

980328



Admin
MINNESOTA

Department of Administration

**Minnesota Department of Administration
Disparity Study Progress Report
March 16, 1998**

March 1998

This information will be made available in alternate format (for example, large print or cassette tape) upon request at 612.296.8929 or TTY 800.627.3529. This document was created by the Minnesota Department of Administration, Materials Management Division, 50 Sherburne Avenue, Suite 112, St. Paul, Minnesota 55155.

Contents

Introduction	1
Background	1
Study Team	1
Study Objectives and Methodology	2
Tasks Completed	5
Work in Progress/timelines	6
Conclusion	7

Introduction

The 1997 Minnesota State Legislature appropriated funds for the commissioner of Administration to conduct a disparity study. Specifically, the legislature calls for “the commissioner to conduct a study to determine if there is sufficient justification under a strict scrutiny standard to continue or establish a narrowly tailored purchasing program for the benefit of any socially disadvantaged groups.”¹

The study commenced on November 13, 1997, and is in progress. This progress report entails a brief history leading up to this study, as well as a summary of the work completed to date, the work in progress, and the projected timelines for the completion of remaining tasks.

Background

The State of Minnesota enacted its first set-aside program in 1975. The program initially provided set-asides for minority businesses only, but grew to include women and disabled-owned businesses and other purchasing methods, such as preferences and subcontracting goals. In 1989, the U.S. Supreme Court issued decisions in City of Richmond v. J.A. Croson Co. and Michigan Road Builders Assoc. v. Milliken that affect state preference programs for minority and woman owned businesses.² In light of these decisions, the State of Minnesota conducted a study in 1990 entitled, “Study of Discrimination Against Women and Minority-owned Businesses and of Other Small-business Topics.” In addition, the Legislative Commission on Small Business Procurements presented its report, “A Foot in the Door,” to the 1990 Legislature. As a result of the two studies, the 1990 Legislature found sufficient justification to enact legislation providing preference programs for targeted group businesses. The study, now underway, is analyzing the current program and the utilization of targeted group businesses in the state’s procurement process. The study will provide up-to-date factual information and recommendations for future efforts.

Study Team

In October 1997, the disparity study selection team chose Mason Tillman Associates, Ltd., to conduct the disparity study. This decision came about after multiple team meetings, detailed

¹ 1997 Minn. Laws ch. 202, art. 1, sec. 12, subd. 2.

² City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Michigan Road Builders Assoc. v. Milliken, 834 F.2d 583 (6th Cir. 1987).

reviews of all proposals received, reference checks and in-person interviews of two proposing consultant companies.

Mason Tillman Associates, Ltd., is an Oakland California-based consulting firm which specializes in conducting research on regulatory compliance and business affirmative action programs for public and private sector clients. The firm has conducted 27 disparity studies across the nation, none of which have been challenged in a court of law.

The firm is headed by Dr. Eleanor Mason Ramsey and includes a staff of attorneys, economists, statisticians, sociologists, historians and policy advisors providing a broad base upon which to build the study for the State of Minnesota. Dr. Ramsey is the recipient of numerous honors and awards for her work: she received the Leadership America's Signature Award in June 1997 and was named the 1996 Public Policy Advocate of the Year by the National Association of Women Business Owners. In addition, her work as the primary consultant for the City of Richmond's Disparity Study and Business Opportunity Program was recognized by the National League of Cities. In 1996 the city of Richmond was awarded the 1996 Cultural Diversity Award for its program.

Study Objectives and Methodology

The consultants have segmented the study into multiple tasks and described the objective of each task and the methodology utilized to conduct. A summary of the major objectives and methodology is as follows:

Objective 1: Develop a legal framework establishing the research parameters in accordance with controlling laws.

Methodology: Mason Tillman Associates, Ltd., in association with their legal advisor, Edward Norton, Esq., are responsible for developing the legal framework of the study. The lawyers on Mason Tillman's staff continually monitor and update the legal framework to incorporate controlling case law at the Supreme Court, appellate and district court levels.

Objective 2: Analyze relevant jurisdictions' studies.

Methodology: The study team identifies other jurisdictions within the geographic area that have conducted disparity studies. Mason Tillman reviews and analyzes these studies and includes observations or conclusions from the studies in the study at issue.

Objective 3: Collect contract data for the state's fiscal years 1996 and 1997. Conduct a utilization analysis by industry, ethnicity, gender, and governmental unit.

Methodology: The state and metropolitan agencies are supplying prime contractor data for each contract category for the study period. The consultants are retrieving subcontractor data. Mason Tillman will analyze records for federal and state construction projects, procurement data for the purchase of equipment, supplies and materials, and professional and technical services.

Objective 4: Determine the geographic market area from which the state utilizes prime contractors and from which the prime contractors choose their subcontractors.

Methodology: Mason Tillman examines the state's prime and subcontracting utilization data and uses a cluster analysis to determine the geographical area that represents the market area in which the state principally distributes its contracts.

Objective 5: Determine the number of businesses in the market area willing and able to participate in the state's contracting market.

Methodology: The consultants first determine any prequalification standards that the state utilizes to determine a contractor's eligibility to bid on contracts in all the industries analyzed. After the review, measures are defined for assessing the capacity that firms must have to bid on contracts. Multiple availability strategies are then used to identify businesses that might reasonably meet any bidding requirements the state may have. Such strategies include the review of state records, such as vendor lists, bidders lists, state approved targeted group certified lists and lists drawn from the utilization database. The study team also conducts outreach to groups including professional and trade associations to obtain membership listings and other information to identify relevant businesses.

Objective 6: Determine the capacity of available firms.

Methodology: Mason Tillman takes a random sample from their availability database and surveys the businesses to solicit qualification and capability information. The consultants utilize the state's minimum technical requirements as qualification criteria.

Objective 7: Determine if a statistically significant disparity exists in the amount of available businesses versus the numbers utilized that may lead to an inference of discrimination.

Methodology: Mason Tillman calculates disparity ratios for each ethnic, gender, and

industry group. The disparity ratio is determined by dividing the percentage of targeted groups in a particular industry that are utilized by the percentage available in that industry. If the proportions are not equal, a statistical test follows to determine the probability that the disparity is due to chance. Also, if the proportions are not equal, the statistician calculates an underutilization ratio for each group and industry.

Objective 8: Obtain and analyze anecdotal evidence.

Methodology: Mason Tillman will conduct 45 interviews to examine a record of accounts from the market area. The anecdotal interviews are done in adherence to court rulings indicating that a combination of statistical and anecdotal evidence is necessary to supply a factual predicate for a targeted group program. Mason Tillman utilizes a screener to collect basic demographic data and specific information about the business owners' experiences with the state. Thereafter, one on one interviews are conducted with business owners. The interviews are then transcribed and analyzed to identify any patterns or practices that represent barriers to equal access and opportunity in public contracting.

Objective 9: Conduct verification and corroboration of anecdotal accounts as they pertain to evidence of discrimination.

Methodology: This task is done in adherence to court rulings. Mason Tillman will seek to corroborate anecdotal evidence that tend to relate underutilization patterns and limited availability, if any, to discriminatory practices in the market. Mason Tillman will review state records, interview administrators, and review informal contracting procedures to verify accounts.

Objective 10: Prepare a description of the state's and metropolitan agencies contracting policies and procedures.

Methodology: The state has contracted to provide a description of the contracting policies and procedures. Information has been derived from purchasing and contracting manuals and one-on-one interviews with multiple state and metropolitan agency employees.

Objective 11: Identify and determine the effectiveness of race neutral techniques used by the state to increase the participation of targeted groups in the state's procurement process and to provide recommendations pertaining to race and gender neutral program modifications and enhancements.

- Methodology:** Mason Tillman reviews race and gender neutral program provisions and formal and informal contracting practices of the state to determine the effectiveness of the practices. Effectiveness is determined using information collected from the anecdotal interviews, interviews with state personnel and data from the utilization analysis.
- Objective 12:** Prepare race and gender neutral recommendations and, if the evidence purports a finding of disparity, race and gender specific recommendations.
- Methodology:** Mason Tillman examines all the facts collected in the preceding tasks and prepares recommendations as appropriate based on the findings.
- Objective 13:** Provide the State of Minnesota with a database of all records developed in the performance of the study and a user manual with instructions on sorting data, designing queries, adding new fields, and printing reports.
- Methodology:** Mason Tillman will provide a relational database. The firm will work with the state departments and agencies to ensure that its database is compatible to collect information on contract awards that can be used to update and analyze targeted group utilization and the effectiveness of contracting programs.

Tasks Completed

The following sets forth a description of the work completed subsequent the retention of the consultants and the date the work was completed:

Kick-off Meeting

A kick-off meeting to officially begin the study was held on November 13, 1997. Dr. Ramsey along with three of her staff and legal advisor, Edward Norton, were present, along with multiple representatives from state and metropolitan agencies.

Chapters Received

On December 8, 1997, the state received a draft of the first chapter titled, "Legal Framework of Minority and Women Business Enterprise Systems." As noted above, the chapter remains in draft form as the study progresses in the event any changes in law occur prior to the completion of the study. The first chapter entails a description of the law, and discusses the applicable standards of review, burden of proof, the Croson evidentiary framework and considerations of race and gender options.

On December 24, 1997, the second chapter titled, "Analysis of Other Jurisdictions' Programs" was received. The chapter provides a description and outcomes of disparity studies conducted by Ramsey County, city of St. Paul, Hennepin County, city of Minneapolis and Independent School District Number 625. The chapter provides an overview and history of each jurisdiction's study and procurement program and sets forth a description of the barriers and recommendations set forth in the studies.

A draft of the third chapter, "State of Minnesota Procurement Practices and Policies" was completed on February 27, 1998. This chapter details the state's procurement practices and policies for the purchase of goods and nonprofessional services, construction, and professional/technical services.

Data Collection

The State and metropolitan agencies have made significant strides in collecting data necessary for the study. Mason Tillman provided the state and all metropolitan agencies with a database structure identifying the fields of data required. The state worked with Mason Tillman and an additional outside consultant to prepare a data extraction design to ensure all the requested data was extracted from the Minnesota Accounting and Procurement System (MAPS). To assist the metropolitan agencies with their data collection efforts, Mason Tillman has conducted several meetings with the metropolitan agencies and provided them with tailored database structures.

On December 23, 1997, the Metropolitan Mosquito Control District and the Metropolitan Sports Facilities Commission submitted their initial data to the consultants. The data was provided largely in electronic format. On January 14, 1998, the Metropolitan Council's construction data was submitted to consultants and two days later, the state submitted its vendor database. On January 23, 1998, the Metropolitan Council submitted its procurement data for its Regional Administration and Environmental Services Division. On February 2, 1998, the Metropolitan Council submitted its procurement data from its Metro Transit Division and the Metropolitan Airports Commission made its data submissions. On February 3 and 10, 1998, the state completed its final extractions from MAPS and submitted its remaining databases to the consultants.

Work in Progress/timelines

Data Collection

Much of the data required for the study has been submitted to the consultants. There is some remaining data that is being collected, including construction data from the Department of Transportation. In addition, the consultants are reviewing the data submitted and answering any questions about the data, the database structures and fields. Once the state and metropolitan

agencies have made the final data submissions, the consultants will be able to continue with the other aspects of the study. The following is a projected timeline from the present to the completion of the study:

<u>Event</u>	<u>Timetable</u>
Complete utilization analysis (objective 3)	8 weeks from receipt of data
Complete market area analysis (objective 4)	8 weeks from receipt of data
Complete availability analysis (objective 5 and 6)	10 weeks from receipt of data
Complete disparity ratios (objective 7)	11 weeks from receipt of data
Complete retention and analysis of anecdotal evidence (objective 8)	April 24, 1998
Complete verification of anecdotal evidence (objective 9)	May 14, 1998
Complete race and gender neutral analysis (objective 11)	Draft - March 16, 1998 Final - April 1, 1998
Provide program recommendations (objective 12)	13 weeks from receipt of data
Prepare final report including all chapters	14 weeks from receipt of data

Conclusion

The disparity study has progressed rapidly since the November 13, 1997, kick-off meeting. In four months, the state and metropolitan agencies have extracted significant amounts of data and have dedicated much time and effort to the project. The remaining data collection is expected to be complete in early April, which will trigger the timelines set forth above. At that time, the consultants will move forward with their analyses and recommendations.