money on reservations, which have high rates of unemployment, mortality, and

drug and alcohol dependency. He has been looking to start a business on his reservation but finds that the tribal government is yet another barrier because it does not encourage businesses.

Services: The Asian Experience

Racial discrimination has contributed to problems in obtaining financing, finding qualified managers and executives, coping with government regulations, and finding competitive advantages for the Asian owner of an environmental and civil engineering consulting firm.

He said prime contractors and government agencies tend to question his firm's technical capability and fees, even when they are shown all the necessary information. This is discriminatory, he said, as is being denied a second chance if his firm makes a mistake.

"A lot of people expect minority business enterprises to make mistakes, and when we do, that confirms their conviction of 'bad' minority enterprises," he said.

Despite his nine years' of experience, his firm still has to fight against this image of minority firms being less than adequate.

His firm has been discriminated against by private-sector firms, government agencies or employees, subcontractors, prime contractors and lending institutions, he said. Several contractors have discriminated through late notice of opportunities.

He also said his firm has benefited from the set-aside program and would be less financially viable without it.

A truck repair, maintenance and rebuilding business has experienced discrimination because of its owner's Chinese heritage.

In one incident, the firm had the low bid without the 5-percent SED preference but was denied a \$240,000 contract with the city of Minneapolis. The firm had "the plant, property, and equipment to perform the work, along with 20 years of qualified experience and a performance payment bond," this businessman said. However, the contract was awarded to a nonminority-owned company that had been repairing the city's equipment for a number of years. He believes the award was denied to his company because of his race.

Nghi Huynh, publisher of the Asian Business and Community News, testified on behalf of the Minority Media Coalition about discriminatory action by the state against coalition members. Huynh said state agencies ask minority media outlets to publicize contract bidding and employment opportunities but do not buy ads, as they do in majority-owned newspapers and electronic media. He also cited the state antismoking campaign as an example of this discrimination: none of its paid ads went into the minority media, he said.

Services: The Hispanic Experience

An Hispanic woman who bought a courier firm in the summer of 1989 has not been able to obtain the transfer of its license to operate in Minnesota because of opposition from a large competitor based on her race. The competitor told her in the presence of others that he might not oppose the transfer if she were African-American or Indian and he would drop his opposition immediately if she would transfer the business to her husband, who is not a minority. This same competitor later told her husband that the only thing he opposed was the minority ownership of the license and that if the husband would write a letter saying the business was not owned by a minority, he would withdraw his protest. The competitor also said, "You know I have deeper pockets than you do so I can stand to fight this thing a lot harder and longer than you can."

An Hispanic massage therapist charged that she was discriminated against because of her race when she attempted to get a license to operate a massage business in her home. Based on the promises of a city council member, she invested over \$7,000 in facilities for this business in her home, but she ended up waiting eleven months before the council reviewed her application. The license was refused, and she was denied a variance or trial license.

Services: The Female Experience

The owner of an accounting and temporary employment service in northern Minnesota told the Commission of experiencing discrimination in dealings with government, the private sector, and lending institutions.

When she called on city officials seeking business, she testified, she was treated disparagingly and told, in effect, to "go away, little girl." Two different banks treated her in a similar manner and refused to count her ten years of experience in the business before she went on her own. At one bank, the loan officer made her "feel like an idiot," she said, by not treating her like a professional. One bank did not believe she was who she said and insisted on calling one of her clients for verification. Another was willing to give her only part of a loan request until she said that her father would cosign. She believes this treatment was because she is female and young.

One businesswoman has experienced discrimination because of her gender in a variety of ways over the years. Now owner of a realty company in northern Minnesota, this woman recalled running into this bias when she started teaching in 1962. At that time, she said, a male head of household got \$50 more than anyone else and the school district paid his insurance, but not that of female heads of household.

Twelve years later, she went into real estate and did as well or better than the men in her office. When she went to apply for credit, however, she was told she could not have it because she was a

woman. At one point, she applied for a manager's post in a realty office. When she was turned down, she was told that the other employees in the office did not want a woman as their manager. However, the other employees told her that no one ever asked them what they thought.

In 1980, she started her own real estate company, which prospered. Seven years later, she applied for a loan along with two male partners to buy some property and was told by the bank that it would do it only with her husband's guarantee. She objected because the bank was not seeking the guarantees of her partners' spouses. After she threatened to "do something about it," she got the loan, but it "sizzled" her to feel that she was being put into a minority category by the bank, she said.

She also identified herself as a past director of the state association of realtors, which until last year, she said, had no women on its board.

Discrimination by a lending institution was also alleged by the female president of a metropolitan-area advertising agency. This businesswoman said that her bank required her husband's cosignature on a loan for her agency, even though he had no involvement in the firm and she had had a good credit rating in her own name for 20 years.

"Men I knew in similar situations then and now do not have the same problems," she said.

B. Statistical Evidence

When it enacted the interim program for economically disadvantaged businesses in June 1989, the Legislature also directed the Department of Administration to conduct a study to determine whether there is sufficient justification for establishing a gender- and/or race-conscious purchasing program and to answer three other questions. The following is a summary of the findings, conclusions, and recommendations of that study responding to each of the four questions.

Question 1: Is there sufficient justification under a strict-scrutiny standard to establish a narrowly tailored purchasing program for the benefit of any socially disadvantaged groups?

Sufficient evidence of discrimination is found both in the record of government purchasing and in private sector activities to satisfy the judicial requirements of the Croson and subsequent cases for establishing such a program, according to the study.

This evidence of discrimination is not, however, the same across race and gender lines for each category of product or service. In many

categories of purchasing, no statistically significant disparity exists for various racial groups. The lack of disparity can mean either that firms owned by members of these groups are being used in relative proportion to their availability or that there are no such firms available in that line of work.

The reported discrimination also differs among gender and racial groups. African-Americans, for example, report more often than any other group that their firms have been discriminated against. They also indicate that they have the most difficulty in obtaining equity and debt financing, establishing banking relationships, and securing adequate financing in general.

Based on the study results, it may be concluded that race- or gender-neutral programs may ameliorate specific problems but will not eliminate underutilization found in government purchasing. An effort to simplify government regulations or establish a regulatory ombudsman, for example, would assist all businesses but would particularly benefit Asian- and Indian-owned businesses, which report more difficulty in coping with government regulations. However, female-owned firms report fewer specific problems than their white male or minority counterparts, yet they are consistently the most underutilized. Thus, programs designed to eliminate business problems will aid white male- and minority-owned firms more than those owned by women.

The study also found that past race- and gender-based set-aside and preference programs have directly benefited these firms in several ways. When contracts let because of set asides or preferences were included in the totals, the underutilization of firms owned by African-Americans disappeared in several categories. For other groups, although the number of categories in which a disparity was found did not change with the inclusion of set-aside or preference contracts, the size of the disparity was smaller.

At the same time, however, these programs did not have a larger impact on disparity because firms located in labor surplus areas or counties with low median incomes got a disproportionate share of the contracts let under these programs.

Finally, the study found that the data on purchasing programs is maintained by the state, the metropolitan agencies, and the University of Minnesota in such disparate forms that the compilation of consistent information is costly and time consuming.

Recommendations

1. A race- and gender-based program should be enacted by the Legislature.
2. Such a program should reflect the varying population of female- and minority-owned firms by type of business.
3. The Department of Administration should be given the authority to identify the categories of purchasing that should qualify for

a race- and gender-based preference program based on the availability of firms. Such measurement benchmarks should be established at a level higher than current availability to prevent discouraging new minority- and female-owned firms from entering the field. These findings should apply to state, metropolitan agency, and university purchasing. The department should be required to revise this category eligibility based on new data at least every five years.

4. The purchasing preference granted firms qualifying under race and gender standards should be higher than the preference granted to firms qualifying under the labor surplus or county median income standards to increase their opportunity to be awarded government contracts and reduce their underutilization.
5. The Administration Department or another agency should be given the authority to develop consistent methods of classifying purchase types and collecting data on the implementation of purchasing programs for the state, the metropolitan agencies, and the university. This agency should also be required to prepare a biannual report for the Legislature on the administration of the law encompassing information from all government entities included in its terms. Additional resources may be needed to accomplish this standardized reporting and review.
6. The state should consider making additional efforts to increase sensitivity toward and awareness of female- and minority-owned firms by both government and nongovernment purchasing entities. A state-sponsored training effort marketed to both the public and private sector would be one such method of accomplishing this.
7. State agencies with regulatory oversight of lending institutions should be directed to review institutional lending practices to see whether discrimination exists and, if so, what steps are necessary to eliminate it. Federal agencies should be asked to do the same.

Question 2: Should the definition of small business be revised?

A definition of small business that recognizes the different competitive conditions within the various types of business would provide a more accurate identification of firms that are considered small within a particular industry. The industry-specific definitions of small business used by the U.S. Small Business Administration are too large for use in Minnesota.

The Department of Administration is developing expertise in identifying firms that are disadvantaged in relation to their markets as it implements the interim purchasing preference program for economically disadvantaged businesses. This expertise is transferrable to indentifying the firm size that is considered small within an industry.

Recommendation

1. The Department of Administration should be delegated the authority to establish definitions of small business by type of business. These definitions should recognize the differences between various industries caused by the size of the market for the goods or services and the relative size and market share of the competitors operating in those markets. Resources to develop these definitions and to monitor the need for changes should be provided.

Question 3: Are there alternative programs to stimulate growth opportunities for small businesses?

The Department of Administration's report finds that Minnesota currently offers small businesses a variety of resources ranging from education and training to financing and set asides in government purchasing. Economically disadvantaged firms qualify for a 5-percent purchasing preference through a program that is based on economic conditions and is facially race- and gender-neutral. Other jurisdictions, such as Birmingham, Alabama, and Milwaukee, Wisconsin, are reintroducing social factors into the definition of economic disadvantage by creating rebuttable presumptions of disadvantage when certain social factors are present.

The current five-year limitation on participation in the preference program may exclude a number of small businesses that start small and stay small throughout their lifespan. If a firm is certified as economically disadvantaged on the basis of insufficient economic resources to compete, the arbitrary five-year limit appears to harm the opportunities for that firm to sell to government when it still operates under that economic disadvantage.

Studies have shown that new businesses have a strong interest in additional governmental services, particularly in those providing training and financing. A large variety of programs offering services ranging from technical assistance to financing exist throughout the state. It is not clear, however, whether programs currently available are not widely known to small business owners, whether their focus is not correct, or whether there is simply more demand for them than can be met.

Studies also have shown that almost one-fourth of business owners report coping with government regulations as a major problem.

Recommendations

1. The determination of whether additional resources are necessary for education and technical assistance should await the evaluation of existing programs to assist small businesses that is being prepared by the Department of Trade and Economic Development.

2. The Department of Trade and Economic Development should be directed to examine whether additional programs are necessary to provide working capital financing for small businesses or whether existing programs meet that need.
3. The five-year eligibility limit for small businesses in the economically disadvantaged business preference program should not apply to a firm that qualifies on the basis of its lack of economic resources.
4. The Department of Administration should expand its efforts to help small businesses understand government purchasing procedures and should consider whether those procedures can be simplified for small businesses.

Question 4: Is it feasible to establish a preference program incorporating urban and rural areas of high unemployment?

The study report concludes that areas experiencing economic distress that are smaller than the labor surplus area or the county can be identified; therefore, firms located in such areas could be granted the same kind of preference now given to firms located in labor surplus areas and counties below the median income.

The use of unemployment data correlated to census tract information will allow designation based on unemployment levels, as is the case with the labor surplus area designation. The difference will be that the data used for the labor surplus designation will be more current. Unemployment information for census tracts or other areas smaller than 25,000 population is estimated from 1980 census data. However, there is no evidence that the data will not correctly identify areas of high unemployment; this data is relied upon for other state programs, such as Neighborhood Revitalization.

Recommendations

1. Geographic areas smaller than cities or counties should be designated as areas of economic distress to allow a preference in government purchasing for qualifying businesses located in those areas.
2. Census tracts should be the basis of the designation, and unemployment data, assessed by the same standards used for the labor surplus designation, should be the standard for qualification.
3. Preferences granted to firms as a result of this designation should be the same as preferences granted as the result of the labor surplus area designation.

C. Other Evidence

Disparities are found in other statistics reflecting the societal experiences of women and minorities that bear on their ability to form and run businesses. The information presented below covers membership in trade associations, participation in apprenticeship programs, household income, and unemployment and school dropout rates.

Also included in this section is a summary of a report prepared by the Hubert H. Humphrey Institute's Regional Issues Forum that shows a significant gap between the proportion of minorities in the state's population and the percentage of sales of minority-owned enterprises.

Trade Association Membership

Membership information by gender and race was requested from 33 building and contracting trade associations in Minnesota; nine responded. Breakdowns by gender and race are provided where that information was available, and the proportions of female- and minority-owned firms to majority-owned companies in these organizations are noted where feasible.

By way of comparison, the proportions of female- and minority-owned firms to majority-owned companies in 40 Standard Industrial Classification (SIC) codes, as identified in the 1989 Business Ownership Study (see Part III, Section B of this report), are given below. While the actual number of firms identified in the study is only a sample, the proportions can be assumed to be a reliable representation of the proportion in the whole population of such firms. Twelve of the 40 SIC codes were in the construction industry and two were suppliers or services directly related to the industry. Minority females are counted both as minorities and as females for the purposes of the study and this comparison.

This comparison shows, for example, that the proportion of female-owned firms in the selected SIC codes ranges from slightly more than 19 percent to more than 30 percent; in the reporting trade associations where a gender breakdown of membership was provided, however, the range is from zero to more than 12 percent.

Study proportions:

Nonresidential building construction (SIC 154):

19.16 percent female; 3.49 percent all minorities; 0.70 percent African-American; 1.05 percent Indian; 1.74 percent Asian

Highway and street construction (SIC 161):

23.57 percent female; 1.42 percent all minorities; 0.71 percent Hispanic; 0.71 percent Indian

Heavy construction, except highway (SIC 162):

25.73 percent female; 2.90 percent all minorities; 1.66 percent African-American; 0.83 percent Hispanic; 0.41 percent Indian

Plumbing, heating, air-conditioning contractors (SIC 171):
23.50 percent female; 2.50 percent all minorities; 0.75 percent Hispanic; 1.00 percent Indian; 0.50 percent Aleut; 0.25 percent Asian

Painting, paper hanging contractors (SIC 172):
20.98 percent female; 0.90 percent all minorities; 0.45 percent Hispanic; 0.45 percent Asian

Electrical work (SIC 173):
30.47 percent female; 1.40 percent all minorities; 0.28 percent African-American; 0.28 percent Hispanic; 0.28 percent Indian; 0.28 percent Aleut; 0.28 percent Asian

Masonry, stonework, plastering contractors (SIC 174):
23.08 percent female; 1.92 percent all minorities; 0.64 percent African-American; 0.32 percent Indian; 0.96 percent Asian

Carpentry and floor work (SIC 175):
30.37 percent female; 1.57 percent all minorities; 1.05 percent Hispanic; 0.52 percent Indian

Roofing, siding and sheet metal work (SIC 176):
20.78 percent female; 1.30 percent all minorities; 1.30 percent Hispanic

Concrete work (SIC 177):
26.02 percent female; 1.02 percent minority; 0.51 percent African-American; 0.51 percent Indian

Water well drilling (SIC 178):
21.31 percent female; 1.64 percent all minorities; 1.64 percent Asian

Miscellaneous special trade contractors (SIC 179):
27.46 percent female; 1.75 percent all minorities; 0.70 percent African-American; 0.70 percent Indian; 0.35 percent Asian

Electrical goods (wholesale) (SIC 506):
22.02 percent female; 3.25 percent all minorities; 1.08 percent African-American; 0.36 percent Hispanic; 1.81 percent Asian

Hardware, plumbing, heating equipment wholesale (SIC 507):
23.21 percent female; 2.23 percent all minorities; 0.89 percent African-American; 0.89 percent Hispanic; 0.45 percent Asian

Association membership and proportions:

Associated Builders and Contractors of Minnesota: Membership is open to anyone affiliated with the construction industry.

250 members

4 female or minority (1.6 percent aggregate)

Associated General Contractors of Minnesota: Contractor membership is open to firms that do 85 percent of their business as general contractors; subcontractor membership is open to any subcontractor. (Data based on 1989 association directory.)

150 contractor members
3 female (2.0 percent)
2 minorities (1.3 percent all minorities)
1 Indian (0.67 percent)
1 African-American (0.67 percent)

82 subcontractor members
3 female (3.66 percent)
8 minorities (9.76 percent all minorities)
3 African-American (3.66 percent)
4 Indian (4.88 percent)
1 Hispanic (1.22 percent)

Central Minnesota Builders Association: Membership is open to builders and associates (such as suppliers, subcontractors) who are sponsored by a current member; membership must be approved by the board of directors.

320 members
2 female (0.62 percent)
no race breakdown

Duluth Builders Exchange: Membership is open to anyone in the construction industry.

359 members
30 (estimated) female and minority (8.4 percent aggregate)

Minneapolis Builders Exchange: Membership is open to anyone in the construction industry.

1,218 members
no race or gender breakdown

Minnesota Asphalt Pavement Association: Regular membership is open to anyone engaged in the manufacture, production or placement of hot-mix asphalt; associate membership is open to suppliers, transporters, refiners of asphalt cement, technical consultants, and supporters of the industry.

60 members
0 female
0 minority

Minnesota Association of Plumbing, Heating, and Cooling Contractors: Membership is open to plumbing, heating, and cooling contractors, wholesalers, manufacturers, and others associated with the industry.

300 members
37 (estimated) female (12.33 percent)
1 (estimated) minority (0.33 percent)

Minnesota Electrical Association: Membership is open to licensed electrical contractors; membership committee must approve applicants.

515 members
13 female (2.52 percent)
no race breakdown

Minnesota Mechanical Contractors Association: Membership is open to licensed mechanical contractors. No membership information is available.

Female and Minority Participation in Apprenticeship Programs

As stated earlier in this report, the Commission believes it is not unreasonable to assume a connection between access to training and employment in the trades and the ability to start up and operate enterprises in those areas.

The participation of women and minorities in state-registered apprenticeship programs has been reported by the Minnesota Department of Labor and Industry's Voluntary Apprenticeship Division only since late 1980 and is not broken down into specific ethnic group, but rather reflects just females (both minority and nonminority), minority males, and nonminority males. The division does keep manual records on each individual participant in which racial or ethnic affiliation and gender are recorded, but it produces no aggregate breakdowns of this data.

A review of these reports and records indicates that the participation rates of women and minority men in apprenticeship programs in this decade fall far short of the affirmative action goals adopted by the Apprenticeship Division, which are 11.6 percent for minorities and 21 percent for women.

According to the Minneapolis Civil Rights Department's "Barriers to Progress" report, the goal for women in the Minnesota program was established by the U.S. Department of Labor to be at least one-half of the percentage of women in the national civilian labor force (which was 40 percent in 1976, when the goal was set).

Between late 1980 and the first half of 1988, women made up only 4.1 percent of all persons who entered and 2.5 percent of those who completed apprenticeship programs registered with the division. Minority males comprised 5.7 percent of the total entering and 2.7 percent of those completing during the same period. (See Table 1.)

The percentages of women and minority men entering apprenticeship programs in any one full year have not varied significantly, ranging from 2.9 to 7.5 percent. The highest percentage of women entering in any one full year occurred in 1982, when they made up 5.5 of all new apprentices. That same year was also a high point for minority males, when they made up 7.4 percent.

The same general stasis is noted in the percentages of women and minority men completing their programs in any one full year. The

range is from less than 1 percent to just over 6 percent. The highest rate for women (4.7 percent) occurred in 1987, while the highest for minority men was 6.1 percent, reached in 1988.

Table 2 is based on data collected from the division's cards kept on female and minority participants for the years 1980 through 1988 and reflects the participants' ending activity; i.e., whether they completed, were cancelled or suspended from, or left their program. Unlike Table 1, the totals do not reflect how many of each group and gender were in a program during any one year, only how many ended their participation in one way or another during that year.

Slight discrepancies will be noted between the total completing as registered in the data used in Table 2 and the total completing reported in the division's monthly status reports, which make up the data in Table 1. Some of the differences arise from the separate counting of minority females in Table 2; the division counts them only as female for the purposes of its reports. The rest are evidently clerical errors and do not significantly affect the proportions as compared to the participation of white males.

As Table 2 shows, white females overall had the highest completion rate (50 percent), followed by Asian males with 49 percent. Both of these rates exceed the average completion rate of 48 percent for all apprenticeship programs. Hispanic males had a 41-percent rate, while Indian males were at 34 percent and African-American males were at 32 percent. The rates for Hispanic, Indian, and African-American females were 38 percent, 23 percent, and 9 percent, respectively; however, their actual numbers were very small, with three Hispanic females, three Indian females, and two African-American females completing their programs during the nine-year period.

Table 1
PARTICIPATION IN REGISTERED APPRENTICESHIP PROGRAMS
BY GENDER AND MINORITY STATUS, 1980 - 1989
 (New or reinstated enrollments; completions;
 and suspensions, cancellations or voluntary drops)

YEAR/ACTIVITY	TOTAL	NONMINORITY MALE	%	ALL* FEMALE	%	MINORITY MALE	%
1980** New	916	845	92.2	32	3.5	39	4.3
Completing	358	345	96.4	10	2.8	3	0.8
1981 New	1499	1368	91.2	73	4.9	58	3.9
Completing	1342	1301	96.9	12	0.9	29	2.2
1982 New	1115	971	87.1	61	5.5	83	7.4
Completing	1510	1457	96.5	20	1.3	33	2.2
1983 New	1167	1052	90.1	34	2.9	81	7.0
Completing	1315	1249	95.0	32	2.4	34	2.6
1984 New	1470	1324	90.1	65	4.4	81	5.5
Completing	961	917	95.4	25	2.6	19	2.0
1985 New	1587	1453	91.5	66	4.2	68	4.3
Completing	853	796	93.3	29	3.4	28	3.3
1986 New	1614	1453	90.0	60	3.7	101	6.3
Completing	660	624	94.5	21	3.2	15	2.3
1987 New	1753	1584	90.4	57	3.2	112	6.4
Completing	724	658	90.9	34	4.7	32	4.4
1988 New	1199	1087	90.7	47	3.9	65	5.4
Completing	628	563	89.6	27	4.3	38	6.1
1989*** New	536	464	86.6	32	5.9	40	7.5
Completing	609	578	94.9	17	2.8	14	2.3
TOTAL New	12856	11601	90.2	527	4.1	728	5.7
Completing	8960	8488	94.7	227	2.5	245	2.7

* Both minority and nonminority females.

** August through December 1980 only.

*** January through June 1989 only.

Source: Monthly activity reports, Minnesota Department of Labor and Industry Apprenticeship Division.

Table 2
APPRENTICESHIP ENDING ACTIVITY
BY GENDER AND RACE, 1980 - 1988

YEAR	AFR.-AM.		HISPANIC		ASIAN		INDIAN		WHITE FEMALE
	M	F	M	F	M	F	M	F	
1980									
Total*	51	0	15	1	2	0	28	0	40
# Completing	11	0	5	0	2	0	10	0	13
% Completing	22%	0	33%	0	100%	0	36%	0	32%
1981									
Total	26	3	16	0	3	0	12	0	39
# Completing	15	0	7	0	2	0	6	0	17
% Completing	58%	0	44%	0	67%	0	50%	0	44%
1982									
Total	45	6	19	2	3	1	19	1	59
# Completing	18	0	7	1	1	0	8	0	18
% Completing	40%	0	37%	50%	33%	0	42%	0	30%
1983									
Total	52	3	18	0	7	0	30	1	35
# Completing	20	0	8	0	2	0	10	1	29
% Completing	38%	0	44%	0	28%	0	33%	100%	83%
1984									
Total	21	3	17	0	6	0	13	0	49
# Completing	6	0	10	0	2	0	6	0	32
% Completing	28%	0	59%	0	33%	0	46%	0	65%
1985									
Total	35	4	27	3	1	0	33	3	62
# Completing	12	1	9	1	1	0	10	0	30
% Completing	34%	25%	33%	33%	100%	0	30%	0	48%
1986									
Total	33	0	13	0	2	0	22	5	44
# Completing	4	0	3	0	1	0	5	2	20
% Completing	12%	0	23%	0	50%	0	23%	40%	45%
1987									
Total	57	1	24	0	6	0	35	2	65
# Completing	15	0	9	0	4	0	9	0	35
% Completing	26%	0	38%	0	67%	0	26%	0	54%
1988									
Total	41	3	19	2	5	1	29	1	41
# Completing	16	1	11	1	2	0	12	0	25
% Completing	39%	33%	58%	50%	40%	0	41%	0	61%
Aggregate									
Total	361	23	168	8	35	2	221	13	434
# Completing	117	2	69	3	17	0	76	3	219
% Completing	32%	9%	41%	38%	49%	0	34%	23%	50%

* Total includes all completions, cancellations, and voluntary drops.

Source: Individual participant data cards, Minnesota Department of Labor and Industry Apprenticeship Division.

Household Income

Three out of the four significant minority groups in Minnesota had notably lower average household incomes compared to whites, according to the 1980 U.S. Census.

As shown in Table 3, the greatest disparity occurred among Indians, whose average household income was \$13,690, or 66 percent of the average for whites in the state. African-Americans had an average of \$15,460, or 74 percent of the white average, while Hispanics had \$17,831, or 83 percent. Asians had the highest average household income compared to whites, with \$20,356, or 98 percent.

Table 3
1980 MINNESOTA HOUSEHOLD INCOME BY RACIAL GROUP

	<u>Median</u>	<u>Mean</u>
African-American	\$12,285	\$15,460
Indian, Aleut and Eskimo	10,860	13,690
Hispanic	15,008	17,381
Asian	15,905	20,356
White	17,910	20,854

Source: 1980 Census

Unemployment Rates

Three of the state's four major minority groups suffer significantly higher rates of unemployment than does the white population as a whole, according to statistics based on the 1980 Census.

The unemployment rate reflected in the census data (see Table 4) was 5.2 percent for whites, but almost four times that for Indians, Aleuts and Eskimos, nearly double that for Hispanics, and slightly less than double for African-Americans. The rate for Asians--5.3 percent--was only slightly higher than that for whites.

Similar disproportions appear when the distribution of these groups are compared. Whites make up 97.4 percent of the labor force, but only 94.5 percent of the unemployed. Indians, however, are 0.6 percent of the labor force, but four times that, or 2.4 percent, of the unemployed. The proportion of Hispanics among the unemployed is twice that of their representation in the labor force, while African-Americans are 1.1 percent of the labor force and 1.9 percent of the unemployed. The same proportion of Asians is seen in the labor force and the unemployed.

A similar picture is painted by Table 5, which shows the percentages of census respondents by racial group who reported that they were

unemployed at some point during 1979. The percentage of Indian males was more than two and a half times greater than the percentage for white males, and almost two times greater for Indian females than for white females. African-American males had a percentage that was almost double that of white males, while the rate for African-American females was 25.7 percent compared to 15.3 percent for white females. The incidences of unemployment during that year for Hispanics of both sexes were more than one and a half times that of whites, while the same disparity is seen among Asian men and women.

Unfortunately, the Minnesota Department of Jobs and Training does not keep statistics on individual race or ethnic groups. A report on minorities and females claiming unemployment is contained in Table 6, but it reflects only those persons who were covered by unemployment insurance. According to the department, that number is only about one-third of the total number of Minnesotans unemployed at any one time.

**Table 4
MINNESOTA LABOR FORCE CHARACTERISTICS
1980 CENSUS**

Race/Gender Status	Labor Force	Unemp.			% Distribution		
		Employ'd	Unemp'd	Rate	Force	Emp'd	Unemp'd
TOTAL	1,993,352	1,885,521	107,831	5.4	100.0	100.0	100.0
White	1,942,213	1,840,261	101,952	5.2	97.4	97.6	94.5
African- American	21,709	19,640	2,069	9.5	1.1	1.0	1.9
Indian, Aleut, & Eskimo	12,503	9,940	2,563	20.5	0.6	0.5	2.4
Asian	11,899	11,272	627	5.3	0.6	0.6	0.6
Hispanic	12,704	11,388	1,316	10.4	0.6	0.6	1.2
Other	5,028	4,408	620	12.3	0.3	0.2	0.6
Female	855,918	820,373	35,545	4.2	42.9	43.5	33.0
Male	1,137,434	1,065,148	72,286	6.4	57.1	56.5	67.0

Source: 1980 U.S. Census

Table 5
MINNESOTA UNEMPLOYMENT RATE BY RACIAL GROUP
1980 CENSUS

African-American	
Male	30.0%
Female	25.7
Indian, Aleut & Eskimo	
Male	39.6%
Female	29.7
Hispanic	
Male	26.5%
Female	23.3
Asian	
Male	22.2%
Female	23.8
White	
Male	15.3
Female	15.3

Note: Percents represent total number of census respondents who were unemployed at some point during 1979.

Source: 1980 U.S. Census

Table 6
MINNESOTA MINORITIES AND FEMALES CLAIMING UNEMPLOYMENT
1983 - 1988

	<u>Total</u>	<u>Female</u>	<u>Percent</u>	<u>Minorities</u>	<u>Percent</u>
1983*	212,749	62,948	29.6%	6,769	3.2%
1984*	172,141	53,410	31.0%	5,728	3.3%
1986**	187,968	57,669	30.7%	7,198	3.8%
1987**	168,920	51,962	30.8%	7,033	4.2%
1988**	151,423	47,099	31.1%	6,485	4.3%

*Calendar year

**Program year ending in June

Source: Minnesota Department of Jobs and Training

Dropout Rates

Three percent of all students in grades 7 through 12 dropped out of school in 1987 (see Table 7). The rate that year of white students

who dropped out compared to all white students was slightly less than the overall percentage--2.6 percent. The dropout rates for African-American, Indian, and Hispanic students compared to their total populations, however, were considerably higher: 11.3 percent, 11.6 percent, and 8.1 percent, respectively. Asian students had a dropout rate slightly higher than the overall average (3.1 percent).

African-American students were 2.6 percent of all enrollees in 1987 but 9.9 percent of all dropouts, while white students made up 92.6 percent of all enrollees and 79.5 percent of all dropouts. Indian students were 1.5 percent of all enrollees but almost four times that--5.7 percent--of all dropouts, while Hispanic students were slightly less than 1 percent of all students and 2.4% of all dropouts. Asian students made up 2.5 percent of all enrollees and 2.6 percent of all dropouts.

Similar patterns can be seen through the seven preceding years.

Table 7
MINNESOTA SCHOOL DROPOUTS BY RACE, GRADES 7 - 12,
SCHOOL YEARS 1980-81 TO 1987-88

	1980	1981	1982	1983	1984	1985	1986	1987
<u>TOTAL</u>								
Enrollees	382,049	370,200	362,037	356,228	348,355	339,736	332,104	326,128
Dropouts	10,082	9,374	7,653	7,695	8,790	8,776	9,042	9,787
% Dropout	2.6%	2.5%	2.1%	2.2%	2.5%	2.6%	2.7%	3.0%
<u>WHITE</u>								
Enrollees	364,750	351,608	342,163	336,169	327,081	317,577	308,941	301,899
% of All								
Enrollees	95.5%	95.0%	94.5%	94.4%	93.9%	93.5%	93.0%	92.6%
Dropouts	8,679	7,748	6,193	6,319	7,220	7,168	7,725	7,783
% Dropout	2.4%	2.2%	1.8%	1.9%	2.2%	2.3%	2.5%	2.6%
% of All								
Dropouts	86.1%	82.7%	80.9%	82.1%	82.1%	81.7%	85.4%	79.5%
<u>AFR.-AMER.</u>								
Enrollees	6,239	6,389	6,854	7,184	7,556	8,003	8,345	8,560
% of All								
Enrollees	1.6%	1.7%	1.9%	2.0%	2.2%	2.4%	2.5%	2.6%
Dropouts	710	767	656	697	801	747	485	965
% Dropout	11.4%	12.0%	9.6%	9.7%	10.6%	9.3%	10.6%	11.3%
% of All								
Dropouts	7.0%	8.2%	8.6%	9.1%	9.1%	8.5%	5.4%	9.9%

Table 7 (Continued)
MINNESOTA SCHOOL DROPOUTS BY RACE, GRADES 7 - 12,
SCHOOL YEARS 1980-81 TO 1987-88

	1980	1981	1982	1983	1984	1985	1986	1987
INDIAN								
Enrollees	4,767	4,835	4,737	4,863	5,033	4,779	4,792	4,775
% of All								
Enrollees	1.2%	1.3%	1.3%	1.4%	1.4%	1.4%	1.4%	1.5%
Dropouts	514	525	513	447	506	516	452	556
% Dropout	10.8%	10.9%	10.8%	9.2%	10.1%	10.8%	9.4%	11.6%
% of All								
Dropouts	5.1%	5.6%	6.7%	5.8%	5.8%	5.9%	5.0%	5.7%
ASIAN								
Enrollees	4,025	5,086	5,782	5,620	6,222	6,798	7,355	8,039
% of All								
Enrollees	1.0%	1.4%	1.6%	1.6%	1.8%	2.0%	2.2%	2.5%
Dropouts	65	201	166	115	119	175	197	251
% Dropout	1.6%	4.0%	2.9%	2.0%	1.9%	2.6%	2.7%	3.1%
% of All								
Dropouts	0.6%	2.1%	2.2%	1.5%	1.4%	2.0%	2.2%	2.6%
HISPANIC								
Enrollees	2,268	2,282	2,501	2,392	2,463	2,579	2,671	2,855
% of All								
Enrollees	0.6%	0.6%	0.7%	0.7%	0.7%	0.8%	0.8%	0.9%
Dropouts	114	133	125	117	114	170	183	232
% Dropout	5.0%	5.8%	5.0%	4.9%	5.8%	6.6%	6.9%	8.1%
% of All								
Dropouts	1.1%	1.4%	1.6%	1.5%	1.3%	1.9%	2.0%	2.4%

Note: Percentages may not total 100 due to rounding.

Source: Minnesota Department of Education

Regional Issues Forum Minority Business Report

The Hubert H. Humphrey Institute's Regional Issues Forum, established by the Northwest Area Foundation to help encourage economic development in an eight-state region including Minnesota, published a report in April 1989 that looked at minority-owned business enterprises in the region.

The report, "Minority Business in the Northwest United States," was based on 1980 U.S. Census data and found that although minorities comprise nearly 7 percent of the region's population, "sales of minority-owned enterprises are only 0.1 percent to 0.8 percent of the total sales" within each of the eight states.

"This situation hasn't changed substantially from 20 years ago," the report's authors wrote. "The President's annual report 'The State of Small Business,' the Urban League's annual 'State of Black America' and other publications have shown this bleak picture year after year."

Tables 8, 9, and 10 are derived from data presented in the Regional Issues Forum report.

**Table 8
MINNESOTA MINORITY BUSINESSES AND POPULATIONS**

	Afr.-Am.	Hispanic	Indian/ Aleut/Esk.	Asian	Other
Population*	52,172	32,200	36,684	32,200	13,043
% of Total Pop.	1.3%	0.8%	0.9%	0.8%	0.3%
# of Minority Businesses	1,238	496	259	1,004	58
Sales of Min. Bus. (\$ 000)	87,632	28,283	6,865	47,959	1,195
Min. Firms per 1,000 People (same minority)	24	15	7	31	4

*White population was 3,941,871. Total minority population was 4 percent of the state's population.

Note: Total of minority businesses includes some repetitions. Firms may be counted more than once according to the race of multiple owners; they are also counted separately according to race and ethnicity.

Source: "Minority Business in the Northwest United States," Hubert H. Humphrey Institute of Public Affairs Regional Issues Forum, April 1989.

**Table 9
COMPARISON OF MINNESOTA MINORITY BUSINESSES
TO ALL BUSINESSES, BY INDUSTRY**

	All Firms	Min. Firms	Min. % Total	All Sales (\$ 000)	Minority Sales (\$ 000)	Min. % Total
Construction	9,260	139	1.5%	5,826,218	6,634	0.1%
Manufacturing	6,775	107	1.6%	35,321,300	NA	NA
Retail	37,274	928	2.5%	19,599,200	66,489	0.3%
Services	19,996	1,416	7.1%	6,472,100	49,035	0.8%
Wholesale	9,020	37	0.4%	47,400,000	NA	NA

NA = Data withheld by Census Bureau for individual company privacy.

Source: "Minority Business in the Northwest United States," Hubert H. Humphrey Institute of Public Affairs Regional Issues Forum, April 1989.

**Table 10
MINNESOTA MINORITY FIRM COUNT AND SALES BY INDUSTRY,
INDEXED TO MINORITY POPULATION**
(Index values less than 100 show fewer minority firms/sales
than the minority proportion of the population.)

	<u>Minority Firms Count Indexed*</u>	<u>Minority Firms Sales Indexed**</u>
Construction	37.5	3
Manufacturing	39.5	NA
Retail	62.2	8
Services	177.0	19
Wholesale	10.3	NA

*Count Index = (Minority Firms-count / All Firms-count) /
(Minority Population / Total Population) X 100

**Sales Index = (Minority Firms-sales / All Firms-sales) /
(Minority Population / Total Population) X 100

Source: "Minority Business in the Northwest United States,"
Hubert H. Humphrey Institute of Public Affairs Regional Issues
Forum, April 1989.

PART III - FOCUSING ON SOLUTIONS:

Neutral Alternatives and Programs in Other Jurisdictions

The Supreme Court held in its Croson decision that legislation designed to remedy past discrimination must be narrowly tailored to accomplish its purpose. It must fit the discrimination to be remedied, it must be more effective than alternative remedies for accomplishing the goal, and it must not unduly burden nonminorities.

This section outlines various alternatives to race- and gender-conscious programs and reviews programs that have been enacted in other jurisdictions.

Race- and Gender-Neutral Alternatives

Under the Croson decision, a jurisdiction must examine race- and gender-neutral alternatives and determine their efficacy before enacting a set-aside program. If such neutral alternatives will not accomplish the objective of remedying the effects of past discrimination, a race- and gender-conscious program may be enacted.

Among the alternatives that should be considered are several the Court itself suggested, including "simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races." Other possible alternatives include:

Bonding

- o Maintain a referral list of surety agents who want to work with small businesses.
- o Develop a surety bond guarantee program.
- o Eliminate premium cost as a bid item (but pay separately for it).
- o Prequalify contractors rather than requiring bonds.

Credit and financing

- o Require the state to pay contractors within 10 days of request.

- o Require contractors to pay subcontractors within 7 to 10 days of a specified point in time, such as receipt of proof of work completion.
- o Require contractors to pay subcontractors biweekly.
- o Pay contractors for mobilization (bid preparation costs, moving to site, insurance and bond premiums); make mobilization costs a line item.
- o Require agencies to make direct disbursements to subcontractors.
- o Eliminate, reduce, or modify retainage.
 - Retain only for cause.
 - Retain only 5 percent.
 - Put retainage in interest-bearing account.
 - Prohibit contractors from retaining more than 5 percent from subcontractors.
 - Establish a loan guarantee program.

Education

- o Develop a state-funded internship program that matches experienced contractors with inexperienced ones; provide training in such areas as management and labor negotiations.
- o Provide training on how to bid, market the business, and seek projects.
- o Provide information on business resources, such as Small Business Administration programs.
- o Remove or reduce restrictions on mentor relationships.

In considering any neutral alternative, the measure must be examined carefully to determine whether it does in fact help to remedy discrimination.

Programs in Other Jurisdictions

Most set-aside or preference programs that have been enacted in other jurisdictions since the Croson decision take three basic approaches: 1) targeted on all small businesses; 2) targeted on economically disadvantaged businesses; or 3) facially neutral with race and gender used as criteria.

The first approach applies a broad brush to all businesses. One such program in Arizona includes a citizen-based advisory committee to help identify small businesses and requires that contractors be paid within 30 days. Maryland's program prohibits setting aside a contract unless there are at least two small businesses available to bid on it; Montana has a similar program requiring that three small businesses be available.

Minnesota's program for economically disadvantaged businesses (outlined in Part I of this report) is an example of the second approach. Oregon has enacted a similar program for what it calls "emerging small businesses."

The third approach is exemplified by programs in Wilmington,

Delaware; Birmingham, Alabama; and Milwaukee, Wisconsin.

Wilmington has a goal of 30 percent of all contracts going to minority-owned and other disadvantaged businesses. That city's ordinance defines a disadvantaged business as one owned by someone who has been discriminated against or who has certain problems; it also includes businesses owned by members of groups that have high unemployment rates. Provision is made for relaxing bonding requirements on an individual case basis.

The Birmingham program is a joint public-private venture involving a community development corporation (CDC) and a construction trades program. The CDC was established to make loans to and investments in small businesses owned by minorities and other disadvantaged persons. The program will use the Small Business Administration's definition of a small business and a variety of criteria for defining socially or economically disadvantaged persons. Nine Birmingham lending institutions have put up \$1.5 million for three years for these loans and investments, and the city is guaranteeing up to 75 percent of each loan. Loans will be made for "gap" contract or short-term receivables financing; start-up capital and financing; asset acquisition; working capital; and loans or guarantees needed to obtain normal bank financing.

The Birmingham construction trades program is jointly funded by the city and the Associated General Contractors and consists of a Construction Trades Authority that will set policy, rules, and goals for the participation of businesses owned by minorities and other disadvantaged persons on both public and private sector contracts. This body, which includes representatives of both sectors, will train, encourage, and certify disadvantaged businesses and arrange joint ventures. Birmingham area institutions are being asked to become signatories to the program and an annual fundraising goal of \$400,000 has been set. The program comes out of a consent decree resolving 10 years of litigation over a suit brought by the Associated General Contractors.

The city of Milwaukee's program combines training and preference for disadvantaged business owners in the construction industry. Such owners who complete special training in owning and running a successful construction-related business are certified to participate in the preference program. A larger contractor who uses such certified businesses on a city contract gets preference points based on the number of such firms used, up to a maximum of a 5-percent preference. Under this program, a disadvantaged individual is one who is experiencing substantial difficulty in achieving business success as a result of at least three of the following: 1) disadvantage with respect to education; 2) disadvantage with respect to employment; 3) social disadvantage; 4) disadvantage with respect to residence or business location; 5) lack of business training in operating a construction-related enterprise; or 6) disadvantage in ability to compete in the free enterprise system due to diminished capital, credit, or bonding opportunities.

New York City has instituted a facially neutral program encouraging contractors to locate and perform work in low-income, high-unemployment areas of the city. California has an "outreach" program in which the use of minority- and female-owned businesses is encouraged, but not specifically required.

Gender- and race-conscious legislation has been adopted since the Croson decision in King County, Washington, and San Francisco after both jurisdictions found statistical evidence of underrepresentation of female- and minority-owned firms in government contracting and subcontracting.

In King County, each county contract-awarding authority establishes separate utilization goals for minority- and female-owned firms based on contract dollar amounts and available businesses. A 5-percent preference is granted for all purchasing, service, and concession contracts and for construction contracts under \$10,000. For construction contracts over that limit, a percentage of the subcontracting is set aside for minorities or women based on the extent of subcontracting opportunities presented by the contract and the availability of these businesses qualified to do the subcontracting work. The King County legislation was challenged and upheld in federal district court.

In July 1989, an ordinance took effect in San Francisco that grants preference in contract bidding to minority- and female-owned businesses, as well as to enterprises located within the city and the county. Local minority- and female-owned businesses or joint ventures in which local minority or female participation equals or exceeds 51 percent get a 10-percent preference, while local businesses or joint ventures in which local minority or female participation is at or exceeds 35 percent but less than 51 percent get a 5-percent preference.

PART IV - ENSURING FAIR MARKET ACCESS:

Commission Findings and Legislative Recommendations

From the statistical evidence and direct testimony reviewed and summarized in this report, the Small Business Procurements Commission finds the following:

1. That public and private purchasing agents, business owners, contractors, financial institutions, and surety agents have discriminated and do discriminate against female- and minority-owned businesses doing business with the State of Minnesota on the basis of the gender and race of the owners of these businesses.
2. That but for the provisions of its past set-aside and preference programs for minority- and female-owned businesses, the State of Minnesota would have been and continues to be a passive participant in the discrimination against these businesses.
3. That a gender- and race-based procurement program is necessary to remedy discrimination against minority- and female-owned businesses by governmental agencies and private businesses, to prevent the State of Minnesota from financing and participating in this discrimination with its contract dollars, and to dismantle the system of race- and gender-based exclusion from the marketplace.
4. That the market from which the state draws vendors extends throughout the State of Minnesota.
5. That the current program for Economically Disadvantaged Businesses has failed to reach female- and minority-owned firms.
6. That minorities and women are precluded and discouraged from owning businesses through discriminatory exclusion from apprenticeship opportunities (and thus from access to the construction industry) and by barriers to obtaining financing, finding customers, and gaining entry into the "old boys'" network.

7. That many public and private programs to assist small business already exist but have not helped female- and minority-owned firms to attain their proportional market share.
8. That race- and gender-neutral measures, by themselves, will not eliminate the effects of discrimination by governmental agencies and private businesses. While the existence of such alternative remedies must continue to be explored, no effective alternatives appear to be available at present.

Recommendations

Based on these findings, the Commission makes the following recommendations:

1. A race- and gender-based program should be enacted by the Legislature that reflects the varying populations of female- and minority-owned firms by industry.
2. The interim program for Economically Disadvantaged Businesses should be discontinued if a race- and gender-based program is enacted.
3. The program for otherwise economically disadvantaged businesses should be discontinued and a new program instituted in which all small business owners who are not otherwise targeted but document discrimination against their firms may be included on a case-by-case basis.
4. Consideration should be given to reinstating eligibility for businesses owned by persons who have substantial physical disabilities.
5. Current interim programs should be extended until the new programs can be implemented.
6. The Department of Administration should be given the authority to identify the categories of purchasing that should qualify for a race- and gender-based procurement program based on the availability of firms. Such benchmarks should be set higher to prevent discouraging women and minorities from entering the field and to remedy the past effects of discrimination that have prevented them from entering into business. These findings should apply to state, metropolitan agency, and University of Minnesota purchasing. The department should be required to revise this category eligibility based on new data at least every five years. The determination of these categories should be made under the emergency rules procedures.
7. Firms qualifying under race and gender standards should be granted a 6-percent purchasing preference and firms qualifying under the labor surplus or county median income standards should be granted a 4-percent preference. The higher preference for the minority- and female-owned firms would increase their opportunity to be awarded government contracts and reduce their underutilization.

8. Agencies should have the authority to use at their discretion preference and/or set asides on contracts for bidding by targeted groups.
9. The designation of counties having less than 70-percent median income should be retained and the Revenue Department should be required to obtain the information from federal tax returns to determine county median income.
10. Agencies should be encouraged to make all purchases under \$1,500 from participating businesses when such businesses are available to provide the product or service. This should be balanced, however, with considerations regarding the need for and desirability of local purchasing.
11. Geographic areas smaller than cities or counties should be designated as areas of economic distress to allow a preference in government purchasing for qualifying businesses located in those areas. Census tracts should be the basis of the designation, and unemployment data, assessed by the same standards used for the labor surplus designation, should be the standard for qualification. Preferences granted to firms as a result of this designation should be the same as preferences granted as the result of the labor surplus area designation.
12. Agencies should have flexibility to set goals for subcontracting on individual projects with consideration given to the findings of the study and the commission regarding the underutilization of targeted groups in various industry areas. Goal-setting processes should contain waiver provisions.
13. Special financial incentives, similar to those now awarded for finishing jobs ahead of schedule, should be available to contractors for exceeding subcontracting goals for targeted groups.
14. In subcontracting to targeted groups, 75 percent of the subcontract must be performed by eligible businesses.
15. The Administration Department or another agency should be given the authority to develop consistent methods of classifying purchase types and collecting data on the implementation of purchasing programs for the state, the metropolitan agencies, and the university. This agency should also be required to prepare a biannual report for the Legislature on the administration of the law encompassing information from all government entities included in its terms. Additional resources may be needed to accomplish this standardized reporting and review.
16. The state should make additional efforts to increase sensitivity toward and awareness of female- and minority-owned firms by both government and nongovernment purchasing entities. A state-sponsored training effort marketed to both the public and private sector would be one such method of accomplishing this.
17. State agencies with regulatory oversight of lending institutions should be directed to review institutional lending practices to

see whether discrimination exists and, if so, what steps are necessary to eliminate it. Federal agencies should be asked to do the same.

18. To the extent permitted by law, the state should enact provisions requiring lending institutions to disclose their reasons for refusing financing to small businesses.
19. The Legislature should amend the Human Rights Act to prohibit discrimination against a business based on the race or gender of its owner.
20. The Department of Administration should be delegated the authority to establish definitions of small business by type of business. These definitions should recognize the differences between various industries caused by the size of the market for the goods or services and the relative size and market share of the competitors operating in those markets. These definitions should limit participation to businesses that have their principal place of business in Minnesota. Resources to develop these definitions and to monitor the need for changes should be provided.
21. Program participants should be recertified annually.
22. There should be a single certification for all state purchasing activities that do not involve federal funds. Application forms should be simplified.
23. A criminal felony provision should be enacted for filing false documents or obtaining a contract under false pretenses.
24. A business should be eligible for participation for a four-year developmental period followed by a five-year weaning period, provided that it should become ineligible if, during any consecutive three-year period, it exceeds the income limitations set forth in rule. A business should also become ineligible when the county or area in which it is located no longer is eligible as a below-median income county or a labor surplus area or when a finding is made that discrimination or disparity no longer exists for a specific targeted group and the business is owned by a member of that group.
25. The determination of whether additional resources are necessary for education and technical assistance should await the evaluation of existing programs to assist small businesses that is being prepared by the Department of Trade and Economic Development.
26. The state should provide information on business resources, such as Small Business Administration programs.
27. The Department of Administration should expand its efforts to help small businesses understand government purchasing procedures and should consider whether those procedures can be simplified for small businesses.

28. Operating agencies should be required to provide training and technical assistance on such topics as understanding bidding and award processes, information about upcoming projects, and business management to targeted-group businesses and should be provided with adequate funds to carry out this activity.
29. The Department of Administration should study in the coming year the possible use of joint ventures and mentor relationships.
30. The Department of Trade and Economic Development should be directed to examine whether additional programs are necessary to provide working capital financing for small businesses or whether existing programs meet that need.
31. The Working Capital Fund approach should be expanded to include targeted businesses performing work on any metropolitan agency, university, or state contract.
32. Contractors should be required to pay subcontractors within 7 to 10 days after they have received payment from the state for that portion of the work in which the subcontractors were involved.
33. Contractors should be paid for mobilization (bid preparation costs, moving to site, insurance and bond premiums), and mobilization costs should be made a line item.
34. The elimination, reduction, or modification of retainage should be explored.
35. Agencies should be given the flexibility to waive bid bonds for targeted-group members.
36. Each agency should review its bidding procedures for possible simplification.
37. Bonding requirements should be relaxed.
38. The state should maintain a referral list of surety agents who want to work with small businesses.
39. The state should develop and fund surety bond guarantee programs.
40. The state should consider eliminating bonding premium cost as bid item (but pay separately for it).

