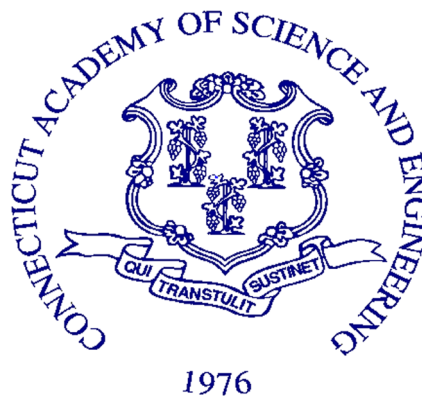


# CONNECTICUT DISPARITY STUDY: PHASE I

**AUGUST 2013**

**A REPORT BY**

**THE CONNECTICUT  
ACADEMY OF SCIENCE  
AND ENGINEERING**



**FOR**

**THE CONNECTICUT GENERAL ASSEMBLY  
GOVERNMENT ADMINISTRATION AND  
ELECTIONS COMMITTEE**



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THE CONNECTICUT ACADEMY  
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ORIGIN OF INQUIRY: THE CONNECTICUT GENERAL ASSEMBLY

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This study was initiated at the request of the Connecticut General Assembly on September 19, 2012. The project was conducted by an Academy Study Committee with the support of staff of the Connecticut Economic Resource Center, Inc. serving as the study management team with assistance from Evolution Enterprises, LLC. The content of this report lies within the province of the Academy's Economic Development, Education and Human Resources, and Technology Technical Boards. The report has been reviewed by Academy Members Peter G. Cable, PhD, and Gale F. Hoffnagle. Martha Sherman, the Academy's Managing Editor, edited the report. The report is hereby released with the approval of the Academy Council

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## EXECUTIVE SUMMARY

### STUDY PURPOSE

At the request of the Connecticut General Assembly, the Connecticut Academy of Science and Engineering (CASE), in accordance with legislation adopted in the 2012 legislative session, Public Act 12-1 and Public Act 12-104, shall conduct a disparity study of the state's Small and Minority Business Enterprise Set-Aside Program ("Set-Aside Program"). Public Act 12-1 provides an overview of the scope of work to be included in the study, and Public Act 12-104 provides for the funding of the project

Public Act 12-1, Section 110 stated that *"The study shall provide an analysis of existing statistical data concerning the state's current set-aside program, established under section 4a-60g of the general statutes, to determine whether its current form achieves the goal of facilitating the participation in state contracts of small contractors and minority business enterprises."*

### STUDY PHASING

Findings from the study's initial research and analysis of Connecticut's current Set-Aside Program identified that:

- The state's executive branch agencies and the other branches of state government that are responsible for awarding state contracts and overseeing the Set-Aside Program do not uniformly collect subcontractor contracting data, including payment information.
- A review of the legal issues and case law, including presentations to the CASE Study Committee by experts on matters of race-based and gender-based programs, identified that subcontractor data and financial information is a critical component of conducting a valid disparity study. Additionally, it was noted that unless quality data are collected and available for analysis, the results of the disparity study could be challenged in court, which would negate the purpose of conducting the study.

Therefore, it is recommended that the disparity study be divided into four distinct phases:

- Phase 1: Connecticut's Set-Aside Program Review and Analysis, Legal Issues, and Stakeholder Anecdotal Information/Analysis
- Phase 2: Diversity Data Management System Specification and Review of Agency Procedures and Practices Related to System Implementation, Best Practices Review and Analysis, and Establishing MBE/WBE Program Requirements
- Phase 3: Diversity Data Management System Testing, Econometric Model Acquisition and Testing, Legal Issues Update, Agency Progress and Race-Neutral Measures Implementation Review, and MBE/WBE Company Survey.
- Phase 4: Data Analysis and Goal Setting, Anecdotal Information/Analysis, and Final Project Report

This report is the final report for Phase 1 of the disparity study, including findings and recommendations that provide a foundation the remainder of the disparity study outlined in the stated phases.

## METHODOLOGY

The following quantitative and qualitative methods were utilized to determine key findings and study recommendations:

- A legal review discussing *Croson (City of Richmond v. J.A. Croson Co.; 1989)* and subsequent case law and legal standards.
- A review of legislation regarding Connecticut's Set-Aside Program.
- An assessment of Connecticut's Set-Aside Program as related to case law and legal standards.
- A review of existing policies and procedures related to Connecticut's Set-Aside Program by interviewing key state agency personnel who are involved in set-aside goal setting for contracts, and procurement and contracting processes. In addition, a review of public hearings and prior reports was conducted.
- An introduction to supplier diversity data management systems for use in managing MBE programs by interviewing contacts in other states that implemented data management systems in order to track MBE spending. Additionally, for background purposes two supplier diversity data management system vendors were interviewed to gain an understanding of the functionality of these types of programs for use in managing the state's MBE program and for use in conducting the analysis aspect of the state's disparity study.
- A summary of qualitative evidence from the Connecticut Department of Administrative Services (DAS) certified and non-certified companies concerning experiences doing business or attempting to do business in the relevant marketplace, including experiences of institutionalized discrimination and/or individual disparate treatment. This anecdotal evidence was gathered through: online surveys of state agency contacts involved in Set-Aside Program goal setting and procurement processes; online surveys of business chambers that offer small or minority business enterprise programs or that have information from member businesses about the marketplace; online survey of DAS-certified companies; interviews of various stakeholders, such as business leaders; participation at small and minority business enterprise forums to gather additional information; and a series of focus groups conducted throughout the state to gather additional input.

## BRIEF STATEMENT OF PRIMARY CONCLUSION

The purpose of a minority business enterprise program should be to eliminate discrimination in state contracting in the market area. Although, Connecticut's current program was intended to achieve this objective, it was not designed as a *narrowly tailored* program and does not meet the *strict scrutiny* judicial standard for justifying a race-based program. To meet this standard:

- Contracting goals established for the program need to be related to a current assessment of whether there are disparities in state contracting in the market area among different groups.
- The state must show, through inference by utilizing econometric modeling, that discrimination is present in state contracting in the market area to justify a program.
- The program must be *narrowly tailored* to eliminate the persistence of discrimination by specifically identifying which groups are experiencing discrimination, by ensuring program flexibility to achieve program goals, and separating the MBE program from the SBE program.
- Connecticut must collect data on contractors by acquiring and implementing a diversity data management system. Detailed contracting information including certified subcontractors that are utilized to meet program goals must be available for econometric analysis to establish, monitor, and modify program goals on an ongoing basis.

Also, MBE and WBE companies located outside of Connecticut that are *ready, able, and willing* to provide services to the state need to have the opportunity to apply for certification. These actions will set in place a program structure that will meet the requirements for having a legally defensible program. It is suggested that this program be titled the Connecticut MBE/WBE Opportunities Program.

## SUMMARY OF FINDINGS

The themes of the findings revolve around legal issues, data collection, process enhancements, and business support. The key findings clarify the objectives of the state's Set-Aside Program with the recommendations then suggesting how these objectives can best be met.

### *Legal Review*

- With the review of several legal cases that specifically addressed minority- and women-based programs it is evident that Connecticut's Set-Aside Program statute, C.G.S. §4a-60g, will not be upheld in the Second Circuit Court or any court of law, if challenged. Connecticut's statute does not meet the *strict scrutiny* standard of review used for evaluating race-based programs in the courts, as set forth by the US Supreme Court in *City of Richmond v. J.A. Croson (1989)*. Although Connecticut may be able to prove that it possesses a *compelling interest*, the first prong of *strict scrutiny*, in establishing and continuing its Set-Aside Program, it will not be able to prove that the program is *narrowly tailored*.
- Connecticut's Set-Aside Program is limited to MBEs located in Connecticut, yet the market for contracting services often extends beyond state borders. MBE program eligibility needs to be based on availability of companies located within the market area for contracting services that are *ready, able, and willing* to provide such services. Therefore, *ready, able, and willing* firms outside of Connecticut, need to be eligible for certification as MBE/WBEs. The disparity study statistical analysis will reflect this measure of *ready, able, and willing* firms in the relevant market area as well.

- The goal for a race-based program must be adjusted to show the effects of discrimination. Connecticut's statute states that 25% of contracting dollars must be awarded to small business enterprises (SBEs), and 25% of contracting dollars awarded to SBEs must be awarded to MBEs.<sup>1</sup> However, the set-aside appears to have been set arbitrarily without a statistical determination of whether there is a disparity in the state contracting market, and hence discrimination.
- Connecticut's Set-Aside Program is structured as a *rigid* quota system. State agencies are required to set aside a portion of contract dollars to MBEs. However, racial quotas have been consistently struck down in courts. Accordingly, if challenged, Connecticut's program would be struck down in court. Race-based programs that have been deemed constitutional by courts use a "goals" method instead of a quota system.
- The MBE/WBE Opportunities Program must be subject to periodic evaluation to determine if there is a continuing need for the program. This means that program leadership must continually evaluate whether race-conscious measures on state contracts are contributing to eliminating discrimination in the market. This can be evaluated by comparing the portion of a goal that is met through race-neutral means to the portion of the goal that is met through race-conscious means. If a goal is met solely through race-neutral means, it signals that the MBE/WBE Opportunities Program is no longer needed.

Additionally, to be *narrowly tailored a race-based program*:

- Must not penalize recipients of contract dollars for not meeting MBE goals, if *good faith efforts* were used by a prime contractor to identify eligible MBEs. For example, if a contractor can demonstrate that they reached out to MBEs to achieve a goal and were not able to retain a MBE for work, then the contractor must be allowed to request a waiver. Connecticut grants waivers for *good faith efforts*; however the state does not have a specific standard for what documentation appropriately constitutes a *good faith effort*.
- Must limit the types of companies that are eligible for the preference. The aim of the program is to correct discrimination that has placed minority business enterprises at an economic disadvantage. A *narrowly tailored* program cannot give preference to companies that have significant economic advantages, regardless of race.
- It is noted that the SBE program is not based on race; therefore it is not held to *strict scrutiny* review. Thus, the two programs cannot be intertwined.

Further, if the program is ever legally challenged, Connecticut must be prepared to specifically address the issue of *capacity* in a disparity study. Some courts look for a measure of *capacity* in disparity studies because they consider the argument that firm disparities, that might show an inference of discrimination, may be distorted by the firm's ability to perform the requirements outlined in state contracts.

Additionally, based on legal case review, it is evident that programs based on disparity studies that included comprehensive anecdotal evidence were more likely to be upheld in courts.

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1. PA 76-185 initially established the SBE program. PA 82-358 initially established the minority business percentage.

### *Data Collection*

- Quality data collection and the application of appropriate analytical techniques are crucial aspects of designing a legally defensible disparity study and providing evidence justifying that any goals that are established are in fact necessary. Collecting full and complete and timely prime contract and associated subcontract awards and actual payment is also critical to effective program implementation and monitoring.
- Connecticut's current recordkeeping system presents a significant challenge to assessing the SBE and MBE programs. The application and approval of budget exclusions plays a significant role in whether an agency is successful in meeting their SBE and MBE goals.
- The following data elements must be systematically collected and available in order to conduct a valid disparity study: subcontractors and payment data to subcontractors; P-card purchases; and consistent accounting methods (cash versus accrual) across branches of state government.

### *Certification Processes*

- There is some confusion among a variety of stakeholders about what it means to be SBE/MBE "certified" with the state, including the expectation of results. There are multiple programs for which a company can apply for special distinction in the state contracting process, which can add to the confusion and expectation of results.
- The level of paperwork to become certified at the state level is perceived as cumbersome by some contractors. However, it is important to have both a rigorous evaluation as well as a program that allows many businesses to participate.
- The bid documentation that is required by the state far exceeds what is required for any private sector bid, according to focus group participants, and smaller companies do not have extra staff to handle the paperwork and reporting requirements.
- The revenue size standard for SBE/MBE certification eligibility can have the impact of limiting these businesses from growing, as some businesses may purposefully decide not to exceed the standard to remain eligible for the program. The revenue size standard also does not take into account industry differences; for example, industries that require large equipment purchases such as heavy construction may warrant a larger revenue cap than a service industry with lower equipment requirements.

### *Agency Processes*

- Under Connecticut's current Set-Aside Program, all state agencies are required to establish small and minority business enterprise goals in their budgets. Although required, not every agency reports their goals to DAS and CHRO. There are also no penalties for an agency not reporting its annual goals, quarterly status updates, or for failing to meet its goals.
- Although there is an established process for determining agency or political subdivision goals, the specific contracts that are to have a set-aside component are decided by the individual procurement managers, rendering the goal-setting process arbitrary.

- When companies are required to submit an affirmative action plan through CHRO and conduct a *good faith effort* to contract with minority-owned businesses, there is sometimes confusion among contractors regarding what constitutes a *good faith effort*.
- Funding that is passed through to municipalities is statutorily exempt from the Set-Aside Program. Only three cities – Bridgeport, New Haven, and Hartford – have their own municipal programs.
- If any awarding authority has reason to believe that any contractor or subcontractor awarded a set-aside contract has violated any of the terms of the set-aside process through misrepresentation or through other means, the awarding authority, after a hearing process, can suspend contract payments as well as order a civil penalty of up to \$10,000 for each violation. Since this can be a time-consuming process, and one that utilizes staff resources, it is not expected that many agencies utilize this statutory authority unless absolutely necessary. Monitoring is on a “paper” basis only, with little or no field work that would help to assess penalties to agencies or to contractors for noncompliance.

### ***Barriers for Small and Minority Business Enterprises***

- Some of the challenges that SBE/MBEs face when starting or operating their business include access to capital and bonding, recordkeeping, strategic planning, and marketing.
- The state’s inconsistency with managing and enforcing its Set-Aside Program compliance rules and requirements was another often mentioned barrier to growth.
- In addition, the \$15 million threshold for SBE/MBE certification was generally considered too high, which some focus group participants indicated puts the smaller SBE/MBEs at a disadvantage competitively.
- Paperwork, bonding, and insurance requirements for state jobs were generally seen as barriers to growth.
- The difficulty of small businesses “getting their foot in the door” for state contracts was mentioned by both small companies and prime contractors in focus groups.
- Even though there are a number of programs that support SBE/MBEs in Connecticut, and DAS and CHRO conduct various workshops about doing business with the state, there was a general sentiment among companies that processes and resources could be better streamlined so that companies that need support services can efficiently receive them. In addition, many companies do not know about or understand how to obtain state certification so that they can bid on state projects.

## **RECOMMENDATIONS**

### ***Legal Issues***

Establishing *compelling interest* requires a state to demonstrate that there is strong evidence of discrimination that creates a continuing disadvantage for certain groups, thus justifying a need

for a race-based program. However, a program must also be *narrowly tailored* to remedy only the discrimination in the market. Therefore, Connecticut's statute must be changed in the following manner:

- On an interim basis, until completion of the disparity study, adopt legislation to separate the state's SBE Set-Aside Program from the MBE program. The SBE program is not based on race or gender therefore it is not held to *strict scrutiny* or *intermediate scrutiny* review. Thus, the programs should not be intertwined.
- Assess what geographical areas fall under Connecticut's state agency contracting market. Once the geographical area is identified, identify all *ready, willing, and able* firms in this market. Until completion of the disparity study's econometric analysis, set the current statutory goal, 25% of the 25% of the SBE program contracting dollars (6.25% of total eligible contracting dollars) as the MBE program interim goal.
- Eliminate the quota system present within the current MBE Program and instead institute a goal-based program that allows for flexibility by encouraging, rather than requiring, contractors to use MBEs and WBEs, and providing waivers to contractors who are unable to meet the goal but can substantiate their *good faith efforts*.

In addition, the following recommendations set additional standards for a *narrowly tailored* race-based program that do not have to be included in a revised statute:

- If a dispute arises about whether a *good faith effort* was made by a party, the party should have the option of appealing to a committee that can hear the dispute and decide a reasonable outcome. The committee should comprise persons involved in the MBE program process to ensure familiarity with program rules. However, the committee should not comprise persons in the department that initially contended with the opposing party that a *good faith effort* was, in fact, made.
- Establish business size limits that are representative of industry trends, so that the program applies to MBEs that also have some aspect of disadvantage (such as being small), while having distinct limits for different sub-industries.
- Based on the disparity study's econometric analysis, an overall MBE annual goal will be determined. The overall MBE goal will be a reflection of discrimination experienced by minority groups, if applicable. In addition, based on the Disparity Study's econometric analysis, a total goal for women-owned businesses should be created if it is found that they suffer from discrimination in the contracting market.
- If a particular minority group is found to experience discrimination in the contracting market, but is still underutilized despite the establishment of an overall MBE goal, then additional methods should be explored and employed to mitigate discrimination.
- State agencies should consider reaching as much of their established goals as possible through race-neutral means.
- The MBE/WBE Opportunities Program must be subject to periodic evaluation to determine if there is a continuing need for the program. This means that program leadership must continually evaluate whether race-conscious measures on state

contracts are contributing to eliminating discrimination in the market. This can be evaluated by comparing the portion of a goal that is met through race-neutral means to the portion of the goal that is met through race-conscious means. If a goal is met solely through race-neutral means, it signals that the MBE/WBE Opportunities Program is no longer needed. State legislation should require a start and completion date for a subsequent disparity study with a sunset date for the MBE/WBE Opportunities Program to coincide with completion of the subsequent study, providing time for the General Assembly to reset the program period, if necessary, based on the results of the study.

In the data gathering and analysis phase of the report, it is recommended that researchers examine the 'capacity' of firms by (1) finding a measure of 'capacity' that is appropriate, if any; and (2) conducting a separate analysis of what variables affect the 'capacity' of a firm. If researchers find that discrimination impacts 'capacity', then it should not be controlled for in the econometric model.

### *Data Collection*

The current Connecticut Set-Aside Program can be improved significantly by revising the method and manner the state uses to evaluate marketplace discrimination, calculate availability, establish goals, and monitor performance. Each of these aspects necessitates a transition by the state to a more dynamic and detailed process of procurement tracking and data collection.

Gathering sufficient and comprehensive data will enable a valid statistical analysis to be conducted:

- Collect data regarding actual payments to subcontractors categorized as MBE/WBEs, as well as non-MBE/WBEs, for all contracts. Also, collect payment data to prime contractors and subcontractors (MBE/non-MBE) by distinct NAICS industry codes.
- Acquire access to and implement the use of a statewide supplier diversity data management system, which can be provided by an outside vendor, for the state's MBE/WBE Opportunities Program that allows program administrators to accurately set goals, monitor performance, and evaluate program participation. The system should also be web-accessible to the public and interested parties for program monitoring and identification of contracting opportunities, in addition to providing safeguards to protect proprietary information. Data required for program management from all financial systems utilized by state branches of government and agencies will be integrated and incorporated into the diversity management system including, but not limited to, the following: prime contractor payments, subcontractor payments, list of companies bidding on and awarded contracts, company data (such as race, ethnicity, and gender of principal owner; years of experience; a score that rates the contractor's bonding ability) on bidders and companies awarded contracts (including subcontractors engaged by prime contractors), P-card payments, and a consistent accounting method (cash versus accrual).
- Additionally, the system should have the capability to track pass-through funding to municipalities for state-funded projects and grants for MBE/WBE Opportunities Program eligible expenditures. This system should also have the capability for generating annual reports at various levels of state government to provide for overall



program accomplishments, as well as agency performance, with the functionality to examine contracting by individual MBE/WBE groups as well as by sub-industry. Additionally, ensure that the supplier diversity data management system has the functionality to include data on the contracts that are race-neutral, as well as contracts that have MBE/WBE goals.

- The first phase of the disparity study collected and reported on findings from anecdotal evidence regarding issues of possible discrimination in state contracting. The next phase of the study should further gather comprehensive anecdotal evidence to corroborate the inference of discrimination if founded. Anecdotal evidence should be gathered not only from minority groups, but all stakeholders in the contracting process. This will provide a better understanding of what is transpiring in the market and effective remedial action can be implemented, if necessary.

Deciding which data sources and methods are best suited to calculate potential availability and capacity and disparities for MBE/WBE owners in business earnings, wages, access to credit, and rates of business formation, will enable the evaluation of statistical discrimination in the marketplace. Recommendations include:

- Use the US Census Bureau's American Community Survey (ACS) Public Use Microdata Sample (PUMS) to establish marketplace discrimination and evaluate, as needed.
- Determine the best dataset to evaluate the current availability based on the appropriate geography of the market, such as the business listing from D&B, along with the D&B Supplier Diversity Solutions database.
- Calculate availability of small, women- and minority-owned businesses for each distinct industry sector to enable valid statistical analyses of disparity in the marketplace and to determine a method for measuring *capacity*.

Monitoring agency processes for setting goals includes the following recommendation:

- Determine if low MBE availability should continue to be addressed using exclusions. Rather than having the agencies utilize a process of budget exclusions to determine goals, consider setting goals according to the number of certified firms and industry sector availability, with actual performance evaluated using actual spending amounts at the end of the fiscal year.

### ***Certification Processes***

Streamlining the SBE/MBE certification and bidding processes would help encourage program participation and may increase competition for state contracts. Suggestions for streamlining the process include:

- Adopt either a (1) uniform certification process using the federal DBE requirements, or (2) have a portal where companies can apply for certifications that interest them. Using the federal DBE certification process as the state's certification process would provide for a single certification system to reduce the number of forms required for certification processing for companies interested in dual certification. However, since the DBE process is more stringent than the state's program requirements, it is likely that revised

SBE and MBE/WBE certification processes will require more effort than that which current SBE and MBE/WBE program certified companies are familiar with, and some currently SBE and MBE/WBE certified companies may not be eligible for the modified program. Additionally, it is noted that ConnDOT's certification process compliance practices, such as on-site unannounced visits to companies seeking certification, are utilized to enforce certification requirements.

- An alternative to adopting a uniform certification process would be to have a one-stop portal where companies could apply for the types of certification that are of interest to them. Also, companies could be made aware of certification program options as part of registration with the Secretary of the State, Connecticut's Licensing Info Center, Department of Labor (DOL), and the Department of Revenue Services (DRS), among others.
- Develop a single online database of companies with all certifications listed (including SBE, MBE, WBE, DisBE, DBE, prequalified, municipal, etc.) so that agencies do not have to search multiple lists to check for the appropriate qualifications. This comprehensive listing would also provide companies with easily accessible information for developing business relationships for bidding on state contracts. In addition, the database could be used to update and manage companies that become de-certified for any reason, as well as companies whose certifications expire.

Educating certified companies about the next steps that are involved in obtaining state contracts will help to manage expectations about the results of the SBE and MBE/WBE programs:

- Once a company receives a certification, the company should be made aware of the business resources that are available to them, suggestions about how to receive notices regarding state bids and RFPs and other proactive measures that can be taken to expand networks and gain related experience. This information can be standardized and provided via email or mail upon certification, as well as in program literature available to companies interested in applying for certification.

Remove the Connecticut location requirement for MBE program certification. This will provide an opportunity for companies that are located outside of Connecticut that are *ready, willing and able* to apply for MBE/WBE certification. Additionally, Connecticut should consider developing reciprocity agreements with other states for MBE program certification.

Change the certification requirements that are related to business size limitations so that the program is specifically tailored to assist businesses that are economically disadvantaged:

- Consider revising the definition of "small" for the certification programs (refer to Appendix H for additional information on size standard methods).
  - o Connecticut should conduct an industry analysis of its geographic market area to determine how it should measure a "small business." To conduct the industry analysis, Connecticut should consider different industry and regional factors that might determine business size.
  - o Connecticut should research applying multiple levels of business size rather than just a bifurcated model of "small business" and "large business" as business sizes, and those of affiliate companies, vary significantly across industry and

geography. Utilizing multiple levels of business size can also assist businesses that may be “graduating” or transitioning out of the program because of a series of successful state contracts.

- o If a revenue standard is used to measure business size, then it should be indexed to inflation.
- Additionally, revenue limits create the potential for MBE/WBE companies to graduate out of the program. Consideration should be given to developing alternatives that would enable companies that exceed the revenue limit of the program under certain conditions to maintain their MBE/WBE certification eligibility.

Examine the federal DBE program for guidance on certification requirements that often create confusion for applying companies. For example, should the owner of the company also be licensed in the industry or is control of daily operations enough (one example involves whether the owner of a company of electricians should also be a licensed electrician)? Enable more legitimate SBEs and MBE/WBEs to be utilized for state contracts:

- Increase the number of unannounced on-site visits conducted by DAS to companies to ensure compliance with state certification requirements. If a company misrepresents information provided in its certification application or its certification, then the company should be fined and removed from the list for a period of time (under §4a-63, the suspension period of disqualification from bidding on contracts is three months) under the statutory authority of the awarding agency. In certain cases where submitting false information is involved, consider prosecution. Consider additional measures that the federal program includes, such as looking for significant outside non-related payments on tax returns that might indicate an absentee owner, a front, or a company that is not really an operating company.
- Match company certification categories with the online database of companies with certifications. For example, describe which minority group is represented through a certification rather than just noting it as an MBE-certified company. This will help agencies to better understand which minority-owned businesses are obtaining state contracting and increase the diversity of companies used.

### *Agency Processes*

Centrally managing the certification programs across branches of government, each with different financial systems and reporting requirements, will provide more effective oversight and review of agency performance and program result, as well as providing businesses with enhanced program transparency and contract opportunities:

- Create a working group of key agency leaders and program implementers, representing all branches of government and financial systems. The working group should be co-chaired by the DAS commissioner and CHRO’s executive director. The purpose of the proposed working group, assuming that the state’s certification process will continue to be different from the federal DBE program, is to create an all-government forum to consolidate the management and oversight of the SBE Set-Aside Program and MBE/WBE Opportunities Program including organizational structure and leadership, procurement and certification processes, budget exclusion practices, appropriate

race-neutral measures, standards for *good faith efforts*, compliance and enforcement practices, interpretations of commercially useful functions,<sup>2</sup> and program performance and reporting review and analysis. If the federal DBE program is adopted as the state's program, then the scope of the working group would focus on race-neutral measures and collecting appropriate data, since the federal program would provide much of the other guidance.

Collaboration among the two lead entities, DAS and CHRO, will lead to increased resource efficiencies:

- Conduct joint workshops for agencies about the goal-setting procedures.
- Conduct joint workshops for companies about what is needed to effectively work on state contracts.
- Utilize the diversity data management system to:
  - maintain agency goal-setting and MBE/WBE utilization plan (currently the affirmative action plans that are administered by CHRO) information
  - analyze agency performance in meeting their goals (both agency-wide and contract-specific)
  - identify minority firms by various sub-categorizations that bid on or were awarded contracts, etc.
  - develop annual agency and statewide MBE/WBE program performance reports that would be issued jointly by DAS and CHRO through the proposed working group. This reporting process would eliminate the current requirement for DAS and CHRO to issue reports separately that can potentially result in having reports produced with differing statistics. Additionally, the requirement for each agency to produce an annual report will be eliminated, as periodic and annual reporting will be accomplished directly through the reporting functionality of the diversity data management system.

Effectively monitoring and utilizing compliance enforcement procedures after assessing agency staff resources will provide added quality to the SBE Set-Aside Program and MBE/WBE Opportunities Program:

- Monitor agency budget exclusions to make sure that they are reasonable and consistent. Consider creating a mechanism through the working group under the leadership of DAS and CHRO that ensures that agencies routinely report their goals and make their best efforts to reach them.
- More actively review MBE/WBE utilization plans to make sure that *good faith efforts* are being utilized and conduct an analysis of the results of such efforts. Utilize the CHRO action of holding back 2% of the contracted budget amount from a company if their MBE/WBE utilization plan is not approved. Another method to consider involves requiring an approved utilization plan prior to contract execution.

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2. Under 49 CFR §26.55, a firm performs a commercially useful function when it is: "Responsible for execution of the work of the contract or a distinct element of the work . . . by actually performing, managing, and supervising the work involved."

- Utilize the statutory authority that awarding agencies have to fine or deny companies that misrepresent information provided on SBE and MBE/WBE certification applications (in some instances legal action may also be necessary). Various techniques to assure company compliance with certification requirements should be utilized, including unannounced on-site visits that have been recommended.
- If a certified MBE/WBE receives a contract, but subcontracts a portion of that contract to a non-certified business, then the only portion of that contract that can be counted toward the MBE/WBE contract goal is the portion performed by the MBE/WBE. The subcontract to the non-certified business cannot be counted towards the goal.

### *Support for Small and Minority Companies*

Implementing race-neutral measures to assist all small businesses with issues that have been identified as obstacles for participation in state contracting is a necessary component of and ongoing requirement for any race-based and gender-based program, as well as for the purpose of enabling more companies to be successful in obtaining state contracts and to thrive in the marketplace:

- The following race-neutral measures should be considered based on anecdotal information gathered in this study:
  - o Provide technical assistance and develop programs to aid companies in obtaining audited financial statements, bonding, computer skills, profit estimating, and cash flow timing to make payroll
  - o Provide support for relationship building (networking) among prime contractors and subcontractors
  - o Provide educational programs to build capacity and awareness of the SBE and MBE/WBE programs that are designed to explain the difference between the various certifications in Connecticut
  - o Provide educational programs about starting a business
  - o Provide guidance and information on developing bids and responses to RFPs and how to get involved in the state procurement process through events, outreach, conferences, and website, among others
  - o Offer education programs on current business topics

Simplifying contracting processes reduces paperwork and improves efficiencies for all involved:

- Educate businesses about the resources and support services that are already available as part of a company's registration with the Secretary of the State, Connecticut's Licensing Info Center, DOL, and DRS, among others.
- Reduce paperwork needed to fulfill state contracting requirements, such as when a company is awarded a contract, having all required paperwork be submitted electronically (through the diversity data management system or through a central point of contact), with distribution to the appropriate staff at the agencies responsible for the review and processing of the submitted information.

- Reduce the complexity of the contracting process by providing boilerplate common terms and conditions for bids, RFPs and contracts online that can be referenced electronically on the state's contracting portal where possible.
- Clearly articulate the importance of the goal in the RFP criteria (versus price and other factors), and add a level of transparency to the bid and contract awarding process. Goals should be identified in all advertisements and bidding documents for which a contract goal has been set.

## **TIMELINE FOR SELECTED RECOMMENDATIONS**

### *Actions to Be Taken As Soon as Possible*

- Establish a Working Group with representation from all state agencies/branches of government, co-chaired by the commissioner of the Department of Administrative Services and the executive director of the Commission on Human Rights and Opportunities to oversee and coordinate the MBE/WBE and SBE programs.
- Separate the SBE Set-Aside Program from the MBE/WBE Opportunities Program by amending the applicable state statute(s).
- Consider the current MBE/WBE business goals to be interim goals until the statistical analysis of the disparity study is completed.
- Remove the Connecticut location requirement for MBE/WBE businesses and allow for reciprocity among other states by amending applicable state statute(s) and/or regulations.

### *Short-Term Actions*

- Collect comprehensive data for all state agencies and across multiple financial systems through a statewide diversity data management system.
- Conduct an initial statistical analysis, after collection of one year of comprehensive data with a statistically significant sample size, to determine new interim goals based on the results of the analysis, including separating MBE and WBE goals, and sub-goals by race and ethnicity, where needed, based on the data.
- Coordinate existing race-neutral and capacity-building programs for small businesses and add additional programming support to fill in the gaps in need. These programs help all small companies, and furthermore, a legally defensible program must demonstrate it has achieved as much parity as possible using race-neutral measures.
- Streamline certification processes; and improve and simplify the state's contracting processes.
- Strengthen the certification process by increasing unannounced site visits to certified companies and monitoring and compliance enforcement of utilization plans to create more trust among subcontractors and prime contractors.

- Standardize the agency budget exclusion and exemption process.
- Eliminate the statutory municipal exclusion legislation for all state-funded projects and procurement, and require municipalities to use the state's diversity data management system for tracking and reporting on all state-funded municipal projects and procurement.

### *Future Actions*

- Complete the econometric analysis of the Disparity Study, based on three years of comprehensive data, to determine if there is a persistence of discrimination in state contracting, and if so, to establish specific goals for individual racial groups and gender, and for industry types of contracting and procurement. Additionally, to support the statistical analysis and the *compelling interest*, continue to gather anecdotal information so as to customize race-neutral and race-conscious measures and initiatives to better address identified disparities.

## CONCLUDING REMARKS

What are the objectives of the proposed Connecticut SBE Set-Aside Program and MBE/WBE Opportunities Program? Providing opportunities for these companies to succeed in the marketplace through state contracts is a noble pursuit, and one that can be facilitated through a number of race-neutral programs and initiatives such as technical business training and increased access to capital. Actions that make it easier for companies to work with the state, allow small companies more access to financial opportunities, and provide technical business assistance, for example, are all actions that can help small businesses, regardless of race ownership, to succeed. It is also necessary to implement these measures before legislation can be adopted that clearly states the goals of an MBE/WBE program.

The purpose and intent of a formal MBE/WBE Opportunities Program that is established by state statute should be to correct for current discrimination. It is a remedy that is intended to be used after race-neutral measures are implemented and when discrimination still exists. Therefore, offering race-neutral measures of business support services is a useful way to initially provide businesses with opportunities. Streamlining agency processes and the certification process are also useful for every business because they make the program more efficient and enhance the state's contracting processes, encouraging more companies to participate.

Collecting comprehensive data about contracts and all payments made to all contractors, whether prime or subcontractors, is an essential precursor to conducting the statistical disparity analysis. Based on the results of periodic statistical analyses, if discrimination exists, then a formal, legislatively mandated MBE/WBE Opportunities Program can be implemented that takes into account all of the legal requirements as set forth in relevant case law. Conversely, if the statistical analysis finds that discrimination is not present in the purchasing practices of the state, the MBE/WBE Opportunities Program would be eliminated.





## 1.0 INTRODUCTION AND METHODOLOGY

At the request of the Connecticut General Assembly, the Connecticut Academy of Science and Engineering (CASE), in accordance with legislation adopted in the 2012 legislative session, Public Act 12-1 and Public Act 12-104, shall conduct a disparity study of the state's Small and Minority Business Enterprise Set-Aside Program ("Set-Aside program"). Public Act 12-1 provides an overview of the scope of work to be included in the study, and Public Act 12-104 provides for the funding of the project.

Public Act 12-1, Section 110 states that "*The study shall provide an analysis of existing statistical data concerning the state's current set-aside program, established under section 4a-60g of the general statutes, to determine whether its current form achieves the goal of facilitating the participation in state contracts of small contractors and minority business enterprises.*"

CASE commissioned the Connecticut Economic Resource Center, Inc. (CERC) to manage the research process; Evolution Enterprises, LLC, was commissioned to facilitate the focus groups and garner insights from interviews and stakeholder meetings.

Initial research identified that:

- The state's executive branch agencies and the other branches of state government that are responsible for awarding state contracts and overseeing the Set-Aside Program do not uniformly collect subcontractor contracting data, including payment information.
- A review of the legal issues and case law, including presentations to the CASE Study Committee by experts on matters of race-based and gender-based programs, identified that subcontractor data and financial information is a critical component of conducting a valid disparity study. Additionally, it was noted that unless quality data is collected and available for analysis, the results of the disparity study could be challenged in court, which would negate the purpose of conducting the study.

Therefore, the CASE Study Committee proposed that the disparity study scope of work be divided into four phases based on the goals of the project as specified in Public Act 12-1 and in the best interests of the State of Connecticut.

This report is the culmination of the Phase 1 efforts that includes the following methods and analyses:

- A legal review discussing *Croson (City of Richmond v. J.A. Croson Co.; 1989)* and subsequent case law and legal standards.
- A review of legislation regarding Connecticut's Set-Aside Program.
- An assessment of Connecticut's Set-Aside Program as related to case law and legal standards.
- A review of existing policies and procedures related to Connecticut's Set-Aside Program. This review was completed by interviewing key state agency personnel who are

involved in set-aside goal setting for contracts, as well as key state agency personnel who are involved in the procurement and contracting processes. In addition, a review of public hearings was conducted.

- An introduction to supplier diversity data management systems for use in managing minority business enterprise (MBE) programs by interviewing contacts in other states that implemented data management systems in order to track MBE spending. Additionally, for background purposes, two supplier diversity data management system vendors were interviewed to gain an understanding of the functionality of these types of programs for use in managing the state's MBE program and conducting the analysis aspect of the state's disparity study.
- A summary of qualitative evidence from the Connecticut Department of Administrative Services (DAS) certified and non-certified companies concerning experiences doing business or attempting to do business in the relevant marketplace, including experiences of institutionalized discrimination and/or individual disparate treatment. This anecdotal evidence was gathered through
  - o online surveys of state agency contacts involved in set-aside program goal setting and procurement processes;
  - o online surveys of business chambers that offer small or minority business enterprise programs or that have information from member businesses about the marketplace;
  - o online survey of DAS-certified companies; interviews of various stakeholders such as business leaders;
  - o participation at small and minority business enterprise forums to gather additional information, and
  - o a series of focus groups conducted throughout the state to gather additional input.

The research findings were used as guidance by the CASE Study Committee to inform the recommendations. The recommendations are based on the findings of the reviews, assessments and qualitative evidence, including suggestions for data collection and analysis so that the entire disparity study can be completed.

The remaining phases of the disparity study are as follows:

- Phase 2: Diversity Data Management System Specification and Review of Agency Procedures and Practices Related to System Implementation, Best Practices Review and Analysis, and Establishing MBE/WBE Program Requirements
- Phase 3: Diversity Data Management System Testing, Econometric Model Acquisition and Testing, Legal Issues Update, Agency Progress and Race-Neutral Measures Implementation Review, and MBE/WBE Company Survey.
- Phase 4: Data Analysis and Goal Setting, Anecdotal Information/ Analysis, and Final Project Report

## 2.0 LEGAL REVIEW

This section of the report reviews court cases that have involved challenges to federal, state or local contracting programs regarding minority- and women-owned businesses. Specifically, this section looks at program structure and design guidelines, as well as flaws in disparity studies that have caused minority- or women-owned business programs to be struck down by the courts. Finally, there are some guiding principles that emerge from previous court cases that have implications for the current program in Connecticut.

### 2.1 OVERVIEW OF JUDICIAL TESTS

In order for a race program to be effective, enforceable, and legally defensible, it must meet the judicial test of *strict scrutiny*. *Strict scrutiny* is the most rigorous form of judicial review that courts use to determine the constitutionality of certain laws that involve *suspect classifications* such as race, religion, or national origin.

To determine if a statute passes the *strict scrutiny* test, the court will consider whether the government has a *compelling interest* in creating the law and whether the law is *narrowly tailored* to meet the need. A *compelling interest* usually involves preventing constitutional violations such as violations of equal protection clauses in the United States Constitution. *Narrowly tailored* means the program is designed so that it specifically addresses the discrimination that has been identified in the market.

Gender-based programs, which are also included in Connecticut's statute, are sometimes held to the same *strict scrutiny* requirement as race-based programs. However, some courts have used *intermediate scrutiny*, a less stringent form of judicial review, to evaluate gender-based programs on the basis that gender is not a *suspect classification*. To pass the *intermediate scrutiny* test, a law or policy must have an important government interest in a way that is substantially related to that interest. This concept will be discussed in more detail in the "Preferences for Women" subsection of this chapter of the report.

A third classification, *rational basis*, is used to evaluate programs when there is no suspect or quasi-suspect classification, or when no fundamental rights have been implicated. A law in question must be "rationally related" to a "legitimate" governmental interest. This classification has been used to evaluate cases involving age discrimination, disability discrimination, or the congressional regulation of aliens.

This area of constitutional law is complex and constantly changing. Over the last 21 years, federal appellate and district courts have developed parameters for establishing a state government's *compelling interest* in correcting for discrimination and evaluating whether the remedies that were implemented were *narrowly tailored*.

## 2.2 DEFINING CASES

The case most often cited and the one that established the legal parameters of a permissible race-based public contracting program is *City of Richmond v. J.A. Croson Co.*<sup>1</sup> In that case, the United States Supreme Court, for the first time, extended the highest level of judicial examination, *strict scrutiny*, in determining the constitutionality of a local government's race-based public contracting program. The Court struck down Richmond, Virginia's Minority Business Enterprise (MBE) Program that required prime contractors who were awarded city construction projects to subcontract at least 30% of the contract to minority-owned business enterprises.

In its decision, the Court found that Richmond had not presented sufficient evidence to demonstrate its *compelling interest* in remedying discrimination – the first criterion of *strict scrutiny*. The evidence presented by the city included: (1) Richmond's population was 50% black, yet less than 1% of its prime construction contracts had been awarded to minority-owned businesses; (2) local contractors' associations were almost all white; (3) the city attorney's opinion that the program was constitutional; and (4) general statements from proponents of the plan (a member of the public not involved in the construction industry, a city council member, and the city manager) that discrimination existed in the local Virginia and national construction markets.

The Court found that the evidence did not pass *strict scrutiny* because the program was applied regardless of whether the individual MBE had suffered discrimination. The Court decision established that in order to have a race-based public contracting program, there must be evidence of discrimination for each individual group that is granted racial, ethnic, or gender preferences.<sup>2</sup>

The city of Richmond's evidence was deemed weak for many reasons. First, the city compared the utilization of MBE prime contractors to the overall minority population, yet not everyone in the population was qualified to perform construction projects nor were they necessarily employed in the industry. As a result, the data were deemed irrelevant. Secondly, the low participation rates of minority businesses in the trade association groups could be due either to discrimination or to a lack of interest. In order to prove it was discrimination, the city would have needed to present data showing a disparity between MBEs in the marketplace and actual membership. Finally, the city should have presented evidence of discrimination in the local marketplace; a program cannot be based on evidence that discrimination exists nationally.

The second prong of *strict scrutiny* is that the remedy must be *narrowly tailored*. Again, the city's program failed in this regard. The Court found that Richmond had not considered race-neutral means to increase MBE participation, such as simplifying bidding procedures, creating flexible waivers, relaxing bonding requirements; and offering training and financial aid for all disadvantaged entrepreneurs. Further, the city's 30% MBE goal had no basis in evidence.

In the opinion of a plurality of the Court, Justice O'Connor wrote that race alone is *suspect* as a basis for government action and that more than *societal* discrimination is required to maintain a race-based public contracting programs, yet the Court did not define *societal* discrimination. The Court did state:

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1. 488 U.S. 469 (1989).

2. *Id.* at 506.

[A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota.<sup>3</sup>

Justice O'Connor, who delivered the opinion of the Court, closed with the following:

“Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the city of Richmond had evidence before it that nonminority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the city could act to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria. In the extreme case, some form of *narrowly tailored* racial preference might be necessary to break down patterns of deliberate exclusion.... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”<sup>4</sup>

Therefore, Justice O'Connor left the door open for states and localities to either continue or establish race-based contracting programs if justification could be made that discrimination exists in that particular marketplace.

The next seminal case involving minority business enterprise programs is *Adarand v. Peña*. In 1989, Adarand, a construction company in Colorado, filed a lawsuit against the Colorado Department of Transportation (CDOT) for violation of the Due Process Clause of the Fifth Amendment. Adarand submitted a lower bid to a prime contractor bidding on a CDOT project than a certified Disadvantaged Business Enterprise (DBE). However, Adarand was not chosen because of its non-DBE status. Adarand initially won summary judgment in district court; however the case was eventually appealed to the United States Supreme Court.<sup>5</sup>

In its ruling, the Supreme Court extended the application of the *strict scrutiny* standard to federal programs. Thus, in addition to the Fourteenth Amendment, *strict scrutiny* would also be used to evaluate the legality of race-based programs under the Fifth Amendment’s Due Process Clause. Therefore, this case held that the federal government’s use of race-based programs would be subject to the same standard of review as state and other government entity programs.

*Adarand* was remanded to the Tenth Circuit of Appeals [Adarand VII]. The circuit court, applying the *strict scrutiny standard*, reviewed whether the interest that Congress claimed in creating race-based programs was, in fact *compelling*; and what the appropriate standard should be for evaluating *compelling interest* in regards to race-based programs.<sup>6</sup>

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3. 488 U.S. at 470.

4. *Id.* at 509.

5. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

6. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

The circuit court ruled that Congress indeed had a *compelling interest*. The circuit court further ruled that *direct and circumstantial evidence*, including post-enactment evidence, was acceptable in establishing *compelling interest* under the Fifth and Fourteenth Amendments. Congress' relevant evidence included

- disparities between the earnings of minority-owned firms and non-minority-owned firms with similar characteristics;
- disparities in commercial loan denial rates between Black business owners compared to non-minority business owners with similar characteristics;
- the large and rapid decline in minorities' participation in the construction industry when race-conscious contracting programs were struck down or abandoned; and
- various forms of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.<sup>7</sup>

The circuit court also acknowledged in *Adarand VII* that Congress' geographic scope for establishing *compelling interest* for race-based programs was "society-wide" and therefore nationwide.

In between the *Adarand v. Peña* [1995] and *Adarand VII* [2000] decisions, Congress reviewed and revised the DBE program's authorizing statute and accompanying regulations (49 C.F.R. Part §26). Since the changes were made, every court has found the regulations to be constitutional on their face.<sup>8</sup>

In making these revisions in response to *Adarand*, Congress made several modifications to address the *narrowly tailored* test. Unlike the prior program, Part 26 of the revised regulations provides the following:

- The overall goal must be based upon demonstrable evidence of the number of DBEs *ready, willing, and able* to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program. The adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures and must estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain *narrowly tailored*.

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7. Holt, Colette, and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

8. See *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001) (*Adarand VII*); *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007) (*Northern Contracting III*).

- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, “wealthy minority owners and wealthy minority firms are exclude[d], and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage.”
- Exemptions and waivers from any or all program requirements are available.
- The authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.<sup>9</sup>

These elements have led the courts to conclude that the federal DBE program is *narrowly tailored*. The regulations also place strong emphasis on the use of race-neutral means to achieve participation by minority and women business enterprises. Further, the program is flexible in that there are built-in program time limits, states may terminate the program if the goal is met through race-neutral means for two consecutive years, and the legislation is subject to periodic review.

### 2.3 OTHER SIGNIFICANT CASES CHALLENGING THE FEDERAL DBE PROGRAM

There are five cases, besides *Adarand*, in which an application of Part 26 of the regulations has been reviewed in court. These cases demonstrate the types of relevant and necessary evidence for state DOTs’ implementation of programs to meet the court criteria of *narrowly tailored*. Although these cases applied only to the federal DBE Program, they provide general guidance to Connecticut in terms of the type of evidence necessary to establish affirmative action contracting programs and how to narrowly tailor those programs.

In the first key case, *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, the court found the Minnesota Department of Transportation’s (MnDOT’s) DBE program to be constitutional.<sup>10</sup> The Eighth Circuit noted that:

Sherbrooke presented evidence attacking the reliability of the data NERA [National Economic Research Associates] used in determining its recommended overall goal.... it failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports MnDOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures.<sup>11</sup>

In *Northern Contracting, Inc. v. Illinois Department of Transportation*,<sup>12</sup> the Seventh Circuit of Appeals held that the Illinois Department of Transportation’s (IDOT) federal fiscal year (FFY) 2005 DBE Plan was *narrowly tailored*. IDOT commissioned NERA to conduct an availability study that involved developing an accurate calculation of the current relative availability of DBEs

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9. 49 C.F.R. Part §26.

10. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F. 3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004).

11. 345 F. 3d at 973.

12. *N. Contr., Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

and examining whether and to what extent there were disparities between the rates at which minorities and women formed businesses relative to similarly situated white men. At trial, IDOT also presented anecdotal evidence on the DBE program; data on DBE utilization on its construction projects without goals; and utilization in the Illinois State Toll Highway Authority program of non-federal-aid contracts which set only “voluntary” goals.

The trial and appellate courts held the evidence presented to be sufficient proof of discrimination and that race-neutral measures alone would not ensure a level playing field. An important component of this decision was the court’s recognition that estimating the availability of DBEs through NERA’s “custom census” approach was more comprehensive than just counting the certified DBEs among the bidders, prequalified contractors, and registered subcontractors, as the plaintiff had argued.

NERA’s custom census methodology included the following steps:

- Created a database of representative IDOT projects
- Identified the appropriate geographic market for IDOT’s contracting activity
- Identified the appropriate product market for IDOT’s contracting activity
- Counted all businesses in those relevant markets using Dun & Bradstreet’s Marketplace® database
- Identified minority-owned and women-owned businesses in those markets
- Verified the ownership status of minority-owned and women-owned businesses
- Verified the ownership status of all other firms<sup>13</sup>

The study estimated that DBEs comprised 22.77% of IDOT’s available firms. After finding availability, NERA adjusted the availability for the effects of past discrimination as stated in Step 2 of the 49 C.F.R. 26 guidelines. The NERA study:

“Examined whether and to what extent there were disparities between the rates at which minorities and women form businesses relative to similarly situated white men, as well as disparities in the relative earnings of those businesses. Controlling for numerous variables such as the owner’s age, education, and the like, the study found that in a race-neutral marketplace, the availability of DBEs would be approximately 20.8% higher, yielding a Step 2 estimate of DBE availability “but for” discrimination of 27.51%.”<sup>14</sup>

Northern Contracting, Inc. (NCI) contended that IDOT’s program was flawed on the basis that (1) IDOT violated 49 C.F.R. 26.45 by improperly calculating the relative availability of DBEs in Illinois; (2) IDOT failed to adjust its DBE goal base figure based on local market conditions; and (3) IDOT violated 49 C.F.R. 26.51 by failing to meet the maximum feasible portion of its overall goal through race-neutral means.<sup>15</sup>

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13. Holt, Colette; and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

14. *Id.*

15. 473 F.3d at 723.



In the first argument, NCI argued that NERA miscalculated the availability of DBEs in Illinois by using the “custom census” instead of counting the number of certified businesses. However, the court held that there was nothing in 49 C.F.R. 26 that indicated that IDOT must use a narrowed list of DBEs to calculate availability. In fact, the court advocated using the method NERA used to calculate availability that “casts a broader net.”<sup>16</sup> 49 C.F.R. 26 suggests ways in which availability can be calculated. However, it also states that alternative methods can be used to calculate availability as long as the method is based on demonstrable evidence of local market conditions and is designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the relevant market. As to the plaintiff’s second argument, NCI alleged that IDOT’s failure to separate prime contractors from subcontractors when adjusting for market conditions rendered the study flawed. However, the court ruled that there was nothing in the regulation that required such separation. Finally, the court affirmed that IDOT did engage in race-neutral means, including: holding information sessions, providing technical and financial training to DBEs and other small businesses, and initiating a bonding and financing assistance program. Thus, IDOT’s program was upheld.

In *Western States Paving Co., Inc. v. Washington State Department of Transportation*,<sup>17</sup> decided by the Ninth Circuit Court of Appeals, the DBE program’s legislation and regulations were found to have met the *strict scrutiny* standard on its face. However, the program, as applied by Washington State DOT (WSDOT), was not sufficiently *narrowly tailored*.

WSDOT’s DBE office calculated its year 2000 DBE availability by dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory by the total number of transportation contracting firms listed in the Census Bureau’s Washington database.<sup>18</sup> WSDOT found that 11.17% of total firms were DBE firms. Next, WSDOT attempted to fulfill Step 2 of 49 C.F.R. 26.45 by adjusting its base figure to reflect the capacity of DBE firms in its market. WSDOT made an upwards adjustment to 14% based on an 18% DBE utilization rate on state contracts between 1994 and 1998. Lastly, WSDOT separated the portion of the 14% goal that could be met through race-neutral means and the portion of the 14% goal that needed to be met through race-based means. WSDOT used the 9% DBE utilization rate on contracts without race-based measures to conclude that 5% of the 14% DBE utilization goal needed to be achieved through race-based means.

The Ninth Circuit Court of Appeals ruled that the adjustments to the goal base figure were flawed because they did not accurately account for the relative capacity of DBE firms. The circuit court reasoned that the adjustment was inaccurate because it was based on an 18% DBE utilization rate that was reached through affirmative action means and hence, it was impossible to determine whether the 18% utilization rate reflected a higher capacity of DBE firms or the effect of affirmative action remedies.

Furthermore, the Ninth Circuit noted that:

DBE firms may be smaller and less experienced than non-DBE firms (especially if they are new businesses started by recent immigrants) or they may be concentrated in certain

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16. Holt, Colette; and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

17. *Western State Paving Co., v. Washington State Department of Transportation*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

18. *Id.* at 999.

geographic areas of the State, rendering them unavailable for a disproportionate amount of work.<sup>19</sup>

With this reasoning, the court concluded that the DBE utilization goal was not expected to reach 11.17%, the overall DBE availability.<sup>20</sup> Moreover, because WSDOT determined that 9% of the DBE utilization goal could be met through race-neutral means, the disparity between the race-neutral percentage and a goal that potentially factored in the lack of capacity of DBEs was statistically insignificant and thus did not constitute evidence of discrimination in the Washington transportation market.

In its ruling, the Ninth Circuit failed to acknowledge that the capacity of DBE firms may be affected by past discrimination, which would affect their relative capacity levels. WSDOT cited no evidence that corroborated this assertion because of the lack of reliable data. Consequently, the Ninth Circuit Court of Appeals did not address the validity of this argument.<sup>21</sup>

In a subsequent case, challenging New Jersey Transit's (NJT) DBE program,<sup>22</sup> the district court applied the reasoning of the *Northern Contracting and Western States* cases to dismiss the plaintiff's arguments that New Jersey must independently establish the *compelling interest* prong of *strict scrutiny* in implementing the federal regulations. The court held that a recipient's constitutional duty under Part 26 is to *narrowly tailor* its program, but it does not need to justify establishing a DBE program in the first place, because that has already been justified by Congress.

In a recent case, *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*,<sup>23</sup> Associated General Contractors of America (AGC) challenged the application of California's program on the basis that it neither had a *compelling interest* to implement the program nor was the program *narrowly tailored*. The Ninth Circuit Court of Appeals awarded summary judgment to California. It ruled that AGC did not possess associational standing to challenge the program and it deemed that California's program satisfied the *strict scrutiny test*.

After the Ninth Circuit Court of Appeals struck down the Washington Department of Transportation DBE program in *Western States*, California Department of Transportation (Caltrans) suspended its race-based and gender-based program and hired consultant BBC Research and Consulting to conduct an availability and disparity study. In the interim, Caltrans implemented a race-neutral and gender-neutral contracting program.

BBC completed the availability and disparity study by examining over 10,000 Caltrans contracts issued between 2002 and 2006 and collecting extensive anecdotal evidence by conducting public hearings and interviewing more than 18,000 business establishments. BBC individually contacted businesses by telephone and identified 3,398 firms out of more than 18,000 MBE/WBEs that met the following criteria:

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19. *Id.* at 1001.

20. *Id.* at 1001-1001.

21. *Id.* at 1002.

22. *GEOD v. New Jersey Transit Corp.*, 746 F. Supp. 2d 642 (D.N.J. 2010).

23. 2013 WL 1607239 (9<sup>th</sup> Cir. 2013).

- Perform work related to transportation construction, maintenance or design (in the lines of business pertinent to this study and after combining multiple responses for firms with more than one office)
- Are qualified and interested in performing transportation-related work for Caltrans and/or local governments in the future, as a prime contractor and/or subcontractor (or supplier or trucker)
- Have attempted to obtain this work in the past (in the public or private sector)
- Indicated the regions of the state in which they can perform work<sup>24</sup>

BBC's method also involved using a disparity index, with an index of 100 representing statistical parity between availability and utilization, to determine if a disparity existed. Through its analysis, BBC found that the index for state-funded contracts was 59 for MBE/WBEs. In June 2007, BBC concluded that significant disparities existed in the Caltrans contracting market for African American, Asian-Pacific, Native American, and women-owned businesses, and established an overall goal of 13.5% for these groups.<sup>25</sup> Caltrans expected to meet half of its goal through race-neutral means.

In June 2009, AGC challenged the constitutionality of the program. AGC argued that *strict scrutiny* required Caltrans to provide evidence of "specific acts" of "deliberate" discrimination by Caltrans employees or prime contractors.<sup>26</sup> However, Croson established that statistical disparities could be sufficient to infer discrimination and hence, to support race-based programs. Second, AGC argued that BBC erred by not separating subcontracts from prime contracts when conducting its analysis. However, the court ruled that to establish a pattern of discrimination, Caltrans could meet the evidentiary standard by examining evidence in its entirety. AGC also discounted the validity of anecdotal evidence because it wasn't "verified," yet the court stated that there was no need to do so based on rulings from the Fourth and Tenth Circuits.

AGC also contended that the accounts of anecdotal information did not substantiate the existence of discrimination because it did not consider "difficulties with obtaining bonding" and breaking into the "good ole boy" network of contractors<sup>27</sup> as discrimination. However, the court ruled that these problems did, in fact, reveal evidence of discrimination in the form of repeated barriers that excluded minority contractors from competing in the market. AGC also argued that BBC erred when separating white women-owned businesses from businesses owned by non-white women in its analysis. However, the court ruled that this was a valid step because it ensured that the analysis wouldn't be skewed by race.

AGC also contended that the program was not *narrowly tailored* because it failed to evaluate race-neutral measures, and because the defendants did not detail instances of discrimination in affidavits from disadvantaged business enterprises. However, the statute only requires that the state make "serious, good faith consideration of workable race-neutral alternatives."<sup>28</sup> Further,

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24. Availability and Disparity Study: 2007. California Department of Transportation.

25. In the study, BBC found that contracting disparities did not exist for Hispanic-owned businesses. However, in a later study, completed in 2009, BBC found that disparities existed for Hispanic-owned businesses, showing that Hispanic-owned businesses lost a significant amount of business when they were excluded from the DBE program.

26. 2013 WL 1607239 (9<sup>th</sup> Cir. 2013).

27. *Id.* at 9.

28. *Id.* at 11.

the court stated that defendants were not required to present evidence of overt discrimination in affidavits.

Additionally, the court ruled that AGC had no standing in contesting the program because it did not present evidence that any of its members suffered injury from the implementation of the program. The court ruled that “an unverified complaint cannot form the basis of evidence considered at summary judgment.”<sup>29</sup>

## 2.4 CASES INVOLVING CHALLENGES TO STATE AND LOCAL PROGRAMS

In addition to the cases involving the federal DBE program, there have been many state and municipal programs challenged in court that merit consideration. While many of these cases clarified or provided additional guidance on program structure and disparity study design, others have muddied the waters with rulings that appear contradictory, or that add layers of complexity to an already challenging issue. Three cases that established significant benchmarks are *Concrete Works of Colorado, Inc. v. City & County of Denver*, *H.B Rowe v. Tippett* and *Builders Association of Greater Chicago v. City of Chicago*.

*Concrete Works of Colorado, Inc. v. City & County of Denver*<sup>30</sup> involved an equal protection challenge to a city’s minority contractor preference program. Concrete Works of Colorado (CWC) sued the city and county of Denver for violation of its Fourteenth Amendment rights.

First, the district court granted summary judgment in favor of Denver. However, CWC appealed and the case was remanded. On remand, the court reversed its previous decision on bench trial. Denver appealed this decision to the Tenth Circuit Court of Appeals. The circuit court ruled in favor of Denver and stated that under the Fourteenth Amendment, Denver did not have the burden of proving the existence of discrimination. Denver only had to demonstrate “strong evidence of discrimination” in the market in order to justify remedial action. The Supreme Court denied CWC’s writ of certiorari petition in November 2003 and allowed the circuit court decision to stand.

This case is important for two reasons: first, it set the state and local standard for how courts evaluated *compelling interest* with respect to race-preference programs. An inference of discrimination, not proof, was acceptable for a government entity to justify a *compelling interest* in remediating discrimination. Also, it placed the ultimate burden of proving a program’s unconstitutionality on the plaintiff. Secondly, this was the first minority business program upheld after the merits of a full trial.

In another challenge to a city program, *Builders Association of Greater Chicago v. City of Chicago*,<sup>31</sup> the US District Court for the Northern District of Illinois ruled that, although there was a *compelling interest* by the city to correct for the effects of past discrimination, the program was not sufficiently *narrowly tailored*.

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29. *Id.* at 7.

30. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10<sup>th</sup> Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

31. 298 F. Supp. 2d 725 (N.D. Illinois 2003).

In its decision, the court acknowledged that Chicago's history had been marred by discrimination both in the general "societal" sense and in its contracting market. The "market failure of discrimination" included discrimination by unions that limited "the normal progression ... from entry level unskilled employment to development of craft skills to development of managerial skills and, finally, entrepreneurship."<sup>32</sup> This shows that opportunities within the industry were limited for minority-owned businesses. Further, the city cited the wide disparity in debt capital between startup African-American small businesses and white male-owned small businesses. The city also referenced the significant drop in the utilization of women-owned and minority-owned businesses after the Metropolitan Water Reclamation District's and Cook County's preference programs were terminated. Consequently, the court concurred that the city possessed a *compelling interest* to remedy discrimination in its contracting market.

However, the court determined that the program was not *narrowly tailored*. The program did not have a termination date; waivers were rarely or never granted, despite *good faith efforts*; there were no personal net worth limits for eligibility and revenue limits were too high. Moreover, the court asserted that the program was essentially a quota system because goals were considered to be mandatory. Instead of an injunction, however, the city was given six months to alter its program so that it could meet the *narrowly tailored* requirement.

A recent challenge to a state's minority- and women-owned business program occurred in North Carolina. In *H.B. Rowe, Inc. v. Tippett*<sup>33</sup>, plaintiff challenged the North Carolina Department of Transportation's (NCDOT) Minority Business Enterprise and Woman Business Enterprise Program (MWBE) for its state-funded contracts. The court reviewed *de novo*, rather than for clear error, the district court's ultimate determination that the underlying facts demonstrate a "strong basis in evidence,"<sup>34</sup> and upheld the program for minority-owned firms under *strict scrutiny* based upon a disparity study, but struck down the inclusion of white women under the *intermediate scrutiny* standard.

First, the Fourth Circuit reaffirmed that

although imposing a substantial burden, *strict scrutiny* is not automatically "fatal in fact." [Citation omitted] After all, "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." [Citations omitted] In so acting, a governmental entity must demonstrate it had a *compelling interest* in "remedying the effects of past or present racial discrimination."<sup>35</sup>

- The MBE component met this *compelling interest* test. The court noted that "[mere speculation that the state's evidence is insufficient or methodologically flawed does not suffice to rebut a state's showing."<sup>36</sup>
- The program for state-funded contracts largely mirrored Part 26.<sup>37</sup>
- There were large disparities for all groups except white women, who were "overutilized."

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32. *Id.* at 734.

33. *H.B. Rowe Co., Inc v. Tippett*, 615 F.3d 233(4<sup>th</sup> Cir. 2010).

34. *Id.* at 241, fn. 5.

35. *Id.* at 241.

36. *Id.* at 242.

37. *Id.* at 236.

- To corroborate the disparity data, a telephone survey revealed that minority and women ownership universally had a negative effect on revenue, with the largest negative effect being ownership by African Americans. Disparities in firm revenue were not the result of capacity-related or managerial characteristics alone.<sup>38</sup>
- The drastic drop—nearly 38%—in the participation of these groups as a result of the suspension of the North Carolina program “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors’ reduced utilization of these groups during the suspension.... Such an inference is particularly compelling for minority-owned businesses because, even during the 2004 study period, prime contractors continued to underutilize them on state-funded road projects.”<sup>39</sup>
- Anecdotal evidence from a telephone survey, personal interviews and focus groups was relevant and probative.

Further, the program was *narrowly tailored*.

- NCDOT had “undertaken most of the race-neutral alternatives identified” in 49 C.F.R. Part 26.<sup>40</sup> *Strict scrutiny* does not require that every race-neutral approach must be implemented and then proven ineffective before race-conscious remedies may be utilized.<sup>41</sup> If disparities persist even in the presence of race-neutral remedies, a race-conscious approach is justified.<sup>42</sup>
- The program tied its goals to the availability of M/WBEs.
- The program provided a waiver of project-specific goals when prime contractors make *good faith efforts* to meet those goals.<sup>43</sup>

However, the inclusion of white women was struck down under *intermediate scrutiny*. While gender-based measures may rest on “something less” than the “strong basis in evidence” needed for race-conscious relief, the program must still be based on an “evidence-informed analysis” rather than stereotypes or assumptions.<sup>44</sup> The state’s disparity study established that women were substantially overutilized on its subcontracts, and such utilization was statistically significant. While it was probative that the value of the subcontracts won by women was only one-third that of white males and that the utilization of WBEs declined significantly during

the program’s suspension, this evidence did not overcome the statistical results. The private sector evidence presented by the study did not cure this deficiency because no test for statistical significance was performed. Nor did the study present anecdotal evidence indicating the extent to which WBEs competing on public sector contracts also sought work on private sector contracts or that they faced discrimination in the private sector; to the contrary, “the anecdotal evidence indicates that most women subcontractors in North Carolina do not experience discrimination.”<sup>45</sup>

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38. *Id.* at 245-46.

39. *Id.* at 247-48.

40. *Id.* at 252 (emphasis in the original).

41. *Id.*

42. *Id.*

43. *Id.* at 253-254.

44. *Id.* at 242.

45. *Id.* at 256.

## 2.5 “READY, WILLING, AND ABLE”

In many cases involving alleged violations of the equal protection clause, the question arises as to whether minority- or women-owned businesses are *ready, willing, and able* to complete the work. Furthermore, the issue of *capacity*, brought forth by several plaintiffs, has incited significant debate. Courts have yet to offer guidance to governments on how best to measure *ready, willing, and able* and *capacity* mainly because these phrases have no definitive meaning. Consequently, court decisions on minority enterprise business programs have varied based on a particular court’s interpretation of what is an appropriate measure of *ready, willing, and able* and *capacity*.

Several disparity studies have attempted to measure *ready, willing, and able* and *capacity* using statistical evidence. However, the methodologies used have been questioned by opponents of race-based programs. Furthermore, proponents of programs have challenged the attempts of opponents to even require the measurement of *capacity* as it is not easily quantifiable on an individual firm basis and is necessary to control for in econometric analysis. Listed next are notable cases in which rulings were specifically hinged on the measurement of terms such as *ready, willing, and able* and *capacity*.

In 1996, the District Court for the Southern District of Ohio, in *Associated General Contractors of America v. City of Columbus*,<sup>46</sup> found the program unconstitutional with the central criticism that the availability of firms did not adequately demonstrate their “qualifications.” The city referenced several studies, produced over a five-year period, to justify the program. However, the court dismissed the availability measures that were used, including the use of census data, a bidders’ list, and a telephone survey. The court ruled that using census data was an inaccurate representation of “qualified” firms because “unqualified” firms might be included in the count. The court dismissed the use of the bidders’ list because it only included contracts under \$10,000. Lastly, the telephone survey failed to prove that contractors were qualified because respondents were not asked about their ability to comply with city bonding and insurance requirements.<sup>47</sup> The court determined that using the city’s list of contractors who submitted bids on prime contracts would be a better assessment of availability of “qualified” firms, yet this information did not exist for subcontractors at the time.

Further in *Engineering Contractors Association of South Florida Inc. v. Metropolitan Dade County*,<sup>48</sup> the District Court of the Southern District of Florida found that the statistics presented were not persuasive because they did not control for necessary variables. In order to accurately calculate availability, the analysis must consider minority/women-owned business enterprises

(M/WBEs) that are actually qualified to do the work; the size of the firm, which impacts the size of the contract that can be bid upon; and the capacity of the firm to handle the work. On appeal, the Eleventh Circuit affirmed the trial court decision. However, this court did not apply a *de novo* review at the appellate level.

In *Rothe Development Corp. v. United States Department of Defense (DOD)*,<sup>49</sup> the Court of Appeals for the Federal Circuit referenced six post-enactment disparity studies offered by DOD

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46. 936 F. Supp. 1363 (S.D. Ohio 1996).

47. *Id.* at 1396.

48. *Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997).

49. 545 F.3d 1023 (Fed. Cir. 2008).

to evaluate the program's legitimacy; however the district court did not receive testimony from the experts who conducted the studies to garner full understanding of the studies and there was no record regarding the studies' methodology before the federal circuit.

The court held the studies were insufficient to support Congress' compelling interest because the studies did not account for size differences and qualifications of the minority firms or, as the court termed it, "relative capacity." Rothe contended that the six disparity studies presented included all minority-owned firms as *ready, willing, and able* without regard to whether they were "qualified." Rothe objected to the studies' use of lists compiled by local business associations, and community outreach to identify minority-owned businesses. However, the court concluded that the use of the lists was permissible since the businesses considered in the studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records or bidders lists.

The six disparity studies attempted to account for the relative sizes of contracts awarded to minority-owned businesses by measuring the utilization of minority-owned businesses in terms of contract dollars. However, the court ruled that the studies did not account for the "relative size" of the businesses themselves. Because the studies measured the availability of minority-owned businesses by the percentage of firms in the market, instead of by the percentage of total marketplace *capacity* those firms could provide, the circuit court expounded that the analysis was flawed.

The court did note in its decision that discrimination could be a reason behind the contracting disparities, yet failed to acknowledge that the measure of capacity that it requested would potentially render the econometric model flawed:

To be clear, we do not hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. Where the calculated disparity ratios are low enough, we do not foreclose the possibility that an inference of discrimination might still be permissible for some of the minority groups in some of the studied industries in some of the jurisdictions. And we recognize that a minority-owned firm's capacity and qualifications may themselves be affected by discrimination. But we hold that the defects we have noted detract dramatically from the probative value of these six studies, and, in conjunction with their limited geographic coverage, render the studies insufficient to form the statistical core of the "strong basis in evidence" required to uphold the statute.<sup>50</sup>

In contrast to the cases listed above, where courts ruled that some measure of *capacity was necessary*, in *Northern Contracting v. Illinois*<sup>51</sup> the district court acknowledged that measures of *capacity* were affected by discrimination in the IDOT contracting market. NERA found that "discrimination in credit and bonding markets may artificially reduce the number of registered and pre-qualified DBEs for IDOT contracts"<sup>52</sup> because minorities were denied credit and bonding lines more often than white male-owned businesses even when controlling for creditworthiness. Hence, because minority- and women-owned businesses lacked access to adequately finance their businesses, they were less likely to possess the *capacity* to bid on IDOT projects.

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50. 545 F.3d 1023; (U.S. App. 2008).

51. 2005 U.S. Dist. Lexis 19868.

52. *Id.* at 1.



Further, in affirming the trial court's holding, the Seventh Circuit ruled that the federal DBE regulations do not narrowly define *ready, willing, and able*. Rather, the court offered several methodologies, suggesting that there are multiple ways to determine availability. The court found that IDOT's utilization of NERA's custom census approach to calculating *ready, willing, and able* was a sufficient attempt to arrive at a more accurate calculation of availability, and thus *capacity*.

Additionally, in *Concrete Works of Colorado v. City and County of Denver*, the Tenth Circuit of Appeals rejected the plaintiff's argument that Denver's methodology of calculating disparities in its contracting market was flawed because it included all available minority- and women-owned businesses without accounting for the relative *capacity* of those businesses. Denver explained that the "*capacity* [of firms] at a given moment in time belies quantification due to the industry's highly elastic nature. Denver further argued that its contracts represented less than 4% of total MBE revenues and less than 2% of WBE revenues in 1989, thereby strongly implying that MBE and WBE participation did not render these firms incapable of undertaking additional work."<sup>53</sup>

Undoubtedly, as exemplified by all of these cases, the issue of measuring *capacity* has been a contentious issue when challenging the validity of disparity ratios. Plaintiffs generally argue that studies need to account for the relative size of minority-owned businesses in order to render the disparity ratio more reflective of what is truly *ready, willing, and able*. However, many proponents of programs argue that because discrimination has a direct effect on capacity, controlling for capacity in econometric models would obscure the effects of discrimination. Furthermore, proponents of the programs also argue that *capacity* is difficult to measure because of the ever-changing nature of some industries. For example, in the Transportation Research Board's National Cooperative Highway Research Program (NCHRP) Report, *Guidelines for Conducting a Disparity Study and Availability Study for the Federal DBE Program*, it discusses construction industry characteristics:

Firms grow quickly when demand increases and shrink quickly when demand decreases. Therefore, focusing on the capacity of businesses in terms of employment, revenue, bonding capacity, number of trucks, and so forth is wrong as a matter of economics and can potentially obscure the existence of discrimination.<sup>54</sup>

Given this issue, any measure of *capacity* may not reflect the industry disparities because it cannot account for the characteristics of individual firms within that industry. Further, the courts do not discuss establishing the "*capacity* of white male-owned businesses, thus applying a different standard to minority- or women-owned business enterprises and perpetuating the potential for discrimination.

Despite the obvious fallacies associated with measurements of *capacity*, some courts may look for this measurement in disparity studies. Consequently, researchers commissioned to conduct a disparity study must demonstrate through econometric analysis that discrimination affects *capacity* in order to defend why the measure of *capacity* can be an erroneous measure when calculating firm availability. Further, researchers must show that the *capacity* of individual firms may be impossible to measure in many industries because of the transient nature of those industries.

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53. 36 F. 3d 1513 at 1541.

54. Holt, Colette, and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

It is important to further note that some studies have controlled for *capacity* and significant disparities have still been found, which is very compelling in showing inferences of discrimination. The Second Circuit, which is the jurisdiction that includes Connecticut, does not have any rulings concerning an appropriate method for determining *capacity* or *ready, willing, and able*.

## 2.6 ANECDOTAL EVIDENCE

Anecdotal evidence has proven to be an important component when defending race-based programs. It alone will not suffice to prove a systematic pattern of discrimination; however, it can be a powerful asset in supporting statistical evidence of discrimination.<sup>55</sup> For example, instances of overt discrimination, not evident in statistical analysis, are documented when gathering anecdotal evidence.

Testimony and information gleaned from focus groups, interviews and surveys of prime contractors, subcontractors, lenders, and bonding companies, just to name a few, can provide information about barriers minority firms face that can further explain the statistical findings of business formation rates, success in winning contracts, and lower earnings. Many cases have provided guidance on how to collect and utilize anecdotal evidence to support and strengthen evidence of discrimination in contracting markets. Many cases also provide examples of overt discrimination, not evident in statistical analysis, that have strengthened cases.

For example, in *Concrete Works of Colorado, Inc. v. City and County of Denver*, Denver gathered anecdotal evidence documenting instances of discrimination through public forums, questionnaires, and individual interviews. Further, Denver continuously collected anecdotal information over the years to evaluate whether there was a continuing need for the program. Denver also hired Browne, Bortz & Coddington (BBC) to assess its goals program by collecting anecdotal evidence. Through its analysis, BBC revealed that

Denver employees and private contractors engaged in conduct designed to circumvent the goals program. Denver employees avoided the goals program by using change orders to existing contracts rather than putting new work out to bid. Employees also characterized some major construction projects as “remodeling” because remodeling projects fell under the auspices of the Department of General Services (DGS), which had no goals program. Other responses indicated that prime contractors continued to call WBEs they knew were no longer in business and counted those calls as good-faith efforts to meet the goals program.<sup>56</sup>

Even though these findings did not prove the existence of systematic discrimination in the Denver contracting market, it did reveal practices that individuals employed to actively discriminate. Courts will be more empathetic when hearing instances such as these as opposed to only analyzing hard statistical evidence.

In Northern Contracting, state officials associated with the IDOT program testified that they collected a plethora of information on unfair practices, particularly when companies attempted to obtain financing and bonding. For example:

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<sup>55</sup> *Coral Construction Co. v. King County*, 941 F.2d, 910, at 919 (9<sup>th</sup> Cir. 1991); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 893 F. Supp. 419, 429 (E.D. Pa. 1995).

<sup>56</sup> 823 F. Supp 821 (D. Colo. 1993) at 834.

Situations in which a DBE had put together a loan package in the manner that was required by the lending institution but was turned down for financing. After the staff of the Supportive Services Unit of the Bureau of Small Business Enterprises, which assists DBE prime contractors and subcontractors in obtaining bonding and financing, intervened on behalf of the DBE, changing “virtually nothing,” the loan was approved.<sup>57</sup>

This example of anecdotal evidence shows that unfair practices occur beyond the contracting process and extends to women- and minority-owned businesses attempting to obtain financing in order to maintain their businesses. This example reinforces the argument that discrimination can have an adverse impact on the *capacity* of a minority business enterprise. Without financing and bonding, a firm is virtually incapable of growing. Therefore, it is essential that defendants of programs collect information on instances of discrimination not just in its contracting market, but in instances where discrimination can impact actual business formation and growth.

Even though anecdotal evidence is a powerful asset in proving the existence of discrimination, defendants can't rely solely on it to uphold a program in court. In *Associated General Contractors of America v. the City of New Haven*,<sup>58</sup> the city did not present statistical evidence to justify its set-aside program, but only presented anecdotal evidence to prove that discrimination existed in its market.

After *Croson*, the city realized that its race- and gender-preference set-aside program would not hold up in court due to lack of statistical evidence. However, the city decided to continue the program in the interim until it collected data because it surmised that discrimination existed

regardless of statistical proof. The city's program was quickly challenged. In response, the city cited incidents “where workers' tools [were] stolen from job sites and minority- and women-owned firms were unable to get loans.”<sup>59</sup> However, the court deemed this evidence insufficiently probative in proving the existence of pervasive discrimination in the New Haven contracting market.

In contrast, some defendants of programs have relied too little on anecdotal evidence, which contributed to a program's eventual dismissal. In *Western States Paving v. Washington Department of Transportation*,<sup>60</sup> WSDOT only presented three formal complaints of discrimination as anecdotal evidence. Two of the three complaints were eventually dismissed as without merit. The court deemed that the anecdotal evidence presented in the affidavits represented “societal” discrimination rather than discrimination specific to the contracting industry in Washington.<sup>61</sup> If discrimination is occurring in a market, it is important to encourage contractors to document these instances to strengthen the case that discrimination does exist in the market.

These cases show that it is essential to properly gather comprehensive anecdotal evidence that specifically addresses discrimination in a contracting market and discrimination that affects business formation and growth to support a government race and gender preference program.

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57. 2005 U.S. Dist. Lexis 19868 at 1.

58. *Associated General Contractors of America v. City of New Haven* 791 F.Supp. 941 (D. Conn. 1992).

59. *Id.* at 945.

60. *Western State Paving Co., v. Washington State Department of Transportation*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

61. *Id.* at 1002.

When gathering anecdotal evidence, researchers also must be able to distinguish between evidence of discrimination and a general lack of access.<sup>62</sup>

## 2.7 PREFERENCES FOR WOMEN

Gender-based programs, in contrast to race-based programs, are not always analyzed according to the *strict scrutiny* standard. In general, courts have subjected preferences for women-owned business enterprises (WBEs) to *intermediate scrutiny*: gender-based classification must be supported by an “exceedingly persuasive justification” and “substantially related” to the objective.<sup>63</sup> However, the Supreme Court has not developed a framework for analyzing equal protection challenges to gender-based programs and whether such programs should be subject to the lesser constitutional standard of *intermediate scrutiny*.<sup>64</sup> In the Second Circuit, an intermediate standard of review has been applied to classifications based on gender.

## 2.8 SECOND CIRCUIT DECISIONS

This section of the legal review looks at the cases that have been decided in the Second Circuit, the jurisdiction that encompasses Connecticut. From these decisions, Connecticut can gain insight into the courts’ criteria for structuring a program and for conducting valid disparity studies.

### 2.8.1 *Jana-Rock Constr., Inc. v. N.Y. State Dep’t of Econ. Dev.*<sup>65</sup>

In this case, the plaintiff, a firm whose owner was not Latin American, qualified as Hispanic for purposes of the federal DBE program, but did not qualify as a minority business enterprise under the state definition of Hispanic, which did not include people or descendants from Spain or Portugal. The firm claimed the state’s program violated *strict scrutiny* since it distinguished among different subclasses of Hispanics. However, the court found that whether a program is under-inclusive is subject only to *rational basis scrutiny* and not *strict scrutiny* and dismissed the complaint, ruling in favor of the defendants.<sup>66</sup> The court also concluded that *narrow tailoring* requires the state to identify groups that are discriminated against without needing to justify conclusively that no other group merits inclusion.

### 2.8.2 *Associated General Contractors of Connecticut, Inc. and Drywall Associates, Inc., v. City of New Haven*<sup>67</sup>

After the *Croson* case, New Haven decided to review its set-aside ordinance for municipal contracts that in 1977 created a 15% set-aside for minority business enterprises (MBE) and in 1983 established a 6% set-aside for women business enterprises (WBE) with respect to municipal contracts. In June 1989, the Aldermen of New Haven created the Aldermanic Special Committee to determine if there was sufficient evidence to

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62. Holt, Colette, and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

63. *United States v. Virginia*, 518 U.S. 515, 524 (1996).

64. *United States v. Virginia*, 518 U.S. 515 (1996) (applying standard of “exceedingly persuasive justification” in striking down Virginia Military Institute’s males only admissions policy).

65. *Jana-Rock Construction, Inc. v. New York State Department of Economic Development*, 438 F.3d 195 (2<sup>nd</sup> Cir. 2005).

66. *Id.*

67. *Associated General Contractors of Connecticut v. City of New Haven*, 791 F.Supp. 941 (D. Conn 1992)

have a program. A year later, the committee issued a report that there was still a need but that the program should only last two years. On July 5, 1990, the city adopted Chapter 12<sup>1</sup>/<sub>4</sub>, which directed construction contractors to make every effort to insure 4% of construction contracts were set aside for certified WBEs and 10% for subcontractors certified as disadvantaged business enterprises (DBEs). The program had a three-year sunset provision during which time the program was to be studied to determine minority business participation and the necessity of additional goals.

In June 1989, Associated General Contractors of Connecticut, Inc. (AGC), challenged the constitutionality of the original program and then filed an amended complaint in September 1990 when the city adopted Chapter 12<sup>1</sup>/<sub>4</sub>. On May 4, 1992 the district court entered summary judgment in favor of the plaintiffs, declaring Chapter 12<sup>1</sup>/<sub>4</sub> unconstitutional in light of *Croson* and on mootness.<sup>68</sup> Although the district court did not award injunctive relief, after the decision the city ceased enforcing its set-aside program.

### ***2.8.3 North Shore Concrete and Associates, Inc. v. City of New York*<sup>69</sup>**

In this case, the plaintiff, North Shore Concrete, challenged the constitutionality of the program, citing three specific instances where, although it was the lowest bidder, it was not awarded a contract due to the implementation of the city's M/WBE program. The city's program required prime contractors to specify how they would meet the M/WBE program goals, and if a contractor failed to do so, the bid was disqualified, even if it was the lowest bid.

The city commissioned a study by NERA to enable it to comply with the requirements of a race-based affirmative action program in accordance with the *Croson* decision. The city used this study as evidence that discrimination existed in the marketplace and there was a *compelling interest* for the program.

The court found that there was sufficient statistical evidence of discrimination in the hiring of African-American-, Hispanic-, and women-owned firms in the city of New York. However, there was neither statistical nor anecdotal evidence that firms owned by Native Americans and Alaskan Natives were discriminated against. Referring back to the *Croson* case, the city of Richmond's program was criticized because it was over-inclusive. "The random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination."<sup>70</sup> Thus, the New York program's inclusion of Native Americans and Alaskan Natives was found unconstitutional and that portion of the program was severed.<sup>71</sup> However, nothing in the decision prevents the city from enacting a future program for Native Americans or Alaskan Natives based on concrete evidence of past discrimination in the New York City construction industry. The remainder of the statute survived the plaintiff's motion for summary judgment.

## ***2.9 Review of Connecticut's Set-Aside Program and Minority Business Enterprise Program***

Section 4a-60g of the Connecticut General Statutes, "Set-aside program for small contractors, minority business enterprises, individuals with disabilities, and nonprofit corporations," sets forth the state's guidelines for state contracting to assist small and minority-owned businesses. The statute details the following definitions for the purposes of the set-aside program:

- "Small Contractor" means any contractor, subcontractor, manufacturer, service company or nonprofit corporation a) that maintains its principal place of business in the state;

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68. *Associated General Contractors of Connecticut, Inc. and Drywall Associates, Inc., v. City of New Haven*, 41 F. 3d 62; 1994 U.S. App.

69. *North Shore Concrete and Associates, Inc. v. City of New York*, 94 Cv. 4017 (E.D. N.Y. 1998)

70. 488 U.S. at 506

71. Severability is a doctrine governed by state law and favored under NY Law which advises a court to refrain from invalidating an entire statute when only portions of it are objectionable.

and b) that has gross revenues not exceeding \$15 million in the most recent completed fiscal year prior to application. “Small contractor” does not include any person who is affiliated with another person if both persons together have gross revenues exceeding \$15 million.

- “Minority business enterprise” means any small contractor (A) fifty-one per cent or more of the capital stock, if any, or assets of which are owned by a person or persons (i) who exercise operational authority over the daily affairs of the enterprise, (ii) who have the power to direct the management and policies and receive the beneficial interest of the enterprise, and (iii) who are members of a minority, as such term is defined in subsection (a) of section 32-9n, (B) who is an individual with a disability, or (C) which is a nonprofit corporation in which fifty-one per cent or more of the persons who (i) exercise operational authority over the enterprise, and (ii) have the power to direct the management and policies of the enterprise are members of a minority, as defined in this subsection, or are individuals with a disability.

The program includes state contracts involving the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways, and the purchase of goods and services. The statute applies to each state agency and each political subdivision of the state other than a municipality. Eligibility of nonprofit corporations under the provisions of the statute is limited to predevelopment contracts for housing projects awarded by the commissioner of the Connecticut Department of Economic and Community Development (DECD).

The following is a summary of the provisions of the legislation:

- Small business and minority business enterprise (SBE/MBE) set-aside goals:
  - o The statute stipulates that at least 25% of the total value of the contracts for each fiscal year be set aside by each agency for small contractors provided that neither (1) a contract that may not be set aside due to a conflict with a federal law or regulation, nor (2) a contract for any goods or services which have been determined by DAS to be not customarily available from or supplied by small contractors be included.
  - o Agencies must also set aside 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified small minority-owned businesses.
- Minorities are defined as (per subsection (a) of 32-9n):
  - o Black Americans, including all persons having origins in any of the Black African racial groups not of Hispanic origin;
  - o Hispanic Americans, including all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
  - o All persons having origins in the Iberian Peninsula, including Portugal, regardless of race;
  - o Women;
  - o Asian Pacific Americans and Pacific islanders; or
  - o American Indians and persons having origins in any of the original peoples

of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

- The head of any state agency or political subdivision of the state other than a municipality may, in lieu of setting aside any contract or portions thereof, require contractors to set aside a portion of any contract for subcontractors who are eligible for the SBE/MBE set-aside program. Nothing in this subsection shall be construed to diminish the total value of contracts that are required to be set aside by any state agency or political subdivision of the state other than a municipality pursuant to this section.
- The heads of all state agencies and of each political subdivision of the state other than a municipality shall notify the commissioner of the Connecticut Department of Administrative Services (DAS) of all contracts to be set aside pursuant to this statute at the time that bid documents for such contracts are made available to potential contractors.
- The set-aside program applies only to contracts greater than \$10,000.
- The statute stipulates that businesses awarded contracts or portions of contracts must perform at least 15% of the work with their own workforces and shall require at least 25% of the work be performed by contractors or subcontractors eligible for set-aside awards. A contractor awarded a contract or a portion of a contract under this section shall not subcontract with any person with whom the contractor is affiliated.
- No person who is affiliated with another person shall be eligible for awards if both affiliated persons considered together would not qualify as a small contractor or a minority business enterprise.
- Businesses awarded contracts pursuant to C.G.S. §40a-60g must submit, in writing, an explanation of any subcontract to such contract that is entered into with any person that is not eligible for the SBE/MBE award of a contract pursuant to this section, prior to the performance of any work pursuant to such subcontract.
- The awarding authority may require that a contractor or subcontractor awarded a SBE/MBE contract or a portion of a contract provide the following documentation:
  1. A copy of the certificate of incorporation, certificate of limited partnership, partnership agreement or other organizational documents of the contractor or subcontractor;
  2. A copy of federal income tax returns filed by the contractor or subcontractor for the previous year; and
  3. Evidence of payment of fair market value for the purchase or lease by the contractor or subcontractor of property or equipment from another contractor who is not eligible for SBE/MBE set-aside contracts.
- The awarding authority or the commissioner of either DAS or the Commission on Human Rights and Opportunities (CHRO) may conduct an audit of the financial, corporate and business records and conduct an investigation of any small contractor or minority business enterprise which applies for or is awarded a SBE/MBE set-aside contract for the purpose of determining eligibility for awards or compliance with the established requirements.

- Small and minority contractors can submit a letter of credit in an amount equal to 10% of the contract for any contract that is less than \$100,000, and in an amount equal to 25% of the contract for any contract that exceeds \$100,000 in lieu of a performance, bid, labor and materials or other required bond.
- Establishing set-aside goals:
  - Annually each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall prepare a report establishing SBE/MBE set-aside program goals.
  - Each such report shall be submitted to DAS and CHRO and the co-chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to planning and development, and government administration and elections.
- Reporting on set-aside goals:
  - Quarterly, each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall prepare a status report on the implementation and results of its SBE/MBE set-aside program goals.
  - Each report shall be submitted to DAS and CHRO.
  - Any state agency or political subdivision of the state, other than a municipality, that achieves less than 50% of its SBE/MBE set-aside program goals by the end of the second reporting period in any twelve-month period shall provide a written explanation to DAS and CHRO detailing how the annual goals will be achieved.
  - CHRO shall (1) monitor the achievement of the annual goals established by each state agency and political subdivision of the state other than a municipality, and (2) prepare a quarterly report concerning such goal achievement. The report shall be submitted to each state agency that submitted a report, DECD, DAS and the co-chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to planning and development, and government administration and elections.
  - Failure by any state agency or political subdivision of the state other than a municipality to submit any reports required by this section shall be a violation of section 46a-77.
- Certification of small contractors and minority business enterprises:
  - DAS establishes the process for certification of small contractors and minority business enterprises as eligible for set-aside contracts.
  - Each certification is valid for a period not to exceed two years.
  - Any paper application for certification shall be no longer than six pages.
  - DAS shall maintain on its website an updated directory of small contractors and minority business enterprises certified under this section.



- Enforcement:
  - o If it is suspected that a contractor has violated any of the provisions of the statute, the state agency responsible for the contract shall send a notice to the contractor by certified mail, return receipt requested.
  - o The notice shall include (A) a reference to the provision alleged to be violated, (B) a short and plain statement of the matter asserted, (C) the maximum civil penalty that may be imposed for such violation, and (D) the time and place for the hearing.
  - o The hearing shall be fixed for a date not earlier than fourteen days after the notice is mailed. The awarding authority shall send a copy of the notice to CHRO.
  - o The state agency shall hold a hearing, conducted in accordance with the provisions of chapter 54 of the Connecticut General Statutes, on the violation asserted unless such contractor or subcontractor fails to appear.
  - o If, after the hearing, the awarding authority finds that the contractor or subcontractor has willfully violated any provision of this section, the awarding authority shall suspend all set-aside contract payments to the contractor or subcontractor and may, at its discretion, order that a civil penalty not exceeding \$10,000 per violation be imposed on the contractor or subcontractor.
  - o If such contractor or subcontractor fails to appear for the hearing, the awarding authority may, as the facts require, order that a civil penalty not exceeding \$10,000 per violation be imposed on the contractor or subcontractor.
  - o The state agency responsible for the contract shall send a copy of any order issued by certified mail, return receipt requested, to the contractor or subcontractor named in the order.
  - o The state agency responsible for the contract may cause proceedings to be instituted by the Attorney General for the enforcement of any order imposing a civil penalty.
- This statute does not apply to the four janitorial contracts<sup>72</sup> awarded pursuant to subsections (b) to (e), inclusive, of section 4a-82.

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72. PA 06-129 established a pilot program to create and expand janitorial work opportunities for persons with a disability and persons with a disadvantage. The statute for the set-aside program explicitly states that it does not apply to this janitorial pilot program.



### 3.0 LEGISLATIVE HISTORY

For this section, public hearing testimony and legislative discourse on bills that resulted in public acts and changes to the state's set-aside program were reviewed. Throughout the history of the program, the legislature sought ways to amend the statute in order to increase participation by small and minority businesses and to eliminate the potential for fraudulent activity within the program.

At the time the original program was established, other states and the federal government were implementing such programs, and that was cited by several legislators as the reason for Connecticut to establish a program. However, it is unclear how the original 25% Small Business Enterprise goal was established. In 1953, the federal government established a 5% set-aside program for small businesses owned by socially and economically disadvantaged people.<sup>73</sup> Further, in May 1977, the Public Works Employment Act of 1977 established that 10% of grants for public works projects go to minority business enterprises.<sup>74</sup>

However, there was public discussion about employment discrimination and an almost complete lack of access to government markets by minority- and women-owned businesses. In 1975, the commissioner of the Department of Economic Development recognized in the department's economic development plan that the state had an "economically important affirmative action role in opening up state business to minorities and women."<sup>75</sup> In 1976, the legislature established the set-aside program for small contractors in Public Act 76-185. Below are the provisions of the bill:

- The departments of public works and transportation may (meaning are not required to) set aside for small contractors not more than 25% of contracts greater than \$50,000 pertaining to the construction, reconstruction, or rehabilitation of public buildings and the construction and maintenance of highways.
- No small contractor shall receive more than \$250,000 in any one calendar year.

Since the creation of the program, a number of modifications have occurred. Originally, the program was aimed at only small contractors. In 1982 the legislation was modified so that 25% of the set-aside for small contractors, or 6.25%, went to minority business enterprises. In order to increase the number of firms who could compete, and also to increase competition and better pricing for the state, the legislature in 1987 increased the maximum allowable gross revenue for program eligibility for small contractors from \$1.5 million to \$3 million (which was subsequently increased and as of 2012 is set at \$15 million).

In response to controversy over contract compliance regarding construction of the state's Legislative Office Building, as well as a 1988 CHRO report that presented anecdotal evidence of discrimination in state contracting (Appendix B), P.A. 88-351 was adopted that provided CHRO with additional enforcement powers on contract compliance matters. Further, the legislature

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73. <http://www.referenceforbusiness.com/encyclopedia/Man-Mix/Minority-Owned-Businesses.html>

74. Yale Law School, Fullilove, Drew S. Days III, January 1, 1987.

75. "The New Connecticut: Toward Equal Opportunity in State Contracting," August 31, 1992 (Exhibit BB).

added several subsections that further defined eligibility for the program, documentation that could be requested to prove eligibility, and an enforcement mechanism.

P.A. 90-253 mandated that a discrimination study be performed by an independent consultant in cooperation with the state’s Department of Economic Development (DED – the agency responsible at the time for the state’s set-aside program), and the heads of other state contracting agencies to determine if discrimination was preventing minority- and women-owned businesses from participating in state contracting. A draft report titled “The Empty Shell: Connecticut’s Setting Aside of Women and Minority Businesses,” was issued in February 1992. A final report, “The New Connecticut,” was issued in August 1992, and incorporated many comments, criticisms and insights by certain members of the DED M/WBE Advisory Board, certain panelists from the January 1992 public hearings, and the May 1992 decision of Judge Dorsey in *Associated Contractors of New Haven v. the City of New Haven*. Appendix A lists the major findings and recommendations from the report.

Highlighted below are the major changes that have occurred to the set-aside program (C.G.S. §4a-60g through §4a-60j) through public acts.

Public Act	Major Changes to the Statute
PA 77-425	<ul style="list-style-type: none"> <li>• Required, as opposed to leaving it optional, that the commissioners of public works and transportation set aside a portion of contracts. The act also added the Director of Purchases in the program.</li> <li>• Included the purchase of supplies, materials, equipment and services as contracts that would fall under the set-aside program.</li> <li>• Removed the requirement that it be for contracts greater than \$50,000.</li> <li>• Changed the percentage of the portion of contracts that are set aside: the aggregate value of all set-asides be at least 15% but not more than 25% of the average of the total value of all contracts for each of the previous three fiscal years.</li> <li>• Increased the amount one contract could receive from \$250,000 to \$500,000 and changed it from calendar year to fiscal year.</li> <li>• Added that payments for small contractors be received in 30 days.</li> </ul>
PA 82-358	<ul style="list-style-type: none"> <li>• Made the set-aside program apply to all state agencies.</li> <li>• Required that a percentage of the set-aside for small contractors be set aside for minority business enterprises: not less than 25% of the total contract value be reserved for minority business enterprises.</li> </ul>
PA 85-364	<ul style="list-style-type: none"> <li>• Inserted a new subsection allowing, but not requiring, a contractor or subcontractor to perform at least 15% of the work with his or her own forces and requiring at least 25% of the work subcontracted out be performed by businesses eligible under the set-aside program.</li> </ul>

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PA 87-577	<ul style="list-style-type: none"> <li>• Increased the eligibility amounts in the definition of small contractors that are eligible for the set-aside program from \$1.5 million to \$3 million in gross revenues.</li> <li>• In an effort to address some of the alleged problems of the program, the act required small contractors to have 51% of their ownership in the hands of people who were active in the daily affairs of the company.</li> <li>• Increased the amount small contractors could receive in a fiscal year from \$750,000 to \$1.5 million.</li> <li>• Instead of just allowing, the legislation required that a business perform 15% of the work with its own forces and that not less than 25% of the work be done by eligible set-aside businesses.</li> <li>• Permitted agencies to conduct audits of the financial records of small contractors or minority business enterprises applying for contracts.</li> <li>• The act imposed a maximum fine of \$10,000 if there was a violation of the program and a suspension of payments. It also set forth a due process procedure.</li> <li>• It expanded the definition of minority to include people from the Iberian Peninsula (Spain and Portugal).</li> </ul>
PA 88-351	<ul style="list-style-type: none"> <li>• Redefined “minority business enterprise” to require minority owners to be active in daily affairs of enterprise and to have power to direct management and policies.</li> <li>• Required total value of set-aside contracts to be at least 25% of average of total value of all contracts for each of the previous three fiscal years, deleting prior minimum of 15%.</li> <li>• Permitted CHRO, along with the commissioner of DECD, to conduct audits of financial records of any small or minority contractor applying for set-aside contracts.</li> <li>• The act also required trade contractors to set aside portions of contracts whereas before it was only for general contractors.</li> </ul>
PA 92-189	<ul style="list-style-type: none"> <li>• Extended the set-aside program to individuals with disabilities.</li> </ul>
PA 93-359	<ul style="list-style-type: none"> <li>• Permitted nonprofits to be eligible for the set-aside program but only for pre-development contracts awarded by the commissioner of housing (currently DECD) for housing projects.</li> </ul>

PA 93-409	<ul style="list-style-type: none"> <li>• Increased the eligibility amounts in the definition of small contractors that are eligible for the set-aside program from \$3 million to \$10 million in gross revenues.</li> <li>• Increased the amount small contractors could receive in a fiscal year from \$1.5 million to \$10 million.</li> <li>• Established a certification process for small and minority businesses within DECD.</li> <li>• Required each agency and political subdivision to annually submit goals for the set-aside program to DECD, CHRO, and the General Assembly.</li> <li>• Added that in lieu of a performance bond, contractors could submit a letter of credit.</li> </ul>
PA 95-334	<ul style="list-style-type: none"> <li>• Allowed contractors under the set-aside program to submit a letter of credit in lieu of bid, labor, and materials or other required bonds in addition to performance bonds, which were added in 1993.</li> </ul>
PA 99-233	<ul style="list-style-type: none"> <li>• Transferred from DECD to DAS the responsibility for certifying small and minority-owned businesses.</li> <li>• Created a pre-certification list for businesses whose principal place of business is in Connecticut but which had not been in the state for one year. After making a good faith effort to find a contractor from the certified list, agencies could then use the pre-certified list to find a contractor.</li> <li>• Added language defining small contractor and minority business enterprises as having majority ownership by people who have “operational authority” and receive the “beneficial interests” of the business. Rather than the statute stating “25% of the average of the total value of all contracts,” the act changed it to say “25% of the total value of all contracts” let by each agency in each fiscal year.</li> <li>• Required DAS to print a directory of small and minority certified businesses</li> </ul>
PA 00-199	<ul style="list-style-type: none"> <li>• Each agency must submit annually its set-aside goals to DAS instead of DECD.</li> <li>• Effective June 1, 2000, (1) required CHRO to monitor the achievement of the annual goals established by each state agency and political subdivision of the state other than municipalities, (2) to prepare a quarterly report concerning such goal achievement, (3) required that the report be submitted to each agency that submitted an annual goal report to CHRO, and to the commissioners of DECD and DAS, and (4) provided that failure of agencies and political subdivisions to submit annual reports to CHRO shall be a violation of §46a-77.</li> </ul>

<p>PA 07-4 June Special Session</p>	<ul style="list-style-type: none"> <li>• Deleted the subsection that did not allow a small contractor to receive more than \$10 million in contracts in any fiscal year.</li> <li>• Added that if a contractor did not subcontract with a business eligible for the set-aside program, it had to submit the reason in writing to the agency responsible for the contract.</li> </ul>
<p>PA 11-229</p>	<ul style="list-style-type: none"> <li>• Added nonprofit corporations as eligible small contractors.</li> <li>• Eliminated the requirement that small contractors do business under the same ownership or management for a year before they are certified.</li> <li>• Redefined small contractor so that it prohibits a contractor from receiving certification if it is affiliated with another person and combined revenues exceed \$15 million.</li> <li>• Eliminated the requirement that 51% of a small contractor’s ownership is held by someone with authority over daily operations, management, and policies and who receives beneficial interests, thereby potentially expanding the people and businesses that may be certified as small businesses.</li> <li>• Deleted the section referring to a precertification list since a business no longer needs to be in the state for one year.</li> </ul>

This section provides a summary of state statutes that relate to state contracting requirements.

### 3.1 STATE VENDOR SBE AND MBE CERTIFICATION

Currently, the vendor certification process is handled by the Supplier Diversity (Set-Aside) Team within DAS. Prior to passage of P.A. 99-233, the vendor certification process was handled by the Department of Economic and Community Development (DECD).

In order to be certified as a small business or minority business enterprise, and to qualify for the state’s set-aside program, the following criteria must be met:

- Small business
  - o Principal place of business is in Connecticut;
  - o Gross revenues not exceeding \$15 million in most recent fiscal year
- Minority-owned business
  - o Small business (meeting the above criteria) with at least 51% ownership by one or more minority person(s) who exercise(s) operational authority over daily affairs of the business, has the power to direct management and policies, and receives beneficial interests of the business;
  - o A minority is a person(s) who: is American Indian, Asian, Black, Hispanic; has origins in the Iberian Peninsula; is a woman; or is an individual with a disability.

Nonprofit organizations can also become certified in order to qualify for pre-development contracts awarded by the DECD for housing projects.

If a business meets the criteria listed above, it then can file a Supplier Diversity Program Certification Application with DAS, which can be completed online. Per the guidelines in state statute, the certification process can take up to 60 days and certification is issued for a 2-year period. Certified vendors are notified electronically when their certification is about to expire 60 days, 30 days, and 14 days prior to the expiration date. Additionally, contract specialists personally reach out to certified vendors with active contracts when their certification is soon due for expiration. Two staff members within the DAS Office of Supplier Diversity (OSD) conduct on-site visits to verify eligibility of companies seeking certification, although not all applications receive an on-site visit. Applicants are required to submit, at a minimum, the following information:

- Trade name certificates;
- Sales and use tax permits;
- Licenses; and
- Annual Report, Certificate of Incorporation, Organization & First Annual Report, Articles of Organization, and Certificate of Limited Liability Partnership

### **3.2 PRE-QUALIFICATION OF CONTRACTORS**

Pursuant to C.G.S. §4a-100, contractors or substantial subcontractors (person or organization that performs work with a value greater than \$500,000, whether a prime vendor or subcontractor) that bid on projects for the construction, reconstruction, alteration, remodeling, repair, or demolition of any public building or public work by the state or a municipality, except a project administered by the Connecticut Department of Transportation (ConnDOT), must apply for pre-qualification through the Department of Administrative Services (DAS) and the Department of Construction Services (DCS). The application must contain, at a minimum, the following:

- Form of organization.
- Principal and key personnel names under which it conducted business for the past five years.
- Any legal or administrative hearings pending or concluded in the past five years that relate to public contracts.
- Any financial, personal, or familial relationship between the applicant and any public or private construction project owner listed on the application as constituting construction experience.
- A statement as to whether the contractor has been disqualified by a federal agency or another state; has had a license suspended or revoked by the Connecticut Department of Consumer Protection; or other state disqualifications; and other information deemed relevant for determining qualifications.



- Reviewed or audited financials, bonding letter.
- Department of Revenue Services (DRS) status letter indicating there are no outstanding taxes due.
- Workers compensation rating.
- Safety manual.
- Initial fee (plus an annual renewal fee).
- Evaluations from three previous jobs.
- Registration with the Secretary of the State. The amount a contractor is pre-qualified for depends on the level of bonding available to that contractor.

All applicants must file a financial statement prepared by a certified public accountant, which includes information concerning the applicant’s assets and liabilities, plant and equipment, bank and credit references, bonding company and maximum bonding capacity, and other information the DAS commissioner deems relevant for evaluation of the applicant’s financial capacity and responsibility. The commissioner will review the application along with any relevant information on past performance. Within 60 days of receiving a completed application, a preliminary determination of pre-qualification is made and within 90 days of the preliminary decision, a final determination will be made.

A certificate of pre-qualification is good for one year, although the DAS commissioner can make it effective for a period of not more than two years, and includes the type of work the contractor is pre-qualified for, aggregate work capacity rating, and single project limits. The contractor or substantial subcontractor must submit an application fee, which is based on the aggregate work capacity for which they are approved. The applicable fees are shown in Table 1.

TABLE 1: FEES BASED ON AGGREGATE WORK CAPACITY RATING  
 (SOURCE: DEPARTMENT OF CONSTRUCTION SERVICES)

Aggregate Work Capacity Rating	Fee
\$5 million or less	\$600
\$5 - \$8 million	\$750
\$8 - \$10 million	\$850
\$10 - \$15 million	\$1,000
\$15 - \$20 million	\$1,500
\$20 - \$40 million	\$2,000
\$40 million or more	\$2,500

### 3.3 NONDISCRIMINATION AGREEMENTS

Every contract of the state requires contractors to adhere to nondiscrimination and affirmative action provisions. These provisions are described in C.G.S. §4a-60. The following provides an overview of the major provisions of the statute:

- The contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness.
- The contractor agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved.
- If the contract is a public works contract, the contractor agrees to make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project; and
- The contractor in all solicitations or advertisements will state it is an “affirmative action-equal opportunity employer.”

For contracts valued at more than \$50,000, contractors must provide documentation that company or corporate policy complies with the nondiscrimination agreement. For contractors with one or more contracts valued at less than \$50,000 for each year of the contract(s), the contractor must provide written or electronic representation that they are in compliance with the nondiscrimination agreement.

The Connecticut Commission on Human Rights and Opportunities (CHRO) determines a contractor’s good faith efforts based on, but not limited to, the following factors:

- the contractor’s employment and subcontracting policies, patterns, and practices
- affirmative advertising, recruitment, and training
- technical assistance activities
- other activities the commission may prescribe to ensure participation of minority business enterprises in public works projects

### 3.4 AFFIRMATIVE ACTION PLANS

Pursuant to C.G.S. § 46a-68d, all public works contracts,<sup>76</sup> subject to Part II of Chapter 60,<sup>77</sup> are subject to affirmative action requirements. After a bid is accepted but before a contract is

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<sup>76</sup> Public works contract means construction, rehabilitation, conversion, extension, demolition or repair of public building, highway or other changes or improvements in real property

<sup>77</sup> Contracts that are more than \$500,000

awarded, the contractor must file and have approved by CHRO a contract-specific affirmative action plan. Failure to develop an approved affirmative action plan results in the state withholding 2% of the total contract price per month from any payment made to a contractor. Plans must be reviewed within 60 days of submission and contractors who are approved receive a certificate of compliance, which is valid for the duration of the contract.

C.G.S. § 46a-68c of the statutes stipulates that contractors with 25 or more employees awarded public works contracts valued at more than \$50,000, but not subject to the provisions in C.G.S. § 46a-68d, must develop and file an affirmative action plan with the CHRO. Failure to develop a plan bars the contractor from bidding on future contracts until the requirement has been met. When a plan is approved, the contractor receives a certificate of compliance that is good for two years.

### **3.5 MINORITY BUSINESS ENTERPRISE REVIEW COMMITTEE**

Pursuant to C.G.S. §4a-62, there exists a Minority Business Enterprise Review Committee that is responsible for conducting ongoing review of contract awards, loans and bonds made by the state, for the purpose of determining compliance with the set-aside program. The committee members as defined in statute include two members of the House of Representatives appointed by the Speaker, two members of the House appointed by the minority leader, two members of the Senate appointed by the president pro tempore, and two members of the Senate appointed by the minority leader of the Senate. The committee is required to annually report on its findings and include recommendations for legislation, if necessary. Although established in statute, the committee never became active because a leader was never appointed.



## 4.0 PROCESS REVIEW

A number of state agencies are involved in the awarding of state contracts or have contract compliance duties. The key agencies involved in the contracting process include the following:

The **Department of Administration Services (DAS)** has the statutory authority to adopt regulations that establish procedures for the award of contracts to small and minority business enterprises. DAS also has responsibility for the purchase of goods and services for other state agencies in the executive branch of state government. The **Office of Supplier Diversity (OSD)**, which is a department within DAS, oversees the SBE/MBE certification program.

The **Commission on Human Rights and Opportunities (CHRO)** monitors state contracts and enforces anti-discrimination laws. In addition, CHRO approves the affirmative action and set-aside plans of contractors working on state contracts.

Construction contracts valued at more than \$500,000 (or \$2 million for UConn), are administered by the **Department of Construction Services (DCS)**. Exceptions include public highway or bridge projects or any other construction project administered by ConnDOT.

The **Department of Transportation (ConnDOT)** awards contracts for the construction of highways and bridges, and oversees the certification process for the federal disadvantaged business enterprise program. ConnDOT also separately administers its own contractor pre-qualification program for companies seeking to enter into contracts with the department.

The **Department of Labor (DOL)** has the authority to monitor compliance with statutes requiring non-discrimination in state contracts and subcontracts as a result of Executive Order No. Three, issued by Governor Thomas A. Meskill in 1971.

The **Department of Economic and Community Development (DECD)**, in promoting job growth and economic development throughout the state, provides support for business growth including job incentive and loan programs, and funds programs that are run by other entities. A selection of resources is detailed at the end of this section.

The **State Contracting Standards Board** was created under Governor M. Jodi Rell in 2009. Although not currently active, the board is part of the Office of Governmental Accountability. When first created, the board was appointed to develop and implement a standardized state procurement and project management education and training program.

The following is a selection of terms with definitions that will be commonly used throughout this section of the report.

- **SBE-** SBE stands for small business enterprise and is used in reference to SBEs certified in Connecticut's SBE/MBE program. A Connecticut business can qualify as a SBE if its gross receipts in its most recent fiscal year do not exceed \$15 million, and has its principal place of business is located in Connecticut.

- **MBE** – MBE stands for minority business enterprise and is also used to reference certified MBEs in Connecticut’s current Set-Aside Program. A Connecticut business can qualify as an MBE if it meets the SBE certification requirements, and if at least 51% of the business is owned by one or more minority person(s) who: exercises operational authority over daily affairs of the business; has the power to direct management and policies and receives the beneficial interests of the business; and possesses managerial and technical competence and experience directly related to the principal business activities of the enterprise. For the purpose of qualifying as an MBE a minority is a person(s) who is American Indian, Asian, Black, Hispanic, has origins in the Iberian Peninsula, a woman, or an individual with a disability.
- **Set-aside** – Set-aside is a term used to denote a quota, or in other words, a share or percentage of contracting dollars that is required – not just recommended or encouraged – to be allocated for a specific group of individuals.
- **Goal** – Goal is used to refer to a percentage of state contracting dollars that is encouraged or recommended to be awarded to a MBE and WBE businesses. It is not a quota in that a specific percentage of contracting dollars is not required to be awarded to MBE and WBE businesses.
- **Core-CT** refers to the PeopleSoft version 9.1 ERP system (Enterprise Resource Planning), which contains human resource and financial data management utilized by Connecticut’s executive branch state agencies to track financial information. Not all state agencies use Core-CT, and some agencies use it for different functions.
- **JASMIN** – Is an internal contract management system utilized by Connecticut’s judicial branch to record contracts and purchases.
- **BANNER** – Is an internal financial data management system utilized by the administration office of the Board of Regents to track vendor payments.
- **BizNet** - BizNet is a central collection area and informational tool for companies looking to do business with the State of Connecticut. It is now a requirement of DAS/ Procurement Services that all suppliers and prospective suppliers create a business network account (BizNet) by adding a company profile in the BizNet system. Companies that are currently certified through the DAS Supplier Diversity and DAS Construction Contractor Pre-Qualification Programs already have active accounts in BizNet and will have the ability to access and update their company information electronically.<sup>78</sup>
- **P-Card** – Purchasing cards (P-cards) is a credit card program co-sponsored by DAS and the Office of the State Comptroller. The P-Card is a MasterCard issued by JPMorgan Chase. It works just like a personal credit card with custom designed features and built-in controls to meet the specific needs of the cardholder’s agency, municipality, and school or not-for-profit organization.<sup>79</sup>
- **Exclusion** – refers to a standard set of goods and services purchases that are not subject to SBE/MBE goals usually because the procured item or service can only come from a sole-source provider, or because the contract cannot be subject to SBE/MBE goals due to a conflict with a federal law or regulation. Examples of exclusions include utility services, government transfers, and overhead expenditures.

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78. Department of Administrative Services State Procurement Marketplace, BizNet Connection.

79. Department of Administrative Services State Procurement Marketplace, Purchasing Card Program (P-Card).

- **Exemption** – refers to goods and services purchases that are not subject to SBE/MBE goals upon request by contract management because the product or service is not customarily available by certified SBEs/MBEs. A state agency must apply for, and receive approval for, a budget exemption.
- **Good faith efforts** – currently refers to the efforts made by contractors to retain SBE/MBE contractors to perform a part of a project that is required in the contract. An example of a good faith effort is referring to a contractor’s use of the DAS SBE/MBE certified list for the purpose of engaging certified businesses via email or phone for work on state contracts.

The remainder of this section of the report details the processes used by DAS and CHRO to certify businesses, to set agency set-aside goals, and to monitor progress made on contracts. Additionally, agencies that have different procurement, contracting and vendor payment systems than the DAS/executive branch system are documented.

## 4.1 DEPARTMENT OF ADMINISTRATIVE SERVICES

### 4.1.1 Overview

DAS was established in 1977 as a single agency in charge of providing administrative services to other agencies. DAS has statutory authority in the areas of personnel recruitment, workforce planning, fleet operations, state workers’ compensation administration, procurement of goods and services, contractor pre-qualification and supplier diversity, among others. As of July 1, 2011, the Department of Information Technology (now the Bureau of Enterprise Systems and Technology) and part of the Department of Public Works (now the Facilities Unit) were consolidated into DAS. The balance of the former Department of Public works was consolidated under the Department of Construction Services.

The vendor certification process is administered by the Supplier Diversity (Set-Aside) Team within DAS’s Procurement Division. Their mission is to certify Connecticut small and minority-owned businesses (SBEs and MBEs) and to assist executive branch state agencies in their SBE and MBE goal-setting processes. The Supplier Diversity (Set-Aside) Team

- serves as primary liaison for small vendors seeking state procurement opportunities;
- recruits and certifies small, women-, minority- and disabled-owned businesses to participate in the set-aside program;
- assists state agencies in establishing and meeting set-aside goals;
- seeks to match growth-oriented SBE/MBE businesses with purchasing/contracting opportunities; and
- advocates for SBEs and MBEs working within the state procurement process.

### ***4.1.2 General Contracting Process***

DAS's Procurement Division has approximately 65 staff of which 35 administer more than 1,000 active contracts with an estimated value in 2012 of \$2.3 billion. The division is responsible for the contracting of supplies, materials, equipment, and contractual services for executive branch agencies, as well as the purchasing, leasing, and contracting for all information and telecommunication system facilities, equipment and services for state agencies. The division is responsible for contract administration. Vendor payments are managed by each agency, overseen by the Accounts Payable Division of the Office of the State Comptroller and recorded in Core-CT.

Solicitations and contracts are posted on the DAS website, known as the State Contracting Portal. DAS awards approximately 250 contracts per year with the contracts varying by budget and timeline. Almost 17,000 businesses subscribe to the online notification system with additional businesses that visit the site but are not registered.<sup>80</sup>

When a DAS-administered state contract does not exist, DAS has delegated purchasing authority through General Letter #71 to state agencies for purchases less than \$50,000. Through such delegation, state agency purchases valued under \$2,500 can be acquired without a formal bidding process. Purchases valued under \$10,000 require the solicitation of at least three bids, and purchases that exceed \$10,000, but are less than \$50,000, require the agency to post their solicitation on the State Contracting Portal to receive competitive bids. All purchases over \$3,000 require a contract.

*4.1.2.1 Construction Contractor Prequalification Program:* Construction contracts of a certain value are administered by DCS. The Construction Contractor Prequalification Program within DAS Procurement prequalifies building contractors and subcontractors to enable them to bid on a contract or perform the work for the construction, alteration, repair or demolition of public buildings or any other public work by the state or municipality, when such work is estimated to cost more than \$500,000 and is funded in whole or in part with state funds, except a public highway or bridge project or any other construction project administered by ConnDOT. All prime contractors for projects over \$500,000, as well as subcontractors whose portion of a contract totals over \$500,000, require prequalification. As of March 2013, there were approximately 750 prequalified contractors with DAS. Thirty-eight percent were also certified by DAS as a small business, 12% were certified as small and minority-owned businesses, and 9% were certified as small and women-owned businesses.<sup>81</sup>

*4.1.2.2 Purchasing Card (P-Card) Program:* The P-card program is a payment tool for state agencies. A credit card is provided to state agencies to streamline the purchasing/payment process. Agencies must adhere to all purchasing policies when utilizing the P-card, including the use of state contracts or General Letter #71 when a state contract does not exist. As of December 2012, there were 1,318 P-cards issued to various state agency and addendum<sup>82</sup> agency staff.

The executive branch agencies, state universities, and associated municipalities and nonprofits spent approximately \$56 million in 2012 using P-cards. This charge volume has increased by

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80. DAS State Procurement Marketplace Briefing Book, 2012 Year in Review, p. 7

81. Minority Business Enterprise Forum, March 11, 2013

82. Addendum agencies include public organizations that piggyback off the state's program. Some of these agencies include school districts and municipalities.



approximately \$20 million from the 2008 level of almost \$37 million. However, this amount could increase dramatically with the passage of P.A. 12-1 that increases the single transaction limit from \$10,000 to \$250,000. Further, if agencies receive written approval from the comptroller and DAS commissioner, they can exceed the \$250,000 limit.

TABLE 2: PURCHASING CARD PROGRAM – 2012

SOURCE: DAS STATE PROCUREMENT MARKETPLACE BRIEFING BOOK, 2012 YEAR IN REVIEW

Contract User	Transaction Count	Charge Volume
All Executive Branch Agencies	99,755	\$24 million
State Universities (UConn, CSUs)	86,105	\$21 million
Municipality & Nonprofit	77,940	\$11 million
<b>Total</b>	<b>263,800</b>	<b>\$56 million</b>

All transactions that are under \$1,000 must go on the P-card per a 2011 directive from the Office of the State Comptroller, since it reduces paperwork and invoicing, companies are paid faster, and the state receives a rebate. P-card transactions are tracked in Pathway Net, a commercial card management system, which contains the most recent 18 months of purchase information. Each agency that has access to the system has a P-card coordinator. The information contained in the system is similar to information found on a typical credit card bill – vendor name, transaction date, and amount spent. However, in rare instances the actual commodity purchases will appear, but this is dependent on the relationship the credit card company has with the vendor and is not controlled by DAS.

The P-card program is co-administered by DAS and the comptroller. DAS manually cross-references vendors utilized through P-cards with the certification list to see if any transactions meet the SBE/MBE program agency goals. The bank can identify SBE/MBEs, but its list does not correlate with the state’s DAS-certified list. DAS has maintained files on P-card purchasing dating back to December 2008. There is no systematic link between P-card purchases and the Core-CT financial system. A new system was set to launch in March 2013 that would have linked P-card purchases with contracts in the Core-CT system for future purchases. However, there was a state hiring freeze and DAS could not implement the module without staffing to administer the program.

### 4.1.3 SBE/MBE Contracting Process

Pursuant to C.G.S. 4a-60(g), the set-aside program for small business enterprises and minority business enterprises was established for the purpose of assuring that Connecticut small and minority-owned businesses have an opportunity to bid on state contracts. The program is limited to Connecticut-based small and minority businesses.

Each executive branch agency annually establishes goals for the set-aside program. The Supplier Diversity Team provides each agency with an Agency Budget Form and provides technical assistance as needed to agency staff. The budget form contains the total budget for the agency, then deducts budgetary items that do not qualify under the set-aside program. The budget items that can be deducted from the calculation of the set-aside goal include:

- Federally funded expenditures – contracts that may not be assigned to SBE/MBE vendors due to a conflict with a federal law or regulation
- Non-purchasing budgeted expenditures – these items include direct overhead expenditures, building or office space lease/rental, postage, debt services, telecommunications services, and employee fringe benefits
- Statutorily required budget expenditures – items based on a specific statute such as interagency transfers that result in no external purchasing; Board of Education and Services to the Blind; and Correctional Enterprises of Connecticut
- Agency-requested exemptions such as dues and subscriptions, insurance services, or sole-source purchasing. Agencies are also able to request additional exemptions, which require approval from DAS.

Based on the total budget remaining, a dollar value program goal is established for the agency.

The capital budgets of UConn and DCS are not included in the goal-setting process administered by DAS. However, DAS documents this information in its budget form for informational purposes only. The amount that is awarded to SBE/MBEs from the capital budgets of UConn and DCS does not count towards DAS goals, but is counted towards UConn and DCS goals.

For each contract request that agencies submit to DAS through the Core-CT system, the Procurement Division reviews the request and the certification list to identify how many certified vendors are in particular industries. Generally, if there are three or more vendors in the industry that are certified, then part or all of the contract will be set aside. However, if there are less than three vendors certified, the contract may not have a set-aside provision included in the solicitation.

In Fiscal Year 2012, DAS paid approximately \$336 million to small businesses, and of that, \$84 million went directly to minority-owned businesses.<sup>83</sup>

For DCS, construction projects valued under \$500,000 would typically be awarded to a certified SBE contractor, who should use a good faith effort to use MBEs. For projects over \$500,000, the contract is awarded to the lowest qualified bidder that meets the required specification and the typical set-aside requirements – 25% to SBEs and 6.25% to MBEs – apply. Additionally, a plan must be approved to show how the SBE and MBE goals will be met by the prime contractor. On-call services – a list of prequalified contractors used for special projects that are time-sensitive – are not subject to the set-aside requirements; however, a Consultant Diversity Policy was implemented in May 2013 to increase MBE participation in on-call services.

#### ***4.1.4 SBE/MBE Vendor Certification Process***

As of December 2012, there were 2,598 DAS-certified SBE/MBE companies.

Figure 1 shows the volume of applications submitted to the program each month from January 2012 through December 2012, with orange showing renewals and red showing new applications. In 2012, there were 1,086 requests for certification renewal and 1,199 new applications.

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83. DAS State Procurement Marketplace Briefing Book, 2012 Year in Review

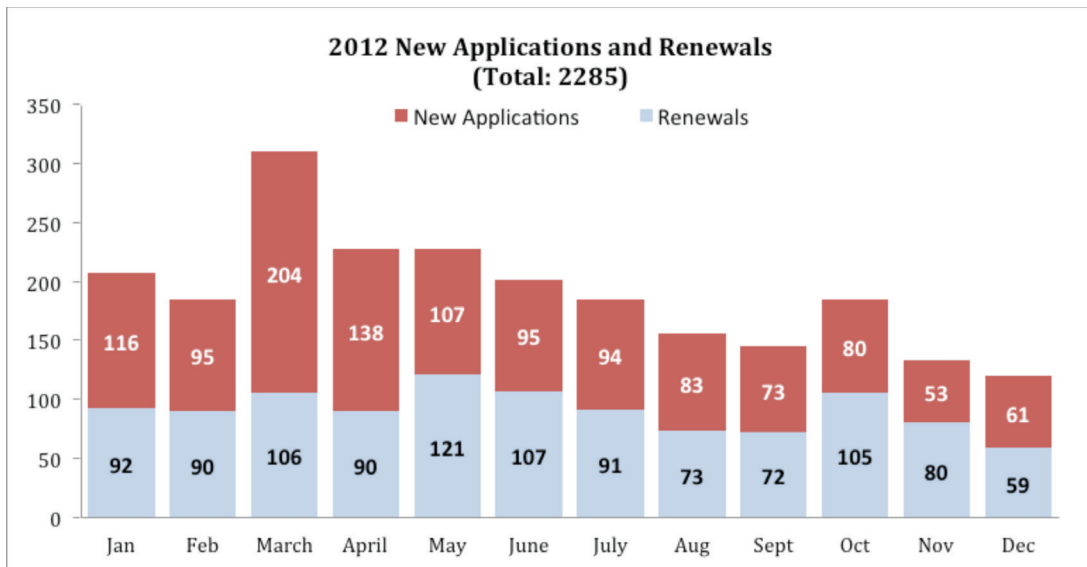


FIGURE 1: APPLICATIONS FOR DAS SBE/MBE CERTIFICATION:  
JANUARY 2012 - DECEMBER 2012

SOURCE: DAS STATE PROCUREMENT MARKETPLACE BRIEFING BOOK, 2012 YEAR IN REVIEW

Figure 2 shows the volume of applications approved for certification in the program each month from January 2012 through December 2012. In 2012, a total of 1,580 companies were certified as SBE/MBEs. Thus, out of all applications submitted in 2012, 69% applications were approved for certification (approval percent is approximate due to lag because of 60-day certification approval).

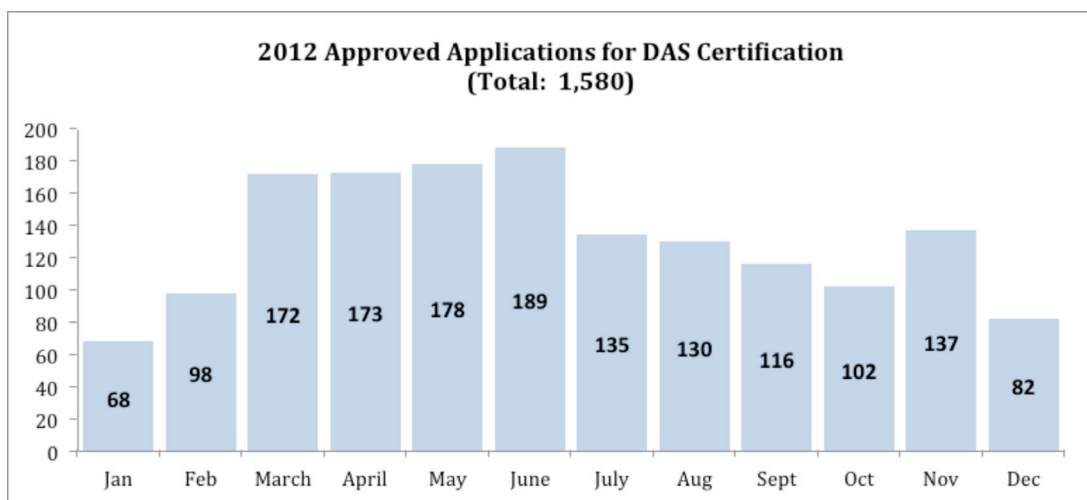


FIGURE 2: APPROVED APPLICATIONS FOR DAS SBE/MBE CERTIFICATION:  
JANUARY - DECEMBER 2012

SOURCE: DAS STATE PROCUREMENT MARKETPLACE BRIEFING BOOK, 2012 YEAR IN REVIEW

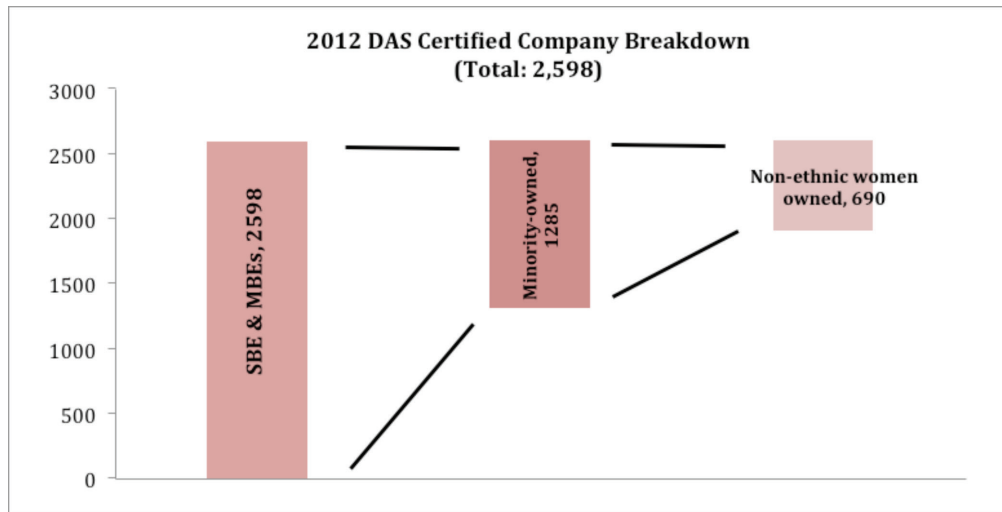


FIGURE 3: DAS-CERTIFIED SMALL BUSINESSES: 2012

SOURCE: DAS STATE PROCUREMENT MARKETPLACE BRIEFING BOOK, 2012 YEAR IN REVIEW

As shown in Figure 3, in 2012, there were a total of 2,598 certified small businesses in Connecticut and of those, 1,285, or 49%, were minority owned. 31%, or 797, were women-owned businesses with the majority of those owners (690 or 27% of the total) being classified as non-ethnic women.

Table 3 shows the breakdown of the gross receipts of the certified businesses. Pursuant to Connecticut statute, a micro-business is one that has gross receipts of less than \$3 million. Although not shown on the chart, 83%, or 2,146, certified businesses in Connecticut are considered micro-businesses.

TABLE 3: GROSS RECEIPTS OF CERTIFIED BUSINESS

SOURCE: DAS STATE PROCUREMENT MARKETPLACE BRIEFING BOOK, 2012 YEAR IN REVIEW

Gross Receipts	# of Small Businesses
< \$1million	1,545
\$1 -\$6 million	884
\$6-\$10 million	115
\$10-\$15 million	54
<b>Total Certified</b>	<b>2,598</b>

If a business applies for certification, but is denied, there is a reconsideration process that is administered by the Supplier Diversity Team.

#### 4.1.5 Outreach for SBE/MBE Program

In order to increase SBE/MBE participation, the Supplier Diversity Team reaches out to several organizations in the state and also conducts targeted programming efforts. The Supplier Diversity Team works closely with the Hartford chapter of the Service Corps of Retired

Executives (SCORE), chambers of commerce, business and professional associations, the Women's Business Development Center (WBCD), and Small Business Development Center (SBDC). The Supplier Diversity Team also provides contractors with access to the DAS certified vendor list. Further outreach activities include:

- Marketing events
- Matchmaker events where prime contractors and subcontractors can meet
- Bonding programs
- Bonding certification through DECD
- Bid subscription notices

The following list details outreach events to small and minority businesses attended by Supplier Diversity Team staff in 2012:

- DEEP outreach planning meeting for clean water funds and use of SBE/MBE's (January)
- MBE Day - State Capitol (February)
- Operation Home Work-Veterans' Expo (March)
- How to do Business with the State workshop (March)
- VASE Construction outreach workshop (March)
- Woman Entrepreneur Center Certification Workshop (March)
- Hartford Business Expo (June)
- SBE/MBE Matchmaker Event (June)
- Association of Builders and Contractors Workshop (July)
- NAACP Workshop (August)
- Greater New England Minority Development Council Workshop (September)
- Connecticut Economic Development Resource Center Workshop (October)
- St. Francis Hospital Outreach Workshop (October)
- Grainger SBE/MBE outreach meeting (October)
- Connecticut Subcontractors Association meeting (November)
- SBA - SBE/MBE workshop (November)

The Supplier Diversity Team has noted that some SBE/MBEs need more education on bidding for state contracts. For example, the type of training that could help would include: how to put a bid together; understanding bonding prerequisites; technology; and the paperless process.

In 2009, as required by P.A. 09-184, DAS created a micro-business program for small businesses with less than \$3 million in annual gross revenues. In determining the lowest responsible

qualified bidder for a contract, qualified micro-businesses receive a price preference of up to 10%. This program encompasses almost all certified businesses in Connecticut, since most businesses on the certified list have less than \$3 million in annual gross revenue. This micro-business program is not limited to Connecticut companies.

#### **4.1.6 SBE/MBE Program Monitoring**

Pursuant to C.G.S. §4a-60g, each state agency and political subdivision of the state other than a municipality is required to prepare a report establishing a contracting/purchasing goal for small business enterprises and minority-owned business enterprises for each state fiscal year. Agencies submit progress reports quarterly to DAS and CHRO that contain the following information: number of contracts, number of SBE/MBEs contracted with, and dollar amounts. Annual reports showing cumulative information are also sent to DAS and CHRO.

A DAS full-time staff person manages the agency set-aside goal-setting process and the list of certified SBE/MBE companies. Goals are not measured on a contract by contract basis, but rather overall for each agency. If a state agency achieves less than half its goal by the second reporting period of the year, the agency must provide a written explanation to the DAS commissioner and CHRO detailing how the agency will achieve its goal by the end of the year. However, there is no statutory enforcement mechanism in place for CHRO to utilize if the agency does not meet its goal.

#### **4.1.7 Data System**

Contract and payment information is captured in the Core-CT system. Contract administration by DAS is handled in the BizNet system. State agencies submit their requests to DAS via a Core-10 DAS Bid request in Core-CT, and DAS works on behalf of the agencies to establish a contract. Once a contract is established, all of the information is captured in the BizNet system, and DAS converts the Core-10 Bid request into a contract in Core-CT, then agencies may begin to make purchases against the established contract. Purchase order and receipt information is captured through Core-CT. The certified directory of SBE/MBEs is also interfaced into Core-CT on a nightly basis. The Core-CT system contains the following information:

- Vendor information, such as address, procurement and payable transaction processing rules, certified classification (SBE & MBE)
- Contract ID number, agency the contract is issued by, contract releases associated with purchases.
- eProcurement requisitions, purchase orders, and purchase order change orders and purchase order receipts.
- Payments for vouchers for executive branch agencies, payments for non-purchase order vouchers for non-executive branch agencies, and paycheck payments to all current and retired employees. General ledger, budgets, account codes and descriptions, fund descriptions (ex. general fund, capital equipment purchase fund), commitment control pre-encumbrances, encumbrances, and fund expenses and balances.
- Asset information pertaining to real property and personal property tracking and capital asset depreciation calculation

- Inventory of consumable goods utilized by state agencies to conduct their daily operations
- Accounts Receivable and Billing modules
- Project cost functions
- Customer contracts that represent an agreement between a state agency and the customer that they are billing, which could be another state agency, a federal agency, or a third party

Information that is captured elsewhere is

- The number of businesses that submitted a bid (available through the DAS BizNet System)
- Itemized purchases made using the P-card system (This data was scheduled to be integrated into Core-CT starting in March 2013 has been put on hold due to a state hiring freeze)

DAS utilizes the BizNet System to manage bidder information. Bidders self-register on the BizNet platform and are responsible for keeping their company profile information up to date. The DAS Procurement Division requires that all suppliers and prospective suppliers create an account. A view has been created that allows DAS to access vendor information contained in Core-CT to validate that the correct vendor is matched in the BizNet system when the BizNet contract record is created.

In addition to Core-CT and BizNet, the Department of Construction Services utilizes additional software programs to manage its projects. For the low bid contracts, the DCS collects information on prime contractors and subcontractors, including their set-aside status, and the award amounts for each project in a proprietary Microsoft Access database. Actual payments to subcontractors are not currently tracked in Core-CT or in the Access database. Payments to subcontractors are scheduled to be tracked starting in summer 2013. BizNet tracks separately a list of all bidders (both winning and non-winning) and the amounts bid for ethics purposes, but does not contain any additional information on the bids. DCS is working toward integrating its database with BizNet. For qualifications contracts, DAS uses the PMWeb construction management program that tracks payments to subcontractors but does not currently track whether any awarded companies are a certified small or minority business enterprise, though they are considering ways to do so.

## 4.2 COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

### 4.2.1 *Overview*

The Commission on Human Rights and Opportunities (CHRO) is Connecticut's chief civil rights law enforcement agency. Established in 1943, the CHRO is the oldest civil rights agency in the nation. CHRO is empowered to identify and eliminate discrimination in the state of Connecticut.<sup>84</sup>

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<sup>84</sup>. Connecticut Law prohibits discrimination on many bases included but not limited to race, color, creed, religion, religious creed, national origin, ancestry, sex, gender identity or expression, age, marital status, sexual orientation, mental disability, learning disability, physical disability, genetic information, source of income, and familial status (C.G.S. §46a-51 et seq).

CHRO is responsible for reviewing, monitoring, and enforcing the state's equal opportunity, affirmative action, and contract compliance laws. CHRO also performs outreach, education and training, and participates in other activities to inform members of the public of their duties, rights and responsibilities under the law. In addition, the CHRO identifies and reports problems of discrimination in Connecticut to the legislature.

CHRO, pursuant to C.G.S. §46a-52, consists of nine persons, five appointed by the governor and four appointed by the General Assembly. CHRO appoints an executive director for a four-year term; the director is responsible for overseeing the responsibilities of the department. Since 2008, CHRO's staffing has been reduced from 108 to 69 in 2013. Approximately 90% of the work that CHRO staff conducts involves employment discrimination complaint processing. The CHRO receives about 2,000 to 2,200 new cases each year and approximately 3,500 to 4,000 cases are in the CHRO's process each year.

#### ***4.2.2 Complaint Processing***

Discrimination complaints filed with the CHRO are received, processed and investigated at CHRO's four regional offices located across the state (Hartford, Norwich, Bridgeport, and Waterbury), and at its Housing Discrimination Unit located at the CHRO central office in Hartford. Investigations include preliminary complaint processing, complaint mediation and complaint investigations.

When a finding of reasonable cause is made and the complaint is unable to be resolved through conciliation, the complaint is certified to public hearing. The legal division prosecutes complaints at CHRO's Office of Public Hearings. Discrimination complaints certified to public hearing are assigned to CHRO human rights referees in the CHRO's Office of Public Hearings. Discrimination cases are also assigned to the Office of Public Hearings through the early legal intervention process.

CHRO's Contract Compliance Unit (CCU) conducts contract compliance enforcement, and upon its identification of a contractor or subcontractor in apparent noncompliance, CHRO can file and prosecute a complaint of noncompliance against a noncompliant contractor or subcontractor at the CHRO's Office of Public Hearings.

CHRO human rights referees preside over CHRO's discrimination complaints and they also receive and preside over whistle blowing cases. Each contested case at public hearing is assigned to a human rights referee. The referee adjudicator presides over the case at public hearing through pretrial processing; he or she is authorized to hear and decide motions, conduct administrative law trials, receive evidence, and decide on liability. Upon a determination of discrimination, the referee is authorized to issue orders of affirmative actions and the award of damages as he or she deems appropriate.

In contract compliance cases, the referee is authorized to order affirmative actions, fines and other damages. When fraudulent activity is identified under C.G.S. §46a-56(d), criminal charges may be filed and penalties and criminal sanctions can be pursued by the State's Attorney or the state's Attorney General.



### ***4.2.3 Contract Compliance Unit (CCU) - Affirmative Action***

The Contract Compliance Unit (CCU) monitors state agencies' employment activity and contract compliance activity. Each agency is required to develop and implement an affirmative action plan (AAP). Each agency is required to submit its AAP to the CHRO for review and analysis. The CCU staff evaluates each agency's AAP and, through the CHRO executive director, recommendations are made to the CHRO commissioners as to whether the agency's AAP should be approved, conditionally approved or disapproved. The commissioners have the authority to adopt the recommendation of the executive director or modify it. They also have the authority to find a state agency in non-compliance. Upon CHRO's issuance of a Certificate of Noncompliance to an agency, the agency becomes unable to engage in hiring and promotions until the certificate is lifted.

### ***4.2.4 Contract Compliance Unit (CCU) - Contract Compliance***

The CCU within CHRO is also responsible for oversight of the state's set-aside program. CCU was created in the 1980s and as of 2013, employs three full-time staff. The unit is responsible for advising state agencies about contractual obligations under C.G.S. §4a-60 and set-aside program requirements under C.G.S. §4a-60g. In particular CHRO has the following responsibilities as delineated in C.G.S. §46a-56:

- Receive notice of contract awards from the state agencies and receive and determine the compliance of state contractors with the requirements of C.G.S. §4a-60, §4a-60a, §4a-60g and §4a-68b et seq.
- Monitor state contracts to determine whether they are in compliance with C.G.S. §4a-60 and §4a-60a, and those provisions of the general statutes that prohibit discrimination.
- Compile data concerning state contracts with female and minority business enterprises and submit a report annually to the General Assembly concerning the employment of such business enterprises as contractors and subcontractors. From time to time, but not less than once a year, report to the governor as provided in C.G.S. §4-60, making recommendations for the removal of such injustices as it may find to exist and such other recommendations as it deems advisable, and describing the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work it has performed.

CHRO, when deemed in the best interest of the state, also has the right to issue contract compliance exemptions (1) if the work is to be or has been performed outside the state and no recruitment of workers within the limits of the state is involved; (2) for contracts involving less than specified amount of money or specified numbers of workers; (3) for contracts involving subcontractors below a specified tier. The CHRO may also exempt facilities of contractors which are in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided such an exemption shall not interfere with or impede the effectuation of the purposes of this section and sections 4a-60, 4a-60a, 4a-60g, 4a-62 and 46a-68b to 46a-68k, inclusive.

The Regulations of Connecticut State Agencies Section 46a-68j-29 provides further clarification regarding exemptions. CHRO has the right to exempt a contractor from the requirements of complying with the set-aside program under certain circumstances, such as for work that is performed outside the state without the involvement of in-state workers or subcontracts that

are below a specified tier. If a contractor is not in compliance with the set-aside program, CHRO may issue a complaint, and a hearing will be held before a human rights officer or human rights referee. If CHRO finds a contractor, subcontractor or supplier of materials fraudulently qualified as minority business enterprise, a civil penalty of not more than \$10,000 will be assessed.

#### 4.2.5 *Set-Aside Program Reporting and Compliance*

Currently there are 90 state agencies – including individual state colleges/ universities and constitutional offices – and 33 political subdivisions that fall under the provisions of state procurement. On a quarterly basis, state agencies and political subdivisions other than municipalities are required to report on contracting practices and progress in meeting their annual goals regarding the set-aside program to CHRO and DAS. As of an April 2008 ruling by the Connecticut Attorney General, political subdivisions are not required to report their set-aside program goals to CHRO and DAS.

If a state agency achieves less than half of its goal by the second reporting period, it must provide a written explanation to the DAS commissioner and CHRO detailing how the agency will achieve its goal in the final reporting period. However, there is no statutory enforcement mechanism in place if the agency does not meet its goal. CHRO is responsible for compiling all agency information on a quarterly basis and submitting a report to the contracting agencies, DAS, DECD, DAS, and the General Assembly (see C.G.S §4a-60g, section (m)).

According to CHRO’s 2009-2010 *Administrative Digest Report*, 6,393 technical assistance reviews, meetings, and conversations were conducted to assist contractors in complying with contracting set-aside provisions.

According to CHRO’s *Annual Report to the Connecticut General Assembly Regarding Contract Compliance and Small and Minority Business Utilization for Fiscal Years: 2008/2009; 2009/2010; and 2010/2011*, 71 agencies and 33 political subdivisions are required to report to CHRO. However, CHRO has indicated that some agencies/ political subdivisions that are required to report to CHRO do not. Table 4 aggregates the total amounts of contracts that were awarded to small and minority business enterprises, based on information that the agencies and political subdivisions reported to CHRO for the period of 2008 - 2011.

TABLE 4: AGGREGATE CONTRACT DOLLARS AWARDED TO  
SMALL AND MINORITY BUSINESS ENTERPRISES 2008 – 2011

SOURCE: CHRO ANNUAL REPORT TO THE CONNECTICUT GENERAL ASSEMBLY REGARDING CONTRACT COMPLIANCE AND SMALL AND MINORITY BUSINESS UTILIZATION FOR FISCAL YEARS: 2008/2009; 2009/2010; AND 2010/2011

	2008/2009	2009/2010	2010/2011
<b>SBE Contract Awards</b>	\$317,071,572	\$300,662,341	\$373,840,744
<b>MBE Contract Awards</b>	\$65,378,831	\$71,830,109	\$65,742,606
<b>MBE Contract Awards as Percent of SBE Contract Awards</b>	21%	24%	18%

Lastly, the report includes the following recommendations for the state in connection with the set-aside program:

1. Eliminate the municipal exemption, which allows towns who are receiving state funds for a variety of projects to be exempt from the state's supplier diversity goals.
2. Complete a disparity study to document the extent to which SBE/MBEs are underutilized and to establish supplier diversity goals that will separate the goals for M/W/DisBEs.
3. Clarify whether state funding through quasi-agencies are fully subject to the state's set-aside statutes.
4. Reinforce CHRO's authority as an enforcement agency.
5. Increase the retainage that agencies withhold from non-compliant contractors from 2% to 5% per month when they are in non-compliance. Additionally, CHRO should be able to keep the retainage, which can then be used to enhance program monitoring and education/outreach.
6. Provide field monitoring to SBE/MBEs to ensure that the nondiscrimination and the small contractor supplier diversity statutes are being fully observed.
7. Provide field inspections of certified SBE/MBE contractors to confirm that their DAS certifications are accurate and valid, as CHRO has found several questionably certified SBE/MBE contractors.
8. Work more directly with the DAS Supplier Diversity Program to assist more SBE/MBEs in becoming certified.
9. Work more directly with other State of Connecticut civil rights agencies, such as the Permanent Commission on the Status of Women; the African American Affairs Commission; the Asian American Affairs Commission; DECD, and the Commission on Latino and Puerto Rican Affairs, to ensure businesses owned by members of protected classes are being represented and utilized in efforts to bring them into the mainstream of economic commerce.
10. Provide considerable public outreach to help implement business growth and development.
11. Enact legislation that provides a penalty for state agencies that fail to comply with filing and other requirements outlined in Connecticut General Statutes, as amended by Public Act 11-229.
12. Increase CHRO/CCU staffing in order to provide efficient monitoring of SBE/MBEs.
13. Develop state bonding programs that will assist SBE/MBEs in contracting with state agencies for projects over \$500,000 and provide more efficient monitoring of SBE/MBEs' monthly and quarterly reports.
14. Provide an electronic system for more efficient monitoring of SBE/MBEs' monthly and quarterly reports.

#### 4.2.6 *Affirmative Action Plans*

Contractors that have more than 25 employees and a state construction contract of at least \$50,000 are required to submit an affirmative action plan to CHRO pursuant to C.G.S. §46a-68; subsections (c) and (d). According to CHRO's 2009-2010 *Administrative Digest Report to the Governor*, CCU staff reviewed 523 affirmative action plans submitted by contractors who were awarded public works and construction contracts. The following describes the information that the contractor is required to report<sup>85</sup>:

- Affirmative action policy statement
- Communication plan to employees on the company's Affirmative Action Equal Opportunity Employer (AA/EOE) policy
- External communications regarding company's AA/EOE policy
- List of who within the company is responsible for day-to-day responsibilities and for implementation of the company's AA/EOE program
- Organizational chart
- Listing of number of employees by job title, gender and race
- Comparison of employees by job category, gender and race to the metropolitan statistical area's availability to determine under or overutilization. Contractors with 25 or more employees with underutilization must submit a signed statement pledging their good faith efforts to meet or surpass the Connecticut statistics if the need to hire more workers for the state project arises
- Project description, timeline, and trades involved
- Employment analysis – review of the company's employment process and identification of policies and practices that build in or perpetuate barriers to EOE
- Apprenticeship training – only required for contracts in excess of \$10 million and lasting 18 months or more
- Efforts to find SBE/MBE subcontractors:
  - All sources used to find the businesses
  - Listing of all SBE/MBE subcontractors from which company solicited a bid
  - Explanation and documentation of the reasons why contracts were not awarded to bidders
- MBE goals and timetables – the contractor sets goals for awarding all or a reasonable portion of the contract to qualified minority business enterprises based upon the availability
- MBE Assistance and Innovative Programs – discussion of efforts, informal and formal, to assist MBEs and WBEs

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85. [http://www.ct.gov/chro/lib/chro/aap\\_format1008.pdf](http://www.ct.gov/chro/lib/chro/aap_format1008.pdf) (accessed 2/14/13)

- Project Reporting and Monitoring Process – provide a statement that the company will file all monthly and quarterly reports as required by CHRO:
  - o Monthly and cumulative employment utilization report
  - o Monthly and quarterly payment status report
  - o Monthly and quarterly small contractor and minority business enterprise payment status reports

A project is not started until a company's affirmative action plan is approved; otherwise 2% of the project budget is retained until the plan is approved. For projects with budgets of less than \$50,000, or for contractors with fewer than 25 employees, a set-aside plan must be submitted, rather than the comprehensive affirmative action plan. The set-aside plan is for the purpose of monitoring whether a good faith effort has been conducted in order to subcontract with MBEs. A project can start before the company's set-aside plan is approved.

CHRO determines whether a good faith effort has been made based upon the availability of minority business enterprises in the labor market area. To comply with the good faith effort requirement, contractors may need to undertake several forms of outreach, including

- Advertising in special interest publications and on special interest media
- Holding workshops and seminars
- Contacting special interest organizations, groups and individuals
- Contacting churches, unions, unemployment centers and community centers<sup>86</sup>

The goal of the affirmative action plans is to ensure parity – that subcontractors being utilized correspond to the availability of contractors in the marketplace. Currently, affirmative action plans are submitted in paper format to CHRO and are not available electronically. CHRO is in the process of rewriting the regulations and also making the information available electronically, but funding for this endeavor is still undetermined. CHRO is also considering allowing contractors to file an affirmative action plan that would be current for two years, and then file set-aside plans for each project.

Review of affirmative action plans is strictly a review of documents that are submitted by companies. Ideally the office would also conduct field checks to ensure the plans submitted coincide with the actual on-the-ground work; however, with the volume of affirmative action plans that must be reviewed and only two staff assigned to this function, it is not possible to ensure compliance through site visits.

## 4.3 UNIVERSITY OF CONNECTICUT

### 4.3.1 Overview

Contracting for UConn's main campus in Storrs and all of the university's regional campuses is administered by the Department of Procurement Services located at the UConn Storrs campus.

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86. C.G.S. §4a-60 and Regulations of Connecticut State Agencies §46a-68j-23 to §46a-68j-28; [http://www.das.state.ct.us/Purchase/SetAside/CHRO\\_GOOD\\_FAITH\\_EFFORT.pdf](http://www.das.state.ct.us/Purchase/SetAside/CHRO_GOOD_FAITH_EFFORT.pdf)

The department is divided into three divisions: Purchasing, Contracting and Compliance, and Capital Projects and Contracts Administration. The UConn Health Center (UCHC) also has its own Procurement and Contracts Departments that administer contracts specifically for UCHC. The procurement and contracting staff at UConn Storrs and UCHC work closely together on joint procurement efforts, including bids and resultant contracts for goods and services where applicable. *(Throughout this section, unless otherwise noted, the terms "UConn" and "university" refer to all campuses, including UCHC.)*

### **4.3.2 General Contracting Process**

Bidding and contracting for UConn is centralized and all purchase orders are created electronically through an eProcurement system. UConn solicits competitive quotes for purchases between \$10,000 and \$50,000. Purchases over \$50,000 are put out for bid in accordance with statutory and university requirements, including posting through the state contracting portal. Bids posted by the UConn-Storrs campus (but not UCHC) are also advertised on UConn's procurement website. UConn manages procurement for construction and professional services in support of its capital construction program. This includes a contractor prequalification process that utilizes DAS prequalification captured data.

*P-Cards:* The Storrs and regional campuses' P-card Program has issued approximately 470 cards, with spending totaling approximately \$1.2 million per month. UCHC's P-card Program has issued approximately 20 cards, with spending totaling approximately \$50,000 per month. Credit limits for all university P-card holders are capped by the card provider.

The P-card transactions are not integrated the university's eProcurement system, and information about the type of business utilized is not captured.

As noted previously, the state (including UConn/UCHC) has been encouraging greater use of P-cards since purchase processing is more efficient compared to traditional purchase orders. UConn/UCHC are considered addenda agencies to the DAS P-card Program and provider contract.

### **4.3.3 SBE/MBE Contracting Process**

The procurement managers (i.e., the buyers for each commodity) decide which contracts will be set aside for small businesses based on their knowledge of vendors available in the market area. For example, the procurement managers are aware that many of the businesses within the printing industry are small businesses; therefore only small businesses are permitted to submit bids on printing contracts. However, due to the very nature of certain commodities such as clinical, research and software providers, it can be difficult to obtain competitive bids from in-state vendors of any size because very few of those vendors are located in Connecticut, let alone able to provide the required technologies. Consequently, UConn procurement managers cannot set aside certain commodities for small businesses, and sometimes must rely on sole-source contracting for particular items. The procurement department provides information about the commodities that cannot be set aside or that must be purchased as sole-source items in the annual goal-setting reports submitted to CHRO by the university.

UConn Procurement and Supplier Diversity Program staff attend expos and events in Connecticut to publicize upcoming construction projects at UConn that may be of interest

to SBE/MBEs; provide information about state and university procurement and bidding processes; educate businesses on how to be notified about and respond to bids posted by the university; and provide information about how to become certified as a SBE/MBE with the state, and the benefits associated with SBE/MBE certification. Efforts are underway to determine how effective these outreach programs are relative to active participation in public bid activities and resultant contracts with SBE/MBEs.

#### ***4.3.4 SBE/MBE Vendor Certification Process and Outreach***

UConn refers to the DAS certification list to identify SBE/MBE companies for projects. UConn has participated in the matchmaker event held at the University of Hartford for the past two years. Additional outreach activities include encouraging and assisting known vendors to apply for certification through DAS. UConn relies on the Connecticut Procurement Technical Assistance Program (CT PTAP) to assist SBE/MBEs with technical assistance for state contracting. They also have two supplier diversity staff members who can answer questions and assist companies.

#### ***4.3.5 Monitoring of SBE/MBE Program***

Monitoring of the UConn SBE/MBE program is a responsibility of CHRO. UConn submits a quarterly report to CHRO, as required of all state agencies.

#### ***4.3.6 Data System***

The eProcurement systems utilized by UConn (Kuali Financial Systems and SciQuest eProcurement) and UCHC (Banner Finance and SciQuest eProcurement) are separate and not integrated with finance/procurement systems utilized by other state agencies, such as Core-CT. Both UConn and UCHC utilize SciQuest, in addition to other systems such as Microsoft SharePoint, to store information about their contracts.

### **4.4 BOARD OF REGENTS ADMINISTRATION OFFICE**

#### ***4.4.1 Overview***

The administration office of the Board of Regents (BOR) oversees the procurement and contracting activities for 16 universities/colleges, including four state universities and 12 community colleges. Contracts must be reviewed at the BOR level prior to going to the Attorney General's office for final review and approval. Charter Oak State College, which is under the governance of the BOR, manages their own procurement and contracting activities.

#### ***4.4.2 General Contracting Process***

Construction projects that are less than \$2 million are administered by the BOR administration office, and have a 100% SBE and 25% MBE requirement (unless vendors for a particular contract are unavailable). Projects that are greater than \$2 million are managed by the DAS/DCS. Construction projects over \$2 million do not count toward the overall university or college set-aside goals but count toward DCS/DAS set-aside goals. If a project is more than \$500,000, contractors must be prequalified through DAS/DCS in order to bid on the project.

#### ***4.4.3 SBE/MBE Contracting Process***

The BOR adheres to the goals set forth in C.G.S. 4a-60g. Each state university, community college, and two system offices have separate accounts and separate targets and submit reports separately to CHRO (19 total reports).

Like other agencies, services for which there are no qualifying SBEs—including university food service, bookstores and conference hotels—are excluded from the budget for purposes of calculating the goal. However, in many cases, second tier SBE/MBE requirements may be included in contracts for these goods/services.

#### ***4.4.4 SBE/MBE Vendor Certification Process***

The system offices of the universities/colleges and the BOR administration office rely on DAS for certification of SBE/MBEs.

#### ***4.4.5 SBE/MBE Program Monitoring***

Monitoring of the BOR SBE/MBE program is a responsibility of CHRO.

#### ***4.4.6 Data System***

The BOR administration office utilizes the BANNER system to track vendor payments. Subcontractor data is not collected within the BANNER system. P-card purchases are not used for any contract payments. P-card purchases, in general, are not used by the universities/colleges, with the exception of Central Connecticut State University, which allows most faculty members to use P-cards for purchasing teaching materials and subscriptions.

### **4.5 JUDICIAL BRANCH**

#### ***4.5.1 Overview***

The judicial branch is responsible for overseeing the courts, employment services, and juvenile and adult probation. The judicial branch contracts for approximately \$500 million worth of services annually.

#### ***4.5.2 General Contracting Process***

The judicial branch's Procurement Department is responsible for contracting for all divisions within the judicial branch. In general, the department solicits bids for contracts, seeking to receive at least three qualifying bids and selecting the lowest bid from the firm that meets specification. The department distributes requests for proposals via e-mail, the web and US Mail to known vendors based on the location and requirements of a project in order to ensure enough bids are received. The department always advertises in newspapers and posts the information on its website, which is also linked to the DAS website.

A pre-bid conference is held and bids are submitted. The department reviews bids for cost and completion of required bid documentation. If no subcontractors are listed on the bid, Judicial Procurement determines if the work will only be performed by the prime contractor. Businesses



are not required to subcontract, but if subcontractors are listed or otherwise identified, the prime contractor must meet set-aside program requirements.

The judicial branch only manages construction contracts valued under \$1.25 million. If a construction project contract value is over \$1.25 million, it is managed by the DCS. However, if a contract is valued at more than \$500,000, contractors must be prequalified through DAS in order to bid. Most of the construction projects that Judicial Procurement administers are awarded to certified SBEs due to the dollar limit, and therefore these projects count towards the judicial branch's set-aside goals.

The department tracks the subcontractors listed for each contract.

#### ***4.5.3 SBE/MBE Contracting Process***

The judicial branch sets SBE/MBE contracting goals annually, and follows the state statute guidelines and the process set forth by CHRO. After the standard exclusions that are removed from the judicial branch budget, such as state mandates, utility expenses, social services, and federal government transfers, the contracting expenditures eligible for the set-aside program amounted to approximately \$36 million in FY 2012.

Once the set-aside goal is established for the year, it remains the goal even if there are budget reductions.

#### ***4.5.4 SBE/MBE Vendor Certification Process***

The judicial branch utilizes the DAS vendor certification process for SBE/MBEs. Judicial branch procurement staff work closely with DAS supplier diversity staff in assisting potential contractors to qualify for the set-aside program.

#### ***4.5.5 SBE/MBE Program Monitoring***

Monitoring of judicial branch SBE/MBE program is a responsibility of CHRO.

#### ***4.5.6 Data System***

The judicial branch has its own contract management system, JASMIN, for recording contracts and purchases. Core-CT is utilized only for personnel payments and for tracking payments to contractors. However, there is not a link between the two systems. Department staff verify that Core-CT payments made match the vendor payments recorded in JASMIN.

### **4.6 GENERAL ASSEMBLY**

#### ***4.6.1 Overview***

The Connecticut General Assembly (CGA) is the legislative branch of state government, comprising the House of Representatives (151 members) and the Senate (36 members). This branch contracts primarily in areas related to facilities management. The CGA's Fiscal Group of the Office of Legislative Management (OLM) includes eleven staff (the fiscal administrator; three employees who work on contracting; two employees who focus on purchasing; four employees

who are charged with tasks related to accounts payable, budgeting and accounting; and one employee who acts as a system administrator). This office contracts on behalf of the CGA, primarily in areas related to facilities management, consulting and information technology.

#### ***4.6.2 General Contracting Process***

The OLM Fiscal Group is responsible for contracting on behalf of the CGA. In general, this office solicits bids (RFBs) and proposals (RFPs) for contracts. Some RFBs and RFPs are posted on the state's contracting portal, and a link to the state's contracting portal is included on CGA's website. In addition, companies with known expertise in the contracting area are notified directly of RFB or RFP opportunities via email. The CGA is currently in the process of developing a written procurement process.

A pre-bid walkthrough is held if the contract is for a facility-based project. At that time, questions are asked and answers are provided, if possible. Answers to all questions asked at the pre-bid walkthrough and via email are publically addressed in an amendment, which is posted on the state's contracting portal. The OLM Financial Department and the evaluation committee chairperson create the weighted selection criteria for a project with set-aside contracting percentages associated with each. Often projects are reserved for set-aside vendors unless a review of the DAS certified list shows that there are no small or minority businesses available in the contracting area required for the project. An evaluation committee reviews the bids and selects the finalist based on the selection criteria and price.

If a project is more than \$500,000, contractors must be prequalified through DAS/DCS in order to bid on the project. For any project valued over \$500,000, OLM requires that the general contractor allocate 25% of the project total to set-aside vendors, in conjunction with C.G.S. §4b-91.

The OLM Fiscal Group does record who contractors list as their subcontractors; however, this information is not captured in the financial database system.

#### ***4.6.3 SBE/MBE Contracting Process***

Similar to the contracting processes of the executive and judicial branches, the CGA annually sets goals for contracting with SBE/MBEs and follows state statute guidelines and the process set forth by CHRO. After the standard exemptions such as utility expenses, are removed from the budget, the contracting expenditures eligible for the set-aside program are determined. Set-aside program goal setting is updated monthly.

#### ***4.6.4 SBE/MBE Vendor Certification Process***

The CGA utilizes the DAS vendor certification process for SBE/MBEs. A web link to the DAS certification process is in the process of being created on the OLM Fiscal Group website to inform SBE/MBEs interested in providing services to the CGA about the opportunity to become certified. The OLM Fiscal Group does not yet have a formal policy for reaching out and encouraging vendors who may qualify for certification.

#### **4.6.5 SBE/MBE Program Monitoring**

Monitoring of the CGA's set-aside program is a responsibility of CHRO. DAS works with the OLM Fiscal Group to set the set-aside goals and amend them if necessary.

#### **4.6.6 Data System**

The CGA utilizes PeopleSoft for accounting and financial management. The PeopleSoft system keeps track of P-card purchases, and is able to code payments that were made to SBE/MBEs. The financial records in PeopleSoft are linked into Core-CT, which is used for tracking payments. Subcontractor payments are not recorded.

### **4.7 DEPARTMENT OF TRANSPORTATION**

#### **4.7.1 Overview**

The Connecticut Department of Transportation (ConnDOT) administers the federal Disadvantaged Business Enterprise (DBE) Program as defined in Title 49, Code of Federal Register (CFR) Part 26 and Part 23 for Airport Concessions. The federal program is executed in accordance with the regulations of the US Department of Transportation (DOT) as a condition of receiving federal (Federal Aviation Administration, Federal Highway Administration, or Federal Transit Administration) transportation funding.

The DBE program administered through ConnDOT is separate from the state's DAS Supplier Diversity Program that certifies companies as SBE/MBEs. There is no certification reciprocity between the two programs.

The DBE program is national, so a company can be certified and perform work in multiple states. DBE certification requires verification that a company is socially or economically disadvantaged, including a personal net worth limit, and who is actually in control and operating the business. The federal certification is not defined by gender or race, yet presumes that women, African Americans, Hispanics, Native Americans, Asian-Pacific Americans, and Subcontinent Asian Americans are socially and economically disadvantaged. Individuals not of the presumed groups may apply for certification, but bear the burden of documenting their social and economic disadvantage.

In a given year, approximately 80%-90% of ConnDOT projects are federally assisted and 10-20% are funded by Connecticut. If a project is federally assisted, the DBE regulations apply to the project. If a project is state funded, then the Connecticut set-aside program regulations are applied.

#### **4.7.2 General Contracting Process (state and federally assisted projects)**

The ConnDOT purchasing office is responsible for the procurement of commodities for both state and federally funded projects. Purchases are generally limited to items such as trucking parts, and items used for facilities and maintenance purposes. The purchasing office employs a staff of seven (two employees in contract compliance and five employees in the development and verification of specifications for projects). Construction contracts are managed by the Office of Construction.

Bids are solicited for contracts valued over \$10,000 dollars for both state- and federally funded projects. Contract opportunities are advertised broadly, including through an online website portal. A field employee in the procurement office collects the bids. A minimum of three qualified quotes must be received for all ConnDOT projects valued over \$10,000. However, some procurement items are designated as single-source items because of product uniqueness, such as cable television, stamps/postage, and relocation of utility poles (owned by respective utility companies). Hence, these items do not require competitive bids. Furthermore, the purchasing office refers to an “on-call list” of prequalified consultants for certain projects. Only prime contractors can be prequalified; prequalification certification expires after one year.

The compliance team within the purchasing office manages existing contracts that need to be honored. Furthermore, contract compliance sends compliance reports for state-funded contracts to DAS on a quarterly basis and compliance reports to CHRO showing agency contracting activities on a quarterly basis. Also, ConnDOT is required to submit bi-annual DBE utilization reports to the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), and an annual report to Federal Aviation Administration (FAA) on DBE and Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) utilization. The reports reflect the total awards and the DBE commitments and utilization for each modal agency.

#### ***4.7.3 Purchasing cards (P-CARDS)***

Purchasing cards (P-cards) are not extensively used nor is their use encouraged at ConnDOT because of accountability issues. The majority of P-cards purchases consist of meal and emergency purchases. 143 ConnDOT employees are authorized to use P-cards.

#### ***4.7.4 DBE Contracting Process***

Annual DBE goals are calculated and set through ConnDOT’s DBE program office for federally funded projects; however, DBE goals for each individual contract are set by a ConnDOT screening committee. The screening committee members consist of representatives from the various ConnDOT offices. Furthermore, ConnDOT’s Manager of the Office of Contract Compliance acts as an advisor to the screening committee, and also represents the ConnDOT commissioner on the committee. Goals for state-funded projects are calculated using DAS set-aside guidelines.

#### ***4.7.5 DBE Vendor Certification Process***

The ConnDOT DBE program office consists of a team of seven employees who are assigned to certification, Title VI, Contractor Compliance, and administrative functions. The ConnDOT DBE certification process takes approximately four months. Candidates must submit items for verification such as federal and state tax returns and personal net worth information. The Small Business Administration (SBA) guidelines are used to determine what constitutes a small business on an industry by industry basis, and companies must be certified in each of the industries in which they plan to participate in the DBE Program. Candidates must also complete interviews to qualify. If the firm is Connecticut based, an on-site visit is required; for out of state firms, the on-site report is requested from the home state. Once certified, companies are included on ConnDOT’s DBE certified contractor list that is accessible on the ConnDOT website.

The ConnDOT DBE program hosts several outreach events for networking purposes and orientation events on “How to do Business with ConnDOT.” During events, ConnDOT offices explain their functions, processes and regulations to companies so that there is a clear understanding of ConnDOT contracting requirements.

#### ***4.7.6 DBE Program Monitoring***

The federal program regulations contain several enforcement mechanisms to minimize fraud and promote program compliance.

As part of the certification process, ConnDOT conducts unannounced on-site visits to ensure the company is in operation and that the owner is present and involved. Owners are also interviewed by subject matter experts to ensure they are active in the day-to-day operations of the business, trust agreements and operating agreements are reviewed, and owners’ tax returns are screened for significant sources of outside income.

Once contracts are awarded, ConnDOT monitors contracts on an ongoing basis by verifying prime contractors’ payments to DBEs. If there is an issue with payment, the ConnDOT DBE program steps in to mediate among parties. Currently, the DBE program has a 98-99% success rate for mediations among contractors and DBEs. Prime contractors are required to submit verification of payments made to DBE and SBE firms on a quarterly basis that includes the amount paid and check numbers. At the completion of a project, a final verification of total payments made to DBE and SBE firms that is signed by the prime contractor and each subcontractor utilized on the contract is provided to the department. This verification is used to determine if the goals were met on the project. Additionally, as part of finalizing the project, a review of the items and dollar values committed to the DBE or SBE firm in the pre-award is compared to the actual amounts paid; if there is a difference between what was committed and what was performed, ConnDOT asks the prime contractor to document the reason for the difference.

Furthermore, there are enforcement mechanisms at the agency level, as the DOT could lose federal funding if they were not in compliance with the program.

#### ***4.7.7 Data System***

ConnDOT uses the Core-CT financial system to track payments for both federal and state contracts. Also, the system is used to invoice the federal government and track federal reimbursements to the state. Five ConnDOT staff oversee the department’s use of the Core-CT. Core-CT currently does not directly track payments to MBEs and DBEs. However, the ConnDOT staff manually tracks payments to contractors by cross-referencing company names against Core-CT financial system information. Additionally, the ConnDOT staff tracks P-card payments by cross-referencing MBE and DBE companies with bank statements.



## 5.0 ANALYSIS OF STATE AGENCY BUDGETS FOR SET-ASIDE GOALS

The portion of an agency’s budget that is considered to be a part of the state’s set-aside program is subject to a number of adjustments including the removal of federally funded expenditures, non-purchasing expenditures, and state-required expenditures. Connecticut requires that every state agency submit a budget request to DAS that outlines its planned fiscal year expenditure and the appropriate set-aside goal. The budget request form lists: (a) the agency’s adopted budget; (b) federally funded expenditures, non-purchasing expenditures, and statute-required expenditures (together, called “deductions”); and (c) any requested exemptions. The total adopted budget less all deductions is referred to as an agency’s “pre-exemption budget.” The total SBE eligible budget is the adopted budget less deductions and exemptions.

AMOUNTS REQUESTED BY AGENCY					
DESCRIPTION	Federally Funded Expenditure	Non-Purchasing Expenditure	Statute-Required Expenditure	Requested Exemptions	Deductions + Exemptions
<b>Agency Adopted Budget</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>SBE Available Budget</b>	\$ -	<b>Notes or Comments:</b>			
<b>SBE Goal</b>	\$ -				
<b>MBE Goal</b>	\$ -				

An exemption, according to DAS, is a planned procurement purchase or portion of the budget where an agency will be unable to meet an SBE or MBE goal. The typical justification for an exemption is an absence or a low concentration of SBEs and MBEs in a respective industry sector. The proposed budget is then examined by DAS and either approved or denied based predominately on the level of requested exemptions. The final approved budget is then used to calculate the SBE and MBE goal for the agency in the coming fiscal year.



Prior to 2011, DAS reported the total SBE/MBE funding dollars to CHRO to evaluate whether the agencies met their respective goals and to produce a resulting annual update of the program’s performance. DAS provided raw data to CHRO so that each agency’s performance could be evaluated. Subsequently, CHRO created a summary reporting table that detailed the

agencies' goals and the proportion of the SBE and MBE goals that were achieved. However, CHRO did not report the overall budget or approved exemptions. The CHRO assumed responsibility for the reporting process in 2011, and has produced one report covering multiple years in 2012. The numbers reported by CHRO differ slightly from DAS records. DAS began collecting data independently again in 2012 to ensure continuity of the performance numbers contained in the annual report.

According to the 2010 database supplied by DAS, the performance of 91 agencies was reported to DAS and subsequently to CHRO. The overarching agencies were categorized into 116 detailed reporting entities by CHRO (e.g., reporting entities for the Office of the State Comptroller include both operating budget and the capital improvements fund expenditures). In 2010, ten of the 91 agencies were exempt from reporting and all non-exempt agencies were approved. A total of 11 political subdivisions also reported in 2010 and three were exempt.

According to the 2012 database supplied by DAS, the performance of 80 agencies was reported to DAS and subsequently to CHRO. The overall agencies and political subdivisions were categorized into 106 detailed reporting entities by CHRO in 2012. In 2012, four of the 80 agencies were exempt from reporting and all non-exempt agencies were approved. A total of 14 political subdivisions also reported in 2012 and three were exempt.

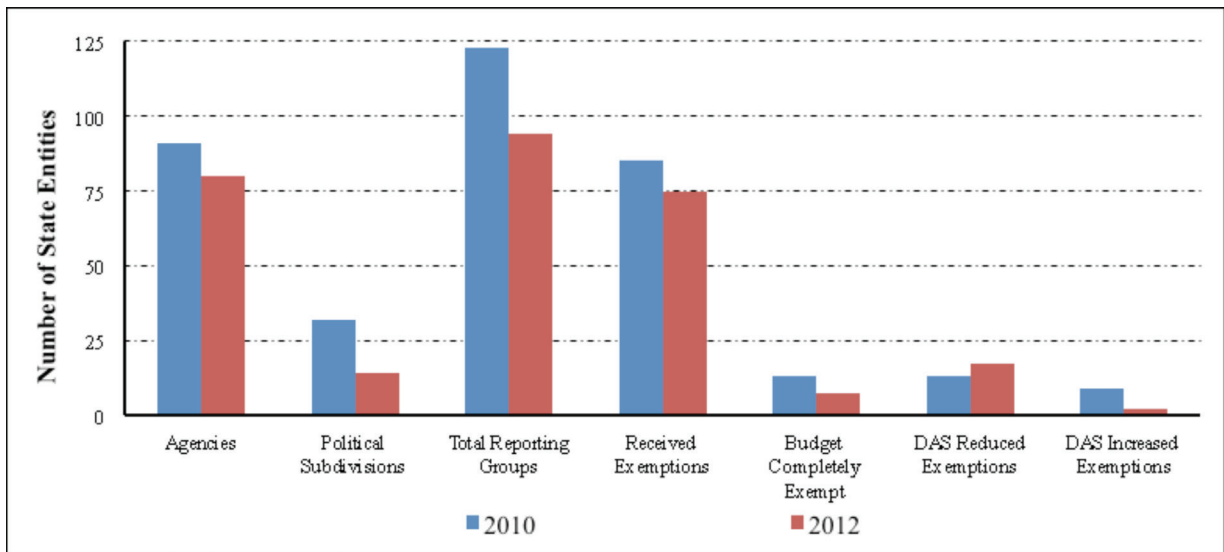


FIGURE 4: NUMBER OF RECORDS OF REQUESTED AND APPROVED BUDGETS

SOURCE: DAS AGENCY DATABASE FOR SET-ASIDE PROGRAM

A total of 91 agencies requested budget approval from DAS in 2010 and had an aggregate pre-exemption (the agency-adopted budget less all federally funded expenditures, non-purchasing, and statute-required expenditures, but prior to the application of any exemptions) budget of approximately \$5.7 billion. A total of 85 agencies received exemptions totaling \$5.2 billion. The total requested exemptions were reduced for 13 state entities by 0.3% or \$13.2 million and increased by DAS for nine agencies by 0.01% or \$464,000. Nearly 92.2% of the pre-exemption budget was deemed exempt in 2010.



CONNECTICUT DISPARITY STUDY: PHASE I  
ANALYSIS OF STATE AGENCY BUDGETS FOR SET-ASIDE GOALS

A total of 80 agencies requested budget approval from DAS in 2012 and had an aggregate pre-exemption budget of approximately \$5.8 billion. A total of 75 agencies received exemptions totaling \$5.5 billion. The total requested exemptions were reduced by DAS for 17 agencies by 2%, or \$112.4 million, and increased for two state entities by 0.08%, or \$4.3 million. Nearly 93.8% of the pre-exemption budget was deemed exempt in 2012.

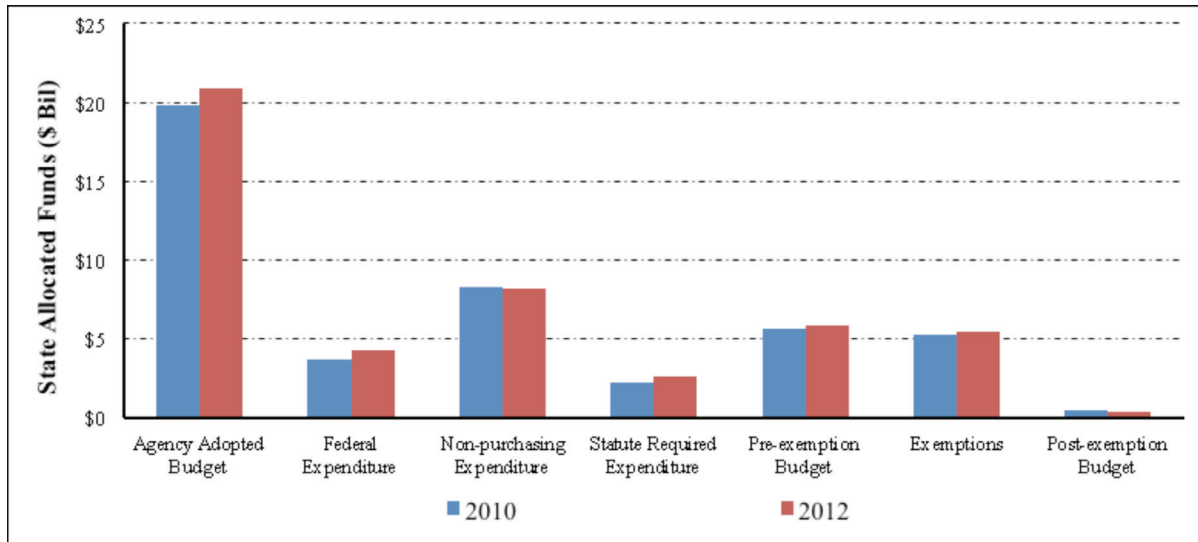


FIGURE 5: AGENCY BUDGETS, EXPENDITURES AND EXEMPTIONS, 2010 AND 2012

SOURCE: DAS AGENCY DATABASE FOR SET-ASIDE PROGRAM

Nearly \$5.2 billion, or 92.2%, of the pre-exemption budget was deemed exempt in 2010 and \$5.5 billion, or 93.8%, in 2012. The total expenditure goal for SBEs was \$110.8 million or about 2% of the total pre-exemption budget (as opposed to the budget with exemptions from which this goal was created) in 2010 and \$90 million or 1.5% in 2012. The total expenditure for MBEs expressed as a fraction of the pre-exemption budget was about 0.5% of total procurement in 2010 and 0.4% in 2012.

According to DAS records, the total expenditure for SBEs was \$300.5 million, or 67.8% of the post-exemption budget, in 2010, and was \$306 million, or 85%, in 2012. However, the total expenditure on SBEs was only 5.3% of the pre-exemption budget in 2010 and 5.2% in 2012. The total expenditure on MBEs was \$71.8 million, or 16.2% of the post-exemption budget, in 2010 and was \$67.8 million, or 18.8%, in 2012. However, the total expenditure on MBEs was only 1.3% of the pre-exemption budget in 2010 and 1.2% in 2012. It is clear from the DAS data that the application and approval of exemptions plays a significant role in whether an agency is successful in meeting their SBE and MBE goals.

According to DAS records, 66 state agencies representing 68.6% of the total eligible procurement in the state met or exceeded the 25% SBE set-aside goal in 2010. The amount spent on SBE procurement by these agencies amounted to nearly \$363.4 million, or 77.9%, of their total eligible budget. A total of 17 agencies amounting to 31.4% of total state eligible procurement failed to meet their goal in 2010. The aggregate small business expenditure for these state entities amounted to nearly \$17.5 million, or 10.5% of their total eligible budget. The aggregate state procurement on small business was \$300.5 million and represented 56.8% of the total eligible

budget across the state in 2010.

According to DAS records, a total of 50 state entities, representing 73.8% of the total eligible procurement in the state, met or exceeded the 25% SBE set-aside goal in 2012. The amount spent on small business procurement by these agencies amounted to nearly \$285.4 million, or 72.5%, of their total eligible budget. A total of 18 state entities, amounting to 26.2% of total state eligible procurement, failed to meet their goals in 2012. The aggregate SBE expenditure for these agencies amounted to nearly \$20.6 million, or 14.8%, of their total eligible budget. The aggregate state procurement on small business was \$306 million and represented 57.4% of the total eligible budget across the state in 2012.

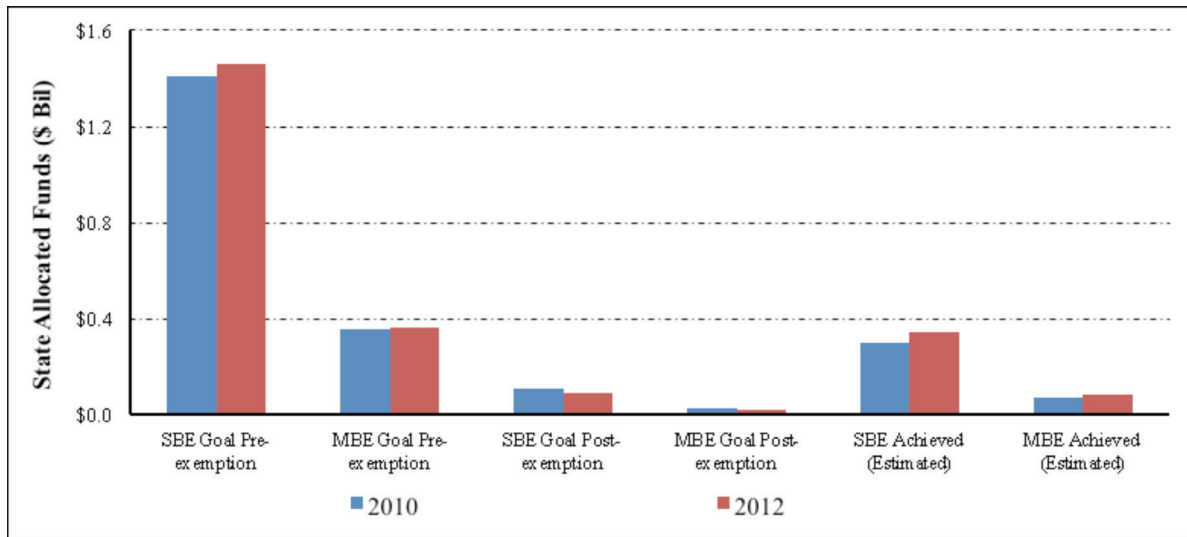


FIGURE 6: AGENCY GOALS FOR SBEs AND MBEs, 2010 AND 2012

SOURCE: DAS AGENCY DATABASE FOR SET-ASIDE PROGRAM

According to DAS records, a total of 54 state entities, representing 62.1% of the total eligible procurement in the state, met or exceeded the 6.25% MBE goal in 2010. Minority procurement for these agencies amounted to nearly \$64.9 million, or 19.7% of their total eligible budget. A total of 27 state entities, amounting to 37.9% of total state eligible procurement, failed to meet their goal in 2010. The aggregate MBE expenditure for these agencies amounted to nearly \$6.9 million, or 3.5% of their total eligible budget. The aggregate state procurement on MBEs was \$71.8 million and represented 13.6% of the total eligible budget in 2010.

According to DAS records, a total of 50 state entities, representing 76.4% of the total eligible procurement in the state, met or exceeded the 6.25% MBE goal in 2012. MBE procurement amounted to nearly \$62.6 million, or 15.4% of their total eligible budget. A total of 18 state entities, amounting to 23.6% of total state eligible procurement, failed to meet their goal in 2012. The aggregate MBE expenditure for these state entities amounted to nearly \$5.2 million, or 4.1% of their total eligible budget. The aggregate state procurement on MBEs was \$67.8 million and represented 12.7% of the total eligible budget across the state in 2012.

## **6.0 PROGRAMS FOR SMALL/MINORITY/WOMEN/DISABLED BUSINESS ENTERPRISES**

Currently, there are a number of programs that provide business support services to small and minority businesses. This section provides an overview of a selection of programs to assist SBE/MBEs to be more competitive and to potentially bid on state contracts. The information was compiled through analysis of Connecticut's Business Response Center's Program Finder, an online database of programs throughout the state that help businesses, along with questionnaire responses provided by contacts at identified programs.

It is noted that local Connecticut Small Business Development Center (CTSBDC) service centers, a statewide program that provides expert management and technical assistance to start-up and existing businesses in Connecticut, are opening around the state throughout spring and summer of 2013.

In addition, chambers of commerce throughout the state provide a variety of resources to members including, but not limited to, speed networking, SCORE, conferences and classes, mentor programs, and member educational events (such as writing a business or marketing plan).

### **6.1 AFRICAN AMERICAN AFFAIRS COMMISSION (AAAC)**

The African-American Affairs Commission (AAAC) is a semi-autonomous agency of the State of Connecticut that was established in 1997 by act of the General Assembly. AAAC derives its authority from Public Act No. 97-11, Section 24 and, for purpose of administration, reports to the Legislative Management Committee of the General Assembly. The mission of the AAAC is to improve and promote the economic development, education, health and political well-being of the African-American community in Connecticut. The AAAC accomplishes these goals through information sharing, the promotion of cultural awareness, community networking and legislation.

The AAAC updates its membership directory and reaches out to businesses through the organization's website and social media websites. Each year the AAAC recognizes the Business of the Year during its Classic Awards ceremony. The AAAC does not directly assist MBE or SBE businesses, but assists in directing inquiries to others that can provide guidance and support. The AAAC also annually arranges a week-long showcase of small businesses and human services organizations at the Capitol.

### **6.2 COMMERCIAL CONSTRUCTION INDUSTRY ASSOCIATION (CCIA)**

For more than 75 years, the Commercial Construction Industry Association (CCIA) has carried on its founding members' beliefs in the power of collective action and cooperation to grow the construction industry. CCIA comprises nine divisions, including the Associated General

Contractors of Connecticut and the Connecticut Road Builders Association, among others. CCIA has over 300 member companies statewide, and assists and advises non-member companies. Direct contact between the various market sectors gives CCIA members broader exposure to innovative delivery systems, construction methods, products, and services. CCIA is committed to “shaping the future of the construction industry” in order to advance the industry as a whole and help improve the quality of life for all Connecticut citizens.

CCIA uses several forms of communication, such as email distribution, website promotion, US mail, teleconferences, and in-house meetings to reach out to businesses. They provide a range of services designed to accommodate the unique needs of CCIA’s diverse member base. For example, they offer a wide variety of training programs that include monthly safety roundtables, training programs regarding compliance with state and federal regulations, programs relating to various aspects of insurance, and informational seminars on emerging and timely topics. CCIA does not identify whether its members are certified as SBEs/MBEs/WBEs. However, CCIA actively participates and acts as a resource, working with federal agencies and its national association partners, such as the Associated General Contractors of America and the American Road and Transportation Builders Association, when those groups are dealing with SBE/MBE/WBE participation issues on the national level. Specifically, CCIA has hosted training programs on DBE and MBE subcontracting requirements. Further, CCIA provides guidance to individuals considering opening businesses, and start-up businesses.

### ***6.3 Community Economic Development Fund (CEDF)***

The Community Economic Development Fund (CEDF) provides loans and technical assistance to small businesses and nonprofits in the state ranging from \$5,000 to \$250,000. In order to qualify, a project must benefit the community, such as increasing the economic base, creating jobs, providing a needed service or by being part of a community strategic plan. Two additional eligibility criteria include that (1) the business is located in one of the 56 targeted or preferred communities or (2) the income of the owner(s) is less than the statewide median income. CEDF can provide commercial or mixed-use mortgages up to \$500,000 if the borrower has a business located in the building. In addition, CEDF provides small business skills workshops throughout the state.

The purpose of CEDF’s microloan guarantee program is to foster business development and employment growth for woman- and minority-owned businesses that cannot access financing through conventional means. The program offers a 30% guarantee of principal on loans \$50,000 and under. The availability of the guarantee facilitates the potential for receiving a loan. DECD, partnering with CEDF, provides the loan guarantees on the direct loans offered through CEDF. Loan funds can be used for general business purposes, including working capital, machinery, equipment and startup financing.

### ***6.4 Community Investment Corporation (CIC)***

The Community Investment Corporation (CIC) is a nonprofit economic development lender contributing financial expertise and guidance to small business entrepreneurs in Connecticut and Rhode Island. Training and technical assistance are available to pre-screened applicants concerning all aspects of business planning and loan due diligence. A full array of business counseling services is available on an individual and group basis to companies within its microloan and DECD loan portfolios. Financing is provided to approximately 110 small

businesses each year and approximately 100 portfolios a year are eligible for ongoing technical assistance.

### ***6.5 Connecticut Procurement Technical Assistance Program (PTAP)***

The Connecticut Procurement Technical Assistance Program (PTAP) is one of 97 Procurement Technical Assistance Programs located throughout the United States. The Southeastern Connecticut Enterprise Region has hosted the PTAP Program since 1985. The purpose of the program is to assist small businesses entering into, or expanding their involvement in, federal, state, or municipal contract work. The program provides assistance to companies seeking contracting opportunities with prime government contractors. The services offered by PTAP include instructing companies about registrations, reviewing bid proposals, explaining federal and state set-aside programs, providing bid matches to some clients, and assisting with payment issues. The program aims to assist companies in all aspects of government bidding and contracting.

The program connects with businesses in a variety of ways including its website, informational seminars, attendance at chamber events, participation in networking events with congressional offices, and through referrals from state agencies. PTAP provides ongoing one-on-one training to clients. Additionally, they present half-day seminars throughout the year around the state in which they explain numerous topics on public bidding and contracting. The PTAP works with numerous small businesses, many of which are classified as MBEs or WBEs. Specifically, the PTAP has held “Matchmaker Events” for the last two years in which small businesses are brought together with prime government contractors.

### ***6.6 Greater New England Minority Supplier Development Council, Inc. (GNEMSDC)***

The Greater New England Minority Supplier Development Council, Inc. (GNEMSDC) is a nonprofit organization, one of 38 regional councils affiliated with the National Minority Supplier Development Council, Inc. (NMSDC) that serves all six New England states. GNEMSDC’s mission is to increase the procurement opportunities between corporate members and minority-owned businesses. GNEMSDC provides certification that is recognized nationally by corporations to qualified MBEs.

Membership consists of local and national Fortune 500 corporations, government agencies, universities, financial institutions, associations and organizations. GNEMSDC provides services to these members and to certified MBEs. GNEMSDC is governed by a board of directors and funded by corporate membership dues, certification fees, contributions, in-kind services and grants.

### ***6.7 Greater Valley Chamber of Commerce Women in Networking Grant***

The Women in Networking Grant program provides financial assistance to women 18 years of age or older in the Connecticut Greater Valley area including the towns of Ansonia, Beacon Falls, Derby, Oxford, Seymour and Shelton. The money is intended as a grant-in-aid for expenses to enhance the applicant’s current business or to start a new business. The grant can be used for expenses such as equipment, tuition, books, transportation, business wardrobe or childcare necessary to reach the applicant’s career goals. Applicants must demonstrate a need for financial

assistance with their expenses to improve their marketable skills or those of their business. The minimum one-time grant is \$500.

### ***6.8 The Hartford Economic Development Corporation (HEDCo)***

The Hartford Economic Development Corporation (HEDCo) acts as a one-stop assistance center for small businesses in the Hartford Metropolitan Area (including Hartford and 57 surrounding cities and towns) that are interested in locating in the Hartford area and that are woman-owned, minority-owned, or a startup business. HEDCo provides technical assistance, loan packaging, regulatory assistance, locational assistance and problem solving services. HEDCo works in tandem with the Greater Hartford Business Development Center (GHBDC) to stimulate economic development. GHBDC's primary focus is on small business debt financing and loans.

### ***6.9 New Haven Manufacturers Association (NHMA)***

The New Haven Manufacturers Association (NHMA) was established in 1913. The NHMA is a membership organization that consists of not only manufacturing firms, but also non-manufacturing firms in such areas as pharmaceuticals, consulting and banking. NHMA's goal is to promote issues important to the Greater New Haven manufacturing community, educate its members on business operations and provide a forum for the exchange of ideas and issues.

The NHMA reaches out to businesses through bi-weekly program meetings, which include presentations from local business, educational and government leaders. They also organize roundtable discussions, networking meetings and company tours. While they do not work specifically with state agencies to increase SBE or MBE participation, they collaborate with numerous organizations in order to support both manufacturers as well as the manufacturing workforce.

### ***6.10 Office of Small and Disadvantaged Business Utilization (OSDBU)***

OSDBU is a small business advocacy and advisory office with the responsibility for ensuring that small and disadvantaged businesses are provided with the maximum practicable opportunity to participate in federal agency contracting processes. Every federal agency is required to have an OSDBU. The OSDBU mission includes:

- To ensure that small business policies and goals of each federal agency are implemented in a fair, efficient, and effective manner to serve small businesses.
- To implement federal agency activities on behalf of small businesses, in accordance with Sections 8, 15, and 31 of the Small Business Administration, as amended.
- To provide opportunities, technical assistance, and financial services to the small business community.

OSDBU's customers include small businesses, small disadvantaged businesses, 8(a) firms, woman-owned businesses, historically underutilized business zone (HUBZone) businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, and disadvantaged business enterprises.

### ***6.11 Side Street to Main Street Business and Leadership Development Program***

In 1996, there were very few minority owned businesses in Middlesex County. At the urging of the NAACP, the Middlesex County Chamber of Commerce created the Side Street to Main Street Business & Leadership Development Program, and sought the financial support of Aetna, Inc., who has generously funded and supported the program ever since.

The program is a year-long entrepreneurial and business development course, with a rigorous curriculum, designed to assist minority small business owners in the community who have not received formal business training to become more successful by developing the attitudes, skills and qualities necessary for effective business ownership and success. Since the program began in 1997, more than 186 people have graduated. Admission to the program is competitive and open to all Connecticut minority businesses but preference is given to those located in Middlesex County.

Since the program only accepts 16 applicants annually, and more qualified applicants apply than can be accepted, the Middlesex Chamber of Commerce, through its nonprofit foundation, Business Industry Foundation of Middlesex County, started a supplemental program called “Business Know-How” with grant funding from Connecticut Light & Power Company and Yankee Gas. The first program took place in spring 2012 with 15 individuals participating over an eight-week period.

### ***6.12 Small Business Express Program (EXP)***

The Small Business Express Program (EXP) is a state-funded financial assistance program offered by DECD designed to support small business growth. Priority for funding is given to the following industries: precision manufacturing, business services, green and sustainable technology, bioscience, and information technology.

The General Assembly, through Public Act 11-1: An Act Promoting Economic Growth and Job Creation in the State, provided up to \$100 million for the EXP. The application process is competitive; funding is contingent on DECD discretion and availability at time of payment.

The program offers eligible small businesses an opportunity to apply for three separate funding options for proposed short-term projects.

- Option 1: EXP Revolving Loan Fund: \$10,000 - \$100,000; repayment term 1 to 10 years
- Option 2: EXP Job Creation Incentive Loan: \$10,000 - \$300,000; repayment term 1 to 10 years, optional deferment and forgiveness terms
- Option 3: EXP Matching Grant

For a business to be eligible for the program, they must: (1) employ not more than 100 employees, (2) have operations in Connecticut, (3) have been registered to conduct business in Connecticut for at least 12 months, (4) be in good standing with all state agencies, and (5) be current regarding the payment of all state and local taxes. Priority for available funding will be given to those eligible applicants who (1) are creating new jobs and (2) are within Connecticut’s economic base industries, as defined in C.G.S. §32-222, including but not limited to: precision

manufacturing, business services, green and sustainable technology, bioscience, and information technology sectors.

### ***6.13 Spanish American Merchants Association (SAMA)***

The Spanish American Merchants Association (SAMA), a nonprofit organization, was incorporated in Connecticut in 1992. "SAMA was created to assist business people, in particular Latinos, to acquire a better understanding of economic principles. Technical assistance is provided to promote business expansion, job creation and new entrepreneurship."<sup>87</sup>

Through its network of more than 500 local Hispanic business owners and organizations, SAMA coordinates the following activities through its three offices in Hartford, New Haven and Willimantic:

- Increase business relationships and partnerships between the corporate sector and small business owners
- Provide technical assistance and training to businesses and entrepreneurs
- Serve as a resource for merchants who have the desire to create or expand their business ventures
- Provide funding to small businesses for equipment, renovation, inventory and cash flow through a loan program

### ***6.14 US Department of Commerce - Minority Business Development Agency (MBDA)***

The Minority Business Development Agency (MBDA) helps to foster growth in businesses of all sizes that are operated by minority owners. The MBDA assists clients with technical capacities, access to capital, taking advantage of contract opportunities, and entrance into new markets. The MBDA operates a number of business centers across the country that provide MBEs with assistance identifying procurement opportunities, finding requests for proposals, and responding to proposals and bids. However, the MBDA does not currently have a business center in the state of Connecticut.

The MBDA also helps to build relationships between agencies and possible MBEs that could be utilized in federal contracting. The MBDA conducts an annual Minority Enterprise Development Week Conference to facilitate MBE outreach and conduct introductions with federal procurement personnel.

### ***6.15 US Small Business Administration (SBA) - Business Development Program***

The US Small Business Administration (SBA) 8(a) Business Development Program helps small disadvantaged businesses compete in the marketplace. The program requires that participating businesses align with the SBA size standards; are 51% owned by a socially or economically disadvantaged US citizen; are managed or operated by one or more individuals who are disadvantaged; and have been in business at least two years. The SBA does not certify

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87. SAMA Connecticut Mission Statement ([http://www.samact.org/pages/mission\\_statement.asp](http://www.samact.org/pages/mission_statement.asp))



small businesses, but does certify those businesses considered to be socially and economically disadvantaged. The Business Development Program fosters the growth of participating companies through one-on-one counseling, training, workshops, management advice, and technical guidance. The program also helps participating firms access federal contracting opportunities and become competitors in the government marketplace.

Owners are considered to be disadvantaged if their ability to compete in the marketplace has been impeded by reduced access to capital and credit relative to other participating firms. Individuals from several minority groups are automatically presumed to be disadvantaged; these groups include African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Subcontinent Asian Americans. Owners from other minority groups may also apply to the program, but must supply substantial evidence to support that they have been subject to bias and discrimination.

A firm can participate in the program for a nine-year term upon initial certification. When a DBE is accepted into the Business Development Program, the SBA monitors that the enterprise continues to meet program criteria. SBA also assists participating firms in developing a mentor-protégé relationship with a larger business. The mentor assist participating disadvantaged businesses by providing support to improve managerial capabilities, providing technical assistance, developing joint ventures, providing subcontracting opportunities, and enhancing firm competitiveness.

Businesses that qualify for the Business Development Program can also obtain assistance from SBA in obtaining a surety bond from a participating company for federal, state, municipal, or private projects. SBA can help small businesses obtain up to \$6.5 million in surety bonds from participating companies. SBA offers four types of surety bonds including bid, payment, performance, and ancillary bonds. A surety bond can provide the resources for an emerging MBE or SBE to obtain the bonding necessary to participate in larger contracts for which they might not otherwise be able to obtain outside bonding.

The US Government Accountability Office reported that 90% of the participating firms in the Business Development Program were minority owned. According to SBA, in Fiscal Year 2010, small businesses received more than \$18.4 billion in 8(a) contract dollars.

The SBA also offers the Historically Underutilized Business Zones (HUBZone) program to assist small businesses in urban and rural communities gain contracting opportunities with the federal government. Within the HUBZone program, the SBA also certifies the following business types:

- Service-Disabled Veteran-Owned Businesses
- Small Disadvantaged Businesses
- Women-Owned Small Businesses

### ***6.16 Women's Business Development Council (WBDC)***

The Women's Business Development Council (WBDC) of Connecticut helps clients increase productivity, maximize preparation, earn money, and continue to achieve their personal and professional business goals. Founded in 1997 as a nonprofit organization, the WBDC is one

of over 120 SBA-supported women's business centers nationwide. Assistance includes small business training and counseling, financial coaching, and workshops pertaining to a range of professional avenues. Programs and services are offered at no charge or for a minimal fee, and are conducted throughout Connecticut throughout year. Programs are open to everyone (women and men), but some programs require an application and assessment interview.

## 7.0 ANALYSIS OF SURVEY OF DAS-CERTIFIED COMPANIES

### 7.1 METHODOLOGY

An online survey of DAS certified SBE/MBE companies was conducted during March 2013 to understand perceptions of the state SBE/MBE certification process and the Connecticut Small and Minority Business Enterprise Set-Aside Program. All companies on the DAS certified SBE/MBE list were contacted via email to complete an online survey. 554 companies out of 3,289 companies, or almost 17% of companies, responded. The following analysis shows some key findings from the surveys.

### 7.2 DEMOGRAPHICS

#### 7.2.1 *Ownership*

About 55% (297) of survey respondents indicated that their business was at least 51% owned by a minority or a woman. About 44% (242) of survey respondents indicated that their business was not at least 51% owned by a minority or a woman. Two survey respondents indicated that they did not know if their business was at least 51% owned by a minority or a woman.

#### 7.2.2 *Geography*

The majority of survey respondents indicated that their businesses were located in one of three Connecticut counties: about 41% (218) of survey respondents indicated that their businesses were located in Hartford County; about 21% (113) of businesses were located in New Haven County, and about 12% (64) of businesses were located in Fairfield County. The rest of firms were located within the Tolland, Middlesex, Litchfield, New London, and Windham counties of Connecticut (about 25%, 132). According to the 2010 U.S. Census Survey of County Business Patterns, 78% of establishments in Connecticut were located in either New Haven, Fairfield, or Hartford counties.<sup>88</sup> Approximately 74% of the businesses in the survey are from these counties; therefore, the geographic distribution in the survey approximately reflected the geographic distribution of businesses in Connecticut.

#### 7.2.3 *Industry*

Survey respondents classified their businesses by the two-digit North American Industry Classification System (NAICS). About 79% of survey respondents categorized their businesses into one of three NAICS industry categories: about 43% (232) of survey respondents indicated that their businesses were in the construction industry; about 21% (113) of survey respondents said that their businesses were in “other services;” and about 15% (82) of survey respondents said that their businesses were in the professional, scientific, and technical services industries. The rest of the survey respondents indicated that their businesses (21%, 118) were in one of fourteen other NAICS industry code categories.

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88. United States Census Bureau Statistics of U.S. Businesses (SUSB) Main

#### *7.2.4 Years in Business*

When analyzing survey respondents by how long their businesses have been in operation, about 70% (384) of survey respondents indicated that their businesses were established more than ten years ago. About 14% (76) of all businesses were established between one and four years ago, and about 15% (82) of all businesses were established between five and nine years ago.

When analyzing year of establishment by minority-owned companies in comparison to non-minority owned companies, a divergence in percentages was discerned. For example, about 73% (56) of survey respondents who formed their businesses within the past 1 to 4 years represent minority-owned businesses. Furthermore, about 71% (59) of survey respondents who formed their businesses in the past 5 to 9 years represent minority-owned businesses. These statistics show that the majority of more recently established businesses tend to be minority owned. This has implications in regards to challenges that new businesses face when competing with mature businesses. For example, newer companies may struggle to solidify their business reputation while mature companies already have an established network that can support their business.

Further, about 83% (201) of all non-minority firms surveyed were formed more than ten years ago, while only about 59% (176) of all minority-owned businesses formed their business more than ten years ago. Thus, these statistics also show that there are more non-minority owned business that have been in business for a longer time than minority-owned businesses. Consequently, mature non-minority owned businesses may have an advantage when competing against newly established, minority-owned businesses.

#### *7.2.5 Revenues*

About 47% (246) of all survey respondent businesses grossed more than \$1 million in 2012. About 36% (189) of all survey respondent businesses grossed between \$100,000 and \$999,999 dollars in 2012, while 17% (91) of all survey respondent companies grossed less than \$100,000. About 57% (139) of all non-minority survey respondent companies grossed revenues of more than \$1 million dollars in 2012, while only about 35% (104) of all minority survey respondent businesses grossed revenues of more than \$1 million in 2012.

Further, 50% (88) of minority-owned businesses that have been in business for more than ten years grossed revenues of more than \$1 million in 2012, while about 63% (126) of non-minority owned firms that have been in business for ten years or more grossed more than \$1 million in revenues in 2012. Even though this question only measures revenues for one year, it still has implications in regards to the effectiveness of using years in business as a capacity measure.

When analyzing revenues by industry, about 47% (116) of companies that grossed more than \$1 million in revenues in 2012 were in the construction industry. Further, about 60% (70) of the businesses in the construction industry that generated revenues of \$1 million or more in 2012 were non-minority owned and about 36% (42) were minority owned. These statistics show that most firms within the construction industry were more likely to gross higher revenues than firms in other industries. However, non-minority owned construction businesses tend to gross more in revenues than minority-owned businesses in the construction industry.

### 7.3 SURVEY QUESTIONS

The following questions are select questions from the survey that provide insight on how DAS certified SBE/MBE companies feel about issues that companies face in trying to start, operate, and grow their businesses. Furthermore, some questions show how these companies feel about the DAS SBE/MBE certification program, as well as the bidding process for state contracts.

**7.3.1 What sources of financing did you have available to start your business? Select all that apply.**

Answer Options	Response Percent	Response Count
Federal government (i.e. , SBA)	4%	18
Equity capital	8%	39
Friends or family	20%	94
Loan from a bank	22%	104
Personal equity	78%	376
Comments	8%	39
	<i>answered question</i>	<b>480</b>
	<i>skipped question</i>	<b>74</b>

The majority of respondents indicated that they used their own equity to start their businesses. A sizable amount of survey respondents (about 22%) indicated that they received bank loans to finance the start of their businesses.

When analyzing the procurement of start-up capital by minority-owned businesses in comparison to non-minority owned businesses in the survey, differences were observed. For example about 10% (25) of survey respondents representing non-minority businesses used “equity capital” to finance their business compared to only 4% (13) of survey respondents representing minority-owned businesses. About 24% (57) of survey respondents representing non-minority owned businesses acquired loans through banks and 15% (44) of survey respondents representing minority-owned businesses indicated that they received bank loans. Approximately the same percentage of businesses, regardless of race of owner (about 4%), received loans from the SBA. A slightly higher percentage of survey respondents representing minority-owned businesses received start-up capital from friends and family (about 18%, 55), while about 16% (39) of survey respondents representing non-minority owned businesses received funds from this source. Lastly, about 73% (219) of survey respondents representing minority-owned businesses were able to fund their businesses with personal equity, while about 64% (154) of survey respondents representing non-minority owned businesses tapped into this resource for capital to finance their business.

These statistics show that minority and non-minority businesses tend to procure capital from somewhat different sources. Non-minority businesses tend to secure capital from private sources that are traditionally in business to invest in companies (equity capital, banks), while more minority-owned businesses receive money from their personal networks. Personal networks most likely do not possess the same level of capital as banks, venture capital funds, etc.

**7.3.2 Have you ever done or tried to do business with the State of Connecticut? (Submitted a bid, been awarded a state contract, bid as a prime contractor, bid as a subcontractor).**

CONNECTICUT DISPARITY STUDY: PHASE I  
ANALYSIS OF SURVEY OF DAS-CERTIFIED COMPANIES

Answer Options	Yes	No	Do Not Know	Response Count
Submitted a bid?	301	66	7	374
Awarded a state contract?	195	157	4	356
Bid as a prime contractor?	181	151	14	346
Bid as a subcontractor?	187	154	11	352
			<i>answered question</i>	<b>394</b>
			<i>skipped question</i>	<b>160</b>

According to the table, about 80% (301) of survey respondents indicated that they have submitted a bid as a prime contractor or subcontractor for a state contract, and about 17% (66) of survey respondents indicated that they never have.

About 55% (195) of survey respondents have been awarded a state contract, while approximately 44% (157) have never been awarded a contract.<sup>89</sup> About 56% (136) of non-minority owned firms in the survey indicated that they have submitted a bid on a state contract, and about 53% (158) of minority-owned firms have submitted a bid on a state contract. About 43% (106) of non-minority owned firms and about 29% (86) of minority-owned firms have been awarded a state contract.. This analysis supports the case that there is a difference between minority-owned firms and non-minority firms in terms of receiving state contracts.

**7.3.3 If you feel you have experienced discrimination in the course of conducting your business, please explain. (Open-ended question)**

Answer Options (Standardized)	Response Percent	Response Count
Yes, language discrimination	0%	1
Yes, disability discrimination	0%	1
Yes, religious discrimination	0%	1
Don't know	1%	2
Yes, because of age	1%	2
Yes, veteran discrimination	1%	2
Yes, geographical discrimination	2%	5
Yes, union discrimination	2%	5
Business favoritism/ discrimination	2%	7
Yes, because of gender	5%	15
Not applicable	6%	20
Yes, because of being small business	9%	27
Yes, but unable to pinpoint discrimination type	10%	32
Yes, racial discrimination	11%	34
Can't be verified through answer	14%	42
No	37%	113
	<i>answered question</i>	<b>309</b>
	<i>skipped question</i>	<b>245</b>

<sup>89</sup> The number of survey respondents who had bid on a state contract is less than the number of respondents who said they were awarded a contract, perhaps because respondents did not understand the definition of "bidding" on a contract.

This survey question shows that many survey respondents have felt discriminated against. However, the type of discrimination varies significantly among survey respondents. For example, about 9% of businesses indicated that they have felt discriminated against because of business size, about 11% feel that they have been racially discriminated against and about 5% of businesses feel that they have been discriminated against because of gender. About 37% of all survey respondents said that they have never felt discriminated against.

When analyzing discrimination by non-minority businesses in comparison to minority-owned businesses, differences are observed. About 30% (90) of survey respondents who represent minority-owned businesses indicated that they felt they have been discriminated against in some form, while only about 15% (36) of survey respondents who represent non-minority businesses indicated that they have been discriminated against. Further, about 8% (25) of survey respondents who represent minority-owned businesses indicated that they have been racially discriminated against, while only about 4% (9) of survey respondents who own non-minority businesses indicated this. Additionally, about 4% (13) of survey respondents who represent minority-owned businesses indicated that they have been discriminated against because of gender, and only about 1% (2) of survey respondents who own non-minority businesses indicated being a victim of gender discrimination.

These statistics show that, overall, survey respondents representing minority-owned businesses in the survey have felt more discriminated against than survey respondents representing non-minority owned businesses. Given these results, it is important to explore the effects of discrimination on business development and profits. Further, it is critical to understand how perceptions of discrimination alter behavior and decision-making. Will businesses take fewer risks because they feel constrained by discrimination? Will they be less likely to bid on state agency projects because of discrimination?

**7.3.4 Do you have any barriers to company growth? If so, what are the barriers? (Open-ended question)**

Answer Options (Standardized)	Response Percent	Response Count
Fraud	0%	1
Don't want to expand	1%	3
Discrimination/favoritism	1%	5
Business location	1%	5
Unions	1%	5
Marketing	1%	5
Taxes	2%	6
Competition	2%	6
Business size	2%	8
State agencies/state set-aside program	2%	9
General cost of doing business	3%	13
Government regulation/law	4%	14
Unspecified	4%	17
Lack of projects	6%	24
Finding good employees	7%	27
General economic distress	9%	33
No	26%	101
Financing/bonding/cash flow constraints	27%	103
	<i>answered question</i>	<b>385</b>
	<i>skipped question</i>	<b>169</b>

This survey question shows that, overall, many small and minority-owned businesses believe there are barriers to business growth. The most significant barrier was financing and bonding issues (about 27%). Also, many survey respondents indicated that generalized economic problems were a barrier to growth. Furthermore, many survey respondents felt that their only growth barrier was lack of projects (about 6%); many survey respondents stressed that they only need a chance to prove their qualifications to grow. About 26% of survey respondents indicated no barriers to growth.

When analyzing this question by non-minority owned businesses in comparison to minority-owned businesses, differences were observed. For example, about 24% (73) of survey respondents representing minority-owned businesses indicated that their main barrier to business growth was financing, bonding, or cash flow issues. Conversely, only about 11% (27) of survey respondents representing non-minority owned firms indicated that this was a problem. Non-minority owned businesses were more likely to select "general economic distress" (about 8%, 19) as a barrier to growth. About 5% (14) of survey respondents representing minority-owned businesses indicated this as a factor. Additionally, about 21% (50) of survey respondents representing non-minority businesses said that they have no barriers to growth, and 16% (49) of survey respondents who represent minority business enterprises indicated this.



Undoubtedly, these statistics show that business financing can be a problem, especially for minority-owned businesses. As seen in a previous question, minority-owned businesses are more likely to receive money from their personal networks, as opposed to financial institutions. Hence, it is important to find out if minority-owned businesses are being turned away from financial institutions and for what reasons. It is also important, then, to comprehend the criteria financial institutions use to arrive at credit ratings for individuals. If minority-owned businesses have lower credit scores, what are the resources in Connecticut for these businesses? Also, what is the market penetration of financial institutions that serve businesses with lower credit scores? These questions need to be addressed in order to design an effective financial system that can assist minority-owned businesses that struggle financially.

**7.3.5 What are your thoughts on the state certification process for small and minority/women/disabled businesses? Are there any improvements that could be made? (Open-ended question)**

Answer Options (Standardized)	Response Percent	Response Count
More contracts as a result of certification	1%	2
Stop discrimination	1%	2
Program should be eliminated	1%	4
N/A	2%	5
Don't know	3%	8
More outreach/financing/training, networking opportunities	3%	9
Improved management/communication/staff levels	4%	11
Program requirement changes	4%	13
Answer can't be verified	5%	14
More work for SBE/MBE	5%	14
Address company fraud	7%	20
No thoughts	11%	31
Process streamlining	27%	79
Satisfied with certification	28%	83
	<i>skipped question</i>	<b>259</b>
	<i>answered questions</i>	<b>295</b>

Many survey respondents (about 27%) indicated that the certification process needs to be streamlined in order to eliminate excessive paperwork and other time-consuming requirements. About 4% of the survey respondents said that DAS needs to change the program to relax bonding requirements and to eliminate the requirement to prove that their company is, in fact, a certified business. However, about 28% of survey respondents indicated that they were satisfied with the program.

When analyzing this question by minority-owned businesses in comparison to non-minority owned businesses, about 16% (49) of survey respondents who represent minority-owned

businesses indicated that they were satisfied with the certification program compared to about 13% (33) of survey respondents who represent non-minority owned businesses. 17% (50) of survey respondents who represent minority-owned businesses indicated that the certification process needs to be streamlined, while about 10% of survey respondents who represent non-minority businesses indicated this. Additionally, about 5% (16) of survey respondents who represent minority-owned businesses indicated that fraud needs to be addressed to improve the program, while only about 2% (4) of survey respondents who represent non-minority businesses indicated this.

These statistics show that many survey respondents who represent certified minority- and non-minority-owned businesses agree that the certification process should be more efficient. Survey respondents cited excessive paperwork as a hindrance to addressing more pressing issues in their businesses. Further, many survey respondents indicated that the certification and re-certification processes take too long. Additionally, many minority-owned businesses cited that DAS must eliminate “front companies,” such as women-owned businesses where their husbands run daily business operations.

**7.3.6 What do you believe can be done to increase opportunities for SBE/MBEs as meaningful participants in contracting opportunities in the public sector? (Open-ended question)**

Answer Options (Standardized)	Response Percent	Response Count
Reciprocity	0%	1
Transparency	0%	1
Program is good	1%	2
Less contract dollars/opportunities	1%	3
Eliminate favoritism/discrimination	1%	3
Local business preferences	1%	4
N/A	2%	5
No race preference program/equal opportunity	3%	8
Don't know	4%	11
No/do nothing	5%	13
Streamline bid/certification process	6%	18
Enforcement/qualification checks	7%	21
Unable to verify answer	9%	26
More contract dollars/opportunities	15%	41
Change bid/certification requirements	17%	49
More training/ networking/ financing/ marketing opportunities	27%	75
	<i>skipped question</i>	<b>273</b>
	<i>answered question</i>	<b>281</b>

Many survey respondents (about 27%) indicated that DAS needs to implement more training and networking programs and events. About 17% of respondents said that the state contracting process needs to be changed. Survey respondents proposed changes such as eliminating

prevailing wage requirements and increasing the prequalification threshold. Many survey respondents (about 13%) also indicated that they would like an increase in state contracting dollars for SBE/MBE businesses.

About 20% (61) of survey respondents representing minority-owned businesses believe that increasing training, networking, and financing opportunities is the best way to increase opportunities. Only about 6% (14) of survey respondents representing non-minority owned businesses indicated this. This difference shows that minority-owned businesses are more likely than non-minority owned businesses to favor an expanded program scope that targets business development programs.

**7.3.7 Do you know how to find prime contractors, other companies or SBE/MBEs to assist with a project?**

Answer Options	Percent Response	Response Count
No	34%	138
Yes	57%	234
Do not know	9%	39
	<i>skipped question</i>	<b>143</b>
	<i>answered question</i>	<b>411</b>

This survey option shows there are still a sizable number of subcontractors (about 34%) that do not know how to contact prime contractors for work. Hence, the responses reveal that a substantial portion of contractors could benefit from networking events that allow for interactions among subcontractors and prime contractors.

When analyzing this question in terms of minority-owned businesses versus non-minority owned businesses, it is evident that minority-owned businesses are less knowledgeable in locating prime contractors. About 29% (87) of minority-owned businesses indicated that they do not know how to find prime contractors or other companies to assist on projects, compared to about 21% (50) of non-minority owned businesses. These statistics show that some minority-owned businesses need more training and networking opportunities to understand the contracting process and gain more opportunities.

**7.4 SURVEY CONCLUSION**

All of these questions provide significant insight on challenges that certified SBE and MBE businesses face and their perceptions regarding the state certification process for the set-aside program. It is evident that many certified minority-owned businesses struggle with financing, training, and networking. In addition, younger businesses tend to have additional issues with growing their networks in order to compete with more established businesses. Consequently, minority-owned businesses could benefit from effective programs that target these issues. It is also clear from the survey that many businesses, both minority and non-minority owned, are frustrated with the certification and bid process. They want a clear, streamlined process.



## 8.0 SUMMARY OF FOCUS GROUP PROCEEDINGS

Evolution Enterprises LLC conducted five focus groups around the state in March and April 2013, Participants included 10 non-certified prime contractors and one non-certified subcontractor, 10 certified Small Business Enterprises (SBEs), and 29 cross certified companies that between them reflect 23 SBE certifications: 16 Minority Business Enterprise (MBE) certifications, 17 certified Women Business Enterprise (WBE), and one certified Disabled Business Enterprise (DisBE) in person.<sup>90</sup>

Date of Session	Location	Focus	# of Participants
March 7, 2013	CERC/CASE, Rocky Hill	MBE	12 (2 from 1 company) company)
March 11, 2013	Workforce Alliance, New Haven	SBE	11
March 19, 2013	Eastern Connecticut Workforce Investment Board, Franklin	MBE	10
April 2, 2013	CERC/CASE, Rocky Hill	Prime*	11
		MBE	9 (2 from 1 company)

\*included one WBE and one WBE/MBE

FIGURE 7: FOCUS GROUP SESSIONS

The sessions were recorded and notes were taken to ensure accuracy of transcription. The attendees were notified in advance that the session was being recorded and were assured that their identity, and that of their company, would be held in confidence.

The following highlighted subsections reflect the demographics and recurrent themes expressed by session participants. Under each subsection direct comments are provided, where applicable, from participants addressing the topic theme. A more detailed description of the focus groups is provided in Appendix F.

### 8.1 DEMOGRAPHICS OF FOCUS GROUP PARTICIPANT COMPANIES

Of the 10 non-certified prime contractors and 1 non-certified subcontractor, three had over 100 employees, while three had 5-10 workers. This group was overwhelmingly focused in construction (8) and construction services (9) and had been in business for over 10 years (9). Nine of these firms were corporations.

Of the 10 firms certified solely as an SBE, five were primarily construction orientated while four others provided services outside of the construction industry. The numbers of employees at these firms were concentrated in the mid-range of 5-10 (3) and 10-50 (2); the companies had overwhelmingly been in business for over 10 years (8). Six of these firms are LLCs, two are corporations and two are sole proprietorships.

<sup>90</sup> The certifications listed are all included in the state's minority business enterprise (MBE) program, as follows: Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disable Business Enterprise (DisBE) Hence, all of these businesses are certified as MBEs and the stated certifications are used for specificity reasons.

Of the 29 cross certified firms that participated in the focus groups, only one employed more than 100 people, while eight firms employed 5-10, and six firms each employed 1-5 and 10-50 workers. Seventeen of this group of firms have been in business for longer than 10 years with the other 12 companies evenly divided between 1-5 years (6) and 5-10 years (6). Over half of the companies in this category were in the construction industry (15). Firms in construction services and non-construction services were almost evenly split at 10 and nine companies respectively. Seven firms indicated that they produce a good or product. The prevalent form of business in this group of companies was as an LLC (17) with the next most popular form as a corporation (11, of which nine are Subchapter S).

## 8.2 STARTING A BUSINESS

The most prevalent way in which the non-certified companies financed their start was through self-funding (3). Other sources of start-up financing were private investor (1), family investment (1), earned equity (1), and family business succession (1).

Among those firms solely certified as SBEs, three were self-funded at start up, two received family financing, two were able to obtain bank financing and one was financed by HEDCo.

Certified MBE, WBE and DisBEs were overwhelmingly self-financed at the start (17). Two entrepreneurs mortgaged their homes to finance their business startup, two others received family financing, two received bank loans, two obtained SBA backing, and one took over the family business.

## 8.3 RUNNING A BUSINESS

Of the non-certified companies interviewed, market sector concentration was split between public contracts (8) and private contracts (5). The type of work performed in the public versus the private sector was similar. Profit margins in private work were indicated to be generally higher than in the public sector with most operating throughout Connecticut (9), followed by those operating throughout the New England region (2), and one doing business nationally. Barriers to growth most cited involved the economy and bureaucratic requirements.

Of those firms categorized as solely SBEs, the market sector concentration was dispersed among the public (4), private (3), and half and half (4). The type of work performed did not change much between the public and private sector, but the amount of bureaucracy in the public sector was often a subject of complaint. Six companies considered their market to be statewide while three operated throughout New England and the Northeastern portion of the country, two nationwide and two internationally.

Generally, the barriers to growth mentioned most often were the conditions placed upon them by state government and the inconsistency in those requirements.

The multi-certified companies also operated in a rather even market segment mix between public (15) and private (13). Based on the participants' responses, it seems that the type of work performed does change somewhat depending upon the market sector; generally, participants commented that private sector profit margins are higher. As a group, these firms defined their

market both more narrowly (in some cases) and more broadly (in other cases) than other focus group participants. Seventeen firms considered Connecticut their primary marketplace while 11 were focused throughout New England; six sold nationally, three internationally, four throughout Greater Hartford, and one in New Haven and Hartford.

The \$15 million maximum annual gross revenue threshold for the state's SBE and MBE certification was generally considered too high, with comments indicating that this threshold puts the smaller SBEs/MBEs at a disadvantage competitively. Inconsistency with the state's compliance and enforcement of set-aside program rules and requirements was another often-mentioned barrier to growth. Lastly, paperwork, bonding, and insurance requirements for state jobs were generally seen as barriers to growth.

## **8.4 EXPERIENCE WITH THE STATE**

All of the non-certified prime and subcontractors participating in the focus groups have done business with the state or one of its agencies. Most of these firms have received some form of assistance in doing business with the state, and find out about state RFPs or new projects from a broad base of resources. All are thoroughly familiar with how the bid process works and what requirements must be met. Most participating firms in this category found some aspect of the bid process to be unfair and payment experience from the state is mixed. Change orders have no impact on these firms' set-aside goals, meaning that a goal stays the same regardless of change orders.

Five of the participants in this category have experienced projects being conducted through municipalities or state agencies not required to meet set-aside requirements, although they were state funded.

Interviewed firms certified only as an SBE have all tried to do business with the state with very few receiving any assistance to do so. Most of these companies are aware of various ways to find out about state RFPs or new projects and have a good knowledge of how the state's bid process works and what the requirements are. As a group they do not feel any impact in the set-aside goal as a result of change orders. Three firms reported occasions when they felt the bid process was unfair while about half (5) of the companies present told of problems with receiving state payments on contracts. They mentioned a number of regulations that present barriers for all small businesses, including bonding and business volume requirements and paperwork that is prohibitively onerous. None of the firms had experienced municipalities or state agencies not required to meet set-aside goals when state funds were involved.

Most firms that participated in the focus groups with multiple certifications have done, or have tried to do, business with the state or one of its agencies. Those that have not tried to do business with the state mentioned bonding, and the amount of paperwork required, as deterrents. Many have received some form of assistance with regard to doing business with the state but for the most part, do not feel that the help received was effective. Knowledge of where to find out about state RFPs or new projects is generally good, as is knowledge of how the state's bid process works, and the requirements that must be met to bid on a state project. Although most know how the bid process is supposed to work, the general feeling is that the way it actually works is different and that the rules are not enforced. A lot of frustration was expressed with inconsistent bid requirements from one state agency and with municipal bid requirements. None of the

participants were aware of any incident where change orders were issued which impacted the goal.

## **8.5 EXPERIENCE WITH SBE/MBE PROGRAMS**

The non-certified firms that participated in the focus groups have knowledge of how to find SBE/MBEs and have all participated in bids with the state which required them to conform to goals. As a group, most feel that utilization requirements have not increased opportunities for minorities. Opinions vary on what can be done to increase opportunities for minorities as meaningful participants in contracting and what can be done to improve existing SBE/MBE programs.

Firms certified only as SBEs generally know how to find SBE/MBEs and most have participated, or attempted to participate, with state bids which required compliance with state utilization goals. None of the participants in this category felt that utilization goals increased opportunities for minorities to participate in state contracting. Many felt that the state and prime contractors like to stay in their “comfort zone” and do business with the same partners over and over, so there are few real opportunities, and that many people don’t think about how business works when putting the RFPs together. Participants also expressed concerns over fraud within the program, including both certified companies that are fronts or pass-throughs for larger or non-minority owned businesses, as well as a number of “unqualified” minority-owned businesses (e.g., someone who has another full-time occupation) on the list that make it difficult to find the “real” firms with whom they could partner. Improvements expressed ranged from quicker payments, restructuring bids, and better bonding and technical assistance for minorities to tighter scrutiny by the state.

Multi-certified participating firms generally have some knowledge of how SBE/MBEs are found even though they themselves are normally not in a position to bring on board another certified firm to perform on a state contract. Strong views were expressed about utilization requirements. The views on the impact of utilization requirements for minorities in contracting are varied as are the thoughts on what can be done to increase opportunities for SBE/MBEs in contracting and what impact complying with state requirements have had on companies’ ability to compete for contracting opportunities.

## **8.6 EXPERIENCE WITH SBE/MBES**

Non-certified firms have utilized SBE/MBEs numerous times over the last five years as subcontractors (none were able to recall a firm count). Subcontractors were chosen primarily based on a non-certified firm’s past experience with them and their reputation. The impact of complying with the state SBE/MBE requirements is minimal because everyone is in the same boat. The firms in this category do not have problems with bonding but are aware of problems that many subcontractors face. They have no solution for this problem.

In the category of participating company certified solely as an SBE, utilization of SBE/MBEs was not widespread. In a few cases, firms expressed frustration about being required to seek out other SBE/MBEs when many of them felt capable of performing on a whole contract utilizing in-house capabilities. The necessity of complying with state SBE/MBE requirements is a part of



their lives for which they have developed various ways of coping. Subcontractors are primarily chosen based upon familiarity. Bonding is an issue with this group but can be obtained.

Multi-certified firms generally do not utilize other SBE/MBEs as subcontractors although they are familiar with where to find them if needed. When subcontractors are used they are chosen by price and quality of work, past working relationships, and the subcontractor's relationship with a prospective client. As a group they do not feel that compliance with the state utilization requirement has been a very positive factor in getting state jobs. They cite loopholes in the requirements that allow front companies to gain certification and be utilized on state contracts. Most of these firms have experienced difficulties in obtaining bonding which has stymied their growth prospects.

## **8.7 SBE/MBE SUPPORT**

Participating non-certified prime and subcontractors did not express any strong opinions on whether or not enough SBE/MBEs exist in the marketplace.

Those participating firms certified solely as SBEs and those multi-certified firms interviewed had vastly different opinions about whether or not enough SBE/MBEs exist in the marketplace.



## 9.0 SUMMARY OF AGENCY SURVEYS

In addition to the in-person interviews of contacts at key state agencies, the research team also solicited feedback from all agencies through an online survey during March 2013.

### 9.1 SURVEY OF GOAL-SETTING AGENCY CONTACTS

Fourteen agency contacts who are in charge of filling out all set-aside goal forms for approval by DAS, out of 71 in total (20%), responded to the online survey. The majority of the state employees in charge of agency goal setting were in charge of a single agency, but some within smaller agencies set goals for more than one agency. Most respondents said that they either occasionally or often referred to the DAS certification list when putting together a project proposal or bid. However, the respondents also noted that they do not receive a formal notification when the DAS-certified list has been updated. The majority of employees surveyed said that they primarily search the certified list by company name, indicating they typically utilize the same vendors based on previous performance but they also indicated that they often search by industry and certification type. The majority of the respondents categorized the search feature implemented in the DAS certified list as being moderately easy to apply.

The methods that each respective agency applies for the SBE and MBE goals varied widely across the respondents. Some respondents said that as long as preferred vendors are available and competitive, it is very likely they will be awarded contracts. In contrast, many respondents said they send quarterly reminders to procurement agents and integrate SBE and MBE consideration into the formal evaluation model. Other respondents said they typically instruct procurement agents to first search the DAS-certified list before considering other vendors. Nearly all of the respondents stated that their only interaction with CHRO and DAS was through the submission of quarterly and annual goal reports, but some stated that they also utilize the DAS website to search for certified vendors in order to set goals for contracts.

The respondents' answers varied widely again when they were asked what the goal of the state's set-aside program for small and minority businesses should be. Many of the responses highlighted the importance of bolstering small and disadvantaged business from within the state rather than distributing state dollars to external firms. Some respondents stressed the importance of providing increased opportunities for SBEs and MBEs to bid on state contracts while others focused on the necessity of goals to ensure equal access to state contracts. Most of the respondents emphasized the need to increase outreach to SBE and MBE owners to become certified because many are unaware of the program. Other respondents suggested that the paperwork and goal-setting process be streamlined and additional consequences be imposed for agencies that fail to meet their respective goals.

### 9.2 SURVEY OF PROCUREMENT AGENCY CONTACTS

Twenty of 149 agency contacts (13%) who handle procurement processes responded to the online survey. The majority of employees who procure products for the state said that they only make purchases for a single state agency, while a small number from smaller agencies said

they purchase for multiple organizations. The majority of respondents stated that they refer to the DAS certification list occasionally or every time they put together a procurement contract. However, many of these respondents said that they do not receive updates from DAS when the certification list has been updated. The method used to search the DAS-certified list varied widely across procurement agents with the majority saying they used a combination of industry type, company name, and certification type. Nearly all respondents agreed that the DAS-certified list was moderately to very easy to use.

The majority of respondents stated that their only interaction with CHRO was through the quarterly and annual goal updates. A few of the state agencies reported that they have tried to contact CHRO with questions in the past but have found the commission understaffed and have attained little assistance. Similarly, the respondents stated that their only interaction with DAS was through the quarterly and annual goal updates. In contrast to the opinion presented from the respondents about CHRO, a few purchasing agents reported that DAS was well staffed and responsive to inquiries.

The procurement agents were surveyed about the data collected in their respective financial systems as these systems vary greatly across state agencies. The majority of the procurement agents surveyed stated that purchasing card expenditures to SBE and MBE vendors are tracked manually but some acknowledged that their financial systems made this calculation automatically. In addition, many respondents stated that their existing financial systems were wholly unable to track subcontractors. However, a substantial portion stated that they were not sure.

The respondents' answers varied widely again when they were asked about the goal of the state's current set-aside program for small and minority businesses. Many of the responses highlighted the importance of bolstering small and disadvantaged business from within the state rather than distributing state dollars to external firms. The respondents also emphasized the importance of providing additional opportunities for SBE and MBE to bid on state contracts. Many of the respondents emphasized the need to increase outreach to SBE and MBE owners and stated that increased participation might make achieving goals easier for their respective agencies.

## 10.0 FINDINGS

### 10.1 OVERVIEW

What are the objectives of the state's Small and Minority Business Enterprise Set-Aside Program? How could the current program be improved? These questions have been posed at every interview and focus group, as well as asked through online surveys to a variety of stakeholders.

Many ideas revolved around streamlining the certification process to make it simpler and less time-consuming to negotiate. Others noted the need for increasing business opportunities for a variety of small and minority-owned businesses in the marketplace. Support services and resources to increase the potential for small and minority-owned businesses to be able to take on state contracts were also seen as being needed. In addition, trusting that the database of certified companies included only those that were truly qualified to perform the work was a factor for both prime contractors and subcontractors, so that quality working relationships could be formed, especially for the purpose of developing proposals and bids for state contracts. Finally, having a legally defensible state program that recognizes the differences among various protected classes is essential. The state's current MBE program does not meet this standard.

The contracting goals established in state statute need to be related to a current assessment of whether there are disparities in the marketplace among different groups. The state must show, through inference by utilizing econometric statistical modeling, that discrimination is the cause of the disparity in order to create a legally defensible program. Further, the program must be *narrowly tailored* to correct for the persistence of discrimination. Also, detailed contracting information, including certified subcontractors that are utilized to meet program goals, must be available for econometric analysis to establish, monitor, and modify program goals on an ongoing basis.

The findings, based on the study research, are focused on four main themes: legal issues, data collection, process enhancements, and business support. The key findings clarify the objectives of the state's set-aside program with the recommendations suggesting how these objectives can best be met.

### 10.2 LEGAL REVIEW

With the review of several legal cases that specifically addressed minority and women preferences, it is evident that Connecticut's set-aside program statute, C.G.S. §4a-60g, will not be upheld in the Second Circuit court or any court of law, if challenged. Connecticut's statute does not meet the *strict scrutiny* standard of review used for evaluating race-preference programs in the courts, as set forth by the US Supreme Court in *City of Richmond v. J.A. Croson (1989)*. Although Connecticut may be able to prove that it possesses a *compelling interest*, the first prong of *strict scrutiny*, it will not be able to prove that its current Set-Aside Program is *narrowly tailored*.

In order to establish *compelling interest*, a state needs to demonstrate that there is "strong evidence" of discrimination, not outright proof, that creates a continuing disadvantage for certain groups, thus justifying a need for a race-based program. Examples of "strong evidence of discrimination" include:

- Disparities between the earnings of minority-owned firms and non-minority owned firms with similar characteristics;
- Disparities in commercial loan denial rates between black business owners compared to non-minority business owners with similar characteristics;
- The large and rapid decline in minorities' participation in the construction industry when race-conscious contracting programs were struck down or abandoned; and
- Various forms of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.<sup>91</sup>

A race-based program must also be *narrowly tailored*, and this is where Connecticut's statute and current program fail judicial standards. To be *narrowly tailored*, a race-based program must have the following characteristics:

- The overall goal must be based on *ready, willing, and able* firms
- The goal must be adjusted to account for the effects of discrimination
- The maximum feasible portion of the goal must be met through race-neutral measures
- The use of quotas is not permitted
- A recipient is not to be penalized for not meeting the goal after employing the requisite *good faith efforts*
- Firms that exceed certain revenue sizes cannot qualify for the program
- The program should be subject to periodic evaluation to determine its continuing need

Connecticut's Set-Aside Program is limited to MBEs located in Connecticut, yet the market for contracting services often extends beyond state borders. MBE program eligibility needs to be based on availability of companies located within the market area for contracting services that are *ready, willing, and able* to provide such services. Therefore, *ready, willing, and able* firms outside of Connecticut need to be eligible for certification as MBE/WBEs. The disparity study statistical analysis will reflect this measure of *ready, willing, and able firms* in the relevant market area as well.

Secondly, the goal for a race-based program must be adjusted to show the effects of discrimination. Connecticut's statute states that 25% of contracting dollars must be awarded to small business enterprises (SBEs), and 25% of contracting dollars awarded to SBEs must be awarded to MBEs.<sup>92</sup> However, the set-aside appears to have been set arbitrarily, without a statistical determination of whether there is a disparity in the state contracting market, and hence discrimination.

First, Connecticut needs to determine if there is a disparity, or in other words, a significant difference between the utilization of MBEs by state agencies and the overall "availability" of MBEs in the state's contracting market. If a disparity is evident, then Connecticut needs to

91. Holt, Colette, and Wainwright, John. *NCHRP Report: Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, D.C.: National Academy of Sciences, 2010.

92. PA 76-185 initially established the SBE program. PA 82-358 initially established the minority business percentage.

determine whether discrimination can be inferred from the disparity by employing econometric analysis to control for the impact of other variables. If discrimination can be inferred, then Connecticut must adjust the overall “availability” of MBE firms in its contracting market to account for the effects of any discrimination. Connecticut’s statute is not based on this type of analysis, and thus is not *narrowly tailored*.

Further, the use of quotas in race-based programs has been found to be unconstitutional. Currently, Connecticut’s Set-Aside Program is structured as a “rigid” quota system. State agencies are required to set aside a portion of contract dollars to MBEs. However, racial quotas have been consistently struck down in courts. Accordingly, if challenged, Connecticut’s program would be struck down in court. Race-based programs that have been deemed constitutional by the courts use a “goals” method instead of a quota system. Goals in race-based programs are percentages for state agencies to reach, as opposed to percentages of contracts reserved for businesses owned by women and members of minority groups.

Additionally, to be *narrowly tailored* a race-preference program must do the following:

- It must not penalize recipients of contract dollars for not meeting MBE goals, if *good faith efforts* were used by a prime contractor to identify eligible MBEs. For example, if a contractor can demonstrate that they reached out to MBEs to achieve a goal and were not able to retain a MBE for work, then the contractor must be allowed to request a waiver. Connecticut grants waivers for *good faith efforts*; however, the state does not have a specific standard for what documentation appropriately constitutes a *good faith effort*.
- It must limit the types of companies that are eligible for the preference. The aim of the program is to correct discrimination that has placed minority business enterprises at an economic disadvantage. A *narrowly tailored* program cannot give preference to companies that have significant economic advantages, regardless of race.
- It is noted that the SBE program is not based on race; therefore it is not held to *strict scrutiny* review. Thus, the two programs cannot be intertwined.

The MBE/WBE Opportunities Program must be subject to periodic evaluation to determine if there is a continuing need for the program. This means that program leadership must continually evaluate whether race-conscious measures on state contracts are contributing to eliminating discrimination in the market. This can be evaluated by comparing the portion of a goal that is met through race-neutral means to the portion of the goal that is met through race-conscious means. If a goal is met solely through race-neutral means, it signals that the MBE/WBE Opportunities Program is no longer needed. State legislation should require a start and completion date for a subsequent disparity study with a sunset date for the current MBE program to coincide with completion of the disparity study, providing time for the General Assembly to reset the program period, if necessary, based on the results of this subsequent study.

Further, if the program is ever legally challenged, Connecticut must be prepared to specifically address the issue of *capacity* in a disparity study. Some courts look for a measure of *capacity* in disparity studies because they consider the argument that firm disparities, which might show an inference of discrimination, may be distorted by the firm’s ability to perform the requirements outlined in state contracts.

Even though statistical evidence is the most effective asset in proving the need for a program, anecdotal evidence enhances the statistical evidence by exposing discrimination with powerful stories. However, anecdotal evidence must be gathered meticulously. It must provide enough evidence to demonstrate that incidents of discrimination are not isolated events, and show that it is a pervasive problem. Hence, it will lead to a better understanding of what is transpiring in the market and effective remedial action can be implemented.

### 10.3 DATA COLLECTION

Quality data collection and the application of appropriate analytical techniques are crucial aspects of designing a legally defensible disparity study and providing evidence justifying that any goals that are established are in fact necessary. Collecting complete and timely prime contract and associated subcontract award information and payment data is critical to effective program implementation and monitoring.

Connecticut's current recordkeeping system presents a significant challenge to assessing the SBE and MBE programs. It is clear from DAS data that the application and approval of exclusions plays a significant role in whether an agency is successful in meeting its SBE and MBE goals.

There are three distinct facets of a disparity study that necessitate a discussion about data sources and collection methods.

- A legally defensible disparity study that identifies a need for a MBE program requires statistical evidence that there is discrimination occurring in the marketplace. The statistical analysis conducted for the disparity study could utilize a combination of datasets to statistically evaluate the extent, if any, of discrimination in the Connecticut marketplace and provide the necessary justification for MBE/WBE goals.
- The establishment of MBE and WBE goals requires a calculation of an estimate of the current availability and capacity of businesses owned by a discriminated party, or parties, within the marketplace.
- Monitoring each state agency and the overall performance of the state requires that data be collected on prime contractors and subcontractors that have submitted a bid on any state contract, as well as those that have received procurement funds. Calculating an agency's goals and evaluating its performance relies heavily on the availability of procurement, contract, criteria for awarding the contract, and bidding records. Currently, the state maintains these records in a disaggregated system where there are multiple financial systems and methods of recordkeeping among key state agencies and branches of government. These include
  - o Subcontractors and payment data to subcontractors are not consistently available
  - o Recording of P-card purchases is not standardized
  - o The branches of state government and some executive branch agencies use varied accounting methods (cash versus accrual)

All of these data elements must be systematically collected and available in order to conduct a valid disparity study.



As part of the best practices review, data management system implementations by other states and government entities were also examined to determine how Connecticut state agencies can approach this potential implementation process if the state ultimately decides to adopt a data management system to track minority business enterprise data. States that were examined are New York and Tennessee.

### **10.3.1 *New York***

New York State coordinates its state agency contracting program through Empire State Development (ESD), its economic development agency. ESD is tasked with supervising the minority- and women-owned business certification process and general business development for the state that includes building the capacity of minority- and women-owned business enterprises, as well as helping agencies find qualified and certified firms.

In 2012, Empire State Development implemented the B2GNow data management system, a software program for governments that is utilized to collect data for supplier diversity programs, including data on MBE/WBE program certification and participation in state contracting. Prior to this implementation, Empire State Development relied on an antiquated database created in 1980 to collect supplier data for all of its agencies. However, ESD needed a contemporary system that could effectively communicate among the more than 100 state agencies, one that could process the massive volume of data from all of the agencies, and one that would track financial and contracting information.

When developing the request for proposal for potential bidders, ESD valued having bidders that had a comprehensive plan as to how each department and agency would interact through the system, the ability of the bidder to bridge the old systems to the new system, and the bidder having the capacity to perform the work on a large scale.

Looking back on the process, ESD relayed advice on to how to organize the data management implementation process. Advice included the importance of engaging all key people involved in the process, defining expectations, “flushing out” all operation issues, and utilizing persons that possess all levels of expertise. Furthermore, ESD emphasized the importance of brainstorming among all leaders, agencies, and departments.

ESD briefly entertained the possibility of creating an internally housed system. However, this idea was eventually ruled out because they believed an outside company might think of the project in “big picture” terms as opposed to an information technology department within one agency that would think of the project from the perspective of that one agency. Further, they believed an outside company would make unbiased recommendations on how to implement the system.

### **10.3.2 *Tennessee***

In 2010, the state of Tennessee also implemented a supplier diversity data management system to keep track of MBE/WBE spend. Four bidders competed through a request for proposal and the contract eventually was awarded to B2GNow. When evaluating each bidder’s system, Tennessee focused on four essential capabilities that the system had to have: applications capacity, a certification component, a directory component, and a contract compliance function.

In reviewing its implementation process, Tennessee stressed that when moving to an electronic system, there needs to be a special focus on transferring the data over to the electronic system accurately. Furthermore, Tennessee also stressed that the implementation timeframe could be longer than initially expected.

Prior to the implementation of the B2GNow data management system, Tennessee had an internally housed system to manage the data. However, Tennessee decided to ultimately engage an outside company because the cost of maintaining an internal program was high. Furthermore, their in-house system did not produce “real time data”; in other words, their system could not accept different applications instantly.

## 10.4 CERTIFICATION PROCESSES

There is some confusion among a variety of stakeholders about what it means to be SBE/MBE “certified” with the state, including the expectation of results. There are multiple programs for which a company can apply for special distinction in the state contracting process – through DAS certification as an SBE or MBE, through the federal DBE program that is administered by ConnDOT, or being prequalified for larger construction projects. In addition, there are on-call lists through several agencies for emergency work that can be contracted for quickly, for which a company must apply through an RFP process every 1-2 years; other agencies have preferred vendor lists to conduct certain types of work; and some municipalities have separate MBE certification processes. Additionally, there are other informal lists of companies that have conducted favorable work for agencies that can be utilized easily if formal bidding processes are not required.

Also, a number of states have moved toward using the federal DBE certification requirements for their state MBE programs (See Appendix G for details).

The level of paperwork to become certified at the state level is perceived as cumbersome, and if a company plans to apply for multiple certifications the paperwork can become onerous, according to some of the companies that participated in the focus groups. However, it is important to have both a rigorous evaluation as well as a program that allows many businesses to participate.

The expectation of results once a company is certified also is seen as a source of confusion among some companies. For instance, once a company is certified as an SBE or MBE, there sometimes is an expectation that state work will then flow without the certified company having to proactively bid on state contracts or develop business relationships with potential prime contractors in order to be utilized as a subcontractor. Others who bid but do not win contracts may be disappointed or feel that the results are not worth the effort, and choose not to renew their certifications.

Also, the amount of paperwork increases for certified SBE/MBEs when it is time to bid on a state contract. The bid documentation that is required by the state far exceeds what is required for any private sector bid, according to focus group participants, and smaller companies do not have extra staff to handle the paperwork and reporting requirements. Additionally, the application of the set-aside program can lead to unintuitive outcomes in which, for example, a certified SBE/MBE who wins a bid may be required to subcontract a portion of the work to another SBE/MBE in order to meet the set-aside requirement (because they are not allowed to meet it through self-performance), or in which a contractor is required to subcontract a portion of even a small job when, under other circumstances, they would have done the entire job themselves.

Public Act 13-304 changed the share of a contract or a portion of a contract that is awarded under the Set-Aside Program that an SBE/MBE contractor or subcontractor is required to self-perform from 15% to 30%, and the total percentage of such contracts that need to be performed by certified SBE/MBE contractors or subcontractors from 25% to 50%. Further review of state agency practices is needed to determine if the total value of a contract awarded to certified SBE/MBE contractors or subcontractors is applied to Set-Aside Program goals, or if only the portion of such contracts that is performed by certified SBE/MBE contractors is applied to Set-Aside Program goals.

Based on findings from the legal review, the analysis of surveys of certified companies, and interviews with agency contacts, the necessity of some of the certification requirements have also been called into question.

- The revenue size standard for SBE/MBE certification eligibility can have the impact of limiting the growth of some businesses, as they may purposefully decide not to exceed the standard to remain eligible for the program. The revenue size standard also does not take into account industry differences; for example, industries that require large capital investment, such as heavy construction, may warrant a larger revenue cap than a service industry with lower capital investment needs. Some criticize the revenue cap as too high, in that a company generating \$15 million in revenue is in a much different position than a company generating \$750,000, and that truly small businesses and startups still have trouble getting their foot in the door. Furthermore, there is no personal net worth test, so a company with low revenues qualifies even if the proprietor is not economically disadvantaged.
- A certified SBE/MBE's principal location must be in Connecticut in order to be certified by DAS. However, it is possible that there are firms that are based outside the state of Connecticut that are *ready, willing, and able* to compete for state contracts. Therefore, a statistical analysis that only collects data on firms within Connecticut would exclude firms that are *ready, willing, and able* to perform work on state contracts.
- The quality of the state's contractor certification list is frequently questioned. Minority businesses complain about "fronts" and "pass-through" companies, either fraudulent companies that should not be certified at all, or legitimately certified companies that are enticed or coerced into a deal where the work is actually being done by someone else.
- Prime contractors complain about the quality or responsiveness of the companies on the certified list when putting together bids for state contracts. These issues generate bad will and mistrust concerning the certified list, and to the extent they are accurate, make it difficult for prime contractors and agencies to find the legitimate SBE/MBEs with whom to partner and build relationships.

## 10.5 AGENCY PROCESSES

Under Connecticut's current set-aside program, all state agencies are required to establish small and minority business enterprise goals in their budgets. For those agencies that go through the process to establish goals, there is a method to exempt or exclude portions of the budgets from the set-aside goals. Exclusions are automatic; however, agencies can apply for additional exemptions, so the process may not be standardized across agencies. In addition, although

required, not every agency reports their goals to DAS and CHRO. There are also no penalties for an agency not reporting its annual goals, quarterly status updates, or for failing to meet its goals.

Although there is an established process for determining agency or political subdivision goals, the specific contracts that are to have a set-aside component are decided by the individual procurement managers, rendering the goal-setting process arbitrary. For example, if an industry is known to have a number of small businesses available in the state, the agency will set aside that contract for small businesses when awarding that particular contract. Further, agencies often contract with the same SBE/MBEs or set aside the same types of contracts repeatedly because the agency staff know the firms are available and their utilization will count towards the goal, but this may preclude new entrants into the state contracting market.

In addition, when companies are required to submit an affirmative action plan through CHRO and conduct a *good faith effort* to contract with small- and minority-owned businesses, there is sometimes confusion among contractors regarding what constitutes a *good faith effort*. State statutes do provide some guidance, but agencies can also exercise some discretion in making this determination.

Purchases under \$10,000 are not subject to the formal bid process; they can be acquired after receiving three quotes, and purchases under \$2,500 do not require any price comparison. While this facilitates the acquisition of items of smaller dollar value, agencies' consideration of a vendor's SBE/MBE status for these types of purchases is inconsistent. Procuring agents can end up calling companies they know and using the same ones over and over, limiting opportunities for new entrants.

The pool of qualified, SBE/MBE firms is very shallow in a number of industries, making it difficult to set aside many contracts for certified companies. It is difficult to factor in the size and capacity of a firm when putting RFPs together, to make them accessible to smaller companies as well as to avoid having certified businesses take on more than they can handle. Furthermore, in some cases the procuring agency may not be knowledgeable about the industry they are soliciting, making it difficult to appropriately structure RFPs (for both size and specs). Funding that is passed through to municipalities is statutorily exempt from the set-aside program. Only three cities – Bridgeport, New Haven, and Hartford – have their own municipal programs.

Agencies are required to submit all of their reports to DAS, while CHRO administers the affirmative action plans of individual companies. DAS and CHRO often hold separate workshops for state agencies or companies to inform the audiences about conducting business with the state.

According to Connecticut legislation, if any awarding authority has reason to believe that any contractor or subcontractor awarded a set-aside contract has violated any of the terms of the set-aside process through misrepresentation or through other means, the awarding authority, after a hearing process, can suspend contract payments as well as order a civil penalty of up to \$10,000 for each violation. Since this can be a time-consuming process, and one that utilizes staff resources, it is not expected that many agencies utilize this statutory authority unless absolutely necessary. For example, DAS has not issued any fines/penalties to any company in at least the past three years for failing to comply with the certification and other requirements of the SBE/

MBE programs and does not verify the company compliance with program requirements once they become certified because they do not have the staff to do so.

Likewise, CHRO does not have the staff necessary to effectively monitor and enforce compliance with SBE/MBE program requirements among state agencies and companies and has limited ability to take action against repeat offenders. Monitoring is on a “paper” basis only, with little or no field work that would help to assess penalties to agencies or to contractors for noncompliance.

## **10.6 BARRIERS FOR SMALL AND MINORITY BUSINESS ENTERPRISES**

What are some of the challenges that SBE/MBEs face when starting or operating their business? Agencies and other entities that work with businesses mentioned access to capital; recordkeeping, strategic planning, and marketing are consistently seen as challenges. Certified companies also mentioned that access to bonding was a barrier to their growth.

These barriers also preclude some SBE/MBEs from successfully obtaining state contracts. As previously stated, the process of getting certified is seen as cumbersome, and the processes of submitting a bid and quoting a price as a subcontractor for a prime contractor are generally seen as time-consuming and complicated. The companies do not understand why all of the paperwork is necessary. Support and training available for small businesses is inconsistent, and companies do not always know where to go for help.

Generally, the barriers to growth most mentioned by focus group participants were the conditions placed upon them by the state and the inconsistency of those requirements. The state’s inconsistency with managing and enforcing its set-aside program compliance rules and requirements was another often mentioned barrier to growth. In addition, the \$15 million threshold for SBE/MBE certification was generally considered too high, which some focus group participants indicated puts the smaller SBE/MBEs at a disadvantage competitively. Lastly, paperwork, bonding, and insurance requirements for state jobs were generally seen as barriers for growth.

The difficulty of small businesses “getting their foot in the door” for state contracts was mentioned by both small companies and prime contractors in focus groups. This issue was also noted by a number of the business respondents to the online survey, particularly those who represented younger companies. Small companies perceive that subcontractors have been chosen primarily based on prime contractors’ past experiences with them and their reputations. However, a complaint among some prime contractors was that the pool of qualified subcontractors is shallow, or the subcontractors do not have enough experience with state contracts to merit partnering with them on bids or contracts, with the size of the project or procurement being a factor. What project amount can a business handle? Why make a project available if a company cannot perform the work? These are questions that can be very difficult for companies to answer when preparing bids for state contracts. There can also be cost differentials between SBE/MBEs compared to other companies, and the state does not have a method to account for cost differentials. Furthermore, the general contractor is often held responsible for the performance of its subcontractors, so partnering with an unknown or unproven firm is viewed as a significant business risk.

Receiving prompt payment from a prime contractor is often seen as a difficulty for subcontractors; however, Connecticut recently amended its prompt payment statute (C.G.S. §49-41a) by requiring that the trigger date for payment follow the federal requirements. The payment bond statute (C.G.S. §49-42) was also amended to require payment bonds for municipal projects, thereby reducing potential liability for subcontractors.

Even though there are a number of programs that support SBE/MBEs in Connecticut, and DAS and CHRO conduct various workshops about doing business with the state, there was a general sentiment among companies that processes and resources could be better streamlined so that companies that need support services can efficiently receive them.

In addition, many companies do not know about or understand how to obtain state certification so that they can bid on state projects. Education will be a necessary component of the certification streamlining process.

Companies that are successful at state contracting are not always able to diversify their income sources, and rely exclusively on the set-aside program as a source of income; they often fail when they “outgrow” the program. There is a need to address the underlying issues that make them small businesses.

## 11.0 RECOMMENDATIONS

### 11.1 LEGAL ISSUES

Establishing *compelling interest* requires a state to demonstrate that there is strong evidence of discrimination that creates a continuing disadvantage for certain groups, thus justifying a need for a race-based program. However, a program must also be *narrowly tailored* to remedy only the identified discrimination in the market. Therefore, Connecticut's statute must be changed in the following manner:

- On an interim basis, until completion of the disparity study, adopt legislation to separate the state's SBE set-aside program from the MBE program. The SBE program is not based on race or gender, therefore it is not held to *strict scrutiny* or *intermediate scrutiny* review. Thus, the programs should not be intertwined.
- Assess what geographical areas fall under Connecticut's state agency contracting market. Once the geographical area is identified, identify all *ready, willing, and able* firms in this market.
- Until completion of the disparity study's econometric analysis, set the current statutory goal, 25% of the 25% of the SBE program contracting dollars (6.25% of total eligible contracting dollars), as the MBE program interim goal.
- Eliminate the quota system present within the current MBE program and instead institute a goal-based program that allows for flexibility by encouraging, rather than requiring, contractors to use MBEs, and providing waivers to contractors who are unable to meet the goal-based program but can substantiate their *good faith efforts*. The proposed name of the new goal-based program is the MBE/WBE Opportunities program.

In addition, the following recommendations set additional standards for a *narrowly tailored* race-based program that do not have to be included in a revised statute:

- If a dispute arises about whether a *good faith effort* was made by a party, the party should have the option of appealing to a committee that can hear the dispute and decide a reasonable outcome. The committee should comprise persons involved in the MBE program process to ensure familiarity with program rules. However, the committee should not comprise persons in the department that initially contended with the opposing party that a *good faith effort* was, in fact, made.
- Establish business size limits that are representative of industry trends, so that the program applies to MBEs that also have some aspect of disadvantage (such as being small), while having distinct limits for different sub-industries.
- Based on the disparity study's econometric analysis, an overall MBE annual goal will be determined. The overall MBE goal will be a reflection of discrimination experienced by minority groups, if applicable. In addition, based on the disparity study's econometric analysis, a total goal for women-owned businesses should be created if it is found that they suffer from discrimination in the contracting market.

- o If a particular minority group is found to experience discrimination in the contracting market, but is still underutilized despite the establishment of an overall MBE goal, then additional methods should be explored and employed to mitigate discrimination
- State agencies should consider reaching as many of their established goals as possible through race-neutral means.
- The MBE/WBE Opportunities Program must be subject to periodic evaluation to determine if there is a continuing need for the program. This means that program leadership must continually evaluate whether race-conscious measures on state contracts are contributing to eliminating discrimination in the market. This can be evaluated by comparing the portion of a goal that is met through race-neutral means to the portion of the goal that is met through race-conscious means. If a goal is met solely through race-neutral means, it signals that the MBE/WBE Opportunities Program is no longer needed. State legislation should require a start and completion date for a subsequent disparity study with a sunset date for the MBE/WBE Opportunities Program to coincide with completion of the subsequent study, providing time for the General Assembly to reset the program period, if necessary, based on the results of the study.
- In the data gathering and analysis phase of the report, it is recommended that researchers examine the *capacity* of firms by (1) finding a measure of *capacity* that is appropriate, if any; and (2) conducting a separate analysis of what variables affect the *capacity* of a firm. If researchers find that discrimination impacts *capacity*, then it should not be controlled for in the econometric model.

## 11.2 DATA COLLECTION

The current Connecticut Set-Aside Program can be improved significantly by revising the method and manner the state uses to evaluate marketplace discrimination, calculate availability, establish goals, and monitor performance. Each of these aspects necessitates a transition by the state to a more dynamic and detailed process of procurement tracking and data collection.

Gathering sufficient and comprehensive data will enable a valid statistical analysis to be conducted:

- Collect data regarding actual payments to subcontractors categorized as MBE/WBEs, as well as non-MBE/WBEs, for all contracts. Also, collect payment data to prime contractors and subcontractors (MBE/non-MBE) by distinct NAICS industry codes.
- Acquire access to and implement the use of a statewide supplier diversity data management system, which can be provided by an outside vendor, for the state's MBE/WBE Opportunities Program that allows program administrators to accurately set goals, monitor performance, and evaluate program participation. The system should also be web-accessible to the public and interested parties for program monitoring and identification of contracting opportunities, in addition to providing safeguards to protect proprietary information. Data required for program management from all financial systems utilized by state branches of government and agencies will be integrated and incorporated into the diversity management system including, but not limited to, the



following: prime contractor payments; subcontractor payments; list of companies bidding on and awarded contracts; company data (such as race, ethnicity, and gender of principal owner; years of experience; a score that rates the contractor's bonding ability) on bidders and companies awarded contracts (including subcontractors engaged by prime contractors); P-card payments; and a consistent accounting method (cash versus accrual).

The system should also have the capability to track pass-through funding to municipalities for state-funded projects and grants for MBE/WBE program eligible expenditures. This system should also have the capability for generating annual reports at various levels of state government to provide for overall program accomplishments, as well as agency performance, with the functionality to examine contracting by individual MBE/WBE groups, as well as by sub-industry.

- Additionally, ensure that the supplier diversity data management system has the functionality to include data on the contracts that are race-neutral, as well as contracts that have MBE/WBE goals.
- The first phase of the disparity study collected and reported on findings from anecdotal evidence regarding issues of possible discrimination in state contracting. The econometrical statistical analysis phase of the study should further gather comprehensive anecdotal evidence to corroborate the inference of discrimination if founded. Anecdotal evidence should be gathered not only from minority groups, but all stakeholders in the contracting process. This will provide a better understanding of what is transpiring in the market and effective remedial action can be implemented, if necessary.

Deciding which data sources and methods are best suited to calculate potential availability and capacity and disparities for MBE/WBE owners in business earnings, wages, access to credit, and rates of business formation, will enable the evaluation of statistical discrimination in the marketplace. Recommendations include:

- Use the US Census Bureau's American Community Survey (ACS) Public Use Microdata Sample (PUMS) to establish marketplace discrimination and evaluate, as needed.
- Determine the best dataset to evaluate the current availability based on the appropriate geography of the market, such as the business listing from D&B, along with the D&B Supplier Diversity Solutions database.
- Calculate availability of small, women- and minority-owned businesses for each distinct industry sector to enable valid statistical analyses of disparity in the marketplace and to determine a method for measuring capacity.

Monitoring agency processes for setting goals includes the following recommendation:

- Determine if low MBE availability should continue to be addressed using exclusions. Rather than having the agencies utilize a process of budget exclusions to determine goals, consider setting goals according to the number of certified firms and industry sector availability, with actual performance evaluated using actual spending amounts at the end of the fiscal year.

### 11.3 CERTIFICATION PROCESSES

Streamlining the SBE/MBE certification and bidding processes would help encourage program participation and may increase competition for state contracts. Suggestions for streamlining the process include:

- Adopt either a (1) uniform certification process using the federal DBE requirements, or (2) have a portal where companies can apply for certifications that interest them. Using the federal DBE certification process as the state's certification process would provide for a single certification system to reduce the number of forms required for certification processing for companies interested in dual certification. However, since the DBE process is more stringent than the state's program requirements, it is likely that revised SBE and MBE/WBE certification processes will require more effort than that which current SBE and MBE/WBE program certified companies are familiar with, and some currently SBE and MBE/WBE certified companies may not be eligible for the modified program. Additionally, it is noted that ConnDOT's certification process compliance practices, such as on-site unannounced visits to companies seeking certification, are utilized to enforce certification requirements.
- An alternative to adopting a uniform certification process would be to have a one-stop portal where companies could apply for the types of certification that are of interest to them. Also, companies could be made aware of certification program options as part of registration with the Secretary of the State, Connecticut's Licensing Info Center, Department of Labor (DOL), and the Department of Revenue Services (DRS), among others.
- Develop a single online database of companies with all certifications listed (including SBE, MBE, WBE, DisBE, DBE, prequalified, municipal, etc.) so that agencies do not have to search multiple lists to check for the appropriate qualifications. This comprehensive listing would also provide companies with easily accessible information for developing business relationships for bidding on state contracts. In addition, the database could be used to update and manage companies that become de-certified for any reason, as well as companies whose certifications expire.

Educating certified companies about the next steps that are involved in obtaining state contracts will help to manage expectations about the results of the SBE and MBE/WBE programs:

- Once a company receives a certification, the company should be made aware of the business resources that are available to them, suggestions about how to receive notices regarding state bids and RFPs and other proactive measures that can be taken to expand networks and gain related experience. This information can be standardized and provided via email or mail upon certification, as well as in program literature available to companies interested in applying for certification.

Remove the Connecticut location requirement for MBE program certification. This will provide an opportunity for companies that are located outside of Connecticut that are *ready, willing, and able* to apply for MBE/WBE certification. Additionally, Connecticut should consider developing reciprocity agreements with other states for MBE program certification.

Change the certification requirements that are related to business size limitations so that the program is specifically tailored to assist businesses that are economically disadvantaged:

- Consider revising the definition of “small” for the certification programs (refer to Appendix H for additional information on size standard methods).
  - Connecticut should conduct an industry analysis of its geographic market area to determine how it should measure a “small business.” To conduct the industry analysis, Connecticut should consider different industry and regional factors that might determine business size.
  - Connecticut should research applying multiple levels of business size rather than just a bifurcated model of “small business” and “large business” since business sizes, and those of affiliate companies, vary significantly across industry and geography. Utilizing multiple levels of business size can also assist businesses that may be “graduating” or transitioning out of the program because of a series of successful state contracts.
  - If a revenue standard is used to measure business size, then it should be indexed to inflation.
- Additionally, revenue limits create the potential for MBE/WBE companies to graduate out of the program if they are successful in providing services in the program. Consideration should be given to developing alternatives that would enable companies that exceed the revenue limit of the program under certain conditions to maintain their MBE/WBE certification eligibility.

Examine the federal DBE program for guidance on certification requirements that often create confusion for applicant companies. For example, should the owner of the company also be licensed in the industry or is control of daily operations enough (one example involves whether the owner of a company of electricians should also be a licensed electrician)?

Enable more legitimate SBEs and MBE/WBEs to be utilized for state contracts:

- Increase the number of unannounced on-site visits conducted by DAS to companies to ensure compliance with state certification requirements. If a company misrepresents information provided in its certification application or its certification, then the company should be fined and removed from the list for a period of time (under §4a-63, the suspension period of disqualification from bidding on contracts is three months) under the statutory authority of the awarding agency. In certain cases where submitting false information is involved, consider prosecution. Consider additional measures that the federal program includes, such as looking for significant outside non-related payments on tax returns that might indicate an absentee owner, a front, or a company that is not really an operating company.
- Match company certification categories with the online database of companies with certifications. For example, describe which minority group is represented through a certification rather than just noting it is an MBE-certified company. This will help agencies to better understand which small and minority businesses are obtaining state contracting and increase the diversity of companies used.

## 11.4 AGENCY PROCESSES

Centrally managing the certification programs across branches of government, each with different financial systems and reporting requirements, will provide more effective oversight and review of agency performance and program result, as well as providing businesses with enhanced program transparency and contract opportunities:

- Create a working group of key agency leaders and program implementers, representing all branches of government and financial systems. The working group should be co-chaired by the DAS commissioner and CHRO's executive director. The purpose of the proposed working group, assuming that the state's certification process will continue to be different from the federal DBE program, is to create an all-government forum to consolidate the management and oversight of the SBE Set-Aside Program and MBE/WBE Opportunities Program including organizational structure and leadership, procurement and certification processes, budget exclusion practices, appropriate race-neutral measures, standards for *good faith efforts*, compliance and enforcement practices, interpretations of commercially useful functions,<sup>93</sup> and program performance and reporting review and analysis. If the federal DBE program is adopted as the state's program, then the scope of the working group would focus on race-neutral measures and collecting appropriate data, since the federal program would provide much of the other guidance.

Collaboration among the two lead entities, DAS and CHRO, will lead to increased resource efficiencies:

- Conduct joint workshops for agencies about the goal-setting procedures
- Conduct joint workshops for companies about what is needed to effectively work on state contracts.
- Utilize the diversity data management system to:
  - o maintain agency goal-setting and MBE/WBE utilization plan (currently the affirmative action plans that are administered by CHRO) information
  - o analyze agency performance in meeting their goals (both agency-wide and contract-specific)
  - o identify minority firms by various sub-categorizations that bid on or were awarded contracts, etc.
  - o develop annual agency and statewide MBE/WBE program performance reports that would be issued jointly by DAS and CHRO through the proposed working group. This reporting process would eliminate the current requirement for DAS and CHRO to issue reports separately that can potentially result in having reports produced with differing statistics. Additionally, the requirement for each agency to produce an annual report will be eliminated, as periodic and annual reporting will be accomplished directly through the reporting functionality of the diversity data management system.

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93. Under 49 CFR §26.55, a firm performs a commercially useful function when it is: "Responsible for execution of the work of the contract or a distinct element of the work . . . by actually performing, managing, and supervising the work involved."

Effectively monitoring and utilizing compliance enforcement procedures after assessing agency staff resources will provide added quality to the SBE Set-Aside Program and MBE/WBE Opportunities Program:

- Monitor agency budget exclusions to make sure that they are reasonable and consistent. Consider creating a mechanism through the working group under the leadership of DAS and CHRO that ensures that agencies routinely report their goals and make their best efforts to reach them.
- More actively review MBE/WBE utilization plans to make sure that *good faith efforts* are being utilized, and conduct an analysis of the results of such efforts. Utilize the CHRO action of holding back 2% of the contracted budget amount from a company if their MBE/WBE utilization plan is not approved. Another method to consider involves requiring an approved utilization plan prior to contract execution.
- Utilize the statutory authority that awarding agencies have to fine or deny companies that misrepresent information provided on SBE and MBE certification applications (in some instances legal action may also be necessary). Various techniques to assure company compliance with certification requirements should be utilized, including the unannounced on-site visits that have been recommended.
- If a certified MBE/WBE receives a contract, but subcontracts a portion of that contract to a non-certified business, then the only portion of that contract that can be counted toward the MBE/WBE contract goal is the portion performed by the MBE/WBE. The subcontract to the non-certified business cannot be counted towards the goal.

## 11.5 SUPPORT FOR SMALL AND MINORITY COMPANIES

Implementing race-neutral measures to assist all small businesses with issues that have been identified as obstacles for participation in state contracting is a necessary component of and ongoing requirement for any race-based and gender-based program, as well as for the purpose of enabling more companies to be successful in obtaining state contracts and to thrive in the marketplace:

- The following race-neutral measures should be considered based on anecdotal information gathered in this study:
  - Provide technical assistance and develop programs to aid companies in obtaining audited financial statements, bonding, computer skills, profit estimating, and cash flow timing to make payroll
  - Provide support for relationship building (networking) among prime contractors and subcontractors
  - Provide educational programs to build capacity and awareness of the SBE and MBE/WBE programs that are designed to explain the difference between the various certifications in Connecticut
  - Provide educational programs about starting a business
  - Provide guidance and information on developing bids and responses to RFPs and

how to get involved in the state procurement process through events, outreach, conferences, and website, among others

- o Offer education programs on current business topics

Simplifying contracting processes reduces paperwork and improves efficiencies for all involved:

- Educate businesses about the resources and support services that are already available as part of a company's registration with the Secretary of the State, Connecticut's Licensing Info Center, DOL, and DRS, among others.
- Reduce paperwork required to fulfill state contracting requirements, such as when a company is awarded a contract and have all required paperwork be submitted electronically (through the diversity data management system or through a central point of contact), with distribution to the appropriate staff at the agencies responsible for the review and processing of the submitted information.
- Reduce the complexity of the contracting process by providing boilerplate common terms and conditions for bids, RFPs and contracts online that can be referenced electronically on the state's contracting portal where possible.
- Clearly articulate the importance of the goal in the RFP criteria (versus price and other factors), and add a level of transparency to the bid and contract awarding process. Goals should be identified in all advertisements and bidding documents for which a contract goal has been set.

## **12.0 TIMELINE FOR SELECTED RECOMMENDATIONS**

### **12.1 ACTIONS TO BE TAKEN AS SOON AS POSSIBLE**

- Establish a Working Group with representation from all state agencies/branches of government, co-chaired by the commissioner of the Department of Administrative Services and the executive director of the Commission on Human Rights and Opportunities to oversee and coordinate the MBE/WBE and SBE programs.
- Separate the SBE Set-Aside Program from the MBE/WBE Opportunities Program by amending the applicable state statute(s).
- Consider the current MBE/WBE business goals to be interim goals until the statistical analysis of the disparity study is completed.
- Remove the Connecticut location requirement for MBE/WBE businesses and allow for reciprocity among other states by amending applicable state statute(s) and/or regulations.

### **12.2 SHORT-TERM ACTIONS**

- Collect comprehensive data for all state agencies and across multiple financial systems through a statewide diversity data management system, including but not limited to: companies (including industry codes) that have been awarded contracts and those that submitted bids or responses to RFPs but were not awarded contracts; subcontractor and prime contractor payment data; and P-card payments to all companies with sufficient detail to identify type of purchase by level of procurement required for MBE/WBE program statistical analysis, with prime and subcontractor information clearly identified.
- Conduct an initial statistical analysis, after collection of one year of comprehensive data with a statistically significant sample size, to determine new interim goals based on the results of the analysis, including separating MBE and WBE goals, and sub-goals by race and ethnicity, where needed, based on the data.
- Coordinate existing race-neutral and capacity-building programs for small businesses and add additional programming support to fill in the gaps in need. These programs help all small companies, and furthermore a legally defensible program must demonstrate it has achieved as much parity as possible using race-neutral measures.
- Streamline certification processes and improve and simplify the state's contracting processes.
- Strengthen the certification process by increasing unannounced site visits to certified companies and monitoring and compliance enforcement of utilization plans to create more trust among subcontractors and prime contractors.
- Standardize the agency budget exclusion and exemption process.

- Eliminate the statutory municipal exclusion legislation for all state-funded projects and procurement, and require municipalities to use the state’s diversity data management system for tracking and reporting on all state-funded municipal projects and procurement.

### 12.3 FUTURE ACTIONS

- Complete the econometric analysis of the disparity study, based on three years of comprehensive data, to determine if there is a persistence of discrimination in state contracting, and if so, to establish specific goals for individual racial groups and gender, and for industry types of contracting and procurement. Additionally, to support the statistical analysis and the *compelling interest*, continue to gather anecdotal information so as to customize race-neutral and race-conscious measures and initiatives to better address identified disparities.



### 13.0 CONCLUDING REMARKS

What are the objectives of the proposed Connecticut SBE Set-Aside Program and MBE/WBE Opportunities Program? Providing opportunities for these companies to succeed in the marketplace through state contracts is a noble pursuit, and one that can be facilitated through a number of race-neutral programs and initiatives such as technical business training and increased access to capital. Actions that make it easier for companies to work with the state, allow small companies more access to financial opportunities, and provide technical business assistance, for example, are all actions that can help small businesses, regardless of race ownership, to succeed. It is also necessary to implement these measures before legislation can be adopted that clearly states the goals of an MBE/WBE program.

The purpose and intent of a formal MBE/WBE Opportunities Program that is established by state statute should be to correct for current discrimination. It is a remedy that is intended to be used after race-neutral measures are implemented and when discrimination still exists.

Therefore, offering race-neutral measures of business support services is a useful way to initially provide businesses with opportunities. Streamlining agency processes and the certification process are also useful for every business because they make the program more efficient and enhance the state's contracting processes, encouraging more companies to participate.

Collecting comprehensive data about contracts and all payments made to all contractors, whether prime or subcontractors, is an essential precursor to conducting the statistical disparity analysis. Based on the results of periodic statistical analyses, if discrimination exists, then a formal, legislatively mandated MBE/WBE Opportunities Program can be implemented that takes into account all of the legal requirements as set forth in relevant case law. Conversely, if the statistical analysis finds that discrimination is not present in the purchasing practices of the state, the MBE/WBE Opportunities Program would be eliminated.



## APPENDIX A

### “THE NEW CONNECTICUT: TOWARD EQUAL OPPORTUNITY IN STATE CONTRACTING,” AUGUST 1992

**[Note: Exhibits cited in this Appendix are available in the *New Connecticut* report.]**

This report was the result of P.A. 90-253, which was enacted in 1990. It mandated that a discrimination study be performed by an independent consultant in cooperation with the state’s Department of Economic Development (DED – the agency responsible at the time for the state’s set-aside program) and the heads of other state contracting agencies to determine if discrimination was affecting participation by minority- and women-owned businesses in state contracting. In January 1991, Henderson, Hyman & Howard Associates was chosen by DED to complete the study.

A draft report titled “The Empty Shell: Connecticut’s Setting Aside of Women and Minority Businesses” was issued in February 1992. A final report, “The New Connecticut: Toward Equal Opportunity in State Contracting,” was issued in August 1992, and incorporated many comments, criticisms and insights of certain members of the DED M/WBE Advisory Board, certain panelists from the January 1992 public hearings, and the May 1992 decision of Judge Dorsey in *Associated Contractors of New Haven v. the City of New Haven*. The following lists the major findings and recommendations from the report.

Findings (excerpted from pages 3-14 of the report):

- Prior to 1989, other than the DOT and DAS, most State agencies did not meet the “minority” portion of the small business law when they were required by law to set aside 3.75% of its contracts to DED-certified “minority business enterprises.”
- Records of DED, CHRO’s 1988 Report and the history of the “minority” small business set-aside ordinance under CGSA 32-9e (b) indicate that DED never administered the program in accordance with the mandate of CGSA 32-9e (b).
- Soon after the M/WBE percentage was increased to at least 6.25% in October 1988, Croson was decided. In March 1989 an Assistant Attorneys General “Croson” Task Force inappropriately deemed this law to be “unconstitutional.” This Task Force also determined in two internal memoranda that the enforcement of the law would subject the state agency heads to personal liability for enforcement of a clearly unconstitutional law. It is to be noted that the conclusions of the Task Force were never officially adopted by former Attorney General, Clorine Nardi Riddle, Esq., or the current Attorney General, Richard Blumenthal, Esq. Even so, Mr. Richard Cosgrove of the department read into the public record on January 10, 1992 on behalf of Commissioner Reginald J. Smith, a prepared statement that indicated these unofficial internal Assistant Attorneys Task Force memoranda became the basis for his department’s non-enforcement of the “minority” set aside law since some time in 1989.

- The way that State agencies in general have implemented or not implemented the “minority” portion of the small business program has in effect “set ‘minority’ and women businesses aside.” Most state agencies (including the DED which administers the small and minority business programs) treat “minority” and women business issues as low priority matters.
- The 90-91 reports coupled with the 91-92 reports indicate that the post-*Croson* awards to M/WBEs are lower than the pre-*Croson* awards.
- Connecticut’s violation of its own mandate and regulations under CGSA 32-9e (b) to implement a carefully drafted law which is designed to increase participation of MBEs and WBEs in the State small business contract program “approaches a *prima facie* case of statutory violation” as required by *Croson*.
- The statutory violations alone serve as the factual predicate in support of the need to utilize race- and gender- based devices in State of Connecticut contracting, not the least of which because the State’s race- and gender-neutral small business law is rarely complied with to the letter and spirit of the law which is also set forth in CGSA 32-9e (b). Instances and patterns of discrimination in other public sectors of the State and in the private sectors of the State are further evidence in support of the need for carefully drafted gender- and race-based remedies to address discrimination against women and minorities in the State’s public and private contracting sectors.
- The above instances or patterns of M/WBE discrimination in State government and/or in other public and private sectors of the State do not bode well for public officials or private contractors voluntarily entering into contracts with M/WBE prime contractors and subcontractors in the State’s construction industry and contractors in the State’s goods and services industries. This is particularly true in light of the fact that the State hardly implements its race- and gender-neutral small business program under CGSA 32-9e (b).

***Recommendations (excerpted from pages 15-17 of the report):***

“THEREFORE, THE NEW EQUAL OPPORTUNITY IN STATE CONTRACTING FORMULA SHOULD BE: Each State agency will develop annual goals for increasing (a) the numbers of bids from and (b) its contract awards to “available and able women” and to “available and able ‘minorities’.” “Minorities” for the time being should be defined as:

Blacks, Hispanics, “Asian Americans/Pacific Islanders” and Native Americans.

The women and “minority” goals should be separate goals based on the “availability” of able women and able “minorities” to complete State “contracts which are generally awarded or which will be awarded during the next two fiscal years.” The DED-certified M/ WBE Directory should be utilized as the primary source for “available” women and “minorities.” However, the Directory should be revised in accordance with the proposal set forth in Exhibit Y<sup>94</sup> and HHH’s

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94. Exhibit Y – ECONNomics recommendations for a “State Contract Award Data Base.” The recommendations include collecting the following data but not limited to: Product/Service; SIC Code; Minority/Majority; Gender; Race/Ethnicity; Dollar value; Type of award (preference, set-aside, open market); city/ town; state; zip code; date. Further data recommendations made include: require timely reporting (every six months) of all agencies to the responsible state agency; in cases where products/services do not have M/WBE representation, begin an outreach program to identify M/WBE for these products/services; CDA and CII should recognize the importance of M/WBE participation in loan programs; and adopt penalties for false presentation as an M/WBE.

recommendations set forth herein. The Inter-Agency Task Force ... should, among other things, review, and comment on and otherwise direct State contracting agencies to develop annual women and "minority" goals during the first three months of the 92-93 and the 93-94 fiscal years.

OUR RECOMMENDATIONS, THEREFORE, ARE THAT FOR THE 92-93 AND 93-94 FISCAL YEARS THE STATE SHOULD ADDRESS ITS OWN INSTANCES AND PATTERNS OF DISCRIMINATION AND ITS PASSIVE PARTICIPATION IN DISCRIMINATION IN OTHER SECTORS OF THE STATE PURSUANT TO AN EXECUTIVE ORDER AS FOLLOWS:

#### **FIRST**

An Executive Order should mandate that State agencies and departments vigorously enforce the implementation of the 25% small business law after first making arrangements for "minorities" and women who are currently certified with the DED to be automatically eligible to compete as "small businesses" in this program.

#### **SECOND**

The Executive Order should promulgate an equal opportunity in State contracting policy which starts with the full enforcement of the contract compliance laws more particularly described in Exhibit J. The policy will also mandate that each agency set goals for the utilization of both women and "minority" business firms.

#### **THIRD**

Separate MBE and WBE goals should be developed by each agency within three months after the beginning of the current and next fiscal year (or within three months after the date of the executive order) under the guidance of a Special Inter-Agency Task Force designed to implement this Executive Order.

The Inter-Agency Task Force should consist of the DED, the CHRO, Permanent Commission on the Status of Women, Dept. of Administrative Services, Dept. of Transportation and Dept. of Public Works. The Inter-Agency Task Force should oversee the new mandate emerging from this Report's conclusion, namely, that by failing to implement the spirit of the small and M/WBE laws, the State and its contractors may be missing opportunities to receive contracts at the most competitive price. The discriminatory and exclusionary practices which have been identified in the State's public and private contracting sectors are part of a negative way of thinking and doing business which has no place in the "New Connecticut." The Inter-Agency Task Force should work with and guide all State agencies to develop goals for "minorities" and separate goals for women based on availability of "minority" and women per sources such as the DED-certified M/WBE Directory and the census data compiled by E/CONNomics (See Exhibit K).

#### **FOURTH**

Throughout this two year period, state agencies should be mandated to maintain, gather

and report to the Inter-Agency Task Force *Croson*-Required contract data on the utilization of women and "minority" business firms.

**The State And Municipal Record-Keeping Practices and Procedures Must Change In Order to Satisfy the "Modern Equal Protection Doctrine" Underlying the *Croson* Ruling.** State agencies will have an on-going duty to keep records in accordance with the E/CONNomics recommendation set forth on Exhibit Y. Otherwise, there will be no statistical basis for setting M/WBE contract goals. In the future this duty will be particularly important in developing an appropriate long-term minority and women business enterprise policy. There currently is little, if any, statistical data on discrimination against M/WBEs in the State's private contracting sectors. Accordingly, the State (as soon as the State Legislature re-convenes), must enact legislation enabling the municipalities throughout the State to implement changes in their ordinances (with respect to building permits and certificates of occupancy) so that they can commence to collect data to establish statistical evidence of discrimination against available and able M/WBEs in the private contracting sectors of the State. This data is essential in order for the State to determine the extent to which the 1970's concept of "contract set-asides" for M/WBEs continues to be a viable remedy against identified discrimination in the 1990s.

#### FIFTH

In 1994 the Inter-Agency Task Force will assess and recommend a proper mix of both race-and gender-neutral devices and race- and gender-based devices (with built-in expiration provisions) to address patterns of discrimination against women and minority businesses in both the private and public contracting sectors of the State. The Inter-Agency Task Force will recommend legislation which will address patterns of discrimination based on this Study and on its own findings during the next two years. The Task Force will also be asked to review and consider the efficiency of the race- and gender-based legislation such as the San Francisco ordinance which is more particularly described in Exhibit HH attached hereto.

#### SIXTH

The State must continue to become "*CROSON-AWARE*." *Croson's* minimal requirement is that State and local governments must do a better job documenting discrimination against women and minorities who are in business. The maintenance of contract records on the utilization of WBEs and MBEs in the public and private sectors is critical to the future of the remedy currently known as the "minority and/or women set-aside." If this data is not compiled and reported to the DED, CHRO and the Inter-Agency Task Force, it will be impossible in the future to establish the *Croson*-preferred STATISTICAL EVIDENCE OF DISCRIMINATION AGAINST M/WBEs. ACCORDINGLY, STATE AND MUNICIPAL RECORDS SHOULD BE KEPT UTILIZING THE "STATE CONTRACT AWARD BASE" MODEL SET FORTH IN THE E/CONNOMICS LETTER TO HHH DATED MARCH 30, 1992, ATTACHED HERETO AS EXHIBIT Y.

#### SEVENTH

In order to implement our recommendations the Executive Order must set the proper tone for the New Connecticut's balanced vision for equal opportunity in contracting:

The tone of THIS PROPOSED 1992 EXECUTIVE ORDER will be important to distinguish it from the 1969 Executive Order No 3.

The Executive Order might note that the modern equal protection doctrine requires that we aspire to create a society untouched by the history of exclusion, and to assure that equality defines all citizens' daily experience and opportunities as well as the protection afforded them under the law. It requires that all citizens be treated equally and fairly under the law. Women and minority businesses should not be discriminated against in the State's public and private contract sectors. Simultaneously, white male businesses should not become victims of "reverse discrimination" while the State or a political subdivision of the State attempts to address identified discrimination against women and minority businesses. Therefore, race-conscious remedies, such as M/WBE set-aside goals, should be employed no more broadly than the interest of remedying the known discrimination requires.

The Executive Order should discuss the manner in which this new mandate may serve to overcome the State's financial crisis. This buzz word may be important to mention in order to minimize the likelihood that the Executive Order's equal opportunity provisions will not be misunderstood as a "hand out" in the way that welfare legislation is perceived. Minority and women businesses merely want an opportunity to compete. State agencies should be reminded of Justice Brandeis' notion that the true prosperity of our past comes not only from big business, but through the courage, the energy and the resourcefulness of small men and women, without regard to race or creed. By opening up the State's contracting table to *all* available and able citizens, the State's economic misery may end soon and it should get more competitive prices on its contracts.

## APPENDIX B

### **“FACT-FINDING HEARINGS REPORT ON EQUAL OPPORTUNITY AND ECONOMIC DEVELOPMENT IN THE STATE OF CONNECTICUT,” FEBRUARY 1988**

This report is the result of a series of five fact-finding hearings across the state held by the Commission on Human Rights and Opportunities. A total of 65 witnesses provided testimony including 19 minority contractors, 12 local officials, 15 representatives of non-profit organizations, 11 representatives of state agencies, 7 state legislators, and 1 unaffiliated resident. After summarizing the 24 overall findings, 24 recommendations were presented. The following is an excerpt of pages 50-58 of the report.

#### RECOMMENDATIONS TO THE GENERAL ASSEMBLY:

1. CREATE ADDITIONAL RESOURCES FROM WHICH MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES MAY DRAW ASSISTANCE IN OBTAINING STATE CONTRACTS. THESE RESOURCES SHOULD INCLUDE: (1) A BONDING ASSISTANCE PROGRAM IN PARTNERSHIP WITH THE PRIVATE INSURANCE INDUSTRY; (2) FINANCIAL TRAINING PROGRAMS; (3) TECHNICAL ASSISTANCE PROGRAMS.

This is based on the findings:

A-1 Where bonding is required it is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

A-2 Financing is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

2. ESTABLISH SEPARATE SET-ASIDE REQUIREMENTS FOR MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.

This is based on the finding:

B-1 The present grouping of women-owned businesses in the same category as minority-owned businesses, in the minority business enterprise set-aside program, reduces the amount of the set-aside contracts going to minorities.

3. AMEND CONN. GEN. STATE. SEC. 4-114A TO DECLARE CONTRACTS IN VIOLATION OF THE PUBLIC POLICY AGAINST DISCRIMINATION TO BE NULL AND VOID.

This is based on the finding:

F-1 The present system of post-award review by the Commission of employment practices and subcontracting policies prevents meaningful enforcement of the law.



4. AMEND CONN. GEN. STAT. SEC. 46A-56(b) TO AUTHORIZE THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES TO COLLECT CIVIL FINES FROM MINORITY BUSINESS ENTERPRISES OR WOMEN BUSINESS ENTERPRISES FOUND THROUGH THE HEARING PROCESS TO BE FRONTS, AND FROM CONTRACTORS AND SUBCONTRACTORS KNOWINGLY EMPLOYING SUCH ENTERPRISES. THESE FUNDS SHOULD BE PLACED IN A STATE FUND TO ASSIST MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.

This is based on the findings:

G-1 There is a perception that the present certification processes for minority business enterprises do not lock out frauds and shams.

G-2 The credibility of the minority business enterprise program is hurt by frauds and shams.

5. AMEND CONN. GEN. STAT. SEC. 4-114A TO REQUIRE AWARDING AGENCIES TO APPRISE THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES OF ENTERPRISES SUSPECTED OF BEING FRONTS, AND AUTHORIZE THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES TO INVESTIGATE AND PROSECUTE SUCH CASES.

This is based on the finding:

E-2 There is no coordination between these various agencies, and no mechanism for coordination.

G-1 There is a perception that the present certification processes for minority business enterprises do not lock out frauds and shams.

G-2 The credibility of the minority business enterprise program is hurt by frauds and shams.

6. REQUIRE OUT-OF-STATE FIRMS TO MEET THE SAME ANTIDISCRIMINATION REQUIREMENTS AS IN-STATE FIRMS, INCLUDING PRE-AWARD COMMITMENTS AND POST-AWARD PENALTIES. AUTHORIZE THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES TO EXEMPT BY REGULATION CERTAIN CONTRACTS FROM THESE REQUIREMENTS.

This is based on the finding:

F-6 There is no effective mechanism for requiring out-of-state firms to meet contract compliance requirements.

7. ENACT ADDITIONAL LEGISLATION TO MORE FULLY ADDRESS THE EQUAL OPPORTUNITY AND ECONOMIC DEVELOPMENT NEEDS OF PERSONS WITH DISABILITIES.

This is based on the finding:

C-4 Persons with disabilities are not included under present set-aside provisions

8. PROVIDE ADEQUATE FUNDING AND STAFF TO THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES FOR THE IMPLEMENTATION OF ITS CONTRACT COMPLIANCE PROGRAM.

This is based on the finding:

F-3 The Department of Labor does not have the staff needed to enforce Executive Order No. Three.

9. PROVIDE ADEQUATE FUNDING FOR FULL STAFFING OF THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES SATELLITE OFFICE IN NEW HAVEN TO MEET THE NEEDS OF THAT AREA.

This is based on the finding:

F-5 Greater Commission presence in southern Connecticut, and particularly in New Haven, will benefit those seeking their right to equal economic opportunity.

10. AMEND. CONN. GEN. STAT. SEC. 4-121B TO REQUIRE PROMPT PAYMENT FOR CONTRACTS RELATED TO HIGHWAY OR ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE. ENACT ADDITIONAL LEGISLATION TO GUARANTEE PROMPT PAYMENT TO MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.

This is based on the finding:

D-1 Delays in payments by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because they are paid after the prime contractor.

#### RECOMMENDATIONS TO THE GOVERNOR:

1. INSTRUCT THE DEPARTMENT OF LABOR AND THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES TO DEVELOP A COORDINATED PLAN TO IMPLEMENT EXECUTIVE ORDER NO. THREE AND A PLAN TO TRAIN STATE AGENCY CONTRACT COMPLIANCE OFFICERS WITH RESPECT TO STATE CONTRACT COMPLIANCE RESPONSIBILITIES.

This is based on the findings:

E-1 There are several state agencies having contract compliance responsibilities and differing minority business enterprise certification requirements.

E-2 There is no coordination between these various agencies, and no mechanism for coordination.

E-3 This lack of a mechanism for coordination causes confusion, overlapping responsibilities, and unclear enforcement efforts.

F-1 The present system of post-award review by the Commission on Human Rights and Opportunities employment practices and subcontracting policies prevents meaningful enforcement of the law.

F-2 Agencies and contractors are not affirmatively utilizing minority business enterprises as contractors, subcontractors and suppliers of materials.

F-3 The Department of Labor does not have the staff needed to enforce Executive Order No. Three

2. REQUIRE THAT AWARDING AGENCIES MONITOR PAYMENTS FROM PRIME CONTRACTORS TO SUBCONTRACTORS TO ASSURE PROMPT PAYMENT.

This is based on the findings:

D-1 Delays in payments by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because they are paid after the prime contractor.

RECOMMENDATIONS TO THE COMMISSIONER OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

1. IMMEDIATELY ISSUE REGULATIONS UNDER CONN. GEN. STAT. SEC. 4-114B TO ASSIST MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES IN OBTAINING STATE CONTRACTS.

This is based on the findings:

A-1 Where bonding is required it is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state

A-2 Financing is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

D-1 Delays in payments by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because they are paid after the prime contractor.

D-3 Minority business enterprises do not receive bidding information on a timely basis.

D-4 Many minority business enterprises are not being solicited by agencies or primes for any state contracting opportunities.

F-2 Agencies and contractors are not affirmatively utilizing minority business enterprises as contractors, subcontractors and suppliers of materials.

2. ISSUE REGULATION UNDER CONN. GEN. STAT. SEC. 4-114B OR OTHER APPROPRIATE AUTHORITY, ESPECIALLY IN THE AREA OF BONDING, TO ENHANCE THE AWARD OF CONTRACTS TO MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.

This is based on the findings:

A-1 Where bonding is required it is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

A-2 Financing is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

3. CONSULT WITH THE DEPARTMENT OF LABOR, THE DEPARTMENT OF ECONOMIC DEVELOPMENT, THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, AND OTHER INTERESTED PARTIES BEFORE REGULATIONS ARE PUBLISHED.

This is based on the finding:

E-2 There is no coordination between these various agencies, and no mechanism for coordination.

RECOMMENDATIONS TO THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT:

1. COMPILE AND MAINTAIN A PUBLIC RECORD OF THE PERCENTAGE AND DOLLAR AMOUNT OF SET-ASIDE CONTRACTS ANNUALLY AWARDED TO MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. THIS RECORD SHALL INCLUDE: (1) THE TOTAL DOLLAR VALUE OF ALL CONTRACTS SUBJECT TO SET-ASIDE REQUIREMENTS ANNUALLY AWARDED; (2) THE TOTAL DOLLAR VALUE OF ALL SUCH CONTRACTS AWARDED TO SMALL CONTRACTORS; (3) THE TOTAL DOLLAR VALUE OF ALL SUCH CONTRACTS AWARDED TO MINORITY BUSINESS ENTERPRISES; (4) THE TOTAL DOLLAR VALUE OF ALL SUCH CONTRACTS AWARDED TO WOMEN BUSINESS ENTERPRISES; AND (5) THE AVERAGE TOTAL DOLLAR VALUE OF CONTRACTS AWARDED FOR THE PREVIOUS THREE YEARS.

This is based on the findings:

C-1 Figures are not compiled by the state to indicate whether statutory set-aside requirements are being met.

C-2 Without compiled figures, compliance with set-aside requirements cannot be ascertained.

2. MORE AGGRESSIVELY ADMINISTER, ENFORCE, AND MONITOR THE SMALL CONTRACTOR SET-ASIDE PROGRAM. MORE BROADLY DISSEMINATE INFORMATION ON THE PROGRAM TO MINORITY BUSINESS ENTERPRISES, WOMEN BUSINESS ENTERPRISES, AND AWARDING AGENCIES.

This is based on the findings:

D-3 Minority business enterprises do not receive bidding information on a timely basis.

D-4 Many minority business enterprises are not being solicited by agencies or primes for any state contracting opportunities.

G-1 There is a perception that the present Department of Economic Development certification process for minority business enterprises does not lock out frauds and shams.

G-2 The credibility or the minority business enterprise program is hurt by frauds and shams.

3. MAKE LISTINGS OF CERTIFIED MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES MORE WIDELY AVAILABLE, AND TAKE ADDITIONAL STEPS TO PUBLICIZE THAT THE LIST IS AVAILABLE TO AWARDED AGENCIES, CONTRACTORS, SUBCONTRACTORS, MUNICIPALITIES, SUBDIVISIONS OF THE STATE AND INTERESTED PERSONS.

This is based on the findings:

D-4 Many minority business enterprises are not being solicited by agencies or primes for any state contracting opportunities.

D-5 Information for contractors on who the state's minority business enterprises are and where they are is inadequate.

#### RECOMMENDATION TO THE COMPTROLLER:

1. COMPILE A LIST OF AGENCIES FAILING TO MAKE PROMPT PAYMENT TO CONTRACTORS.

This is based on the findings:

D-1 Delays in payments by state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because that are paid after the prime contractor.

#### RECOMMENDATIONS TO MUNICIPALITIES:

1. CONSIDER ENACTING CONTRACT COMPLIANCE ORDINANCES TO AFFORD GREATER OPPORTUNITY FOR MEMBERS OF PROTECTED CLASSES AND SET-ASIDE PROGRAMS TO FOSTER ECONOMIC OPPORTUNITY FOR MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES IN LOCAL ECONOMIC DEVELOPMENT PROJECTS AND OTHER MUNICIPAL CONTRACTS.

This is based on the findings:

H-1 Minority business enterprises seeking municipal contracts face an array of obstacles similar to those found on the state level.

H-2 The absence or non-enforcement of municipal small contractor set-aside ordinances tends to deny minority business enterprises equal contracting opportunity.

RECOMMENDATIONS TO AWARDING AGENCIES:

1. MAKE GREATER EFFORTS TO UTILIZE EXISTING OPPORTUNITY FOR PRE-AWARD REVIEW, AS REQUIRED BY SECTION 4-114A-3(10) OF REGULATIONS OF CONNECTICUT STATE AGENCIES, TO ASSURE CONTRACTOR COMPLIANCE WITH ANTIDISCRIMINATION LAWS.

This is based on the findings:

F-1 The present system of post-award review by the Commission of employment practices and subcontracting policies prevents meaningful enforcement of the law.

F-2 Agencies and contractors are not affirmatively utilizing minority business enterprises as contractors, subcontractors and suppliers of materials.

F-3 The Department of Labor does not have the staff needed to enforce Executive Order No. Three

2. MONITOR INTERNAL PROCEDURES TO ASSURE PROMPT PAYMENT TO CONTRACTORS.

This is based on the findings:

D-1 Delays in payments by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because they are paid after the prime contractor.

3. DEVELOP PROCEDURES TO MONITOR PAYMENTS FROM PRIME CONTRACTORS TO SUBCONTRACTORS TO ASSURE PROMPT PAYMENT.

This is based on the findings:

D-1 Delays in payments by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

D-2 Delays in payments by the state create an even more serious problem for minority business enterprises that are subcontractors because they are paid after the prime contractor.

RECOMMENDATION TO CONTRACTORS:

1. MAKE GREATER EFFORTS TO PROVIDE REASONABLE TECHNICAL ASSISTANCE, TRAINING, AND FINANCIAL ASSISTANCE TO MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES, AS REQUIRED BY SECTION 4-114A-2(4) OF THE REGULATIONS OF CONNECTICUT AGENCIES.

This is based on the findings:

A-1 Where bonding is required it is a major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

A-2 Financing is major obstacle for minority-owned businesses seeking contracts from the state and political subdivisions of the state.

D-2 Delays in payment by the state result in contractors being unable to afford to participate in state contracting opportunities, thereby limiting competition.

**APPENDIX C**  
**SURVEY OF DAS-CERTIFIED COMPANIES**

**Q1. In what industry is your business primarily involved?**

Answer Options	Response Percent	Response Count
Agriculture, Forestry, Fishing and Hunting	0%	2
Mining, Quarrying, and Oil and Gas Extraction	0%	0
Utilities	0%	2
Construction	43%	232
Manufacturing	4%	22
Wholesale Trade	5%	26
Retail Trade	3%	15
Transportation and Warehousing	1%	6
Information	2%	10
Finance and Insurance	2%	9
Real Estate and Rental and Leasing	1%	5
Professional, Scientific, and Technical Services	15%	82
Management of Companies and Enterprises	0%	0
Administrative and Support and Waste Management	1%	4
Educational Services	1%	7
Health Care and Social Assistance	1%	5
Arts, Entertainment, and Recreation	1%	4
Accommodation and Food Services	0%	1
Other Services	21%	113
	<i>answered question</i>	<b>545</b>
	<i>skipped question</i>	<b>9</b>

**Q2. Select the region of the state where your headquarters are located.**

Answer Options	Response Percent	Headquarters
Fairfield	12%	64
Hartford	41%	218
Litchfield	4%	22
Middlesex	8%	44
New Haven	21%	113
New London	7%	35
Tolland	3%	18
Windham	2%	13
Comments	3%	14
	<i>answered question</i>	<b>527</b>
	<i>skipped question</i>	<b>27</b>



**Q3. How many offices does your business have?**

Answer Options	Response Percent	Response Count
1	86%	466
2	8%	45
3	3%	19
4	1%	5
5	1%	8
	<i>answered question</i>	<b>543</b>
	<i>skipped question</i>	<b>11</b>

**Q4. How many employees or contractors does your business have or utilize?**

	0-9	10-20	21-50	51-99	100	Response Count
<b>Full-Time</b>	338	110	72	8	4	532
<b>Part-Time</b>	259	11	5	2	3	280
<b>Contractors</b>	198	12	8	4	4	226
					<i>answered question</i>	<b>547</b>
					<i>skipped question</i>	<b>7</b>

**Q5. Indicate the number of years you have been in business.**

Number of Years	Response Percent	Years in Business
<b>Less than 1 year</b>	1%	6
<b>1 to 4 years</b>	14%	76
<b>5 to 9 years</b>	15%	82
<b>10+ years</b>	70%	384
	<i>answered question</i>	<b>548</b>
	<i>skipped question</i>	<b>6</b>

**Q6. Is at least 51% of your business owned by a minority or a woman?**

Answer	Response Percent	Response Count
<b>Yes</b>	55%	297
<b>No</b>	44%	242
<b>Do Not Know</b>	0%	2
	<i>answered question</i>	<b>541</b>
	<i>skipped question</i>	<b>13</b>

Q7. Indicate your business's state or federal certifications and how many years you have held each certification. If more than one, select all that apply.

Certification(s)	Certification 1	Certification 2	Certification 3	Certification 4	Certification 5
Disadvantaged Business Enterprise (federal DBE)	29	8	5	2	0
Minority Business Enterprise (state MBE)	127	42	8	0	0
Pre-qualified Vendor/Contractor (state)	31	47	10	3	0
Small Business Enterprise (state SBE)	241	85	26	8	1
Women Business Enterprise (state WBE)	84	34	27	5	0
Disabled Business Enterprise (state DisBE)	2	2	2	0	0
None of these certifications	10	2	3	3	3
<b>Response Count</b>	<b>524</b>	<b>220</b>	<b>81</b>	<b>21</b>	<b>4</b>

# of years	Less than 1 year	1 to 4 years	5 to 9 years	10+ years	Response Count
Certification 1	45	186	118	139	488
Certification 2	24	66	61	54	205
Certification 3	6	22	23	22	73
Certification 4	0	8	4	7	19
Certification 5	0	1	0	1	2

Certified in other States	Yes	No	Response Count
Certification 1	39	295	334
Certification 2	27	111	138
Certification 3	11	36	47
Certification 4	6	9	15
Certification 5	1	1	2
Comments			38
		<i>answered question</i>	524
		<i>skipped question</i>	30

**Q8. Select from the drop down menu the average size of your business's State of Connecticut contracts.**

Answer Options	Response Percent	Response Count
No Contracts	41%	220
Up to \$9,999	9%	51
\$10,000 to \$49,999	13%	71
\$50,000 to \$99,999	9%	47
\$100,000 to \$499,999	17%	93
\$500,000 to \$999,999	5%	26
\$1,000,000 plus	6%	32
	<i>answered question</i>	<b>540</b>
	<i>skipped question</i>	<b>14</b>

**Q9. Indicate the largest dollar amount on a contract to date your business has had with the State of Connecticut.**

Answer Options	Response Percent	Response Count
No Contracts	41%	214
Up to \$9,999	5%	29
\$10,000 to \$49,999	12%	63
\$50,000 to \$99,999	7%	39
\$100,000 to \$499,999	16%	86
\$500,000 to \$999,999	8%	43
\$1,000,000 plus	10%	54
	<i>answered question</i>	<b>528</b>
	<i>skipped question</i>	<b>26</b>

**Q10. Indicate your business's largest contract amount in any state and the state.**

Answer Options	Response Percent	Response
Indicate your company's largest \$ amount on a	75%	326
If no contracts, indicate "none."	36%	155
	<i>answered question</i>	<b>434</b>
	<i>skipped question</i>	<b>120</b>

Q11. Indicate your business's gross receipts for 2012.

Answer Options	Response Percent	Response Count
No Gross Receipts for 2012	3%	14
Up to \$9,999	3%	15
\$10,000 to \$49,999	5%	26
\$50,000 to \$99,999	7%	36
\$100,000 to \$499,999	25%	133
\$500,000 to \$999,999	11%	56
\$1,000,000 plus	47%	246
	<i>answered question</i>	<b>526</b>
	<i>skipped question</i>	<b>28</b>

Q12. What business organizations are you affiliated with? Use one text box for each affiliation. (Open-ended question: answers not included in appendix)

Q13. What sources of financing did you have available to start your business? Select all that apply.

Answer Options	Response Percent	Response Count
equity capital	8%	39
loan from a bank	22%	104
federal government (i.e., SBA)	4%	18
friends or family	20%	94
personal equity	78%	376
Comments	8%	39
	<i>answered question</i>	<b>480</b>
	<i>skipped question</i>	<b>74</b>

Q14. Why did you start a business? (Open ended question: answers not included in appendix)

Q15. If you faced any difficulties in starting your business, how did you overcome those difficulties? (Open-ended question: answers not included in appendix)

Q17. On average, what percentages of your annual work are for private contracts vs. public contracts? The percentages should add to 100%.

Answer Options	Response Average	Response Count
% private	60%	429
% public - local	23%	296
% public - state	30%	317
% public - federal	11%	182
other	15%	64
	<i>answered question</i>	<b>451</b>
	<i>skipped question</i>	<b>103</b>

**Q18. Does the type of work you perform vary depending on whether you are working for the public or private sector? If yes, in what way? (Open-ended question: answers not included in appendix)**

**Q19. What geographic area do you consider as your market? Select all that apply.**

Answer Options	Response Percent	Response Count
Town	28%	131
County	31%	143
Connecticut	71%	331
Northeast	34%	157
U.S.	20%	93
World	4%	20
Comments	7%	31
	<i>answered question</i>	<b>463</b>
	<i>skipped question</i>	<b>91</b>

**Q20. Do you have any barriers to company growth? If so, what are the barriers? (Open-ended question: answers not included in appendix)**

**Q21. Are there any barriers that small or minority/women/disabled businesses experience that other businesses do not experience? If so, what are they? (Open-ended question: answers not included in appendix)**

**Q23. Have any of the following been a recurring problem your firm has faced in getting contracts? Select all that apply.**

Answer Options	Response Percent	Response Count
Bonding	31%	91
Cash Flow	44%	127
Having Competitive Prices	48%	140
Aware of Contract Opportunity in Time	50%	145
Comments	30%	88
	<i>answered</i>	<b>291</b>
	<i>skipped question</i>	<b>263</b>

**Q24. How do you find out about state RFPs or new projects opportunities with the State of Connecticut? Select all that apply.**

Answer Options	Response Percent	Response Count
DAS website	77%	307
State Agency Website	2%	101
Email	52%	210
Newspaper	15%	60
From Prime Contractors	37%	147
Comments	12%	47
	<i>answered question</i>	<b>400</b>
	<i>skipped question</i>	<b>154</b>

**Q25. Do you know how to find prime contractors, other companies or S/M/W/DisBEs to assist with a project?**

Answer Options	Response Percent	Response Count
Yes	57%	234
No	34%	138
Do Not Know	10%	39
	<i>answered question</i>	<b>411</b>
	<i>skipped question</i>	<b>143</b>

**Q26. How many times over the last five years...**

Answer Options (# times)	0	1-5	6-9	10	Response Count
...have you utilized S/M/W/DisBEs	227	88	13	58	386
...been a subcontractor yourself?	181	111	16	78	386
...have you utilized S/M/W/DisBEs	104	13	1	16	131
...been a subcontractor yourself?	75	27	3	26	131
				<i>answered question</i>	<b>403</b>
				<i>skipped question</i>	<b>151</b>

CONNECTICUT DISPARITY STUDY: PHASE I  
APPENDICES

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**Q27. Part 1: How important are the following measures to increase participation by S/M/W/DisBEs on State of Connecticut projects?**

<b>Answer Options</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Not important</b>	<b>Response Count</b>
structuring solicitations, quantities, specifications and delivery schedules to facilitate increased participation by S/M/W/DisBEs	248	90	34	373
assisting S/M/W/DisBEs to overcome barriers related to surety bonding or other financing	195	87	86	369
assisting start-up S/M/W/DisBE firms to become established	179	100	84	364
implementing communications programs regarding contracting procedures and opportunities	243	102	24	370
implementing supportive services programs to develop business management, record keeping, and accounting skills	138	117	103	359
helping firms learn to handle increasingly larger projects and a greater diversity of project types	185	101	74	361
assisting firms in the adoption of new or emerging technologies and the use of electronic media	149	118	87	355
adopting reciprocal preference laws so businesses could locate outside of the state	90	73	191	355
ensuring distribution of your certified directory, through print and electronic means, to as many potential prime contractors as possible	236	95	26	358
linked deposit programs or quick pay for timely payment	247	84	27	359
downsizing overall contract amounts	90	130	125	346
restricting prime contractors' self-performance	95	131	103	330
reducing bonds and insurance requirements	186	104	62	353
offering local bid preferences for subcontractors	237	73	47	358
offering technical assistance	148	129	74	352
applying the set-aside goal to the change order amount	141	109	82	333

**Q27. Part 2: How satisfied are you with the following measures being conducted by the State of Connecticut to increase participation by S/M/W/DisBEs on projects?**

Answer Options	Very satisfied	Somewhat satisfied	Not satisfied	Response Count
structuring solicitations, quantities, specifications and delivery schedules to facilitate increased participation by S/M/W/DisBEs	37	155	144	337
assisting S/M/W/DisBEs to overcome barriers related to surety bonding or other financing	34	118	149	302
assisting start-up S/M/W/DisBE firms to become established	44	124	124	293
implementing communications programs regarding contracting procedures and opportunities	39	152	114	306
implementing supportive services programs to develop business management, record keeping, and accounting skills	43	149	91	284
helping firms learn to handle increasingly larger projects and a greater diversity of project types	31	131	119	282
assisting firms in the adoption of new or emerging technologies and the use of electronic media	29	142	106	278
adopting reciprocal preference laws so businesses could locate outside of the state	39	122	96	258
ensuring distribution of your certified directory, through print and electronic means, to as many potential prime contractors as possible	37	118	127	283
linked deposit programs or quick pay for timely payment	34	108	139	282
downsizing overall contract amounts	30	127	100	258
restricting prime contractors' self-performance	28	131	96	256
reducing bonds and insurance requirements	33	96	139	269
offering local bid preferences for subcontractors	19	101	152	273
offering technical assistance	27	135	105	268
applying the set-aside goal to the change order amount	25	116	118	260
Comments				24
	<i>Total Responses Q27 Parts A&amp;B</i>		<i>answered question</i>	382
			<i>skipped question</i>	172



**Q28. What are your thoughts on the state certification process for small and minority/women/disabled businesses? Are there any improvements that could be made? (Open-ended question: answers not included in appendix)**

**Q29. What do you believe can be done to increase opportunities for S/M/W/DisBEs as meaningful participants in contracting opportunities in the public sector? (Open-ended question: answers not included in appendix)**

**Q30. Are there any changes in the S/M/W/DisBE program that you would like to see made? If so, please describe. (Open-ended question: answers not included in appendix)**

**APPENDIX D**  
**SURVEYS OF AGENCIES - PART 1**  
**AGENCY PROCUREMENT SURVEY**

<b>1. For how many agencies do you handle procurement activities?</b>		
Answer Options	Response Percent	Response Count
1	75%	15
2	0%	0
3	10%	2
4	5%	1
5+	10%	2
<i>answered question</i>		20
<i>skipped question</i>		0

<b>2. Do you receive updates when the DAS certification list is updated with new vendors?</b>		
Answer Options	Response Percent	Response Count
Yes	25%	5
No	70%	14
Don't Know	0%	0
Not Applicable	5%	1
<i>answered question</i>		20
<i>skipped question</i>		0

<b>3. How often do you refer to the DAS certification list?</b>		
Answer Options	Response Percent	Response Count
every time you put together a contract	35%	7
occasionally when putting together a contract	50%	10
rarely when putting together a contract	5%	1
never when putting together a contract	0%	0
not applicable	10%	2
<i>answered question</i>		20
<i>skipped question</i>		0

<b>4. How do you search the DAS certified list? Select all that apply.</b>		
Answer Options	Response Percent	Response Count
industry	58%	11
company name	63%	12
SBE/MBE/WBE/DisBE certified	63%	12
don't search the list	5%	1
Other (please specify)	300%	3
<i>answered question</i>		19
<i>skipped question</i>		1

5. How easy to search is the DAS certified list?								
Answer Options	very difficult		moderate		very easy	NA	Rating Average	Response Count
	0	2	6	5	6	1	3.79	20
<i>answered question</i>								20
<i>skipped question</i>								0

**6. What is your interaction with the Commission on Human Rights and Opportunities (CHRO) regarding the state's set-aside program for small and minority businesses? (Open ended question: answers not included in appendix)**

**7. What is your interaction with the Department of Administrative Services (DAS) regarding the state's set-aside program for small and minority businesses? (Open ended question: answers not included in appendix)**

8. If payments to small and minority businesses made via p-card are tracked to calculate set-aside goal achievement, is the tracking conducted manually by staff or does your agency's financial system do this automatically?		
Answer Options	Response Percent	Response Count
Payments made via p-card to small and minority businesses are not tracked	5%	1
Payments made via p-card to small and minority businesses are tracked manually by staff	60%	12
Payments made via p-card to small and minority businesses are tracked by agency's financial system	25%	5
Don't Know	10%	2
<i>answered question</i>		20
<i>skipped question</i>		0

9. Are payments to subcontractors recorded in your agency's financial system?		
Answer Options	Response Percent	Response Count
Yes	10%	2
No	60%	12
Don't Know	25%	5
NA	5%	1
<i>answered question</i>		20
<i>skipped question</i>		0

**10. What is the purpose of the state's small and minority business enterprise program? (Open ended question: answers not included in appendix)**

**11. Do you have any suggestions for how the set-aside program for small and minority businesses could be improved administratively? (Open ended question: answers not included in appendix)**

**12. If you would like to receive updates about this disparity study, please provide your contact information below. (Open ended question: answers not included in appendix)**

**APPENDIX D**  
**SURVEYS OF AGENCIES - PART 2**  
**AGENCY SET-ASIDE GOAL SURVEY**

<b>1. For how many agencies do you handle set-aside goal making activities?</b>		
Answer Options	Response Percent	Response Count
1	78.6%	11
2	14.3%	2
3	0.0%	0
4	0.0%	0
5+	7.1%	1
<i>answered question</i>		14
<i>skipped question</i>		0

<b>2. Do you receive updates when the DAS certification list is updated with new vendors?</b>		
Answer Options	Response Percent	Response Count
Yes	7.1%	1
No	85.7%	12
Don't Know	7.1%	1
Not Applicable	0.0%	0
<i>answered question</i>		14
<i>skipped question</i>		0

<b>3. How often do you refer to the DAS certification list?</b>		
Answer Options	Response Percent	Response Count
every time you put together a project proposal/bid	28.6%	4
occasionally when putting together a project proposal/bid	42.9%	6
rarely when putting together a project proposal/bid	7.1%	1
never when putting together a project proposal/bid	0.0%	0
not applicable	21.4%	3
<i>answered question</i>		14
<i>skipped question</i>		0

4. How do you search the DAS certified list? Select all that apply.		
Answer Options	Response Percent	Response Count
industry	64.3%	9
company name	92.9%	13
SBE/MBE/WBE/DisBE certified	64.3%	9
don't search the list	0.0%	0
Other (please specify)	200.0%	2
<i>answered question</i>		14
<i>skipped question</i>		0

5. How easy to search is the DAS certified list?								
Answer Options	very difficult		moderate		very easy	NA	Rating Average	Response Count
	1	3	5	3	1	0	3.00	13
<i>answered question</i>								13
<i>skipped question</i>								1

6. What is your method for applying small or minority/women/disabled goals on particular contracts? (Open ended question: answers not included in appendix)

7. What is your interaction with the Commission on Human Rights and Opportunities (CHRO) regarding the state's set-aside program for small and minority businesses? (Open ended question: answers not included in appendix)

8. What is your interaction with the Department of Administrative Services (DAS) regarding the state's set-aside program for small and minority businesses? (Open ended question: answers not included in appendix)

9. What is (or should be) the purpose of the state's set-aside program for small and minority businesses? (Open ended question: answers not included in appendix)

10. Do you have any suggestions for how the state's set-aside program for small and minority businesses could be improved administratively? (Open ended question: answers not included in appendix)

11. If you would like to receive updates about this disparity study, please provide your contact information. (Open ended question: answers not included in appendix)

## APPENDIX E: DATA SOURCES AND METHODS FOR DISPARITY STUDIES

Proper data collection and the application of appropriate analytical techniques are crucial aspects of designing a legally defensible disparity study and providing evidence justifying that the goal itself is necessary. There are three distinct facets of a disparity study that necessitate a discussion about data sources and collection methods. First, a legally defensible disparity study requires statistical evidence that there is discrimination occurring in the marketplace. Second, the establishment of MBE/WBE goals requires that an estimation be calculated of the current availability and capacity of the discriminated party within the marketplace. Third, monitoring each state agency and the overall performance of the state requires that data be collected on both prime and subcontractors that have placed a bid on any state contract as well as those that have received procurement funds. Disparity studies from across the country have been analyzed in an effort to provide a thorough depiction of the sources and necessary collection procedures that are required to craft a legally defensible disparity study.

### **Evaluating Statistical Discrimination in the Marketplace**

A legally defensible disparity study requires statistical evidence that there is discrimination occurring in the marketplace. Statistical evidence of discrimination can be defined as any hindrance to the ability of MBE/WBEs to form, grow, and compete in the marketplace. For example, a statistical disparity often exists in the ability of MBE/WBEs to secure the financing, bonding, and insurance required to participate in state contracting or in the private marketplace. Evidence can be found in data pertaining to business starts and their ownership by race as well as gender. Other areas where statistical disparities are often found include employment, self-employment, education, training, union participation, relative earnings, and real income. A complete statistical analysis of the aforementioned areas in addition to historical and qualitative evidence is necessary to establish the necessary motivation for establishing MBE/WBE goals.

One of the most commonly used datasets for evaluating marketplace discrimination is the Census Bureau's Public Use Microdata Sample (PUMS). The PUMS dataset is constructed from the American Community Survey's untabulated responses (about 250,000 households nationally per month) for predefined Public Use Microdata Sample Areas (PUMA) with a minimum of 100,000 residents. The PUMA geographies can be further aggregated to the state and national levels. The US Census Bureau conducts the American Community Survey every year and aggregates the results into 1-year, 3-year, and 5-year sample files in an effort to reduce the margins of error for smaller geographies. A linear regression and linear probability model can be used to assess whether there exists a statistical disparity across race and ethnicity for variables such as business earnings, wages, and the likelihood of business formation. This model can use other variables to control for factors such as level of educational attainment, within-state region, industry, occupation, and length of time in business.

Another dataset that could be used to evaluate marketplace discrimination is the Current Population Survey (CPS), which is created through a joint effort between the US Census Bureau and the US Bureau of Labor Statistics. The CPS is a monthly micro dataset with a considerably smaller sample than the PUMS (about 70,000 households nationally per month) but is released monthly as opposed to annually. The CPS is employment focused and has more economic characteristics pertaining to those individuals surveyed than the PUMS. Similar to the method described to evaluate statistical discrimination using the PUMS, a linear regression and linear probability model can be used to assess whether there exists a statistical disparity across race and ethnicity for variables such as business earnings, wages, and the likelihood of business formation. Using the CPS, this model can also control for issues like level of educational attainment, within state region, industry, occupation, and length of time in business.

The PUMS and CPS are both excellent datasets for evaluating whether statistical discrimination exists in Connecticut. The primary advantage of using PUMS would be that it has a considerably larger sample and is readily available in a state aggregated form. However, using the CPS would allow for a more frequent estimation of statistical disparity and the use of an increased number of economic variables pertaining to the individuals surveyed. The 5-year PUMS files would afford an aggregate national sample of about 15 million while the CPS would yield a sample of about 4.2 million for the same time period. A disparity study could utilize a combination of these datasets to evaluate statistical discrimination in the marketplace and provide the necessary justification for setting MBE/WBE goals.

### **Calculate Availability of MBE/WBEs in the Marketplace**

The next aspect of crafting a legally defensible disparity study is to create a sound estimate of the availability and capacity of MBE/WBEs. Several techniques can be employed to assess marketplace availability and capacity. Many existing disparity studies calculate availability by using data from a wide variety of sources ranging from the US Census Bureau, a custom DBE census, a state's certified MBE/WBE directory, or a repository of submitted bids. A method suggested by this study's research, however, is to also utilize a new proprietary dataset and apportion the MBE/WBE availability using an estimation of capacity.

The most widely accepted methods of calculating availability have been to utilize data from the US Census Bureau's Survey of Business Owners (formerly known as the Survey of Minority and Women Owned Business Enterprises) or create a custom census using proprietary data from Dun & Bradstreet (D&B). The Survey of Business Owners is released in five-year intervals and has a wide variety of variables available such as employment size, sales, and characteristics of ownership. The major impediment to using the Survey of Business Owners is that the latest release currently available is 2007 and the 2012 release will not be available until December 2015. An additional concern stems from the fact that this data is derived from a survey of only 2.3 million businesses nationally, of which only 62% responded in 2007.

A custom census, on the other hand, is typically created by purchasing a statewide directory of D&B records to serve as the denominator in the availability calculation. An indicator for MBE/WBEs is added to the records by contacting minority business organizations and searching government lists of certified MBE/WBEs. The advantage of creating a custom census of MBE/WBEs is that researchers are able to verify that the record keeping of the state and the proprietary data provider is accurate. The downfall to this method, however, stems from the fact that D&B has about 90% coverage. If we assume that this 90% coverage extends to all subsets of the data and therefore assume that firms of all sizes and ownership types have that same 90% coverage, then supplementing the data could disproportionately increase the numerator of the availability calculation. However, if we assume that the D&B records have a lower coverage rate for MBE/WBEs, then this method would increase the numerator but in a way that made the resulting calculation more statistically sound. The D&B availability calculation is then often apportioned by an estimated measure of capacity and corrected for existing discrimination in the rate of business formation.

Calculating availability from the state's certified MBE/WBE directory or the repository of submitted bids is an alternative option that utilizes only internal sources of data. The advantage to using the MBE/WBE directory is that it provides a count of those firms currently able to bid on state contracts. The repository of state bids approach not only indicates that a firm has been certified by the state but assures that the firm is not only capable of working on a project of a given size but is also interested in a project of that type. The disadvantage to this approach, however, is that it assumes that the certified list and repository of bids is a representative sample of all firms interested and capable of participating in state projects. It is clear from the findings in the qualitative analysis of this report that MBE/WBEs are frequently unaware of the program and have



difficulty in becoming certified. This approach should not be utilized for the goal calculation as it would not provide an accurate calculation of overall state availability or capacity.

Finally, the approach recommended by this study's research is that of utilizing the overall D&B data as the denominator in the availability calculation and supplementing these records with the newly available D&B Supplier Diversity Solutions database. The D&B Supplier Diversity Solutions database is a collection of all MBE/WBEs that are collected from over 400 sources. The D&B Supplier Diversity Solutions database attains records of MBE/WBEs from both state and federal agencies as well as from third party certification agencies. The records are then verified from D&B for accuracy and valid ownership characteristics. The total sales of these establishments are also reported and verified to be accurate by D&B. The sales records can be used to apportion availability by the level of capacity once a robust statistical inference has been established between overall sales and the current capacity of a given firm. The custom census approach can then be applied to further refine and verify the data from D&B and any other business list vendors.

### **Calculate Goals and Monitor Each Agency**

In many disparity studies, a statewide goal is created based on the current availability of MBE/WBEs and then distributed to each agency's procurement department. A potential problem with setting a goal solely on the current availability is that it makes no attempt to correct for both current and historical disparities that occur in business formation. Statistical discrimination in business formation can be addressed by either correcting the availability calculation and goal to reflect the level of business formation that would occur in the absence of the disparity or by creating separate programs that encourage MBE/WBE business development.

The decision on which method the state chooses to address current and historical business formation disparities has a significant impact on the overall mission of the program. The former method of correcting the availability calculation attempts to ensure that there is an equitable distribution of state procurement amongst the MBE/WBEs that currently exist in the marketplace while utilizing the same mechanism to address disparities in business formation. The latter method uses the availability and goal to ensure an equitable distribution of state contracting funds to MBE/WBEs, but creates a separate mechanism to address disparities in business formation.

The creation and distribution of goals by the state and to each respective agency is another integral aspect of the MBE/WBE program that should be carefully examined. State agencies currently use exemptions to address the issue of low MBE/WBE availability in specific industry sectors. The resulting goal and level of achievement are calculated from the resulting non-exempt procurement funds. An alternative method would create a separate availability calculation for each industry sector in the state using the D&B data. Each agency's historical procurement could be used to disaggregate an average level of procurement by industry sector, which would then be multiplied by the statewide goal for that industry. The disaggregated MBE/WBE procurement dollars could then be aggregated to create an overall agency goal that would differ for each agency based on historical trends in procurement. Each agency's individual goal could then be further aggregated to create an overall statewide goal that not only reflects both the overall availability of MBE/WBEs in the state but also the spending habits of state agencies.

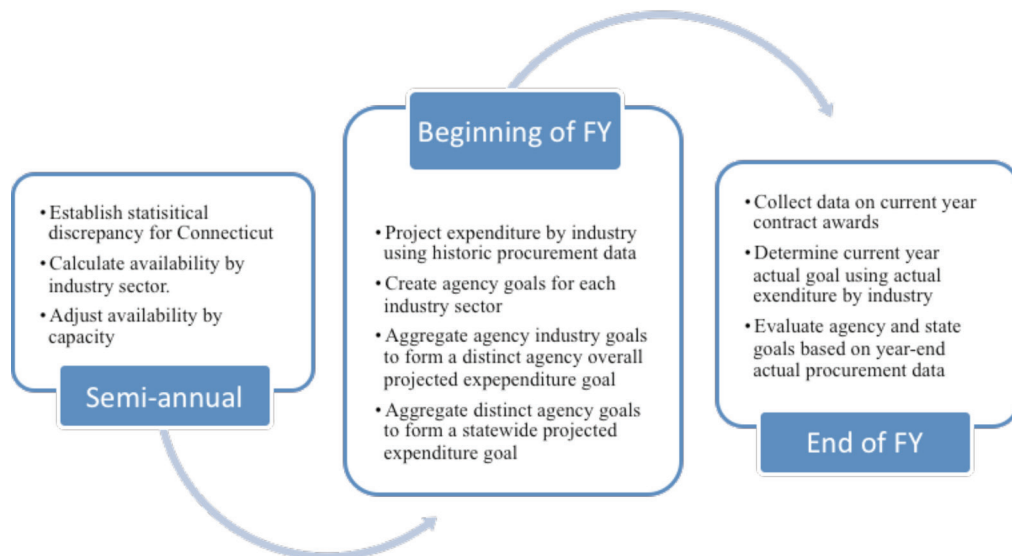
Creating goals using the aforementioned method would allow the state to periodically adjust goals based on changing levels of statewide MBE/WBE availability as well as overall industry composition in the state. This method would also reduce the burden on DAS to approve exemptions for every agency on an annual basis and ensure a more objective method of accounting for low industry sector availability. A potential concern about adopting this process of goal setting is that a state agency might find itself unable to meet its annual goal if its spending habits differed drastically from the historical trend. One potential way to address this issue would be to create

an overall agency “projected goal” based on industry availability and historical procurement at the beginning of the fiscal year. The agency’s performance could then be evaluated at the end of the fiscal year based on the same industry availability but using only that fiscal year’s procurement records. A report could then be issued (potentially jointly by DAS and CHRO) at the end of each year reporting the projected goal, actual goal, amount of the actual goal achieved, and the next year’s projected goal.

Calculating an agency’s goal and evaluating its performance, whether using traditional methods or those proposed herein, relies heavily on the availability of procurement, contract, and bidding records. Currently the state keeps these records in a disaggregated system where there are multiple financial systems and methods of record keeping among key state agencies and branches of government. One solution to this problem that many other states have implemented would be to create a statewide data system specifically for the purposes of tracking the state’s MBE/WBE program. Separate databases could be created for contract bids, procurement dollars, and overall bidders per project. These records would contain information of the firm’s MBE/WBE status, industry, total bid, prime or subcontractor status, and total awarded funds. At each stage of the procurement process an agency procurement agent would be required to enter specific details in the state database as well as their own agency-specific database. This creation and maintenance of the database could be done by the state itself but other states with MBE/WBE programs have chosen to outsource these activities to firms that specialize in the creation of disparity data systems.

The current MBE/SBE program can be improved significantly by revising the method and manner by which the state evaluates marketplace discrimination, calculates availability, establishes goals, and monitors performance. Each of these aspects necessitates a transition by the state to a more dynamic and detailed process of procurement tracking and data collection.

Increased coordination of state procurement data is necessary to accurately monitor annual agency goal performance. It is recommended that the state contract an outside vendor to create a dedicated MBE/SBE database that would be used to collect information such as industry sector and total bid for both prime and subcontractors at every step of the procurement process. The historical procurement and contract data would be used to project an annual goal at the beginning of the fiscal year using the current year availability and capacity calculation. At the end of the fiscal year, an agency’s performance would be evaluated by comparing actual expenditure to the annual program goal adjusted for the given years spending trend. The figure below provides a visual example of how an improved data collection process would benefit the agency goal-setting process.



## APPENDIX F: ANECDOTAL COMMENTS FROM THE FOCUS GROUPS SESSIONS

### ANECDOTAL INTERVIEW METHODOLOGY:

Evolution Enterprises LLC conducted five focus groups representing 10 non-certified prime contractors and one non-certified subcontractor; 10 certified Small Business Enterprises (SBEs); and 29 cross-certified contractors that included 23 SBEs, 16 certified Minority Business Enterprises (MBEs), 17 certified Women Business Enterprises (WBEs), and one certified Disabled Business Enterprises (DisBE).

The sessions were recorded and notes taken to ensure accuracy of the transcription. The attendees were notified that they were being taped prior to each session and were assured that their identity, and that of their company, would be held in strictest confidence.

Answers may not total to the number of firms participating in each focus group as some individuals' decided not to answer a question and at other times, respondents categorized themselves under multiple designations.

The following is the guide used to facilitate questioning at each session:

### GENERAL DEMOGRAPHICS

1. In what industry is your company involved?
2. How many employees does your company have?
3. How many years has your firm been in business?
4. Are you certified as a SBE/MBE with the state?
5. What type of business organization are you registered as (sole proprietorship, partnership, LLC, etc.?)

### STARTING A BUSINESS

6. What sources of financing did you have available to start your business (equity capital, loan, bank, federal government (i.e., SBA), friends, family members, personal equity, etc.)
7. Did you face any difficulties in starting your business? If so, how did you overcome those difficulties?
8. Did you have any training or education to prepare you for running a business?

### RUNNING A BUSINESS

9. Do most of your contracts come from the public or private sector?
10. Does the type of work you perform vary depending on whether you are working for the public or private sector?

11. What geographic area do you consider as your market?
12. Do you have any barriers to company growth? If so, what are the barriers?
13. Are there any barriers that SBE/MBEs experience that other businesses do not experience? If so, what are they?

EXPERIENCE WITH THE STATE

14. Have you ever done or tried to do business with the State of Connecticut?
15. Why or why not have you done or tried to do business with the State of Connecticut?
16. Have you received any help or assistance with regard to doing business with a State of Connecticut agency?
17. How do you find out about State RFPs or new projects?
18. Are you aware of any instances where change orders were issued and the goal was not applied to the change order amount? Did this impact your ability to complete the work?
19. Describe how the State of Connecticut's bid process works.
20. What is the requirement you must meet to bid on a project with the State of Connecticut?
21. Have you found any occasions where the bid process was not fair?
22. Have you experienced any problems with timely payment by the State of Connecticut?
23. Have you experienced projects being conducted through municipalities or state agencies not required to meet set-aside requirements but it is still state funded?

EXPERIENCE WITH SBE/MBEs PROGRAMS

24. Do you know how to find SBE/MBEs, perhaps through the State's SBE/MBE directory?
25. Have you participated in bids with the State of Connecticut which required you to comply with SBE/MBEs requirements?
26. Have SBE/MBE utilization requirements increased opportunities for minorities to participate as prime and subcontractors with the State of Connecticut?
27. What do you believe can be done to increase opportunities for SBE/MBEs as meaningful participants in contracting opportunities in the public sector?
28. Are there any improvements in the SBE/MBE program that you would like to see made? If so, please describe.

EXPERIENCE WITH SBE/MBEs

29. How many times over the last five years have you utilized SBE/MBEs as subcontractors?
30. How do you select subcontractors for a project?

31. Did you utilize SBE/MBEs prior to the existence of the State of Connecticut's SBE/MBE program?
32. What impact, if any, has the necessity of complying with the State of Connecticut SBE/MBE requirements had on your ability to compete for prime contracting opportunities with the State of Connecticut?
33. Have you had any problems receiving bonding? Or have SBE/MBEs with whom you have worked experienced any problems receiving bonding? If yes, please describe.
34. What could be done to assist SBE/MBEs obtain adequate bonding?

SBE/MBEs SUPPORT

35. Are there enough SBE/MBEs in the marketplace? Why or why not?
36. Do you think any of the following measures would increase participation by SBE/MBEs on State of Connecticut projects, or allow additional SBE/MBEs into the marketplace?
  - structuring solicitations, quantities, specifications and delivery schedules to facilitate increased participation by SBE/MBEs
  - assisting SBE/MBEs to overcome barriers related to surety bonding or other financing
  - assisting start-up SBE/MBE firms to become established
  - implementing communications programs regarding contracting procedures and opportunities
  - implementing supportive services programs to develop business management, record keeping, and accounting skills
  - helping firms learn to handle increasingly significant projects and a greater diversity of project types
  - assisting firms in the adoption of emerging technologies and the use of electronic media
  - adopting reciprocal preference laws so businesses could locate outside of the state
  - ensuring distribution of your certified directory, through print and electronic means, to as many potential prime contractors as possible
  - linked deposit programs or quick pay
  - downsizing contract amounts
  - restricting prime contractors' self-performance
  - reducing bonds and insurance requirements
  - offering local bid preferences for subcontractors
  - offering technical assistance
  - others?

ANECDOTAL INTERVIEW FINDINGS:

The following bolded headings reflect the demographics and recurrent themes that occurred throughout the sessions. Under each section are direct comments, where applicable, from the interviewees who addressed the topic theme.

**General Demographics:** This section addressed the industry, size, age, certification status, and organizational structure of the participating contractors.

Of the 10 non-certified prime and one non-certified subcontractors, three had over 100 employees while three had 5-10 workers. This group was overwhelmingly focused in construction (8) and construction services (9), and in business for over 10 years (9). Nine of these contractors were corporations.

Of the 10 contractors certified solely as an SBE, five were primarily construction orientated while four others provided services outside of the construction industry. The number of employees at these firms were concentrated in the mid-range of 5-10 (3) and 10-50 (2) and had overwhelmingly been in business for over 10 years (8). Six of these firms are LLCs, two are corporations and two are sole proprietorships.

Of the 29 cross-certified contractors that participated in the focus groups, only one employed more than 100 employees, while eight firms employed 5-10 people, and 6 firms each employed 1-5 and 10-50 workers. Seventeen of this group of contractors has been in business for longer than 10 years, with the other 12 contractors evenly divided between 1-5 years (6) and 5-10 years (6). Over half of the contractors in this category were in construction (15). Firms in construction services and non-construction services were almost evenly split at 10 and 9 companies respectively. Seven contractors indicated that they produce a good or product. The prevalent form of business in this group of contractors was as an LLC (17), with the next most popular form as a corporation (11 of which 9 are Subchapter S).

**Starting a Business:** This section addresses the experiences encountered when the participating businesses were started.

**The most prevalent way in which the non-certified prime contractors and subcontractors financed their start was through self-funding (3). Other sources of start-up financing were private investor (1), family investment (1), earned equity (1), and family business succession (1).**

Client #4D - It cost me about \$10,000 in accounting fees to try to get a Small Business Administration (SBA) loan so I stopped. Too much red tape. It was money out the door.

Client #4I - The only way to get money was to put up everything you possibly might have in the world for the bank.

Client #4A - Ties in with finance, obtaining bonding. When we started you needed a certain amount liquid. It was extremely difficult. In the beginning, we had to use our house as collateral, very uncomfortable thing. Definitely, in the beginning in order to get enough bonding to bid you had to have a fair amount liquid.

Client #4C - Mod [Experience Modification Factor] rating for your insurance. When you first start out, they want to give you a one, which most people do not appreciate.

Client #4B - Finding projects, finding clients who are willing to take the risk with you when you are coming out of the gate.

Client #4H - More than difficulties, I think the fact that construction is one of the highest rates of business failure in the country, almost as bad as a restaurant and a gas station. People start at the seat of their pants, without getting enough knowledge of the business you are getting into. You must really study and be prepared. My father was in the business. I was working when I was 12 years old. I found it is very important to know what you are doing and to know how to do it well. If you have a good product, clients will come.

**Training and/or education received by non-certified prime contractors and subcontractors were:**

Client #4I - Degree in civil engineering and a license, pretty much mandatory; Client #4H - Civil engineer; Client #4B - Civil engineer, structural engineer; Client #4A - Started out as an Art major, switched to architectural which did help. Ended up doing much more in the business financial end and legal which I have learned by working with terrific experts, finding a good accounting firm, finding a good legal firm, coming to a lot of seminars getting as much training as I could. Sort of beyond what was classroom training; Client #4K - Masters in business. In HR, working on a senior level; Client #4D - Reputation, I would not have been able to start my company without having already (been) established while working for other construction companies. I created my own reputation in the industry that enabled me to kind of hit the ground running. Having relationships with the industry; Client #4D - Getting in the industry I entered with BS degree in construction. It helped me to get the better jobs.

**Among contractors solely certified as SBEs, three were self-funded at start-up, two received family financing, two were able to obtain bank financing and one was financed by the Hartford Economic Development Corporation (HEDC).**

Client #2L - Had payroll for employees they hired, grew quickly, and had to use factoring as opposed to using savings, burned through savings quickly; factoring takes huge percentage of payroll.

Client #2I - Starting out as a general contractor the State has requirements in order to be prequalified in order to bid on any project over \$500,000. One of the requirements is to be in business a year and demonstrate you have done three similar projects based on the classification, and to be prequalified you have to show financial strength (demonstrate you can provide bonding). Fortunately, I was able to get through year one and get some projects that did require bonding for less than \$500,000; after a year was able to become prequalified, because 2I had contacts in the industry and was able to get bonding pretty quickly. As far as a general contractor (GC) in this market, it is very difficult to get private work, so as a start-up GC you are forced to only play in public market. You continually run up against challenges. State has designations for being prequalified. There are other agencies with other stipulations that say we want you to be in business for three years or five years. Even in the public market, he has lost jobs just being prequalified by the State because of the other stipulations. You can protest bids but you have the expense of hiring a lawyer at \$350 an hour; who has time for that?

**Training and/or education received by contractors solely certified as SBEs were:**

Client #2E - Electronic engineering in information technology, constant training, certifying by manufacturer; Client #2L- Manufacturing certification; Client #2A - Water treatment services business requirement to understand chemistry in air conditioning, boilers, and steam boilers. Organization has people that train the owners primarily who are versed in water chemistry and biology; trade association certification that they all belong; Client #2K- Certified for stone and drainage work for where water can run off to and wetlands; some of stone supply houses will offer certification in their drainage and stone work; Client #2D - Owner is an environmental engineer, state licenses are required.

**Certified MBE, WBE and DisBEs were overwhelmingly (17) self-financed at the start. Two mortgaged their homes to finance their business start-up, two others received family financing, two received bank loans, two obtained SBA backing, and one took over the family business.**

Client #3F - In business for three years. First problem was understanding what information she needed to document from a tax perspective; never had been exposed to that before. Huge time-consuming effort. Did not have an accountant to advise her.

Client #3E - Once past the ridiculous paperwork, certification is only after a year of being in business. For the construction industry when you start out you do not have any bonding, so, you cannot bid work, which makes you subject to picking up the crumbs that the GCs may hand out to you. Then when you overcome that you can buy equipment, you have some equity, and then can get bonding.

Client #3J - Banks were not lending money in the 1970's. We put a second mortgage on the house, signed over an agreement for garnishment of wages, signed special insurance that the State demanded; it was not easy, lots of roadblocks from banks and the State; more than people imagined. It did not seem like they wanted manufacturing in the State of Connecticut. Still gets that impression today.

Client #3I - Still overcoming it. Marketing, such a small company and we are good at what we do, hard to find the time to network and market and cover the cost to pay for it. Has not had any work through this offering (through the state).

**Start-up problems experienced:**

Client #5A and Client #2A - Financing; Client #1A and Client #3A - Cash flow; Client #5A - Marketing; Client #4A - Collecting; Client #6A - Information about, and getting access to, programs that give loans; Client #2A - Daycare; Client #5B - Government trouble; the State. It is a cultural issue with the State employees. I am not looking for another program that will help me to fill out a form or something. It is the culture of the employees themselves. They are hard to deal with; Client #5G - After a few years reacting too slowly to a down turn in the economy; Client #5E - Foreign competition; Client #5C - Finding help; Client #5D - Find good help; Client #5A - competition from within the state from the State, like the department of corrections; Client #5F - getting established into the field because it is all competitive.

Most respondents (more than half) are still facing the difficulties they faced when they began their businesses.

**Running a business:** Discusses the markets, market sector (public/private), type of work performed, and barriers to growth (if any).

**Of the non-certified prime contractors and subcontractors interviewed, their market sector concentration was split between public contracts (8) and private contracts (5). The type of work performed in each segment did not vary much at all. Profit margins in private work were indicated to be generally higher than in the public sector with most operating throughout the State of Connecticut (9), followed by those operating throughout the New England region (2), and one (1) doing business nationally. Barriers to growth most cited involved the economy and bureaucratic requirements.**

Client #4A - Right now there are a limited amount of projects available in the State. That is probably our biggest barrier. Competition is fierce because we do not have enough work. I think we are far behind most states in coming out of the recession. I may say something unpopular, but we have some anti-business legislation in this State [that] has hurt us. As for us, I think there are some unknowing things in our future (as far as taxes and health care and things like that), things that are going to affect our businesses. So I think that makes you a little more hesitant from my



perspective whether I would like to hire an employee or subcontract. I think subcontracting for most of us has been very attractive over the past few years.

Client #4K - We struggle. With everybody stretched kind of thin and not a great time to hire more staff. You do not want to have to go through any layoffs so you hold back a lot. So you start/stop with hiring.

Client #4B - Certainly financing with some projects we are involved with you go on them and hope they will get funded. Some are funded but are funded incorrectly. That indirectly affects our ability because you have to put a lot more irons in the fire than actually come out.

Client #4I - Barrier to growth we experience is more a perception on the State level. The perception is that a larger firm is more qualified or can do things better than a smaller firm. Why that perception is there I do not know. On a State level, I run into that quite a bit. It has taken us a long time to convince the State to give us some work.

Client #4H - The economy. Our company had more than doubled the amount of employees than we have at the present time. That is because there is just not enough work around.

Client #4K - I think the other part is that we struggle along with the subcontractors and whether they are getting a good solid base. They are struggling and we are trying to shore them up.

Client #4D - The barrier to our growth has been the enormity of the paperwork required on each of our State projects. In particular as it pertains to getting an affirmative action plan approved by CHRO.

Client #4B - First and foremost it seems like to be qualified to be an SBE/MBE you must be in business for at least 12 months. If you are not an SBE/MBE you, simply speaking, can start tomorrow. If you want to have that DAS approval you are going to wait at least 12 months for it before you can even cross that step. Specifically if you want to be an SBE or an MBE, you have to wait 12 months. The other thing is there is a financial cost to submitting such an application. With the direct cost of that application there is an indirect cost of other consultants that you may need to bring in to help you with the process because it is, as I hear, not that simple and obviously, your accountant may be in on it or your bonding company.

Client #4A - In terms of affirmative action plans, as a small business we are required to meet many times the same goals in our affirmative action plans as much larger firms, yet you have a much smaller project with fewer subcontractors etcetera and it is very difficult. That being said, I think that (and I hate to go off on the CHRO thing) but it seems to me that our plans are being written and they are supposed to be to provide opportunities. We are provided opportunities in our bidding process and when we are evaluated, that is a little piece of it but it is all about the goals. And even when you have met your goals, sometimes, that is not acceptable. When you are looking at smaller projects, when you think about it, if you are looking at a \$500,000 project or \$1M project and you have the same requirements and you want to self-perform you have very few opportunities for self contracting. If you are a small GC starting out and you want to self-perform that is very different than a SBE who is doing a \$100M project, where there is lots and they do not self perform. So there are a lot of opportunities for self-contracting. Whereas somebody like me and the people sitting to my left, it's maybe the mechanicals, and your electrical, things like that. But otherwise carpentry and things like that you would self perform. It is definitely a stumbling block.

Client #4B - I have seen it on one contract where there is a very narrow trade contract. There will

only be two contractors involved. If I am saddled with the 25% and I do not have anybody that bid in that trade for that piece of the contract what do you do. You either bat 1000 or do not get up to the plate basically.

Client #4J - Totally agree. I approached CHRO. Tried to talk with them because in order for us to meet the requirements I have been flatly told it is not goals. You are required. I do not care what the statute says you either do this or you are not approved. Point blank.

Client #4J - And when I have said you understand that we need this work to keep our guys busy? They have said if you do not like the requirements then do not bid State work.

**Of those firms categorized as solely SBEs, the market sector concentration was dispersed among the public (4), private (3), and half public and half private (4). The type of work performed did not change much between the public and private sector, but the amount of bureaucracy in the public sector was often complained about. Six companies considered their market as statewide while (3) operated throughout New England and the Northeastern portion of the country, (2) nationwide and (2) internationally.**

**Generally, the barriers to growth most mentioned were the conditions placed upon them by the State government and the inconsistency in those requirements.**

Client #2I - As a Smaller GC, I have to focus on public work right now because it is hard get out and build relationships because you are cash strapped. So you try and get money so you can grow. Inconsistency in state organizations in how they evaluate a low bidder. They can just say they are not going to give you the job anyway (even if low bidder). You have universities and board of regents at different universities, all with different rules. You can just see, as a start-up, that regardless of my personal experience before starting the company, there is a tendency that they do not want to give you the work even if you low bid.

Client #2H - Connecticut is a lot more difficult to do business in. Done more work when the times were good. Massachusetts, New York and Rhode Island were easier to work in. State has chosen to work through construction managers. All the subcontractors become insignificant. Every subcontractor requires a bid bond, then ultimately a performance bond. The State, when you apply to bid for certain jobs, will tell you what you can bid and what you cannot bid. Due to economic collapse, in my business we do not have anything to prove that we can do a \$1M job because there have not been any. The State says we do not qualify because it does not regard past performance or ability. They do not care; you are just a number. They set the number. In the past two months, there have been a number of jobs I was unable to bid on because of so many restrictions that due to the company's low volume I was not able to qualify. I have been the leader in the State in the past and have experience working on those jobs.

Client #2C - Bidding - Being minority owned has hurt him. Bid a lot of projects and was low bidder here in New Haven and had to give to another electrical contractor who was a union shop. Losing business to minority owned certified.

Client #2A - Larger State contract opportunities: The bidding entity appears not to have an incentive to go out and look at SBEs and bid them. Rather, they prefer to stay with what they have been doing over the years, where they are comfortable. The decision makers who can make these bid decisions are less often to make a change just to maintain the status quo. It is easier to not change than to change. As a result, we do not have the opportunities that we think are out there to even bid on. You cannot grow if you cannot compete, and you cannot compete if you cannot bid.

Client #2D - Same as 2A. Not uniform in state contracting; i.e., had an instance in City of Hartford bid [that] was due at a certain day and time, delivered the bid and was told that the bidding process was being held for a few more days because there were other bids to come in. Thought the bidding process was to close. Asked if the other party was going to low bid against them? It just is not consistent.

Client #2H - Will no longer bid work in the City of Hartford for any city work because they have a clause in their statute that minorities or disadvantaged have a certain advantage of 15% leeway. I do not make 15% so therefore I will never get a job, which has happened many times. He has lost jobs even for state jobs. Why put out the jobs for bid?

Client #2I - Hartford definitely has it (a hometown bid variance), New London has it, not sure if New Haven does.

Client #2G - Can be the lowest bidder and most qualified but the city based contractor who is either lower or higher than me who is unqualified could get that but the State does not check their qualifications, equipment list, or references because he is from Hartford and is a resident.

Client #2I - There was a project in Hartford recently; \$5,000 a day liquidated damages in the contract. It is a park. From a legal standpoint, I do not know if they have a legal right to stipulate \$5,000 a day. I believe they have to be substantiated. I bid the job but I was not sure the bonding company was going to allow me to bid it. Hartford seems to be arbitrary. Every job seems to have \$1,000 a day liquidated damages.

Client #2H - On the flip side of the coin if you are late they will stop you from doing the work. Where is the equality?

Client #2I - By law they are to be paid in 30 days. Been doing work for the State for five years and average payments are made in 53-60 days.

**Barriers for MBE, WBE and DisBEs were cited as:**

Client #2E - Workman- Hard to find quality workers; Client #2K - On the service side, if a contract starts to come to an end and you have been doing an excellent job, he will write into clauses in their contract that "you have the right to renew" and not go out to bid. He (grantor of the contract/awarder of the bid) does not necessarily believe in the lowest bid. Some bids are so low the contractor cannot make money. Likes some of the contracts where he was able to put in a 10% increase and re-sign for a few more years. Where is the reward for doing good work?; Client #2I - A ton of hurdles. Big hurdle when signing contracts where the State makes them agree to not hire their workers but the State will go behind the back of the contractor and hire the contractor's employees. They will not sign a contract to not hire the contractor's workers. There is no mutual non-compete. Small business criteria is \$15M a year (maximum sales level to be an SBE), pretty nice size business. Not sure what kind of lobbying happened to move the criteria to \$15M. The small business program should be to provide opportunities to companies that are underutilized firms. If you are doing \$10M a year they are not too underutilized. The criteria could be \$5M, \$7M; it would take an evaluation of all the firms that are currently SBEs. There are subcontractors who are SBEs but are doing work with their concrete contractor doing \$14-15M a year; Client #2L - Different businesses have different operating expenses and percentages that they profit from so you might think \$10M is a lot. To run our business the expenses are phenomenal. Specifically within Information Technology staffing; Client #2D - Certain size of jobs some guys cannot do, you need a company a little larger; some jobs a \$1M guy cannot do; Client #2I - If the target of the state work to set aside for SBEs is 25%, it is incumbent upon the State to allocate (break down

by trade) appropriate trade packages. #2H - If a concrete company is \$10-15M right now they are taking the work that I should be doing. I am under \$1M. I have no way to compete. I do not care what their operating expenses are, they will eat me up and they are. And, I have my people trained just to do that work; Client #2I - Prequalification process is a big barrier for a lot of firms. If you go to the DAS and print out the list of all the SBE and MBE firms and compare it to all that are prequalified, you will find less than 200 women and minority firms that are prequalified. If bid package is over \$500,000 they cannot play at all; further barrier even though there are large projects (Academic Laboratory Building at Southern CT State University). They set aside packages specifically for MBE and WBE (he reviewed labor package it was to calculate dumpsters, figure out cleaning, etcetera); perfect for minority, women owned firms to play with the big boys, figure out the ropes, and submit the paperwork, but the numbers ran over \$500,000. More of an idiot package, but the hours are run over \$500,000. Nobody cares, nobody knows or understands the rules or understands the result based on how they are laying it out.

**The multi-certified companies also operated in a rather even market segment mix between public (15) and private (13). It seems that the type of work performed does change somewhat depending upon the market sector performed in and that generally private sector profit margins are higher. As a group, these firms defined their market both more narrowly (in some cases) and more broadly (in other cases) than other focus group participants. Seventeen (17) firms considered the State of Connecticut their primary market place, (11) were focused throughout New England, (6) sold nationally, (3) internationally, (4) throughout Greater Hartford, and (1) in New Haven and Hartford.**

**The \$15M threshold for certification by the State was generally considered too high, which put the smaller M/W/DisBEs at a disadvantage competitively. The State's inconsistency with living up to, and enforcing, the rules set forth in the set aside program was another often-mentioned barrier for growth. Lastly, paperwork, bonding, and insurance requirements for State jobs were generally seen as barriers for growth.**

Clients' #1A and #3A - State puts minority businesses with small businesses and sets a \$15M threshold for small business classification. This puts small companies in competition with companies that are right at \$15M. This forces no way to compete in that market; even \$10M is too high. Threshold is too high. Should be down around \$5M.

Client #2A - The internet hurts business. Want to say regarding the \$15M: Do not know the exact figures that should constitute a small business but I can never compete with what is considered small business.

Client #8A - 300 employees, millions and millions of dollars in revenue every year, if I was that big I would consider myself "big business". I think I am with the "micro small business".

Client #10A - It was raised from \$10 to \$15M about two years ago. Nobody knows why. Same companies kept all the business.

Client #4A - The companies that we would consider to be big have now become small business and they tapped into our market and we cannot compete with them at all. They blow us out of the water.

Client #6A - They are doing \$15M worth of work a year; I am doing \$1M. Their buying power at the supply houses is huge. They have finances to wait three-four months for their money. When I bid against them, bidding on a job for \$200,000 is nothing to them. There is no competition. I cannot even bid against what the State considers a small business.

Client #4A - They have bonding power.

Client #10A - There used to be several companies that went well beyond the \$10M sales limit, but they retained their status as a SBE and retained their state contracts. Then it went up to \$15M, so they were back in it. They never got out of it.

Client #9A - All of a sudden they changed it (the sales limit). What will happen if it becomes \$40M, will it (the sales limit) go up to 20? Frustrating ... Very frustrating!

**Experience with the State:** This section explores participants experience with State contracts and their knowledge of how the States contracting process works.

**All of the non-certified prime contractors and subcontractors participating in the focus groups have done business with the State or one of its agencies. Most of these firms have received some form of assistance in doing business with the State and learn about State Request for Proposals (RFP) or new projects from a broad base of resources. All are thoroughly familiar with how the bid process works and what requirements must be met to bid on state work. Most participating firms in this category found some aspect of the bid process to be unfair and experience with State payments is mixed. Change orders have no impact on these contractors set aside goal.**

**Five of the participants in this category have experienced projects conducted through municipalities or state agencies not required to meet set aside requirements although they were state funded.**

Client #4B - We have a consultant specifically hired just to help us with our CHRO and our set aside plans.

Client #4K - Which, by the way, seems to be their new push every time I go in for help. They use to run a meeting every third Thursday (but it seems that they cancelled it every time we showed up). All they (CHRO) keep saying to us is that it should not be that hard; hire a consultant.

Client #4B - It is not that we find it hard to pick work, because it is quite easy. It is the way you present it and the way you approach it because there are these statutes and there is this rule book that the consultants seem to know. So therefore you need the consultants to help you with the process so you are playing more to this unofficial rule book so that you have a better chance of passing on the first pass, rather than the second or third or fifth.

Client #4K - By the way, they are recommending that minority businesses hire a consultant, which is not very easy.

Client #4D - We sent a representative from my company to CHRO training, deemed required because of the rejection of my plan partly because it did not say President on the front cover. It was a three-hour presentation, and right off the bat we wanted to have dialogue like this and you could not ask any questions for three hours. At the end of the day, you just wanted to go home.

Client #4A - I am involved with an association where we have brought in DAS and CHRO to meet with contractors, and to talk about some of the things that we have been talking about. It has been helpful. I think it was helpful on both ends. I have had pretty good luck in getting my plans approved. I think it gives you a little bit of insight into how they are looking at it. I do not think it necessarily makes it any more fair, but you at least have a better understanding. When

we met with DAS, one of the major things we talked about was the screening process for MBEs or WBE and CHRO was complaining that some of the businesses were not legitimate. We also talked about (strategies), but it has not happened, I think because of our (the state's) budget and funding. We talked about trying to provide more training for people because when we talk about how much paperwork is involved in the state jobs and then we get new, especially very small contractors - maybe they just got certified - it is on our shoulders to do all the training on the compliance: filling out the forms, everything from prevailing wage to insurance requirements on up. When you have a small business like I do it is difficult because we also have to monitor and audit the certifications that go into the State. So when we talk about the difference between public and private the paperwork burden is huge on the public works.

Client #4B - I can see how a small company does not have enough staff. We are a medium sized company so we have personnel that are more or less committed to the certified payroll or set aside participation plans, or making the proper filings with CHRO or the other funding agencies that are involved.

Client #4F - Worked with DAS, OPM, DCS (in) developing a plan with independent compliance officers or consultants. We all agreed that the plan that we submitted exceeds the goal and it still gets rejected. What we tried to do was we submitted the plan and had the subcontractors fall under our umbrella, rather than have 42 plans be submitted and try to track. I think that worked better. Our previously approved plan had been in place and should not have been reviewed for seven sections. We went back and we had our hiring practice scrutinized nationally because we require a Bachelor's degree in Engineering as a minimum for an interview. We were put into an exercise to document all the schools in the country that had engineering degrees, had minority affiliations or compliance with producing graduates of a class, when we should not have been doing that. We tried to take one plan and hold the 2% from us; the other 40 subs fall under well in access of the goals for work force and for contract award. Then the rules changed we asked for the specific statute. We get the statute and ask where does it say it in that? They are told it was a "judgment call". "We are deemed with the authority to make the judgment." End of circle

Client #4H - Instead of doing a lot work for the State you try to do as little as you possibly can so you do not have these problems. Problems cost money. Eventually it cost money to the taxpayer. The more people you have involved in one project, even if it is paperwork, the more it is going to cost. It is just that simple.

**These firms find out about State RFPs or new projects as follows:**

Client #4F - DCS portal; Client #4G - They are advertised. We have a website that comes into our office: city jobs, state jobs, federal jobs, Corp of Engineers. We have two or three people to monitor jobs coming in. There are a number of sites that will bring us to you. Corps of Engineers work, Navy work and also federal work. It is very rare that there is a job out there that we do not know about; Client #4H - Have different websites that we examine every single day; Client #4F - CT Building Congress, Construction Institute has been focused on state awards recently and has been pretty invaluable.

Client #4D -The (bid) process, from what I understand and I will try to tie this into CHRO. From CHRO's point of view, regardless of whatever percentages you have achieved in meeting your goals, it is incumbent on us to reach out in every possible item that we need to buy to make sure that we are soliciting the small businesses and particularly minorities, disabled, and WBEs. If I know I am going to hit my percentages it does not matter. It is what have you done in this particular area? - buying doorframes and hardware - to try and reach out to the minority compa-

nies. Even though I do not need one in my goals, it is our job, our responsibility to invite to bid. Actually just inviting them is not enough. If you submit your plan and list "did not receive bid" often times that would be "well what did you do beyond that? How did you communicate with them?" And that is just specifically regarding bidding but they also go over the line with making us help them with paying their bills, doing their certified payroll. They expect us to help this business succeed. They put the extra burden on the small business, which is me.

Client #4B - There is an overall goal of 25%. Obviously you may get it by two or three major trades maybe you can get if you have already hit the 25% mark. But what they will do is in that little trade that may be only 1% of your work; on that little piece, you also must have 25%. So you ask, where does this stop? They just want to keep drawing down and saying there is 25% within every level. Some of this I am getting by hearsay, I keep questioning it, because it is like where does this end? Does it mean if I go hire a sign person that has a \$2,000 contract that they have to go out and get \$500 worth of signs from a set aside supplier when it is a \$20M contract? This makes no sense. This is one more example of where is this written in the statutes? You say it is 25% for the contract meaning 25% of what may be a \$20M contract. We will get \$5M. We will get small business to participate in that, no problem. We will probably get six or seven. They keep taking it down to much smaller levels.

Client #4F - In your contract it defines your goals and your requirements. DAS accepts exemption letters (cannot buy an elevator or an escalator from a minority firm, therefore you get a dollar exemption). CHRO does not accept that. They do not reduce your contract requirement. Bad enough I have a general condition, my fee, my other burden insurance costs on top of that that I have already agreed I am going to make the percentage on those. Now you cannot take the exemption, which the certifying agency has allowed; they say it is something you should be doing.

Client #4B - At the same time the work is left as an elevator rehab contract where maybe 80% of the scope is being held by the elevator trade and the other portion of the work is more incidental, whether it be electricians or paint or whatever it may have. But you have the bulk of the trade in a trade, which has no MBE in that trade.

Client #4F - So then you will take two weeks of your life explaining how the elevator contractor cannot buy the trucking to get his elevator from Illinois to here just to meet a goal just because it is what they do. It is added paperwork and frustration.

Client #4A - There are two other pieces as a part of the statute. They have an unwritten rule. It is not part of the statute but I guess you could call it a goal or suggestion. If you do not have at least three contractors that you have solicited in each category of work you are considered noncompliant. The other piece is, let us say you go out to three subcontractors for signage, and you do not hear from anybody on your MBE, WBE or DisBE list, but you have a signed contractor that is just "Joe Sign" down the street and it is the only one you got. You are going to go with it. That is not acceptable and I believe that the statute says we are supposed to provide bidding opportunities. Why is it not the GC or the CM's responsibility to find out why they did not respond? DAS is the one who certified them. Why is it not somebody calling them and saying, "Do you need help? Why aren't you bidding?" I have seen you on this list 17 times and you have never provided a bid. What we can do to help you be successful in the State. It should not be the opposite. Our goal is to provide opportunity; not to teach somebody how to provide a bid. That would be collusion, number one. There are all kinds of things.

Client #4B - We stand on this example of a set aside invitations and level of responsiveness. Level of responsiveness - 680 invited, only 24 responded. That is 3.5%, and out of those 3.5%, we

know that at least half of them are not qualified.

Client #4G - (On a change order) we have never had anybody come back to us and say well now you got say 15% of what you are supposed to have, and now there is another half million dollars here or something like that and you have to give us 15% of that. That has never, never happened.

Client #4A - I disagree. I have gone to them and said for example, I had a project where there was something with a fire alarm system that was found that the laws had changed in what was installed in the building, a coding change. So something was changed by the time the project was over and the building inspector wanted something to be changed. We had no choice but to use the same electrician to continue that work. We are not going to have one guy do something up to the wall and then somebody else take it from the other side. It was to be a very large change order and they wanted us to subcontract a portion of it but we could not. In this case, you are talking about a large supplier whose materials are not designated as a minority in a Connecticut company. You are talking about a subcontractor with no state designation. For the most part, the owner tells you what the changes are. You price them up. You cannot change horses mid game and say "oh let me just call...let me just put what has been installed between these two walls up to bid now". It does not happen. They try to (force you). I actually had enough so I was over, but the conversation was had, what are you going to do?

Client #4D - I have found that when you submit your affirmative action plan that you certainly should try to exceed your goals in the event that you have some increases in your contract then you are not going to have to be figuring out how you are going to meet your goal at the end of the job. Because your plan is not, from what I understand, fully approved until it is closed out. I am not sure how CHRO actually reports back to the State how we are doing as far as meeting our minority participations. For instance, I have done jobs where I have 50% minority, but that plan is not approved. I do not know if any of those are even being counted in the numbers. The job was done about two years ago.

Client #4I- You cannot tell them you are planning on having 10% more because they will hold you to that higher percentage.

Client #4D - We are in the process of closing in on a job right now. In order to help meet our goals we assigned dollars to a minority and utilized that subcontractor to do work that they normally do not do, but they were happy to do it because they received profit on that. At the end of the job we wrote a deduct change order for the unused portion. That is being scrutinized right now because even though the change order was fully accepted by a particular subcontractor it was not signed by the State. The State does not sign our change orders. This was a \$500 deduct on a \$2M job on a \$24,000 subcontract which was less than 2%. I am spending my money on somebody to write a letter, make the phone calls, to explain this whole scenario of \$500.

Client #4F - We have found that in order to meet compliance requirements subcontractors are picking certified suppliers and vendors as partners. It is an unfair advantage for the non-certified contractor and it is a process for us to go through to try to understand. Are they conforming?

Client #4D - I find that it is unfair when there is a proprietary vendor in the specifications that we are all required to carry their bid in our bid in a competitive bid when we do not know what that proprietary vendor is doing with my competition. I do not know if they are getting the same number. But that one particular proprietary vendor can steer a job depending on how large it is. If it is in fact proprietary, pull it out of our competitive bid process and enter into an agreement direct with that particular vendor. It is truly not fair.



Client #4B – Another part that is not fair is when you are trying to meet your set aside goals, which you typically do, you find yourself in the position to essentially favor set aside businesses specifically after everybody else has already bid the project. Which is unfair to everybody that played by the same rulebook that we all go to. The bid is due here, make sure your bid is in to us at least a day before so we can all read it and review it. But then there is sort of like there is this second set of bidding that goes on to get that percentage up above the goals because on the initial bid nobody paid attention to you. You just were one of many GCs bidding it. Now all of a sudden, “oh, you got the job, now let’s pay attention to you”. So, that is inherently unfair to everybody that is bidding it when you are bidding it.

Client #4D – I think it is unfair that I am not given preferential treatment for my ethnicity or lack thereof or the color of my skin. That is not fair.

Client #4A – I think sometimes in the bidding practices of the State we have to list subcontractors and their price and full schedules of values that prevents shopping the price. We all understand that. But also, in some cases as you have heard, we do not necessarily get a full scope or etcetera on bid day. You might have somebody that you do not know; they are much lower. You want to get the job. I think it is a disadvantage to both the GC and the State to push people into listing somebody before they (the state) have done (completed the bid process). You do not always get the prices, before you can do due diligence. While you are preventing shopping the price, that is true, you are also creating unintended consequences of another problem where now you have listed somebody. There are five cardinal rules to get rid of someone that you have listed. It is not an easy thing, (n)or is it anything anyone wants to do, especially if you want in with somebody to get a job. And, if you were to change, I believe, if you want to change to somebody who is lower or higher as a listed subcontractor, you would have to give the State back the money if they are higher. I believe you have to eat it.

Client #4B – On that same idea that you have to name everybody on bid day. There are certain state agencies that have sort of split their bid process into a couple of steps, where on bid day, obviously, your bid is due with your price and you need to have all your paperwork in. But then five days or 15 days after the bid you submit additional information if you are either the low three bidder, or low three including the possibility of alternates.

Client #4D - I think it is unfair that UConn requires the small businesses or any businesses that want to bid on their work bid as a prequalified contractor with over a million dollars of work to have an audited financial statement. They are the only agency that I am aware of that requires your financial statement to be prequalified to be audited as opposed to being a reviewed financial statement.

Client #4I - Conn DOT has the same requirement.

Client #4F – We are doing Jackson Labs. We were told that we were not going to have to be in compliance. We have a CHRO plan that has been rejected three times so far. We were bidding packages out for compliance.

Client #4C – I guess the rub is that there is no requirement to be in compliance whereas other state work does have requirements to be in compliance. Jackson Labs legislation specifically left out a compliance component to it so that even though you may have a contract there, there is no requirement that you have a set aside for MBE or WBE businesses.

Client #4F – I do not know all the details but we were told that we were not going to have the entire compliance monitoring and documentation process and that has evolved in the three months

preceding the bid package. We absolutely have it.

**Interviewed contractors certified only as an SBE have all tried to do business with the State with very few receiving any assistance to do so. Most of these contractors are aware of various ways to find out about state RFPs or new projects, have a good knowledge of how the bid process works at the State, and the State's requirements. As a group, they do not feel any impact in the set aside goal because of change orders. Three firms expressed occasions when they felt the bid process was unfair while about five of the contractors told of problems with receiving state payments on contracts. None of the contractors had experienced municipalities or state agencies not required to meet set aside goals when state funds were involved.**

Client #2A - DAS website training sessions; utilized their website. The Connecticut Procurement Technical Assistance Program (PTAP) will attempt to help you navigate the state bidding projects. On a daily basis, they will send out jobs and they will do the bid for you if you ask them to once or twice. A certain person is assigned to you and has made the process easier; Client #2B - Will send out direct notice of bids on daily email; DAS website has become a little more helpful to point you to a specific person who is responsible for your account. A lot more accessible; Client #2I - Pretty good experience, once found a person to talk to.

**All contractors were aware of the DAS portal, the website, and emails.**

Client #2K - The way it (the bid process) should work: email with bid, required to show up for walk through or you are not allowed to bid, sealed bid (no longer face to face info); Client #2D - Will go back and request (info about) everyone who bids and is awarded; Client #2G - Formerly at the bid opening they could sit and they would write down who won the bid, then hand it to you and you would be able to know. Now they just announce who won the bid.

Client #2H - All (bids) are unfair. Sometimes you would get the descriptions of percentages for minorities; I do not think it is fair. Minorities do have the advantage i.e., had a small job, he was low bidder but he could not get the job because they (minorities) had to make up the overall percentage for that job. The State recommended he work under another contractor. Contractor changed name of a firm to his son and gave business to his son. He feels if it is a bidding process; let the minority companies bid. He then becomes a second tier. If there is an extra change order 2H becomes a second tier and he gets 10% and contractor gets 5% just because he represents him. It is difficult to live with his overhead on a 10% margin.

Client #2D - When you get a bid and you bid by specifications, when you have the walk through and you look at what they want you to do, the companies awarded are not following the specifications. This can be proven in a number of instances. The State will give to bidder, not always the lowest bidder, but not following the specifications and not treating the systems as it said in the specifications. We lose awards based on bidding for what is asked for and others are getting them and they are not going by the specifications.

Client #2E - State contracts three years with two one-year (renewal) terms, and the contract was set up that if they did not perform they would be penalized. For five years had the contract with no penalty then the State ended up giving contract to an out of state large company and awarded it for more than 2 times the amount, 2E company was asked to extend their contract for 30 days, then another 30 days, then another 30 days. They were told it had to go to the legal department and asked them to stay on. A total of 90 days extension was granted while the state worked out the new contract with the outside of the state contractor.

Client #2K - Experiences state payments of 120 - 150 days, paid for snow removal late June into

July 4. The prime contractor sent the payment to an out of state management company, which sent it to New York for processing. Had to get Connecticut involved in order to be paid.

Client #2D - When negotiating goes on in the CGA no payment issued until they are finished.

Client #2G - Been on a state job for six months paid within three weeks, while invoice to state university pays 90 plus days.

Client #2E - Never paid on time. Have outstanding invoices from July. They are supposed to do a "true up" where they inventory their items and each item counts as a certain amount once a year. One year they refused to do it and it amounted to about \$15-\$20,000. Even though it is in the contract.

Client #2H - Had a contract. They stopped the job, removed everyone from the job. Four years to settle the account with the State. Has had a job at Storrs since August. They say they still have no time to review the paperwork. 2H is working through a GC who has not been able to get through either.

**Most firms that participated in the focus groups with multiple certifications have done, or have tried to do, business with the State or one of its agencies. Those that have not tried to do business with the State informed us that bonding, and the amount of paperwork required, to be deterrents.**

**Many have received some form of assistance with regard to doing business with the State but for the most part do not feel that the help received was effective. Knowledge of where to find out about State RFPs or new projects is generally good, as is knowledge of how the States bid process works, and the requirements that must be met to bid on a State project. Although most know how the bid process is supposed to work the general feeling is that the way it actually works is different and that the rules are not enforced. A lot of frustration was expressed with inconsistent bid requirements from one State agency to another and the total free for all in municipal bid requirements. None of the participants are aware of any incident where change orders were issued which impacted the goal.**

Client #3A - Bonding that is required. Contracts are so large they are steered to the larger companies. There is not anything for the small contractor to go after directly. Contractors will send out invites to bids that are due the next day, then report to CHRO that they reached out to you and you did not bid. Listings (internet) do not give enough time. Companies with \$15M threshold have estimators; we just have ourselves to estimate, office work and everything else. They do not care about families

Client #5A - Received call today on the way to focus group for price deadline tomorrow. We are hopeful we can get more. We are hoping for that good order for once and get paid on time. To me the State has more potential for the goods we might be selling. At least half of our business is state, half of it is private.

Client #5C - The bidding process. We just do not get past that point.

Client #5F - It is a lot of paperwork. It is a challenge.

Client #5G- Found it too discouraging. You are wasting all your time filing the paperwork when you could be doing other things and you have nothing to show for your efforts. We need this work.

Client #5B – They suck up all our tax dollars, we should get something back.

Client #3J – I did (get help from) DAS – will be blunt about it. It was like blowing smoke in the air. They talk a good story. You sit down, you take your notes, you go through everything, you make sure you cross all your T's and I's. And it is nothing. The reality is they do not want to change. I had state contracts before. It was a state contract for a commodity. Every municipality could get in on it, every city; everybody that was coming from the state level could buy off this contract. By the time I got done, I only had three facilities that would be buying in on this contract that was supposed to be worth \$250,000 a year. We could not get paid by ConnDOT; that was a wonderful job. State of Connecticut DOC, had problems with them getting paid. UConn that was supposed to buy off the contract felt they had better pricing from someone else (he knew it was a bold faced lie from procurement up at UConn because I knew who they were buying it from and they were spending 15% more of my tax dollars, from a company out of state). I complained to DAS and basically was told basically to “shut up”. I am like most of the people here; you do the work, you live, you pay taxes and then they go where they want to go.

Client #3F – Brought on by an agency that was working for ConnDOT to teach them programs like some educational workshops for DBEs going through the process of certification with ConnDOT. I was never offered any help myself.

Client #3J – Have had PTAP offer help and I have gone to that. Again, I wasted 40-50 hours of my time about two to three years ago. Gone to the matchmaking, have done all that work and honestly have not gotten a nickel back from it.

Client #4A - ConnDOT at times will offer training programs to assist with process.

Client # 7A - Outreach is on the books so they will have it on their books that it was offered.

Client # 2A - Experience gained by working for former firms.

Client #3A - Lots of training everywhere are for the larger entities to show that State offered them; trainings may not benefit the small business owner.

Client # 9A - Community Economic Development Fund brought in an accountant and held a great class, which was taken twice and led to other courses that must be paid for.

Client #6A - ConnDOT trainings do not offer enough benefits. Funding and opportunities are needed not just on how to fill out paperwork .CHRO helped with how to put together the packet. Sikorsky awarded contract, within the year was to receive \$100M, but did not have any work because they had someone else who they work with.

Client #5A – I would say call purchasing and get an appointment. Every now and again you find a good person so you might have received some benefit or help from that. Nobody is coming to us so you must reach out.

Client #5G - To my knowledge we have never been called by anyone in the state or local bureaucracy saying, “Oh you are an SBE or WBE and we want you to be on our list and we want to help get you some business”. Never.

Client #5F - On that subject, a lot of that is, I am finding out, over the years that I have been in business was my fault. Some of it was my fault and a lot of it was the State's fault. Everyone in this room would really be surprised what the State has to offer us. It is all in a back room; you have to dig and find out about it. Once you find out about it and if you do not know what you

are doing, the paperwork, etcetera, you do not get past the front door. Ladies and gentlemen, the State does have money for businesses like us but it is kept a secret.

**Evolution Enterprises:** That is for training?

Client #5F - No, to help you run your business and it is something that is never heard about.

Client #5G - The state has monies to help us run our businesses and make us better?

Client #5B- I have been involved with the DAS programs and the ConnDOT programs. Central Connecticut State University has one through their Institute of Technology and Business Development. I have been involved with that. Then there is a third one that they run together with the SBA out of UConn. I have been involved with all of them. They are all garbage. They are strictly run to pay the salaries of the people that work there. That is the only purpose of them. They use us as fodder. Minority business is strictly fodder to keep these people employed. They pay millions of dollars in salaries. They could just give us a percentage break off our bids rather than paying all these waste of time people that are in there because they are connected politically somehow.

Client #5F - If you follow the political arena, the governor has set all these millions of dollars aside for small and disabled businesses. The catch to it, we cannot reach and grab this because it is so political. The ones who get this money and take advantage of these programs are the ones who have friends on the inside that are senators and representatives and people like that. So we sit out here suffering day in and day out trying to make payroll and trying to pay your insurance when these big guys got money and still getting more money. My opinion is that the state is my biggest block. Legislature is on the books, its laws and regulations to move this stuff forward.

Client #5A - Years back the state would direct businesses to a business like mine. It would be my company that would hold the contract with a certain manufacturer. Other businesses like mine would all compete to hold that contract. Maybe I would have one manufacturer who would get that, someone else would hold another, and someone else would hold another. The state had these items and, of course, they would get it from you because you were the one who won. They decided to do away with that and they have gone direct to the manufacturers. The manufacturer holds the contract and we are put on for a measly percentage. And if we want it, that is what we have to take. They took it away from us and are competing against us and the Department of Corrections. It is just crazy. Now I have to compete against them. They can buy off of any contract. They are as cheap as it is. I cannot because it is not mine. It is the States.

**State RFPs and jobs are found by:**

Client #3A - Computer - procurement DAS portal, GCs or CMs; Client; #7A - Jobs to Bid, Dodge Construction network, Public notices in the newspaper; Client #3J - DAS website, government website; Client #3H - New Construction News, New England construction news; Client #3K - Does not find out, gets all the listings but the projects in 3K's industry do not get listed; Client #5A - Newspaper, online, DAS website; Client #5F - Invitations, comes through online; Client #5C - Minority Council emails; Client #5B - Occasionally they will push things through "byline review"; Client #5G - Very few municipalities show up on the DAS website for open items. They do it on their own websites. Like the Town of West Hartford, do you ever see them post on there? No, they post all on their own. Occasionally they will post a notice. I will go to the town website for any projects that come up. How do you get access to all those 16-18 general-purpose newspapers? They are debating whether there are public notices in the newspaper right now. There are 16-18 general newspapers in the state that are fighting that right now; to do away with

that. How do you cover all the newspapers?; Client #5D - Mypublicnotice.com does all the newspapers; Client #5F - Being a subcontractor I am registered with the majority of the GCs and CMs. I get all of my information through them. They feed it into plus they have city E-bid; things like that. You go online and register for that and it kicks it back to you. That is how I get most of it.

**What might be done by a state agency that you would find of value?**

Client #3J - Keeping their word; Client #3H - Honoring a certificate statewide, whether it is a DOT or another type of agency; Client #3F - Not having each town having different certification requirements. All towns should honor the certificate; Client #3H - Some towns have this, New London may have it. If an out of state contractor came in and bid a job against a Connecticut firm, there may be a 5% swing or something like that with a CT guy or local person, (so the local person) should or would have the opportunity to match the number. Not get 5% more but if the out of town contractor was from Massachusetts against a local person, but maybe they could do a match up to 5%; Client #3K - From New London, there was a school built about 20 years ago and an addition to the high school that went to the low bidder, which was an out of state low bidder (who brought in workers who are paid 30%-40% less than we have to pay here). Finally, someone sued. The person who sued said they pay high taxes, does not receive any work in the town and enough was enough; Client #3J - I am in New London and we do a lot of New London work, I'm iffy about that because I've seen some projects that should cost \$5M cost \$7M or \$8M. There has to be a balance.

**Change Orders:**

Client #6A - Never made up the difference on the change order; the percentage for minority does not go up.

Client #9A - Not prorated. If it inflates the contract, the set aside does not receive a change. If a change order reduces the scope of work, will the change order try to take away work?

Client #4A - Pantry units to be installed and were subtracted; Becomes less on your contract, your responsibility becomes less. Always benefits them regardless.

Client #6A - Most of jobs where there is a minority participation, there is a major contractor. The major contractor change orders are so much easier for them to get approved. 6A (SBE) loses out on a portion of the contract.

Client #3A - Hazardous work has to get paid on change orders because they are in first. However, they may push you off the job and bring in another company to do the work illegally.

Client #10A - Copier (largest state contract) contracts renewed to same vendor for about nine years (although a four-year contract). A new one comes out and says no minimum cost per copy (maybe a penny to make a copy). When actual contract award came out vendors were allowed to put a minimum on it. Half of the companies would not bid it. The two awarded vendors have such high minimums they are making money hand over fist on the State. Small vendors would only make small monthly amount; maybe \$10 a month to supply a large machine. They do not play by their own rules.

**The bid process:**

Client #10A - (The bid process is) advertised on State portal (internet) - up to you to find it, email daily, postings may be as late as 8 pm at night; open category and search them.

Client #9A - Two weeks' notice, then the day before (the bid is due) there is an addendum often as large as the contract itself. May not have time to work on the addendum. Addendums happen all the time; sometimes they extend the date.

Client #7A - In construction it is supposed to extend (the bid) by AIA standards for 7-day extensions if bid change; Projects have mandatory attendance with pre-bid schedules - sometimes the (pre-bids) are set an hour apart at different sites or different points in the same building. No coordination of schedules. May have to have two people on staff to attend multiple bids.

Client #3E - Does considerable amount of work for the colleges. It is pretty streamlined. Each college has their own vendors that they can use, so depending on where you go. For example, 3E will not work at UConn because UConn is such a closed door. They have their set contractors and that is who they work with. Almost impossible to get into UConn. We do a lot of work at Eastern. We do a lot of work at Southern. At those colleges are a straightforward bid process.

Client #3F - On the flip side of that, with regards to not construction services but more professional services like an architectural engineer: DCS, formerly DPW, would handle all of the procurement for that and it starts as a qualification phase selection then get into negotiations, but it seems like it might be somewhat of a different process. ConnDOT has their own way of doing things, and DEEP. It really depends on the agency.

Client #3E - A lot of redundant paperwork that does not need to be there. Should be like a central clearinghouse. Like the ConnDOT, we send a prequalification once a year and you are good to go.

Client #5D - Go to the walk through, pick up the specifications, bid it.

Client #5D - It is lowest responsible bid but it does not mean low bid gets it. On this particular project that I am working on now it is the engineer (that awards the bid).

Client #5F - It can be the owner. It can be CM, GC. It is all over the place.

Client #5B - A lot of times it is the political powers that are controlling the proxy. So the proxy can be the GM or could be the purchasing agent but they are putting pressure behind the scenes. You usually know when they have caveats in the restrictions. You will have to service three airports of the same size as Bradley Airport. That was one of the restrictions put in a recent state bid.

Client #10A - Bid process is not fair. If you are Xerox, Ricoh, Canon things are great because you have written the bid specifications. Small business cannot even do business with the state because the terms and conditions for smaller business make it unfair. Unreasonable cancellation clauses that are never used, even when they should have. Cannot get financing because of cancellation clause.

Client #8A - Legal jargon, frightened to put in a bid, seems like children's grandchildren will be held liable. Hundreds of thousands of dollars in risk factor

Client #3I - I am a new business, start-up business. Someone in Norwich office walked him through the process; set up on the website, gets the list of things and cannot find video production jobs, which 3I finds hard to believe.

Client #3K - Receives calls from state agencies and groups, i.e., UCHC, who wanted to use our

services but we are not a part of the state contract because we were never notified of it so we were never able to join on to it. They cannot use us even though we are a minority business in the state.

Client #3J - If you know the person up at DAS you can find who holds the contract and you can do that from the website. You can inform them that you are a, as an example, minority, woman owned small business. If they do not have one and they are using a Fortune 500 company in your field they have to put you on.

Client #3H - The bid process is pretty fair across the board in generalities. Just do not like that they are always chasing the low bidder. You see such various swings of money 20, 30, 35%. As long as a guy can get a bond, they are fine with it. If I were running any state, I would throw the low bidder out if it was over or above 5% and go to the next person.

Client #3L - A catch 22. Quality and references are what should matter. But then you would have all the citizens screaming that you did not take the low bidder.

Client #3J - It would be all right if everything were on a level playing field. If we are talking apples to apples hourly salaries. I do not want to say they are fixed, but we have a baseline. If the State of Connecticut or even the federal government would come in and say okay, what is going on here? If General Electronics is at \$100 and you are at \$50, somebody else is at \$105, and someone else is at \$110 something has to give. The only way in my industry that is - is salaries. You have to look at a living wage. We all have to pay our employees a living wage, or a serviceable wage in the State of Connecticut. But you get states whether it is New York, or whether it is more South Carolina. I get people who are working at Electric Boat who are coming from South Carolina. Why? Their salary is literally 40% cheaper than I can afford to pay my employees and it is still cheaper to put them up in a hotel for a week or two weeks so they can do the work. So that has to be looked at through the State and even the state contracts that we all go through. They have got to get it on a level playing field. Why can a Massachusetts company win so many contracts in Connecticut and we cannot win one going the other way? As far as UConn goes, I have gone into contracts and I know I have been low bidder. I have been a sole source and I have still lost the contract. So that tells me that someone is taking in a higher margin or they are substituting a product that there is supposed to be no substitution on. How can I compete with that? How is that fair "just because we are UConn we can do what we want"?

Client #3E - The biggest problem I run across is the state statues state that 25% of all dollars in the State of Connecticut that have state funding are to be expended with minority or small businesses. Most towns do not realize that. In almost every town in the State of Connecticut receives a substantial amount of money from the State. We run into bids all the time where I try and educate these people and say there is a set aside in this (be it the Public Works Director or Town Engineer who will say "no, no, no, this is town money"). There is a percentage in there that is from the State and the State dictates that 25% of that goes to us".

Client #3F - Almost no matter what service you are talking about the people who are writing the invitations to bid or request for proposals there is a lot of confusion on their part about the source of the money and what percentages apply and frankly even what they are procuring so that it can be apples to apples. Some of the RFPs, when you read the scope it is so vague, and they can issue an addendum based on questions from the bidders. It is not real easy to prepare proposals when you have one firm that included survey and geotechnical and the other guy is just doing this and his bid is so much lower. It is not really fair. A more educated procurer would be helpful to the bidders because we will be able to be more responsive.



Client #5G - We cannot compete for new projects because if we have not been engaged on those projects and have a history of that then you cannot bid.

Client #5B - DAS has a prequalification, which they use under the guise of the corruption role and they put it in for their own purposes. Under that reason, they co-opted it and then use it for their own restrictive purpose to keep the friends in the contracts.

Client #5F - Even with that there is a restriction on that. Anything over \$500,000, you have to be bonded. \$500,000 down chances are 99% of the time you will not have to be bonded.

**Payment Experience:**

Client #7A - Mixed experience, job at State Capitol, 3 year contract, paid quick but reduced the amount of work; quarterly inspections, then changed to semiannual inspection. Lost half of contract. (Another) Job for State of Connecticut big changeover. One year later not paid;

Client #10A - 45 days payment depends on the department you are working with; depends on who is processing; it can roll 60 days; one existing contract with Fire Academy but they will not expand the contract. You are happy if you are paid in 45 days

Client #9A - Pull their surety bond; when state pays prime, the prime will choke subcontractor. Does not matter to them and primes will fund their other projects and will wait and wait to pay; Turner published a report three years ago stating they make \$43M a year on holding money; October/November bill submitted at the end of November. (The bill) was not paid until February; everything was correct (certified payroll). The prime stated they were not paid so they could not pay

Client #1A - Hartford/New Britain Bus way 60-90 days payment for a small business makes it difficult to pay workers; Material bought must be paid in 30 days but you do not get paid for 60. Then when you go to the supply house, they will add 10 points to the bid. That is why the bigger companies will get the bid.

Client #3A - Go to state, tell story, you are the complaining one. One mistake made on certified payroll, then wage enforcement will be sent to the vendor to double check their records as if it was your fault, all because you complained. It seems like everyone is working together.

Client #10A - No call backs from the state purchasing departments or DAS; or if you think something should be different on a bid, no response at all.

Client #7A - School in East Hartford - Combined bid at bottom of bid document (allowed three contracts). Awarded one contract, two to two others. Then they did a change order for things others missed. Went to CHRO but had another contract with GC. He would like to bring him up by name (for the contract). Walked away from contract. CHRO keeps requesting more information, wait, wait, closure letter on desk to be signed, wait another week for closure letter. School job in Hartford - a year before receiving retainer check.

Client #3C - In1995. \$550,000 was owed me for 120 days. ConnDOT garage with a company out of Norwich - "money not funded in the kitty yet to get paid. We are moving behind schedule on the scheduled payments." \$552,000 held up, 35 guys on the job.

Client #3H - Any job you do whether it is a school job or college you are looking at, especially if you are working for a CM, you are looking at least 60 plus days on average (for payment). Especially the first requisition. By the time you get it into the system and sometime the CM may have

some other standards than what the state has and they will not release your funds to you because maybe your paperwork is not what they want it to be but everything else is fine. They will hold onto your money. I feel the money should be released.

Client #3H: Sometimes they (a GM) has a different standard. I am working on a job now that if the "school box talks" are not in the original - or something stupid like that - it has to be in with your requisition as a part of your back up.

Client #3C - Worked for the state for five years straight and stopped in 2000. I have never been paid on time in the five years of working with the state. Payment was roughly 60 days. If you are missing the "school box talk", they would send it back and it would be delayed another seven days, constantly

Client #3G - Would love to be paid in three months. It takes me six to eight months to a year to be paid. Because I am a subcontractor, and sometimes a subcontractor of a subcontractor, each time and each layer is delayed 30-60 days. It adds up. If the state would say, you have to pay your subcontractor right away; that would be nice.

Client #3J - The state cannot even pay their primaries right away. On a state contract, in many cases, it will give you the terms. You have 45 days, net 60 days; I do not think I have ever had a state contract where they have paid me on time, so subcontractors are paid late.

Client #3C - Do a lot of Navy work. I send my requisition; they pay me in 14 days. Coast Guard 14, Army Corp gets paid in 14 days. Stopped working for the State of CT because I could not wait for them anymore.

Client #3N - We are a subcontractor of a subcontractor. We get paid in 90-120 days.

Client #3C - I get followed up on by the Federal government. I sign off saying I was paid. They will check up on you to make sure everybody is getting paid. Because if they are not they will stop and not release the funds.

Client #5D - They go on vacation. You do not get paid in June or for a period thereafter because it is fiscal year end and then in December because everybody goes on vacation. You have already waited 60 days just for them to first wait 30 days for the month to be over. Then you have to wait for the architect to approve it, then it has to go to the State desk for them to approve it and then it goes back to the town, and then you get your check.

Client #5A - And you hear it all the time. The vacation thing. Our year is closed, now you have to wait again. Who cares if your year is closed? It should have been allotted for beforehand.

Client #5D - It has been like that forever. You know that come July you are not going to have the money and you know that at Christmastime you are not going to have money because they (the State) go on vacation.

Client #5B - In the statutes it states you can ask for your interest but you will get retribution from the State. They will "lose" your whole invoice, or say they did not get it.

Client #5G - And you better not say anything because 5B is right.

Client #5G - I know of another consulting firm that has done business with the State. They would not qualify as an SBE but they have done business with the State. They stopped doing business with certain state agencies, in particular ConnDOT, because the people would go

to them and want them to do above and beyond the contract. All kinds of extra work and not get paid for it. Substantial work. They did not want to go through the bureaucracy to get it approved. So, you end up eating that. So you say "that's it, we cannot do work with you guys anymore and we are out of here". If you do not do the work, you are out. So you make a decision that you are either going to do it to stay in the game or you do not do it and then you are done forever.

Client #5F - We have problems with change orders. If they direct you to do the work and you do not do it they will kick you off the job and bring somebody else in to do it. Then if you do it and get a signed change order, then you do not get paid. Everybody will sign off on it. I have a prime example. I built a school in Hartford. I will not do the Hartford schools anymore. I had \$300,000 worth of change orders on that school. That was five years ago. Right today I still have not been paid. With a company, my size I cannot take those hits. It is an everyday thing with contracts in the state and cities. They sit back and allow this to happen. They say to you that you cannot sue these people; that is a lie. But, that takes some time too.

Client #5D - The state laws will give you a change order for you to go and do the work, but then they have to go and find the money to pay you. So it extends the payment and so you are out.

Client #3A - (Has had) horrific experience. They (state agencies and municipalities) do not understand what they put in their bid document, or if they do understand they have specific people that they want to do the work. They do not realize that their money is from the federal government and it supersedes their decision. No one will stand up to the municipalities.

Client #10A - Bids (requirements) from municipalities are all different from each (other). Bids do not make sense.

Client #8A - "Cherry pick"; they will not give anything or will give a piece of a bid, usually the lowest priced item of a tiny part of the bid. Ends up costing more to produce the tiny bit. Had an envelope award with City of Hartford. Separate contract for really big orders

**Experience with S/M/W/ DisBEs Programs:** Most of the firms interviewed are certified S/M/WBEs with the exception of one DisBE, and 10 non-certified primes and one non-certified subcontractor.

**The non-certified firms that participated in the focus groups have knowledge of how to find SBE/MBEs and have all participated in bids with the State, which required them to conform to goals. As a group, most feel the utilization requirements have not increased opportunities for minorities. Opinions vary on what can be done to increase opportunities for minorities as meaningful participants in contracting and what can be done to improve existing SBE/MBE programs.**

**Contractors locate SBE/MBEs by:**

Client #4A - DAS website; Client #4F - Locally; Client #4I - We send out invitations through Blue book. It has categories of different contractors that you can select who you want to send invitations to; Client #4B - Local minority departments in certain towns. (These departments) may have a minority officer that helps with either solicitations on behalf of the municipality or sometimes we will approach them and say we have this project coming out to bid, can you help us find more minority vendors. Some are DAS certified, others are not; Client #4I - ConnDOT has a certified vendor list; Client #4F - Minority Construction Council in Hartford, Bridgeport, New London.

Client #4G - Usually they will find you. They will represent themselves to be a DBE as long as they have done their homework life is simple. Large jobs do not have time to check certifications. Sometimes you have to use smaller contractors from smaller amounts to make your 15%; Client #4L - Minority supplier - Fred McKinney's group (Greater New England Supplier Development Council).

**Have utilization requirements increased opportunities for minorities?**

Client #4D - No. The opportunities are there regardless of whether I have these goals to meet. Minorities have every opportunity to visit my company.

Client #4G- Sometimes they get up to 25%, which is big chunk of a job. Sometimes it is very difficult to get that number. Certain trades are fairly easy to get somebody up to 10%. When you get over that, depending on what the work is, there may not be anybody there that does it. Sometimes the work has to be done by the prime. You have to come in there with some sizeable equipment. People just do not have 150-ton barge cranes.

Client #4D - Reduce the paperwork on the general contractor, subcontractors and the GC (to help increase opportunities for minorities).

Client #4B - Make it easier for them to come in and apply for the process. For example, I know a certain business that could comply tomorrow to be an SBE but I know the DAS application will take 3-6 months. By the time it takes for them to get their paperwork I will have had to move on. I have to write a contract in 30 days, cannot wait 3 months or longer.

Client #4I - We have subcontractors who just drop off the list because they cannot be bothered with the paperwork. The paperwork takes too much effort.

Client #4L - I think the certification process with DAS is not an easy process to go through. I think they are very deliberate especially over the past two to three years. They have been very deliberate to making sure that there are not "shell" companies out there that are trying to set themselves up as a MBE/WBE just for the purposes of accessing those set-asides when in true fashion they are not a MBE or WBE.

Client #4B - There are also certain tell tales in the process when you are looking at the credentials of an MBE or an SBE. Look at their project history of what they have done. Look at what they say they do. When they claim 20 different trades including being a plumber and an electrician I am a little perplexed by how are they managing all their licensing? And then on top of that, you look at their insurance certificate and maybe all they have is general liability.

**Contractors certified only as SBEs generally know how to find SBE/MBEs and most have participated, or attempted to participate, with State bids that required compliance with State utilization goals. None of the participants in this category felt that utilization goals increased opportunities for minorities to participate in State contracting. The overwhelming feeling expressed was that many "minority" firms are not "real". It is felt that they are either white fronts or not genuine businesses but rather a person who formed a business who is really just a one-person show used to satisfy the goal. Suggested improvements ranged from better training for minorities to tighter scrutiny by the State.**

**Contractors locate SBE/MBEs by:**

All - On the State of Connecticut website, DAS, Supplier Diversity link DOT

Client #2I - Very difficult to find minority/women on the website. For many class codes that are there, even if you call up a list, it is very long and not easy to export to Excel where you can drop it into another database. Even if you find the list, you have to open up their certificate in order to find a phone number and an email to contact them. As a GC if I am trying to bid. I cannot just get a list of everybody, takes too much time. It is a challenge. I spent a lot of time talking with folks up there who gave me different access but still cannot export into Excel.

Client #2G - Easy to find it (**SBE/MBEs**), but not easy to get that viable information to solicit. Had to follow guidelines to solicit three sources at least. Found the companies. But to find the company information to send the information to them was difficult. Song and dance to get the information.

Client #2I - The problem is a lot of the minority/women owned businesses are underutilized firms and they do not have the office resources. You go down the list and half the email will get kicked back and half the phone numbers are disconnected. If you are a small GC or a SBE that is a trade contractor that has a responsibility to subcontract out a piece of their work to somebody, you are trying to get your own numbers together. Now you are trying to bird dog these companies who you do not know; a) trying to find them; and b) gather the information. If you allocate an hour today to do this then you are leaving a bunch of voicemails and you are trying to follow up. Then you have the State telling you that you have to contact X number and demonstrate how many times you called them, how many times you had coffee with them. They do not make it easy for somebody who is trying to find a variety of firms to cast a proverbial "wide net" to try and find these underutilized firms to give them an opportunity.

Client #2G - If you have to follow a goal, a CHRO/human rights goal, you get so fed up that you cannot go to that person - an MBE or SBE - to solicit (that might not be certified). Then you have to go with someone else that is available. Now, when it is time to do your finalization for the human rights goal you failed those goals, and now you cannot complete your current contract or get final close out because of that.

Client #2I - You do not get paid 2% unless you complete your CHRO and you could lose 2%. They withhold it.

**Participation in bids with the State of Connecticut, which required compliance with SBE/MBEs requirements.**

Client #2G - You need the personnel, one or two persons in office to follow up on the paperwork. A lot of times you submit the information and on their end, you have to wait a day, or three days, or a week, for the state to reply. Lengthy internal process.

Client #2H - Had a contract, needed a subcontractor in a particular field. Was given a list of qualified minorities in that field from the awarding authority; called every one of them. Those that came to the office were unable to read blueprints. They would do the work for him but without pricing. After about six or eight (MBE) 2H went back to the authority and told them it was difficult to find qualified vendors.

Client #2E - Called them (MBE). Sent the plans electronically. Their reply was "just carry me at \$15 a foot". Hard to find qualified minorities.

**To increase opportunities for SBE/MBEs and/or improve existing programs:**

Client #2E - We have a bid with other states. A bunch of vendors that get authorized for this one

contract. They will send out smaller bids that are one or two pagers. You fill it out with the pricing and fax it back. It is a no brainer. We do it every single day. It is easy. We participate more in other states even though we are based in Connecticut.

Client #2H - Training; in construction most contractors who have been in the trade; physically doing the work one way or the other (estimating etc.); financing training, that would help. Whoever becomes qualified knows exactly what to do. He/she would be very competitive in the right way. They will be trained and they will be qualified and that will increase their participation. Right now you call them and they are not qualified so they do not participate.

Client #2I - There are hundreds of firms that are on the DAS list that are companies that are just not companies. They may have gone down to the Secretary of State and may have paid their \$50. They may have gotten certified. They cannot get business. They are workers. The guy is a laborer working for a company, and he has a company, and he is trying to get a business. He does not have time. He cannot meet clients at night. He may have been a tradesman but he does not know how to run a business. Invitations to bid come across his email. He looks at it at night. He sits there with his guys saying, "I've got this opportunity, I've got that opportunity" they do not know what to do with it. It is frustrating for the folks who are trying to find these firms. The prequalification process is one thing. Thousands of firms are not prequalified and if they are not qualified, they should not be contractors. They should have their certification taken away. You are not a contractor; you have a job. You are not financially funded to get the business off the ground; May have been certified at a time, but now are not. They are certified in business, but not "in" business. How many jobs have you bid last year? This should be a basic question. Are you in business or are you a worker? If you are a worker, you are a worker. If you are a home improvement contractor, you are really not working as a commercial landscaper.

Client #2H - My business is very new and I have had different people come in and help me until I did not have the money to pay them. I like the idea to streamline for sure. What I like - (I) received something from UConn (that) talked about their different programs they have for students. The program would give me a marketing person, give me a sales person, and give me a technical person. I spent the time to fill out that paperwork and never heard back. I went in to SCORE and they wanted a business plan. 2H wanted to know what they could do for him. All they wanted was three years of financials and a business plan before they would do anything.

Client #2I - The small, minority/women owned businesses that are in that designation are less than \$15M. If you took a look at everybody that is a minority/women/small owned business and put them on a graph in terms of their annual volume, a large chunk of that group of people are going to be in the smaller half of that bell curve. There will be a handful of firms that are going to consistently get work.

**Multi certified participating contractors generally have some knowledge of how to find a SBE/MBEs, even though they themselves are normally not in a position to bring on board another certified firm to perform on a State contract. Strong views were expressed about utilization requirements. The views on the impact of utilization requirements for minorities in contracting are varied, as are the thoughts on what can be done to increase opportunities for SBE/MBEs in contracting and what impact complying with the State requirements has had on their ability to compete for contracting opportunities.**

Client #3E - On some state agencies you can fulfill that (SBE/MBE requirement) yourself; with other state agencies, no. You have to go out and shop for minority subcontractors.

Client #3L - You cannot fulfill your own requirement.

Client #3E - I have been in this business since 1980, and up until about 7seven years ago minority set-aside projects made up to 75 - 80% of our work. Now they might make up 10%.

Client #3E - So it has actually gone the other way. I am concerned. There are not any set-aside projects for us to bid anymore like there used to be. Without these specific set-asides per contract that used to be in place, for example percentages like 12 or 15% like the DOT does have disappeared in the last five to six years. So we are not getting anything. We are not getting enough calls as minority subcontractors anymore. Drastically gone the other way.

Client #3J - I have been doing this since 1978, maybe 1980, and I see it the same way. In 1990 - 2000, it was very good, very fair. I would say since 2005, all those started to disappear. You could not find anyone to help you to reenergize it. It became the bastard stepchild. Even the primes are the same way. I have gone to matchmaking with General Dynamics with their team. They are supposed to hit the 20% nugget and United Technologies as a whole is at 8%. In 2000 when I had gone to what I call the "party networking", they were at 18%. So they have backslid because they are allowed to.

Client #3E - The language (in the requirement is a problem). We use to do a lot of housing authority projects that we were prime on. We used to bid. In most cases, it used to be 25%. Twenty-five percent used to be set-aside. If you were a minority contractor, that is waived. It was great. That language is no longer in existence. Now there is some big blurb that CHRO is going to make sure that 25% gets broken out as 6.25% to minorities and the balance to SBEs. We do not see it.

Client #3G - Back in the 90's all my phone calls were for laundered money, so I let all my certificates lapse. It was not a lot of times; maybe 5%. I would get a call saying, "We have a job for you". I would bid on it. It would be a teeny one-day job. A few days later, they would say, "Well we want you to run an extra \$100,000 through a \$2,000 job." And I would say "no, we do not do that" and they would hang up after saying well we are not going to give you the work. We would also get people who would want you to put in a proposal as a part of the team and have a WBE on the team. We would put in all this effort and if they won the job, they would never use me. So basically I let everything lapse because it was not benefitting us at all. More recently, I reapplied, got all my certificates, and now it is actually useful. I get legitimate calls for projects. They ask if we have our certificate, and we say yes. It is fine now. The 90's were not good for us.

Client #5D - I think they do help because they made us go out and find some minority contractors; people that we would not have used or asked to come in and work with us.

Client #5F - It is a setup. It is a setup for the majority contractor. The State does not have people to check these things nor do the city. Years ago, they had people controlling these jobs making sure that this person is who he says he is. Not having this person on this job and you go across town and you have the same person on another job. They (the State) do not see that. The same names have been used. The same addresses have been used. My answer is no. Until they can get people out there to check these jobs out like they normally do, they will go right ahead on. Bogus companies.

Client #5B - Our name was used on Fusco's project contract. Fusco listed us on the contract, and then they did not use us. They said our name was not on there but it was a public record and then they had to use us and they were pissed off. It (the contract information) accidentally got out.

Client #5A - It does not make the phone ring. You still have to find it yourself.

Client #5A - There is one that we were recently working on. We, ourselves, are a WBE and (on one of our) contracting jobs (we) had to give part of the job away because we really did not focus on that trade of work. And being that they were not a minority company, we had to find a different contractor to fit within those guidelines that was a minority company. But, I really did not see the point in it because 75% of the contract was ours and we are a WBE.

Client #5D - But they do not allow us to use us as our subcontractors, as an MBE or WBE would have to.

Client #5A - But being that they (the State) were contracting some of the work out, they made us do it.

Client #5B - I have experienced that also. Our experience is that we have contracted with them (the State) as we are in the MBE network so we know people and we contract it out. But that was put in to kind of get us for our activism to get us back. Make it so that we cannot claim ourselves. We do not subcontract any of it out, but we happened to subcontract auxiliary services and office services. They put in a 2% penalty. Why don't they put it on state agencies that do not meet any of their goals? They are putting in a 2% penalty on us and the primes. I am sure that is what they are complaining about. But that was to get us back for complaining about the state agencies not meeting their rules.

Client #5F - I am in the process of doing (it) right now. I have to go find some MBEs and WBEs for some projects that I have. If you do not do it, it is a 2% penalty. I do not know why, but it is a give back.

Client #5B - Why do not we just lob off the state agencies to give back 2% of their budget? Because none of them are meeting their goals and they lie about it.

**To make the situation better:**

Client #3K - Change the language to back to what it was. Mandatory set-asides.

Client #3E - Mandate set-asides.

Client #3K - Has to be mandated. Cannot be we are doing the best we can type situation

Client #3E - This used to be a right to work state. It is no longer a right to work state. A lot of the municipalities are putting projects out with Prevailing Labor Agreement in it. I am not union and I do not intend to go union. But we cannot get the work. We cannot bid on it unless we sign a PLA.

Client #3H - Relax the bonding for those set aside programs. If you have a six, eight or 10%; whatever the set-aside is, allow those people, companies to bid on it without having to put up a the bond. It is best in today's world. It is tough to get a bond right now of any magnitude. Everybody is tightening up. There are some projects that are seen in the schools that have some set-aside programs and they will say okay. These certain set asides we will not require a bond and some that they do. I do not know why they do some and not the other.

Client #3L - They should just require a set bond. If it is a \$1M job, require \$200 bond. A partial bonding for a percentage of the project.



Client #3E – One of the problems is that you have limited bonding capability and capacity. The bonding company says ok you are \$3M. Your total aggregate bonding capacity is that. So if you are on three different projects that go for two years you are done. You cannot get anything else.

Client #3F – I do not know if there is anything like this that exists: It would be helpful to have one (certification) statewide across the board (DAS, ConnDOT, whatever your certificate is would be honored) (with) a searchable database of firms based on whether it is your NAICS code, keywords or whatever. So, if there is a RFP out and I need a WBE or a MBE or an 8A (small, disadvantaged businesses), whatever your deal is for bridge inspection or graphic design or whatever it is, it would magically show 10 firms that meet that criteria. Here is their website, here is your point of contact to make (it) easier for the primes to reach out to them. Maybe in order to be in this database you have to have your prequalification in or centralize that whole process so you are more easily found. How do we know that the primes are even going to know who we are? Everyone is trying to get their name out there all the time. If we had a database that we could rely on to help get our names out there to people who are searching for us rather than just Googling.

Client #3J – There is a federal database that is supposed to be used by all prime contractors, certain sub primes, federal and state; it is a pain to get on. The Central Contractor Registration has migrated to something else. The problem you run into is that you still have to develop a relationship with whoever that contracting officer is. You can bring it up on the computer. You could see that you are one of five or six qualified, but they are going to take a path of least resistance. That is their goal. You could be registered, you could have contracts, but you have to reach out to them because they are not going to go eenie meenie miney mo. They will say, “Oh, I have been using X for the last 10 years and I am sticking with X.”

Client #3J - The primes have SBA officers at all their facilities. The United Technologies, Electric Boats all have them (SBA officers), but the problem is they do not research.

Client #3H – Indirectly the state or whomever you are working for is going to pay for that bond. So really the state has wasted money in a lot of these instances by paying the performance bond, especially when you have a proven contractor. To me it is a waste of money.

Client #5B – Penalties for agencies

Client #5J - Enforceable penalties

Client #5B – Eliminate the exemptions. The DOC may spend 1/10<sup>th</sup> of 1% on minority business and they claim they are meeting the 6.25% goal. One percent is a lot smaller than 6.25%. So how they do it is with the exemption. They get the majority of their purchasing budget exempted by DAS and then they can go and tout that they exceeded their goals by 200-300%. They said what exemptions do you want? We have a letter between DOC and DAS. They said we want to remove a company because we like dealing with them. Let us remove this majority owned contractor who is outside that program list. Let us take that off the budget for minority and small businesses. Let us take it off. So they ended up getting 97-98% exempted from their set-aside program. This is the DOC for FY 2012.

Client #5F - Legitimacy – Everybody is entitled to make a dollar. My biggest competitors are women who do not work in the trades. There are women who are sincere about what they are doing, they are out there on their job, they are in their office, and I take my hat off and even bow to them. That is a battle I have been fighting for over 20 years trying to legitimize this stuff. We

lose a lot of work to these big companies' nieces, wives and daughters. You know that if you have a company doing \$100,000M worth of work a year, his wife is not going to come out and lay any bricks. But she is the one who beats me out.

Client #5B – A majority owned company is working. They have another company, a minority owned company running out the same building, certified, and they have most of the UConn campuses and all the satellite campuses to the tune of \$5M. They are using the same workers, same equipment, same phone number, same building. We reported this to the Attorney General. Their only reason said, "Oh, people have reported this company for years." That was their only response. Is that a front? Or is that a front?

Client #5A – And it also the competing from the DOC. I do not see those people as workers. If anything, they should be free workers covering their own, whatever they are doing inside. They should not be competing with me being able to purchase off the contracts that I cannot purchase off of because I am not a state business. That is a business. That is the State competing against me for what?

Client #5B – Here is another example of the state competing against us. There is a quasi-public agency called ... cannot remember the acronym but they do the handicapped. They are funded and they are certified, and they are part of the program. They compete against all the private contractors. They are funded by the state and they certified as a small business.

#### **Experience with SBE/MBEs**

**Non-certified firms have utilized SBE/MBEs numerous times over the last five years as sub-contractors (none were able to recall a firm count). Subcontractors were chosen primarily based on the non-certified contractor's past experience with them and their reputation. The impact of complying with the State of Connecticut SBE/MBE requirements is minimal because everyone is held to the same requirements. The contractors in this category do not have problems with bonding but are aware of problems that many subcontractors face. They have no solution for this problem.**

#### **Subcontractors are chosen by:**

Client #4D - Reputation & price; Client #4I - lowest gets it; Client #4G - reputation, price has to be in the right general area; Client #4B - prior experience commensurate with scope of the work, and bonding capacity for really large contracts

**For participating contractors certified solely as an SBE, utilization of SBE/MBEs was not widespread. A few contractors expressed frustration for being required to seek out other SBE/MBEs when many of them felt capable of performing on a whole contract utilizing in-house capabilities. The necessity of complying with the State of Connecticut SBE/MBE requirements is a part of their business and they have developed various ways of working with the requirements. Subcontractors are chosen primarily based upon familiarity. Bonding is an issue with this group, but they can obtain one.**

#### **Subcontractors are chosen by:**

Client #2D - know them, have done business with them; Client #2G - people in same trade that you are comfortable with and you have a history with; Client #2K - people in same trade; Client #2I - consistently submitting contractor proposals and bids

**Impact of complying with State SBE/MBE requirements:**

Client #2E - Lost contracts because they were not designated as SBE.

Client #2I - Not that difficult because there is a ton of SBE firms out there. If you are not an SBE, and I am an SBE, bidding out 25% on a general contract does not seem that it is that difficult and only 6% of the job must be minority or women. You typically will get most likely a WBE that will make up that 6%. Sometimes with university projects, they may have 25% (that) has to be set aside and have to have minority participation. Now you are looking at a different kind of contract and if it is like a bathroom renovation now you have licensed trades that are in there, so I cannot self perform that. Chances are those trades are not minorities or women. No one gives much thought or understands the construction business when they are laying out these percentages and protocols (do this, subcontract performance this much; subcontract out that much). They (the State) do not really have any concept as to how you really put a job together and put a bid together; asking people to give you numbers in order to pull the whole thing together. It is a little frustrating, but they do not really have any concept of what the outcome is going to be based on the words they put in the bid packages.

Client #2G - If you have to fulfill those percentages, whether it is in house or minorities, and you try to find companies that do your trade work and there is nobody out there, well I now cannot fulfill that because I can only do a certain type of work. Therefore, how do I maintain the goal? There was a trade package that I can do the job with my eyes closed but internally, with the paperwork, cannot meet the 25% goals and I walked away from a significant project.

Client #2I - That prompts pass-thrush where he (the contractor) could build a relationship with a minority guy but he winds up just giving him a contract or paying him a 5% vig (cut or take). This is what people wind up doing especially in this economic time where work is hard to come by. You look at that job, you may need that job, but instead of getting 10% on that job, you give him 5% for his piece of it or just run materials through him.

Client #2G - He may not even have to show up on the job.

Client #2E - You are joint checking materials and give him a check for his portion.

Client #2H - Different problem. 2H may be excluded because he does not do any floors. There have been four to five projects 2H could not bid. In the past 2H did a lot of GC work, mostly in the structural restoration business. A lot of our work deals with these types of materials. I cannot bid because cannot find people to qualify. Does not bid it anymore.

Client #2D - On the receiving end, receives calls to be included with bigger companies bid. Has a select group in Connecticut that will call when they are bidding. In the clause, they will want them to bid for water treatment or pumps or whatever is specified and they will send just that section that is in the bid and will provide a price.

Client #2H - Most bonding is done with the ability to pay back in the event you default, if you have a magic wand or assets. It is now very difficult. Had an embezzlement of \$4M that pretty much put him out of business combined with the decline of work and on top of that, the bonding company that they used for years decided not to do bonding anymore. Now looking for a new company. Not easy.

### **Bonding:**

Client #2G - Good relationship with company both in state and out-of-state at a certain limit. Would like to see a State of CT entity, a State of CT bonding company, issued and owned.

Client #2I - Parlaying on that idea ... able to get a loan funded by HEDCO. The bonding company has given him bonding up to a certain limit. They are very cautious with him because only in business for a year and a half. If there is a larger project that they are bonding, they tie him up with HEDCO in terms of funding so he cannot get paid by the client. They prefer the money go to HEDCO. It is like training wheels, but happy to have the training wheels; a) because he has an entity that will give him line of credit; and b) someone allowing him to bid on the job. As a young company, I have to accept the fact that there are people that will put me on training wheels and I have an opportunity. Not sure a lot of firms have that opportunity.

### **Experience with SBE/MBEs**

**Multi-certified firms generally do not utilize other SBE/MBEs as subcontractors, although they are familiar with where to find them if needed. When subcontractors are used, these contractors are selected by price and quality of work, past working relationship, and the subcontractors relationship with a prospective client. As a group, these contractors do not feel that compliance with the State utilization requirement has been a very positive factor in receiving state jobs. They cite loopholes in the requirements that allow front companies to be certified and be utilized on State contracts. Most of these firms reported having difficulty in obtaining bonding, which has been a barrier to their growth.**

### **Barriers to growth:**

Client #5A - We are saying we are not getting any advantages (by the State's utilization goals).

Client #3J - I think we all are just looking for people who are willing to work. Who cares what they are. I do government work or military work. As long as they are a US citizen, have not used drugs, do not have a felony record, and they willing to bust their hump, I am willing to put them to work.

Client #5F - Bonding is really a thorn in our side.

Client #5G - It (bonding) is like borrowing the money.

Client #5F - It (bonding) is insurance.

Client #5G - You are tying up a lot of credit that could be borrowed just to be bonded.

Client #5F - To me, it does not make much sense. It is insurance; that is the bottom line. You are paying an arm and a leg for workmen's comp, general liability and all this other stuff. Then they require you to get a bond. Then when you go get a bond, how are you going to get it? Just today, Fusco got a bid out. On that bid it says anything over \$100,000, you should be bonded. I called Fusco and asked, "Why are you requiring a bond on a \$100,000 when the state says \$500,000 or lower." They are setting their own bond.

Client #5B - They charge you for every bond and you will pay a premium.

Client #5F - They set their own. They may even set bond on \$50,000 or \$25,000.

Client #5B – There are obstacles they throw in. The other day Fusco sent out a bid. You pay \$700 for the plans. If you do not want to pay it, they say do not bid State jobs.

Client #3H – Has bonding program, but if your company is a few days late getting financials together they go crazy. This time of year the bonding company wants all of your financials for the previous year but our accountant is busy. It is tax season. I have a bonding program but it is always tough especially if you had a prior year that was not as great as some others.

Client #3A - Big projects GC has bond. No need for small business to bond. They are already covered. State requires the bond over \$500,000.

Client #5A – Eliminate bonding requirements

Client #5B – I do not believe they (the State) have the losses to justify those bonding requirements. They just put them there for political reasons to x you out.

Client #5G – The volume of the work we are doing is so small they do not need a bond. The financial exposure is so minimal. They always find someone else to do the work. They should not have to bond these small jobs. And, we are all doing small jobs.

Client #5D – I kind of disagree. I think bonding is needed just to protect some of us subcontractors. But you have to also know the rules. You only have six months, even though they say it is a year or two years. It also protects the town. We do not want to pay twice. If you are on the job and you do not get paid, you need to go after the town and get paid.

Client #5D – It costs you the same amount of money whether it is a performance bond or a payment.

Client #5B – Predominantly the fee is on the performance bond. I have a problem with the performance bond. I do not think there is an issue with the payment bond issue as well. If the state holds the money, the prime or the general has to sign off that all the subcontractors are being paid. If they make it a felony, they (the State) eliminated all the costs and go prosecute the guy that lied.

Client #5B – The state has to make sure that all the subcontractors are paid. Right now, they just depend on the prime to sign off. In other states, they have the subcontractors sign off.

## **SBE/MBEs SUPPORT**

**Participating non-certified prime and subcontractors did not volunteer any opinion on whether or not enough SBE/MBEs exist in the marketplace. The number of participants indicating agreement with a suggested strategy to increase SBE/MBE participation in State of Connecticut projects or allow additional SBE/MBEs into the marketplace is as follows:**

- assisting SBE/MBEs to overcome barriers related to surety bonding or other financing (1)
- implementing communications programs regarding contracting procedures and opportunities (7)
- implementing supportive services programs to develop business management, record keeping, and accounting skills (8)
- assisting firms in the adoption of emerging technologies and the use of electronic media (2)
- adopting reciprocal preference laws so businesses could locate outside of the state (2)
- ensuring distribution of your certified directory, through print and electronic means, to as

- many potential prime contractors as possible (6)
- o others

Client #4B - giving local preference is actually hurtful to the process.

**Firms certified as an SBE only felt:**

Client #2I - If you look at the list of certified minority/women owned businesses, a large portion of those businesses are not businesses. They are company names that are certified. It is a challenge for everybody to sift through that list. If in the previous year you have not done any revenue, why are you certified and on the list and clogging that whole list up for everybody? Revenue or financial stability should be reviewed and then certification should be taken away. Not a qualified vendor. Are there enough prequalified vendors? No

Client #2G - Too many. Anybody or their brother can do it.

Client #2K - Should be policed better.

Client #2I - You used to have to be in business for a year to be certified. Got rid of that. It is fine to certify someone and the certification is now good for two years. If you cannot demonstrate revenue of some sort or financial stability, their certification should be taken away.

Client #2H - Not enough qualified MBEs

Client #2I - The individual who owns that company could be a qualified tradesman or qualified painter. But currently he or she may not be a qualified business owner of a painter company because they do not have the financial backing to not paint for a painting company and run a business to get a contract. (The painter's) His job prevents him from generating business. His financial position impacts his ability to run a company.

Client #2I - The question you should ask, "Is there enough prequalified minority/women owned business?" The answer is no.

**Participants indicating agreement with a suggested strategy to increase SBE/MBE participation in State of Connecticut projects or allow additional SBE/MBEs into the marketplace is:**

- o structuring solicitations, quantities, specifications and delivery schedules to facilitate increased participation by SBE/MBEs (8)
- o assisting SBE/MBEs to overcome barriers related to surety bonding or other financing (8)
- o assisting start-up SBE/MBE firms to become established (4)
- o implementing supportive services programs to develop business management, record keeping, and accounting skills (1)
- o ensuring distribution of your certified directory, through print and electronic means, to as many potential prime contractors as possible (6)
- o linked deposit programs or quick pay (8)
- o downsizing contract amounts (1)
- o reducing bonds and insurance requirements (7)
- o offering local bid preferences for subcontractors (1)
- o offering technical assistance (1)

**Multi certified participating contractors responded as to whether enough SBE/MBEs exist in the marketplace:**

Client #1A - Legitimate ones? No

Client #3A - State allows you to combine everyone as a minority and do not separate out white women from race.

Client #1A - Many have gone out of business and have gone out just because they are small

Client #4A - More promotion (by the State) to become DBE's or MBE's to encourage competition to work for less money. In Hartford, those (contractors) who are asking questions about the process of becoming DBE's or MBE's are put to the test. Feels the gate has been opened to let everybody in. The more people who compete for the job the less they are paid.

Client #1A - If the State sets a standard for what truckers are paid that would eliminate what ConnDOT has as a standard as a dollar value. Private projects there are no limits; you can work for \$20 and the next person may work for \$10. The state is willing to mandate what you pay your driver. You can work for pennies but you must pay your workers "x" amount, versus what the bid may be.

Client #3J - depends on the industry

Client #3E - In the construction industry it is always very simple. You do paving, sidewalks, curbs or highway illumination. That is it. That is where all the money goes for minority contractors in a nutshell. It is all the stuff the GCs will not do. So you are stuck in that pigeon hole as a minority contractor.

Client #5G - Yes because there is no demand for them (minority contractors).

Client #5F - Yes a lot of WBEs are out there and I say no. There is not a lot of qualified WBEs out there. What I mean about that is all these multimillion-dollar jobs and whatever. When you go into these jobs, you do not have any experience for what you are going into. I have seen it happen so many times. You jump into something where you do not have the slightest idea of what you are doing. You come from putting on a back porch to putting up an office building. It is altogether different. Are they really qualified?

**Participants indicating agreement with a suggested strategy to increase SBE/MBE participation in State of Connecticut projects or allow additional SBE/MBEs into the marketplace are as follows:**

- o structuring solicitations, quantities, specifications and delivery schedules to facilitate increased participation by SBE/MBEs

Client #5G - Yes, for example what I mentioned earlier: if they would break it out instead of just like construction projects, bid the design of construction projects; instead of just going through an architect and selecting their team, if they broke it out you could have more people bidding and a better chance of getting it.

Client #5B- Unbundling, yes. On the other hand, I do not like those bad faith nuisance bids where they send out for \$2,000 just so they can get that minority supplier that nobody wants and then they could say there are no minority bidders out there. When they do that that is a sham.

- Assisting SBE/MBEs to overcome barriers related to surety bonding or other financing (majority of hands raised to indicate agreement)

Client #5G - The problem is the people in the state to help out have not been there so far. So the question is if they say, "Okay, we need to have this new unit to do this," they will be equally as ineffective.

Client #5B- Their help is killing us

- Assisting start-up SBE/MBE firms to become established (majority of hands raised to indicate agreement)  
Comment: if you accompany that with helping attain legitimacy (3 indicated no from group 5)
- Implementing communications programs regarding contracting procedures and opportunities (6)
- Implementing supportive services programs to develop business management, record keeping, and accounting skills (3)
- Assisting firms in the adoption of emerging technologies and the use of electronic media (1)
- Adopting reciprocal preference laws so businesses could locate outside of the state  
No (10% if out of state contractor preference for being a local business) - A lot of things get bid out of state; tough because of taxes and high workers compensation in State
- Ensuring distribution of your certified directory, through print and electronic means, to as many potential prime contractors as possible (5 plus)
- linked deposit programs or quick pay (yes; all hands in focus group (12)  
Client #5B - The problem is the execution. They could screw that up too
- Downsizing contract amounts (19)
- Restricting prime contractors' self-performance (yes - policing the primes, 7)
- Reducing bonds and insurance requirements (yes - get rid of them, 10)
- Offering local bid preferences for subcontractors (yes, 9)
- Others?

Client #9A - DAS has contact information on file if job is coming out in the industry listed. Getting a direct email instead of looking through portal (e-blast). Have it without having to pay for it

Client #10A - State could close their own loopholes; be less discretionary on percentages of their operating budget; could keep more money in the state

Client #8A - Make process easier - make once a year to pre-qualify

Client #6A - Bid documents - make it simpler - could do more faster; more bids directed to woman or minorities rather than small business set asides

Client #5G - If they would actually set reasonable targets and say it is required the state agencies to meet those targets we all would get more work. For municipal government, and their subsets of the state government, if municipal government were required to have set-asides also and meet those targets, we all would be getting more work. But, they are not doing it.



Client #5B - If the state would just follow the set-aside law instead of breaking the law. Right now you leave it up to State workers to exempt each other from the law. Nowhere near the 6.25% or the 25%. If you follow what Pratt and Whitney has done every time they have contracted with small business they have saved money. It is when you allow the big companies to bundle it together and low bid, add all the change orders, the state pays a lot more money with all the cost overruns. They are going to say it cost more money to deal with it but small business always is cheaper. Because, they never add up all the change orders and all the overruns. They look to hide that later.

Client #5D - There are a lot of smaller projects that they do not let out like the emergencies in the towns and in the state that local preferences of who they would like. How do you find where that work is? Because you know they are not going on DAS because it has to be a demand, quick. They also have a smaller threshold that does not have to go out to public bid. I would assume it goes to whomever.

Client #5J - I agree. Emergency services is big especially with all the natural disasters. In 2009, we had record flooding in the State of Connecticut. The city of Norwich, Stonington and Ledyard. We shot all those floods with a vertical camera on our own nickel and called all the agencies just to get their name out there. They just kept sending us around - "call this agency, call that agency." We ended up calling Hartford Emergency Services. The person on the other end of the phone wanted to know "what agency are you with?" I said it is my wife's business; we are just a mom and pop firm. They just about laughed at me and hung up.

Client #5B - The state workers are also entertained. They are in there for perpetuity and when they get promoted, they hire someone else to do their job. They help the dealing with the big companies because they can do everything for them. They do not really care about the cost. They will help large firms hide the cost. When they hire us in, we are the taxpayers. They do not want us to see that.

### **Focus Group Written Questions - Summary of Responses**

At the beginning of each focus group session, contractors were asked to write their responses to the following questions\*:

*What is/should be the purpose of the state's small business enterprise program?*

*What is/should be the purpose of the state's minority business enterprise program?*

Contractor responses for the SBE program have been grouped into three categories, with the number of responses per category in parenthesis: 1) Fair opportunity to do business with the state (18); 2) Opportunity to grow small business (20); and 3) Other, such as create job opportunities and to celebrate small business (9).

Contractor responses for the MBE program have been grouped into four categories, with the number of responses per category in parenthesis: 1) Fair opportunity to do business with the state (25); 2) Opportunity to grow small business (11); 3) Address discrimination (1); and 4) Other, such as create job opportunities and to match state and municipal business with MBEs (9).

\*Note: Contractors in the first focus group session responded to only one question, which read, "What is/should be the purpose of the state's small and minority business enterprise program?"

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## APPENDIX G

### COMPARISON OF STATES' CERTIFICATION REQUIREMENTS

As part of this study's best practices review, small and minority business certification program requirements were analyzed for all states. All states have a Disadvantaged Business Enterprise (DBE) federal program administered through their respective departments of transportation, as well as Small Business Administration (SBA) programs for small businesses, such as HubZone and 8(a). Moreover, most states have their own state minority enterprise programs based on a corresponding statute. What was also found, however, is that some states, such as Arizona and Michigan, use the Disadvantaged Business Enterprise (DBE) program instead of creating their own separate state programs. Hence, if a company wants to bid on contracts at the federal and state levels, it only has to apply to one certification rather than applying for multiple certifications.

Among state programs, requirements vary widely in terms of program design and eligibility requirements. For example, most states have programs that specifically target racial minorities and women, however many states do not explicitly list if they have programs for veterans, the disabled, or other traditionally protected classes. Furthermore, many state programs require that the company applying for certification must be for profit. Some states, such as North Carolina, Kentucky, and Maryland permit companies to be both nonprofit and for profit.

Minority requirements, classifications, and recognition for certification across states vary widely. All states require that businesses must at least be 51% owned by minorities, women, veterans, etc. Virginia's SWaM (Small, Women owned, and Minority owned business) program even explicitly says that businesses cannot "round up" to 51% and must pass the 51% threshold for eligibility. For racial minority classifications, most states give generalized racial classifications such as Black or African American, American Indian, and Asian American. However, some states are more specific in defining racial classes, and some states list countries of origin for eligibility. For example, California's minority business enterprise program lists Bangladesh, Cambodia, China, and more when defining what constitutes an Asian. Further, many states differ in their recognition of what constitutes a certain racial class. For example, some states recognize Hispanic Americans as having origins in Latin America as well as the Iberian Peninsula (Spain, Portugal). However, many states do not recognize Hispanic Americans with origins in the Iberian Peninsula.

Revenue, employee, and personal net worth limit differences were also discerned among states for minority and small business enterprise programs. Some states had thresholds regardless of industry. However, some states created their thresholds by industry, such as Illinois, which had revenue limits for the industry categories of wholesale, retail, construction, and manufacturing. It is important to note that most states adopt the Small Business Administration's (SBA) size standard, which provides revenue limits by industry calculated on a national level. The SBA size standards do not account for regional differences.

States' certification programs also vary in terms of location of business requirements. Some states list that in order for a business to qualify for their programs, the businesses must be located within the state. Conversely, some states list that businesses can be out-of-state or must be located in the United States to qualify for certification. Most state certification programs that permit out-of-state qualifiers have "reciprocity" terms, meaning that they will automatically recognize another state's certification program if that state also recognizes their state certification program. This saves businesses from time-consuming paperwork to qualify for another state's

program. However, some states that do not allow out-of-state company certification want to give preference to in-state companies, thus foregoing the option of “reciprocity.”

Lastly, many states differ in terms of certification expirations. Some states only allow certifications to last a year, thus businesses must recertify by the end the year. However, many states permit the certification to last up to four years, thus businesses do not have to recertify as often. However, states may prefer to have more frequent recertification in order to closely monitor eligibility requirements such as revenue, personal net worth, and employee limits.

## APPENDIX H DEFINING A SMALL BUSINESS IN CONNECTICUT

Under current statute, Connecticut defines a small business as a business that grosses less than \$15 million in annual receipts. However, this definition needs to be changed because it does not account for industry and geographic differences. For example, a typical small business in the construction industry may not be the same as a small business in the food services industry. Further, a typical small construction business in New York City may not be the same as a small construction business in Willington, Connecticut. Therefore, Connecticut must adopt a new model that defines a small business.

Additionally, Connecticut's definition only uses the measure of revenue as a proxy for business size; yet there are other factors that can influence business size such as employee size, net income, net worth, business output, etc. According to the US Small Business Administration (SBA), the choice of a size measure for an industry depends on which measure best represents the magnitude of operations of a business.

A possible guide for Connecticut in determining a small business size standard is the SBA Size Standards Methodology report. The following outlines key assumptions and underlying industry factors that the SBA uses to formulate its Size Standards.

### **SBA underlying basis of what constitutes a small business.<sup>95</sup>**

- “The “**minimal efficient firm**” size refers to the level of output where firms in an industry are able to minimize their average cost of production and become competitive. Thus, conceptually, an industry's size standard should be set such that firms that have not achieved a minimal efficient firm size to remain competitive will be considered small and thus be eligible for SBA assistance while firms that are fully competitive would exceed the size standard and thus be considered ineligible.”
  - The higher the minimal efficient firm size for an industry, the higher should be its size standard. In general, industries with high minimal efficient size tend to be dominated by larger firms and, thus, their average firm size (especially weighted average) tends to be large.
- Given the lack of data on “minimal efficient firm” size by industry, SBA uses the “**average firm size**” as the proxy of minimal efficient firm size. Average firm size is likely to be positively related to minimal efficient (optimal) firm size. A simple average or a weighted average is used to determine “average firm size.”

### **SBA factors to consider when determining appropriate size of a small business by industry.**

#### **Primary Factors<sup>95</sup>**

- **Start-up costs and entry barriers** - Startup costs reflect the amount of capital requirements for physical plant and production equipment new firms must have to enter an industry and become competitive with existing firms.<sup>96</sup>

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95. United States Small Business Administration. SBA Size Standards Methodology. Size Standards Division Office of Government Contracting & Business Development: 2009.

96. Given the lack of data on actual startup costs and other measures of entry barriers (such as degree of product differentiation, advertising expenses, economies of scale, etc.), SBA uses average assets size as a proxy for the levels of capital needs for new businesses entering an industry. An industry with a significantly higher average assets size than the anchor comparison industry group is likely to have higher startup costs, which in turn would support a size standard higher than the anchor size standard.

- **Industry competition** - A prevailing method of analyzing industry competition is the measurement of concentration or market power to determine the extent to which a particular industry is dominated by a few large firms. SBA uses the “**four-firm concentration ratio**” or the cumulative share of total industry receipts of the four biggest firms ranked by order of market share. The four-firm concentration ratio is the most commonly used concentration measure for judging the degree of industry competition (Lipczynski, Wilson and Goddard, 2005).<sup>97</sup> “**Gini Coefficient**” - measures industry concentration by calculating the area difference between a “Lorenz curve” and a diagonal line representing “industry equality” (each firm in the industry has the same share of total receipts).
- **Federal contracting** - SBA also considers the share of federal contracts received by small business within an industry as one of the primary factors in reaching a size standard decision. The **Federal Procurement Data System** - Next Generation (FPDS-NG) contains data on federal purchases of goods and services by six-digit NAICS industry.
  - SBA uses this information to support an increase to an industry’s size standard where the small business share of federal contracts is very low, other factors being equal. In cases where that share is already extremely high, it becomes a neutral factor in the size standards decision.

**Secondary Factors (In addition to the primary factors discussed above, there are factors of lesser importance and not easily quantifiable)<sup>98</sup>**

- **Technological changes** - This factor affects the production process of an industry. It can result in fundamental shifts in an industry’s operations and ultimately can revolutionize entire segments of the economy and the labor force.
- **Industry growth trends** - This factor would take into consideration the overall trends in a particular industry, such as changes in firm size, concentration, and size distributions of firms.

**Data sources used to estimate “small business” size by SBA.**

- US Census Bureau Decennial Economic Census
- Risk Management Association Annual Statement Studies
- US General Service Administration’s Federal Procurement Data Center (FPDC)

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97. Goddard, John; Lipczynski, John; Wilson, John Industrial Organisation: Competition, Strategy, Policy, 2nd Edition

98. United States Small Business Administration. SBA Size Standards Methodology. Size Standards Division, Office of Government Contracting & Business Development: 2009.

## APPENDIX I

### STUDY COMMITTEE MEETINGS AND GUEST SPEAKERS

The following is a list of study committee meetings, including presentations given to the CASE study committee by guest speakers and the CASE Research Team. In the electronic version of this report, links to recordings of presentations and meeting proceedings are provided. (Internet Explorer is required to view videos.)

#### OCTOBER 17, 2012 - MEETING 1

- Introductory Remarks  
Richard H. Strauss, Executive Director, CASE
- Overview of Scope and Work Plan  
Alissa DeJonge, Study Manager and Director of Research, CERC
- Transportation Research Board of the National Academy of Sciences, National Model Disparity Study Project  
Colette Holt, Attorney at Law, Holt & Associates
  - Discussion – Holt Presentation
- Moving Beyond Disparity Studies: A Decision Support Model  
Eugene Fregetto, PhD, Clinical Associate Professor of Marketing, University of Illinois at Chicago
  - Discussion – Fregetto Presentation
- Committee Discussion
- Closing Remarks

#### DECEMBER 11, 2012 - MEETING 2

- Introductory Remarks  
Richard H. Strauss, Executive Director, CASE
- Maureen Berner, Professor of Public Administration and Government, School of Government, University of North Carolina
  - Discussion – Berner Presentation
- CalTrans 2012 - Executive Summary Overview  
Anna Siva, Project Manager, 2012 CalTrans Availability and Disparity Study  
Ramon Carlos, Acting DBE Program Manager, Caltrans
- Update from CASE Research Team  
Alissa DeJonge, Study Manager, Director of Research, CERC  
Carmel Ford, Research Analyst, CERC  
Rachel Gretencord, Director of Real Estate, CERC
- Committee Discussion
- Closing Remarks

FEBRUARY 26, 2013 – MEETING 3

- Introductory Remarks  
Richard Strauss, Executive Director, CASE
- New York State: Disparity Study - Data Management System, RFP, and Implementation  
Dean E. Bennett, Executive Director  
Alan Culbreath, Agency Services Administrative Support  
Scott Munson, Director of Certification  
Division of Minority and Women's Business Development  
Empire State Development
  - Discussion - New York State Presentation
- Dallas Fort Worth Airport: Use of Data Management System
  - Tamela Lee, Vice President  
Business Diversity and Development
  - Discussion - Dallas Fort Worth Airport Presentation
- Hillsborough County Florida: Use of Data Management System
  - Felix Bratslavsky, Program Coordinator  
Hillsborough County, Florida
  - Discussion - Hillsborough County Florida Presentation
- CASE Research Team - Study Update  
Alissa DeJonge, Study Manager, Director of Research, CERC
- CASE Update  
Richard Strauss, Executive Director, CASE
- Questions and Closing Remarks  
Richard Strauss, Executive Director, CASE

MAY 3, 2013 – MEETING 4

- Introductory Remarks  
Richard Strauss, Executive Director, CASE
- Committee Discussion – Draft Findings and Recommendations  
Alissa DeJonge, Study Manager, Director of Research, CERC

## MAJOR STUDIES OF THE ACADEMY

### 2013

- Connecticut Stem Cell Research Program Accomplishments

### 2012

- Strategies for Evaluating the Effectiveness of Programs and Resources for Assuring Connecticut's Skilled Workforce Meets the Needs of Business and Industry Today and in the Future
- Benchmarking Connecticut's Transportation Infrastructure Capital Program with Other States
- Alternative Methods for Safety Analysis and Intervention for Contracting Commercial Vehicles and Drivers in Connecticut

### 2011

- Advances in Nuclear Power Technology
- Guidelines for the Development of a Strategic Plan for Accessibility to and Adoption of Broadband Services in Connecticut

### 2010

- Environmental Mitigation Alternatives for Transportation Projects in Connecticut
- The Design-Build Contracting Methodology for Transportation Projects: A Review of Practice and Evaluation for Connecticut Applications
- Peer Review of an Evaluation of the Health and Environmental Impacts Associated with Synthetic Turf Playing Fields

### 2009

- A Study of the Feasibility of Utilizing Waste Heat from Central Electric Power Generating Stations and Potential Applications
- Independent Monitor Report: Implementation of the UCHC Study Recommendations

### 2008

- Preparing for Connecticut's Energy Future
- Applying Transportation Asset Management in Connecticut
- A Study of Weigh and Inspection Station Technologies
- A Needs-Based Analysis of the University of Connecticut Health Center Facilities Plan

### 2007

- A Study of the Feasibility of Utilizing Fuel Cells to Generate Power for the New Haven Rail Line
- Guidelines for Developing a Strategic Plan for Connecticut's Stem Cell Research Program

### 2006

- Energy Alternatives and Conservation
- Evaluating the Impact of Supplementary Science, Technology, Engineering and Mathematics Educational Programs
- Advanced Communications Technologies
- Preparing for the Hydrogen Economy: Transportation
- Improving Winter Highway Maintenance: Case Studies for Connecticut's Consideration
- Information Technology Systems for Use in Incident Management and Work Zones
- An Evaluation of the Geotechnical Engineering and Limited Environmental Assessment of the Beverly Hills Development, New Haven, Connecticut

### 2005

- Assessment of a Connecticut Technology Seed Capital Fund/Program
- Demonstration and Evaluation of Hybrid Diesel-Electric Transit Buses

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## **CONNECTICUT ACADEMY OF SCIENCE AND ENGINEERING**

The Connecticut Academy is a non-profit institution patterned after the National Academy of Sciences to identify and study issues and technological advancements that are or should be of concern to the state of Connecticut. It was founded in 1976 by Special Act of the Connecticut General Assembly.

### **VISION**

The Connecticut Academy will foster an environment in Connecticut where scientific and technological creativity can thrive and contribute to Connecticut becoming a leading place in the country to live, work and produce for all its citizens, who will continue to enjoy economic well-being and a high quality of life.

### **MISSION STATEMENT**

The Connecticut Academy will provide expert guidance on science and technology to the people and to the State of Connecticut, and promote its application to human welfare and economic well-being.

### **GOALS**

- Provide information and advice on science and technology to the government, industry and people of Connecticut.
- Initiate activities that foster science and engineering education of the highest quality, and promote interest in science and engineering on the part of the public, especially young people.
- Provide opportunities for both specialized and interdisciplinary discourse among its own members, members of the broader technical community, and the community at large.

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